

**Terrorism and the Law of Kuwait:
The local responses to universal threats and
international demands**

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Abstract

This thesis will focus on four issues regarding terrorism and counterterrorism in Kuwait. It will first provide a comprehensive understanding of the threats and the phenomenon of terrorism in Kuwait since its independence in 1961. Second, this thesis will discuss the counterterrorism policies and agenda that Kuwait has adopted to react to terrorism. Third, the criminal offences related to terrorism in Kuwait will be examined. Finally, this thesis will evaluate measures intended to thwart financing terrorism in Kuwait before and after the ratification of the International Convention for the Suppression of the Financing of Terrorism (1999).

Within these themes, this thesis will assess and evaluate the effectiveness of the abovementioned reactions by the Kuwaiti government. The thesis will also assess whether these reactions have impacted Kuwaiti constitutional values. Therefore, this research project will evaluate the fairness and appropriateness of these reactions with regard to Kuwaiti constitutional law and also with regard to international laws, including human rights.

Finally, this thesis will consider the reality that many of the causes of terrorism and many of the possible solutions to these causes do not originate in Kuwait. Nevertheless, Kuwait is not immune to the consequences of terrorism and the efforts of international laws and international partners to stop it. Therefore, this thesis will assess how far Kuwait, as a country in an area of the world that is greatly affected by terrorism, is able to look after its own interests in this regard or is subjected to the wishes of other countries, such as the United States, or the international community. This analysis is especially important, since Kuwait is a small country surrounded by much larger, more powerful, and largely unstable countries, such as Saudi Arabia, Iran, and Iraq.

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List of Abbreviation

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
CBK	Central Bank of Kuwait
CDD	Customer Due Diligence
CMA	Capital Market Authority
CPC	Criminal Procedure Code
CT	Combating Terrorism
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FCT	Foreign Currency Transaction Report
FI	Financial Institution
FSRB	FATF-Style Regional Body
GCC	Gulf Cooperation Council
GAC	General Administration of Customs
ICSFT	International Convention for the Suppression of the Financing of Terrorism 1999
KBF	Kuwait Bank Federation
KFH	Kuwait Finance House
KFIU	Kuwait Financial Intelligence Unit
KLA	Kuwait Lawyers' Association
KSE	Kuwait Stock Exchange
KD	Kuwaiti Dinar
KYC	Know your customer/client
LCT	Large Cash Transaction Report
MAK	Maktab Al-Khidamat
MENAFATF	Middle East and North Africa Financial Action Task Force

MFA	Ministry of Foreign Affairs
MLA	Mutual legal assistance
MOCI	Ministry of Commerce and Industry
MOF	Ministry of Finance
MOJ	Ministry of Justice
MOI	Ministry of Interior
MOSAL	Ministry of Social Affairs and Labour
MVTS	Money or Value Transfer Services
NCCMLTF	National Committee for Combating Money Laundering and Terrorism Financing
NPO	Non-profit organisation
PEP	Politically-exposed person
PPO	Public Prosecutor Office
STR	Suspicious Transaction Report
SSB	State Security Bureau
UN	United Nations Organisation
UNSCR	United Nations Security Council Resolution

Chapter One

Research Plan

1.1 Introduction and Background

Terrorism is a worldwide problem that concerns every nation. Its importance is evidenced by the counterterrorism efforts of the United Nations, the United States of America, and other countries, including Kuwait. Although concerns about terrorism became very prominent after 9/11, this thesis will show that terrorism first affected Kuwait well before the incidents of 9/11. Therefore, it is not sufficient to look at 9/11 as the point when the State of Kuwait first became concerned about terrorism. Nevertheless, the events of 9/11 galvanised the reactions and concerns of the international community about terrorism and counterterrorism and ensured that every country has at least minimum measures to combat terrorism. In fact, since 9/11, concerns about terrorism and investigations into how it developed nationally and internationally have been constant.

In response to these concerns about terrorism and its effects upon all nations, including Kuwait, many policies, laws and other actions have been implemented to combat it. In Kuwait, for instance, policies and measures are in place that have the effect of combating terrorism, even though they are not specifically related to terrorism and there are no comprehensive and specific counterterrorism laws. Terrorism has been, and remains, a major concern in Kuwait.

For the purposes of this research project, this thesis will focus on four issues regarding terrorism and counterterrorism in Kuwait. It will first provide a comprehensive understanding of the threats and the phenomenon of terrorism in Kuwait since its independence in 1961. Second, this thesis will discuss the counterterrorism policies and agenda that Kuwait has adopted to react to terrorism. Third, the criminal offences related to terrorism in Kuwait will be examined. Finally, this thesis will evaluate measures intended to thwart financing terrorism in Kuwait. It should be noted that this thesis covers all available measures to counterterrorism until 1 August 2014.

Within these themes, this thesis will assess and evaluate the effectiveness of the abovementioned reactions by the Kuwaiti government. The thesis will also assess whether and how these reactions have impacted upon Kuwaiti constitutional values. Therefore, this research project will evaluate the fairness and appropriateness of these reactions with regard to Kuwaiti constitutional law and also with regard to international laws, including human rights.

Finally, this thesis will consider the reality that many of the causes of terrorism and many of the possible solutions to these causes do not originate in Kuwait. Nevertheless, Kuwait is not immune to the consequences of terrorism experienced elsewhere and the efforts of international laws and international partners, such the United States, to stop it. Therefore, this thesis will assess how far Kuwait, as a country in an area of the world that is greatly affected by terrorism, is able to look after its own interests in this regard or is subjected to external pressures which might inspire less suitable counter-terrorism responses. This analysis is especially important, since Kuwait is a small country surrounded by much larger, more powerful, and largely unstable countries, such as Saudi Arabia, Iran, and Iraq.

1.2 Statement of Thesis

This research will investigate how the State of Kuwait, as a Gulf nation with limited geo-political influence and very much dependent upon the protection of others, is subjected to external influences but still seeks to interpret, modulate and apply external expectations about combating terrorism within its own jurisdiction and according to its own values. This research will focus on the potential conflict between external and local influences toward the overall responses to terrorism in Kuwait and the results it has produced.

There is exploration as to how Kuwait has been subjected to many pressures from foreign, regional or international bodies that have impacted on, and potentially prompted or hampered the government's overall response to terrorism since its independence in 1961. These influences are explored within the specific contexts of criminal laws against terrorism and counter-terrorism financing law, which are subjected to tests of effectiveness and fairness.

1.3 Research Questions, Objectives and Content in Outline

This thesis will analyse, investigate and examine the following questions, which are arranged according to the sequence of the chapters.

1.3.1 Chapter One: Research Plan

This chapter is an introduction to the thesis, it explains the overall content of the thesis and it outlines briefly the content of each chapter that will follow in this thesis. It will also describe the importance and originality of the thesis. It will, in particular, cover the research design and methodology which will be adopted and implemented in the research project, and how they will help the researcher in achieving the aims and objectives of the research project. It is worth noting that this chapter will explain the fieldwork process, the sampling strategy and how the fieldwork findings will be important specifically for chapters four and five. Moreover, it will explore ethical issues that might occur while doing the research project and how they will be tackled. Finally, the chapter will illustrate the scope and the limits of the study, and the potential problems that might occur while undertaking the research investigation.

1.3.2 Chapter Two: The Phenomenon of Terrorism in Kuwait

This chapter will examine the development of terrorism in Kuwait. It will analyse the types of terrorism that have emerged during the history of Kuwait and why they have emerged. How has terrorism developed in Kuwait since its independence? What terrorist groups are in Kuwait, and to what extent are their ideologies connected to other regional and international terrorist movements? Is Al-Qaida in fact a threat in Kuwait? This chapter will also evaluate how the conflicts in neighbouring countries influenced the Kuwaiti population and produced extremism related to terrorism and the evolution of terrorism. This chapter will also examine whether there are any transnational aspects of terrorist activities in Kuwait. It will go further to critically assess how the presence of, and alliance with, the United States in Kuwait has been responsible for bringing terrorism to Kuwait. Finally, this chapter will analyse the phenomenon of terrorism in Kuwait, its nature and how it has developed since the 1960s. The main aim is to evaluate how terrorism in Kuwait has persisted over time and what has influenced its persistence.

It is understood that the Middle East countries have undergone profound regional, political, social and ideological changes as the result of the loss of the Arab-Israeli War in 1967, the Iran-Iraq war and the Iranian Revolution, the Soviet-Afghan war and the latest incident of the Arab Spring Movement. As this chapter concerns the nature of terrorism in Kuwait, it aims to examine the terrorist incidents that have happened in Kuwait and to analyse whether the aforementioned changes have influenced and contributed to the development of terrorism in Kuwait.

Kuwait is a small country situated in a sensitive position in the region. Its borders are shared with unstable countries that are famous for their many national troubles: Saudi Arabia from the southwest and Iraq and Iran from the northeast. As a result, Kuwait has been affected by the conflicts of its neighbouring countries. Moreover, Kuwait is a close ally of the United States and hosts American troops in its territory since the American liberation of Kuwait from Iraq's invasion. Thus, it is to be determined whether such conditions have any impact on the development of terrorism in Kuwait. This chapter will examine the potential threats to Kuwait's national security.

During recent years and especially since the 9/11 incidents, Al-Qaida has aimed to spread its ideology of global Jihad in the world, which has become one of the major threats to Kuwaiti national security. Therefore, Kuwait has witnessed many terrorist attacks conducted by groups that are either related to Al-Qaida or have adopted and praised its ideology. This chapter will conclude by outlining the possible future threats from neighbouring countries and Al-Qaida's adaptive strategy after the death of Bin Laden.¹

1.3.3 Chapter Three: Kuwait's Counterterrorism Strategies

This chapter will critically analyse the government's overall policies and strategies against terrorism by addressing the following questions. How has the government developed its overall policies and strategies against terrorism? And to what extent has Kuwait set its own agenda to combat terrorism in its own territory?

¹ Jenkins, B. M., *Al Qaeda in Its Third Decade: Irreversible Decline or Imminent Victory?*, (RAND, 2012), Available at: http://www.rand.org/content/dam/rand/pubs/occasional_papers/2012/RAND_OP362.pdf accessed 1st Dec. 2014. See also Celso, A. N., 'Al Qaeda's Post-9/11 Organizational Structure and Strategy: The Role of Islamist Regional Affiliates', (2012) 23(2) *Mediterranean Quarterly*, 30-41.

What regional and international pressures were on Kuwait to respond to terrorism? How has the hostile environment caused by neighbouring countries impacted Kuwait's response to terrorism? This chapter will critically assess whether external pressure, such as from the United States or the international community, has any impact on the Kuwaiti government's response to terrorism. What is Kuwait's counterterrorism strategy, and how effective is it in addressing the threats of terrorism in Kuwait? Which approach of the counterterrorism legal strategies has Kuwait adopted in responding to terrorism, and how does the Kuwaiti government consider the normative considerations of the Kuwaiti constitutional values? To what extent are the adopted legal strategies in accord with the rule of law and effective in protecting the human rights which have been stated in the Kuwaiti constitutional law? What is the definition of terrorism in the Kuwaiti perspective?

Therefore, this stage of the research will explore and examine how Kuwait has reacted to terrorism threats during its history. The chapter will start with a general illustration of Kuwaiti fundamental values and principles that have been set out in the constitutional law and in the international conventions on human rights that Kuwait has ratified (e.g. the International Covenant on Civil and Political Rights), which in general regulate the government's response to any crimes, specifically crimes related to terrorism. It is not certain what the counterterrorism strategies in Kuwait are due to the lack of publication of the government's policies in any comprehensive statement. However, this research will analyse Kuwait's general policies, whether in the form of policy statements issued by the Kuwaiti government or by the National Assembly of Kuwait. In other words, this chapter will focus on how Kuwait has addressed the various threats discussed in the previous chapter and according to each period. Furthermore, the research will analyse the construction of Kuwait's strategies against terrorism by analysing its domestic and international policies. In addition, this chapter will investigate whether there were international or regional pressures in adopting policies that are not implemented with any enthusiasm or effectiveness. This chapter will conclude with an assessment of the government's policies against terrorism and whether the government has addressed the threats of terrorism in accordance with its national constitutional values.

1.3.4 Chapter Four: The Kuwaiti Criminal Law: Criminal Offences Related to Terrorism

This chapter will critically examine the criminal laws related to terrorism in Kuwait by addressing the following questions. To what extent has Kuwait developed the necessary legal framework to address the threats of terrorism? What are these laws, and what offences do they outlaw? This chapter will assess how far are these laws related to the adopted strategy, and to what extent do they achieve the strategic aims and objectives? What is the legal framework supporting the general strategy which has been adopted by the Kuwaiti government to deal with counterterrorism, and has it been counterproductive? This chapter will examine whether implementing international laws or Western style laws exacerbate domestic political tensions? It will go further to assess to what extent has Kuwait been enthusiastic in implementing laws which are not locally derived? This chapter will also critically evaluate how the laws related to terrorism comply with the Kuwaiti constitutional law and with the human rights treaties and conventions that Kuwait has signed and ratified.

Therefore, this chapter will focus on outlining and analysing the criminal offences that are related to terrorism in the Kuwaiti criminal law. Although there is not a comprehensive counterterrorism law in Kuwait, yet there are some articles within the Kuwaiti criminal law that criminalise terrorist activities. In addition, there are also some adopted international laws regarding specific forms of terrorism. Therefore, identifying those articles and the functions that they serve is the main focus of this chapter. In this regard, an analytical study will be made of the Kuwaiti criminal law, which is the Kuwaiti Penal Code No. 16 of 1960, and of the other special laws that have since been passed and added to the law or that have amended some of its parts which related to crimes related to terrorism. It will also critically evaluate how these laws adhere to Kuwait's commitments to the international conventions on terrorism and international conventions on human rights. Moreover, this chapter will investigate whether Kuwait has been pushed into passing laws to criminalise terrorism in a way that have exacerbated, rather than resolved, political tensions. In addition, this chapter will examine other internal issues among political blocs within the national parliament, which have hampered the government's initiatives against terrorism.

1.3.5 Chapter Five: Terrorist Financing: Kuwait's Response

This chapter will focus on Kuwait's regulated banking system and the money service businesses related to financing terrorism by addressing the following questions. How has Kuwait regulated the banking system and the money service businesses in order to combat financing terrorism? Has Kuwait passed any new laws to meet the normative requirements set by the United Nations International Convention for the Suppression of Terrorist Financing 1999 and complied with the 40 + 9 recommendations of the Financial Action Task Force (FATF)? This chapter will also evaluate the government's regulations and measures in two areas that have concerned the international community. Firstly, it will discuss how Kuwait has responded to the risks created by the informal money transfer system, the *Hawala* system of money remittances. Secondly, it will discuss the measures that have been set by the government to regulate Islamic charitable (*Zakat*) and humanitarian organisations. This chapter will explore how effective was the Kuwaiti government in implementing laws related to combating financing terrorism, especially those that were adopted from the international conventions. It will consider to what extent did these laws exacerbate the political debate in the parliament, especially with regard to the Islamic blocs and how did they react? Considering the international concern about financing terrorism, were there regional and international pressures on Kuwait to respond to financing terrorism? The chapter will next explore whether there are any special units to track terrorist financing activities, which units, and how do they work? Finally this chapter will critically examine Kuwait's financial system against terrorist financing and to evaluate the financial position and framework to determine how terrorism is financed.

International attention and concern about terrorist funding has become a universal issue, especially after UNSCR 1373 of 28 September 2001 which was adopted under Chapter VII of the United Nations Charter. Therefore, all member states in the UN are now obligated to regulate their financial systems in accordance with the normative requirements set by the United Nation's International Convention for the Suppression of Terrorist Financing 1999 and the 40 + 9 recommendations made by the FATF. Thus, this chapter will be narrowed to explore Kuwait's response and initiative in addressing the issue of financing terrorism in line with these precepts. Additionally, it will outline the offences

related to financing terrorism within the national laws and will discuss and analyse how they comply with domestic and international standards.

Since some Kuwaiti citizens and organisations have been listed on the UN Consolidated List, the List established and maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) with respect to individuals, groups, undertakings and other entities associated with Al-Qaida, some initiatives have been made by the Kuwaiti government against the financiers. The research, therefore, will evaluate the Kuwaiti legal framework against terrorist financing. It will also examine whether the Kuwaiti government has been pushed to react to individuals or organisations that are mentioned on the list and whether that response has caused any internal tensions. This chapter will conclude with an overall assessment of the national laws and procedures intended to ensure that the money will not be diverted to terrorist organisations.

1.3.6 Chapter Six: Conclusion

This chapter will give an overall assessment of the outcomes and findings. In addition, the chapter will reflect on the adopted methodology and how successful it was in obtaining original and relevant information. Furthermore, this chapter will outline what have been covered in this study, and suggest avenues for future research which will complete the full picture of the Kuwait counter-terrorism efforts. Finally, it will critically evaluate how has the regional and international influences affected the overall response to terrorism in Kuwait.

1.4 Importance and Originality of the Research

This research is intended to contribute to the development of analysis and critique of terrorism and counterterrorism in Kuwait, the Gulf region and at the international level. Most regional researchers, and some international ones, have written about terrorism in the Middle East by focusing on Saudi Arabia, Bahrain and Yemen, and how these governments have reacted to terrorism. Other studies have focused on Al-Qaida in the Arabian Peninsula and other related terrorist groups in the region, notably in Saudi Arabia and Yemen. Yet, there has been no major study during the last decade about terrorism in Kuwait and how terrorism and

counterterrorism has developed in this country. In fact, there is only one study, in 2003, which has illustrated ‘the regional measures Kuwait and other States in the region resorted to, to counter terrorism’.² In addition, most of what has been written was mainly about political or historical studies of the situation in Kuwait, and was not comprehensively related to the phenomenon of terrorism in Kuwait.³ Furthermore, the available literature that related to criminal/penal law and anti-money laundering crimes does not deal with how Kuwait applies these laws to terrorism.⁴ Moreover, there is not any literature which deals with how Kuwait combats the financing of terrorism, apart from the IMF 2011 report on Kuwait.⁵ Also, there is no literature about the most recent reforms in this area, which were made in 2013.

Thus, this research has originality with regard to its analysis of both terrorism and counter-terrorism in Kuwait. This research is intended to provide a better understanding of the phenomenon in Kuwait and to identify the terrorist groups, their ideologies and the type of terrorist crimes that they have committed. Furthermore, the study will critically analyse the Kuwaiti counterterrorism policies from the perspectives of effectiveness and fairness and explore how national, regional or international pressures have affected Kuwait’s response to terrorism. The thesis will also significantly contribute by providing information regarding the national security agenda and how Kuwait has developed, or adapted available, instruments to combat terrorism.

This thesis also intends to contribute to a better understanding of the Kuwaiti legal instruments in responding to terrorism and the Kuwaiti criminal laws against terrorism and terrorism financing. In addition, as already mentioned, this thesis, for the first time, covers the New Kuwaiti Law on terrorism financing, Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of

² Al-Ajmi, T. S., ‘Legal Responses to Terrorism with Special Reference to the Position of Kuwait’, (PhD Thesis, University of Wales, 2003).

³ See Chapter Two.

⁴ See Salem, A. B., *Mediator to Explain the Kuwaiti Penal Code*, (3rd edn, Kuwait University, 1993). See also Gham M. G. and Al-Kandari F. A., *Explain the Kuwaiti Penal Code*, (2nd edn, Kuwait University, 2010-2011). See also Mohammadain, J. W., *Anti-Money Laundering: According to the Kuwaiti law No. 35 of 2002*, (The Industrial Bank of Kuwait K.S.C.: September 2003). See also Chapters Four and Five.

⁵ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011).

Terrorism (AML/CFT). This contribution is very important, because it will provide a critical evaluation of the new policies and laws about terrorism in Kuwait and will evaluate how the government can develop its agenda in the future.

Another aspect of originality arises from the findings arising from the empirical research on terrorism conducted in Kuwait. Though empirical data has been regularly gathered since 2001 by international bodies such as UN CTC and the FATF, no in-depth academic fieldwork has recently been undertaken.

1.5 Research Design and Methodology

This section will present the methods that have been used in this research project. It will examine and explain why such methods have been chosen and how they helped to achieve the research aims and objectives. Further, it will describe the sampling and the data analysis strategy. Finally, it will discuss the ethical issues that impacted on this study.

This approach involved a socio-legal approach, which combines documentary and doctrinal legal research, an historical research method, and fieldwork interviews undertaken through a qualitative research approach. It should be noted that this thesis is not a full comparative study since it is mainly about Kuwait; however, since this thesis was being written in the UK, it was feasible and useful to draw lessons from the UK.

1.5.1 Historical and Socio-Legal Research Method

Since this research analysed and explored the history of terrorism in Kuwait and how laws related to terrorism have been developed, a historical research method has been used as one of the research approaches in the study. This has entailed the exploration and investigation of the terrorist groups and individuals in Kuwait since its independence and the development of Kuwaiti counterterrorism measures. As a result, searching for accurate and trusted records and documents have been given a high concern,⁶ so the research relied on government reports and publications, newspapers, and published secondary commentaries whether on law

⁶ Melton, B. F., Jr., 'Clio at Bar: A Guide to Historical Method for Legists and Jurists', (1998) 83, *Minnesota Law Review*, 377.

or on terrorist incidents. The documents relevant to the development of the laws related to terrorism were available in the Library of the National Assembly of Kuwait. Some of these sources were primary, which enabled the researcher to analyse the actual texts of prime actors. The researcher also relied upon secondary sources with regard to the development of the terrorist activities in Kuwait and the region. In this study, the researcher also outlined the historical events that happened in Kuwait and analysed the experienced pressures that have been generated from the internal political changes in the parliament which determined how such changes had an impact on the government's response to terrorism. Consequently, this thesis can be seen as a socio-legal study.

Socio-legal research provided important insight in this research study, because, sometimes, a legal edict or ruling may become ambiguous or unclear and is therefore more easily interpreted when viewed in its proper historical or social context.⁷ Thus, doctrinal legal research and the historical research method have been complemented by a socio-legal research method implemented by fieldwork interviews. The researcher used expert interviews to obtain a proper behind-the-scenes account of what was influential in designing Kuwaiti policy and whether there were international or regional pressures. The vision of socio-legal research always extends beyond legal texts, academic writings, libraries and the like to investigate 'law-in-society'.⁸ In other words, the main objectives of the socio-legal research are to put the law in context through gathering insights and information from respondents. It also serves to broaden the research discourse by filling the gap between 'laws in books' and the social world, by taking the researcher from merely investigating 'the law' to collecting the related data from wherever possible.⁹ In other words, the empirical data that were generated from socio-legal research gave important insights on 'how the law works in the real world'.¹⁰

⁷ Chynoweth, P., 'Legal Research', in Knight and Ruddock (eds.), *Advanced Research Methods in the Built Environment*, (Wiley-Blackwell, 2008), 30.

⁸ Bradshaw, A., 'Sense and Sensibility: Debates and Developments in Socio-Legal Research Methods', in Thomas, P. A., ed, *Socio-Legal Issue*, Socio-Legal Studies Series, (Dartmouth Publishing Company Ltd., 1997), 99.

⁹ *Ibid.*

¹⁰ Abd Razak, A., 'Understanding Legal Research', (March, 2009) 4, *Research Bulletin of the Faculty of Economics and Management*, 19-24.

1.5.2 Documentary Research

The relevant research instruments were texts and materials gathered from primary sources, such as legislation on terrorism in Kuwait and official documents, and from secondary sources, such as the internet, scholarly articles, magazines, newspapers and textbooks. The extent to which the hypotheses mentioned earlier are true have been verified using the descriptive material gathered.

1.5.2.1 Doctrinal Legal Research

Doctrinal legal research is sometimes described as study of ‘black-letter law’ due to its main concern for the law itself, which can be obtained and accessed through court cases and statutes.¹¹ It also explores the law regarding specific issues and describes how it has been developed and applied.¹²

To determine the laws and the policy related to terrorism in Kuwait, especially in the absence of a comprehensive and clear counterterrorism law,¹³ the researcher examined the proximate legal texts and especially the Kuwaiti criminal law, constitutional law and conventions that relate to terrorism in Kuwait. These were complemented by the analysis of other primary sources, such as official documents, unpublished documents, human rights reports, parliamentary documents regarding national, regional and international security and defence. These sources were chosen to the extent that they provide sources on the doctrine of the law and the policy. Therefore, the aims and objectives of the research have been achieved by examining the different legal perspectives on law and policy.

The following libraries were visited in order to collect the relevant materials about terrorism in Kuwait. Firstly, Kuwait University Libraries: the Faculty of Law Library, Sheik Jaber Al-Ahmad Central Library, the library of the Faculty of Sharia and Islamic Studies, the Centre of Strategic and Future Studies and the Centre of Gulf and Arabian Peninsula Studies. Secondly, Government libraries: the Library of

¹¹ McConville, M. and Chui, W., ‘Introduction and Overview’, in McConville, M. and Chui, W., *Research Methods for Law*, (Edinburgh University Press: Edinburgh, 2007), 1-3.

¹² Dobinson, I. and Johns, F., ‘Qualitative Legal Research’, in McConville, M. and Chui, W., *Research Methods for Law*, (Edinburgh University Press: Edinburgh, 2007), 19.

¹³ U.S. Department of State, *Country Reports on Terrorism 2010*, Chapter 2. Country Reports: Middle East and North Africa Overview, (Office of the Coordinator for Counterterrorism, 2011) Available at: <<http://www.state.gov/s/ct/rls/crt/2010/170257.htm>> accessed 1st Dec. 2014.

the National Assembly of Kuwait, the Library of the Central Bank of Kuwait, the Library of the Kuwait Institute for Judicial and Legal Studies, the Library of the Ministry of Justice and the Central Library of the Saad Al-Abdullah Academy for Security Sciences.

In addition, UK's libraries were helpful in housing materials related to terrorism and counterterrorism in general, and in providing materials related to the political history of Kuwait with some references to terrorism. For example, University of Leeds libraries: Brotherton and Edward Boyle libraries were visited in order to collect the relevant materials. Furthermore, the inter-library loan service was used to gain access to some documents which were not found in the University library. Moreover, libraries like the British library and the Institute of Advanced Legal Studies (University of London) library were visited while doing the research.

1.5.3 Qualitative Research

The proposed study is critical, analytical and descriptive in nature. Therefore, to deepen the enquiry into the identified problem, qualitative research was the chosen tool through which to analyse the terrorism and its local responses to universal threats and international demands in Kuwait. For such qualitative research to be effective, it was necessary to understand basic social and other human related difficulties that must be overcome and resolved by knowing their root causes. To initiate qualitative research, the prominent factor was to look at the facts of interest, which have many aspects and which emphasised the functional relations between the society and the problems arising in society due to terrorism.

Therefore, a qualitative research method was adopted for this research project to secure the following benefits. Firstly, the qualitative approach is based on obtaining a more practical feel of the field of study that cannot be achieved by numerical data and statistical analysis used in quantitative research. In addition, because quantitative method only deals with numbers, statistics and surveys, it is therefore more likely to result in a closed understanding without any interaction with the social world, unlike the qualitative approach which is more interactive with the social world. Furthermore, there are no accurate documentation or statistics related to terrorism and terrorism cases because, in Kuwait at least, this

information is very sensitive and accessing to it could not be achieved. Therefore, the qualitative research approach offered more flexible ways to collect and analyse data and was, therefore, an appropriate approach for the collection and interpretation of field data. Moreover, as stated by Bogdan and Taylor, qualitative research data can 'Provide a holistic view of the phenomena under investigation'.¹⁴ What is more, the data give the 'Ability to interact with the research subjects in their own language and on their own terms'.¹⁵ Lastly, qualitative research provided added facts and understanding of them.

Within the qualitative approach adopted, this study utilised the expert interview, because the researcher aims were to gain an in-depth and clear understanding about Kuwaiti policy in response to terrorism and other sensitive issues related to regional and international influence. Knowledgeable personnel provided rich information on the research topic.¹⁶ By contrast, Kuwaiti legal books and law provided important but limited detail about how Kuwait has responded to terrorism. They were especially limited in explaining perceptions and implementation of laws and policies. Therefore, socio-legal research helped to correlate the social and cultural construction of the people's reactions to the stated law and policy.¹⁷ In addition, interviewing experts was helpful in gaining access to documentary information that had not been published.

Next, and by way of further justification, it should be noted that observational study approaches were rejected in this study for several reasons. First, terrorism cases do not often occur in Kuwait, especially during the last three years. Second, terrorism cases are considered as sensitive cases in Kuwait, and therefore most of terrorism cases are ended with a 'confidential court hearing', which did not allow the researcher to observe. In addition, focus groups approaches were not utilised in this study for many reasons. First, this study intended to interview experts from different ministries and departments who are busy, and it might not be possible to

¹⁴ Bogdan, R. and Taylor, S. J., *Introduction to qualitative research methods*, (John Wiley: New York, 1975), 6-11. See further Patton, M. Q., *Qualitative evaluation methods*, (Sage: Newbury Park, CA: 1980).

¹⁵ Kirk, J., and Miller, M. L., *Reliability and validity in qualitative research*, (Qualitative Research Series 1, Sage: Beverly Hills, CA: 1986).

¹⁶ Denscombe, M., *The Good Research Guide: For Small-Scale Research Project*, (Open University Press, McGraw Hill Education, 2003), 165.

¹⁷ Silverman, D., *Doing Qualitative Research: A Practical Handbook*, (Sage Publication: London, 2000), 5.

get them all together at one time and place. Second, such an approach might pose some hesitancy on the part of experts about voicing opinion before other experts, and therefore might not provide useful information at the individual level.

Having selected interviews, as the chosen method, the interview consisted of a conversation between the interviewer and the interviewee rather than a strict 'question and answer' session.¹⁸ It was advisable to allow the experts to express their ideas freely and to try to draw as much information as possible for the research purposes. In this thesis, the researcher used expert interviews to obtain valuable sources of information and evidence related to terrorism, counter-terrorism, and the law of Kuwait. Expert interviews are crucial, especially when the researcher needs to gather new information in a research project. Meuser and Nagel define 'expert' as 'a person who has privileged access to information about groups of persons or decision processes or who is responsible for the development, implementation or control of solutions, strategies and/or policies'.¹⁹ Thus, such interviews helped to give a good understanding of the phenomenon of terrorism and the processes of how the government responds to it during the recent history of Kuwait.

The researcher conducted face-to-face interviews with key government and law enforcement officials. He also interviewed non-State experts, comprised of defence lawyers, NGO representatives that deal with human rights and professors from the Kuwait University, who provide critical understandings and views of terrorism and the laws of Kuwait.

Thus, expert interviews were meant to accomplish two key objectives. First, they helped to obtain valuable insights and information regarding the history, development and the future of terrorism in Kuwait and the official way of responding to terrorism. Secondly, interviews brought immediate gains in terms of originality, which in turn helped to strengthen the overall result of the research.

¹⁸ Mason, J., *Qualitative Researching*, (Sage Publications: London, 2002), 67.

¹⁹ Meuser, M., and Nagel, U., 'ExpertInneninterviews - vielfach erprobt, wenig bedacht. Ein Beitrag zur qualitativen', (2002), Cited in Picone, I., 'Conceptualising Online News Use', (2007) 3, *Observatorio (OBS*) Journal*, 093-114.

The research adopted the semi-structured interview for several reasons. First, this form of interview allowed the interviewees to explain and express their ideas and thoughts openly.²⁰ In addition, it helped the interviewees by giving them room for flexibility to develop their ideas on the topic that has been raised by the interviewer.²¹ Thirdly, as there is no major study about terrorism in Kuwait, room to develop ideas was necessary when the interviewees provided unexpected and vital information during the interviews. However, the researcher worked from a list of questions regarding chapter related topics, which helped the interviewer to define and control the interviews.²² These questions are set out in Appendix.

1.5.4 Sampling of Participants and Sample Strategy

This research study adopted the following sampling strategies: ‘purposive sampling’ and ‘snowball sampling’.

Firstly, purposive sampling was useful for this research study since that technique reflects the expectation that the researcher can correctly identify those participants who are the best-selected people to help the researcher to understand the problem and answer the research questions.²³ In this regard, the researcher selected participants for study that are ‘information-rich’ and illuminative. As Patton stated, ‘they offer useful manifestations of the phenomenon of interest’.²⁴ Therefore, sampling was sought to give an insight into the topic area that was being investigated by the researcher, ‘not empirical generalisation from a sample to a population’.²⁵ According to Holloway: ‘In purposive sampling, generalizability is less important than the collection of rich data and an understanding of the ideas of the people chosen for the sample’.²⁶ Thus, it is rare to choose a large-scale population in qualitative research, which instead usually ranges between 4 and 40

²⁰ Arksey, H. and Knight, P., 'Interviewing for Social Scientists', (Sage Publications Ltd.: London, 1999).

²¹ Bryman, A., *Social Research Method*, (Oxford University Press: Oxford, 2008), 438-440. Further look at Flick, U., *An Introduction to Qualitative Research*, (Sage Publication: London, 2006), 155.

²² Bryman, A., ‘Qualitative Research on Leadership: A Critical but Appreciative Review’, (2004) 15, *The Leadership Quarterly*, 729-769.

²³ Creswell, J. W., *Research design: Qualitative, quantitative, and mixed methods approaches*, (2nd edn, Thousand Oaks, Calif.: Sage Publications, 2003), 185.

²⁴ Patton, M., *Qualitative Research and Evaluation Methods*, (3rd edn, Sage Publication: London, 2002), 40.

²⁵ *Ibid.*

²⁶ Holloway, I., *Basic concepts for qualitative research*, (Blackwell Science: Oxford, Malden, Mass., 1997), 142.

participants.²⁷ For the benefit of this study and due to the time limit for the fieldwork, which was 4 months, the participants of this study were 28 respondents selected according to their direct involvement in the research topic.

It is worth noting that the researcher's purposive sampling strategy was based on two different methods. First, the researcher identified the related institutions which deal with terrorism, and then asked the institutions help in identifying the appropriate participants. Second, the researcher asked his professors in Kuwait who work within his department, the criminal law and criminal justice department, and contacts who work within the Kuwaiti criminal justice system to help him in identifying the right experts for his research project.

Next, the 'snowball or chain referral sampling' utilised in this study whereby the researcher asked the interviewees for their recommendation of other expert people who possess some characteristics that are of research interest.²⁸ This method helped in locating the most related participants to the research study using the knowledge of the insider people who are interested in the same study.²⁹ As a result, making more connections, and sharing and collecting more information, similarly to a snowball that rolls and become bigger in size as it collects more snow. In addition, and as mentioned above due to the time limit of the fieldwork, a snowball sampling strategy helped in identifying the most relevant participants to the research study without wasting much time.

The participants were divided into four categories as follows. The first category consists of Government officials from representative ministries and law enforcement officials that deal with terrorism. Specifically from Ministry of Interior, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Commerce and Industry, Ministry of Social Affairs and Labour, Ministry of Finance, Ministry of Awqaf and Islamic Affairs and the National Assembly – Legal Department. These respondents were an important source of information in understanding and determining how Kuwait has responded to terrorism, what its counterterrorism measures are, and what the government's policy and agenda are toward the

²⁷ *Ibid.*

²⁸ Biernacki, P. and Waldorf, D. 'Snowball Sampling: Problems and Techniques of Chain Referral Sampling', (1981), 10(2) Sociological Methods and Research, 141-163.

²⁹ *Ibid.*

phenomenon of terrorism. Moreover, such participants were amongst the key players in the development and implementation of counterterrorism laws and conventions. Therefore, the opportunity to interact with such participants provided crucial knowledge about the processes of implementing international and regional counterterrorism conventions and cooperation and whether the Kuwaiti government faced any obstacles in implementing such initiatives. Additionally, such participants provided information regarding the extent to which international or regional pressures were imposed on Kuwait to pass laws that exacerbated political tension. Thus, the mentioned ministries are the most relevant ministries that deal with terrorism and counterterrorism in Kuwait. Therefore, the researcher interviewed participants from such ministries, and especially participants from the related department that deal with terrorism within each ministry.

The second category consisted of financial institutions. As financing terrorism is among the issues investigated in this study, financial institutions provided important information regarding how Kuwait has regulated and secured its financial system from being abused by terrorist financiers. Since there is no detailed literature with regard to how Kuwait combats terrorism financing, apart from the IMF 2011 report³⁰ on Kuwait that looked at the situation on Kuwait through 2011, interviewing such institutions were very helpful. Additionally, such institutions provided the research with vital cases in which Kuwait has been used and abused by terrorist financiers to finance terrorist organisations whether inside or outside Kuwait and how the Kuwaiti government has reacted to such crime. Furthermore, one of the most crucial reasons to interview such groups was basically to understand the measures and the level of regional and international cooperation in ensuring that money transferred, especially in the ‘Hawala’ and ‘Zakat’ operations, will not be diverted to terrorist organisations. For these reasons, the Central Bank of Kuwait (CBK) was a vital institution to interview, as it control the banking system in Kuwait as well as setting the rules and regulations that governing the financial sectors in Kuwait. In addition, the exchange companies and the charitable organisations in Kuwait was another crucial side to interview in order to have the practical atmosphere of controlling the money from not being diverted to terrorist

³⁰ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011).

groups and terrorism. Therefore, from each department the researcher interviewed two participants.

The third category consisted of judges, prosecutors and police officers. They are the responsible bodies in the investigation and the prosecution of terrorist related crimes, they provided important information about how the law has been interpreted and applied in such cases and what are those laws. However, access to real case files was denied, and limited information was gathered about the main offences charged by the courts to prosecute terrorist offenders. Within the prosecution service, the State Security Prosecution Department, is a department that specialises in investigating terrorism and other national security crimes; however, no special court is devoted to terrorist crimes. Instead, such cases are handled by the normal criminal courts. As a result, judges were a vital source of information, not only because they preside over such cases, but also because they used to be prosecutors before they became judges. Therefore, due to their knowledge of, and experience with, the subject matter, they provided well trusted information not only related to the cases and the law, but also related to the appellate law principles in terrorist crimes. Additionally, the researcher interviewed police officers from the Ministry of Interior. Specifically, the researcher interviewed participants from two departments within the Ministry of Interior that deal with terrorism, namely the State Security Bureau (SSB) and the Anti-terrorism Unit. Therefore, the researcher interviewed six participants within this category, two from the prosecution service, two from the judicial system and two from the Ministry of Interior.

The fourth category consisted of non-official stakeholders, such as academics from Kuwait University, lawyers and independent think tanks like Kuwait Human Rights Association. Participants in this category were those who played and are still playing a part in the Kuwaiti agenda in countering terrorism. As distinct players, and because of their knowledge and involvement in the subject matter, they provided an independent, objective and critical assessment and evaluation of the government's reaction to terrorism. They also offered full insight of the current, and future, Kuwaiti policy in combating terrorism. For the abovementioned benefits, the researcher interviewed two participants from each sub-category.

The following table summarises and describes how the participants were distributed:

Table 1.1: The Selected Sample

Category	Number of Participants
1- Government officials from representative ministries.	10
2- Financial institutions.	6
3- Judges, prosecutors and police officers.	6
4- Non-official stakeholders.	6
In Total	28

1.5.5 Access Strategy

Negotiating access is a problem faced by many researchers when conducting qualitative research.³¹ Since, in this study, the researcher interviewed some senior officials from the Kuwaiti government, an advance arrangement was made to secure the appointment with the relevant respondents. Therefore, the researcher started contacting the abovementioned respondents before and during the first month of his fieldwork in order to secure the access to the relevant participants, and interview them during the period of the fieldwork. Additionally, since this research project was fully sponsored by (the Kuwait University – Faculty of Law – the Criminal Law and Criminal Justice Department), the department provided the researcher with an official letter to facilitate the access process to complete the research project. This letter helped the researcher to be identified as a research student to the government officials who are going to take part in the research

³¹ Epstein, L. and King, G., ‘Empirical Research and the Goals of Legal Scholarship: The Rules of Inference’, (2002) 69, University of Chicago Law Review, 1.

project. Furthermore, if, during the research process, the researcher faced any difficulties in accessing any relevant authorities, the Criminal Law and Criminal Justice Department was able to help to resolve such difficulties; for example, by helping the researcher to rearrange another appointment with the government officials. In addition, the researcher, in some cases where the official letter did not succeed in getting access to the aimed participant, he used his networks and contacts to secure access to the relevant participant.

1.5.5.1 Issues Related to Professional Standards and Researcher's Relations

Conducting fieldwork and collecting data from interviewing participants in Kuwait sometimes presents ethical issues, which will be highlighted in this section. These issues occur as a result of the Kuwaiti social culture, in which people are tied together in kinship or tribalism, and the number of Kuwaiti citizens, which total approximately a million and a half. In addition, some of the researcher's family members work in the criminal justice services. Therefore, some of the interviewees may know the researcher personally. To overcome this problem, the researcher avoided selecting relatives or people who have any relations with the researcher, and interviews were conducted to satisfy the applicable professional standards. Nevertheless, where the problem could not be avoided, and where the participant is very important to the research project, then the researcher carried on with the interview with his awareness to accomplish the professional standards.

1.5.6 Data Analysis

After completing the interviews, rich and worthwhile information was obtained regarding how Kuwait has responded to terrorism. Therefore, another important stage of data analysis has occurred.³² In fact, it should be noted that analysing the data was an on-going process, started from the time of collecting the data to the stage of coding and categorising. Therefore, the logic and choice of methods for data analysis certainly result from the research questions set up for the purpose of the study.

³² Miles, M. B. and Huberman, A. M., *Qualitative data analysis*, (2nd edn, Sage Publication: London, 1994).

1.5.6.1 Produce a Record and Coding the Data

This study used the tape-recording method to record the interviews. Before that, however, the researcher asked for the interviewee's consent to record the interview.

Using tape-recording as a main method during the interviews had many advantages. Firstly, it provided a semi-permanent source of information about the entire interview, which offers accurate information obtained from the interviewees when they quoted in the thesis. However, there are also some disadvantages in using tape-recording. According to Noaks and Wincup, tape-recording is usually performed using a machine recorder, which can have issues like battery failure and other 'technical failures'.³³ To avoid that, the researcher had a spare recorder and additional batteries in case any of the abovementioned problems occur. After the interview, the researcher transcribed the recorded interview.

The interviews were conducted in the researcher's mother tongue, which is Arabic. Therefore, all of the information obtained from the interviews was transcribed and analysed in Arabic first and then the researcher translated selected passages into English. However to save time, not all of the transcribed information was translated into English; only selected passages were translated, which the researcher needed to use and quote in the study.

The coding process was the next stage. Coding can be done using either computer software or manually. Nevertheless, the researcher chose to code manually. This is due to the fact that the NVivo programme is provided only in English, yet the interviews in this research project were carried out in Arabic.³⁴ In other words, using computer-aided methods in this study would be ineffective and would be very time-consuming. Therefore, the coding process was in Arabic rather in English. As a consequence, this study used the methods broadly known as the traditional methods.³⁵ Hence, the researcher, firstly, transcribed the information and read through them carefully. Then, the researcher looked at the common words that are used from time to time and used a highlighter to emphasise them in different

³³ Noaks, L. and Wincup, E., *Criminological Research: Understanding Qualitative Method*, (Sage Publication: London, 2004).

³⁴ NVivo9 Fundamentals, a workshop that was attended on October 27, 2011.

³⁵ Mason, J., *Qualitative Researching*, (Sage Publications: London, 2002).

colours according to the most common used and most related to the research chapters. A process of reflection lead to an identification and understanding of the key themes and important insights.

1.5.7 Ethical Issues

This section considers the ethical issues that might arise while conducting the interviews with the participants. First, the guidelines of the British Society of Criminology Code of Ethics (BSC)³⁶ and its ethical standard were the researcher's cornerstone in resolving ethical issues while undertaking the fieldwork. In this regard, the researcher considered the participant's rights and took responsibility in protecting their interest and privacy. Therefore, this section illustrates the way that voluntary and informed consents were given by the participants, the terms of confidentiality, and how the data were protected.

1.5.7.1 Informed Consent and Confidentiality

Informed consent is an important part of the research process.³⁷ This means not only that the researcher must obtain the participant's signature on the form, but also that the researcher must clearly outline the research's aims and objectives and explain what the participation involves. Moreover, it means that the participants must consent to participating in the research project free from any coercion or undue influence in making their decision. Therefore, the participants were told about their rights to withdraw without having to give a reason for their withdrawal.³⁸ However, there was a time limit for their right to withdraw; to be precise the researcher indicated that all the participants have the right to withdraw no later than one month from the interview date. In addition, the researcher ensured

³⁶ British Society of Criminology, 'Code of Ethics for Researchers in the Field of Criminology', Available at: <<http://www.britisoccrim.org/codeofethics.htm>> accessed 1st Dec. 2014.

³⁷ For further information read the University of Leeds, 'University Guidance on Identifying Ethical Issues', Available at: <http://researchsupport.leeds.ac.uk/index.php/academic_staff/good_practice/university_ethics_policies>

³⁸ British Society of Criminology, 'Code of Ethics for Researchers in the Field of Criminology', Available at: <<http://www.britisoccrim.org/codeofethics.htm>> accessed 1st Dec. 2014.

the confidentiality and the anonymity of the participants. This was guaranteed by illustrating how the information is going to be used and stored.³⁹

Sometimes, difficult issues might occur regarding confidentiality where the researcher is put in a situation of either protecting the respondent's confidentiality or divulging wrongdoing. Therefore, the British Society of Criminology advises the interviewer to set limits to confidentiality and to make the interviewees aware about the limits of confidentiality.⁴⁰ As a result, the researcher wrote a notice into the consent form and also notified the participants about their right not to reveal any personal wrongdoing. Otherwise the researcher retained the right to reveal serious information to the relevant authorities.

1.5.7.2 Data Protection and Retention Strategy

One of the researcher's important obligations is to ensure the security and the confidentiality of the research's data outcome. This is also one of the most important policies in the University Information Security Management System (ISMS).⁴¹ Thus, the researcher did everything possible to ensure proper data management of the research outcome. In this regard, the researcher ensured against disclosure of the data to unauthorised recipients, used good data storage, backup and encryption and, most importantly, and set a time limit as to when to destroy the data.

Therefore, after recording the interviews, the researcher stored the recorded tapes and transcripts in the University software system, and, if he needed the information, he used the University's secure remote access, known as 'Desktop Anywhere'. As a result, the information were secured from any unacceptable disclosure, which would otherwise harm the participant's confidentiality. Finally, and after the completion of the research project it is expected that the researcher will not be able to access the University's secure remote access. Therefore, the researcher saved the data in an encrypted external hard disc and will retain it for

³⁹ Noaks, L. and Wincup, E., *Criminological Research: Understanding Qualitative Method*, (Sage Publication: London, 2004), 50.

⁴⁰ British Society of Criminology, 'Code of Ethics for Researchers in the Field of Criminology', Available at: <<http://www.britsoccrim.org/codeofethics.htm>> accessed 1st Dec. 2014.

⁴¹ Information Security Management: Policy on Safeguarding Data Storage, Backup and Encryption, Available at: <<http://campus.leeds.ac.uk/isms/>>

three years. The mentioned period is important in case the researcher wants to return to the data for further information and to publish findings. After three years, the researcher will destroy the recorded tapes and data, because they will be stale. Participants involved in this research project were, in advance, familiarised with the processes of the data protection and retention strategy.

1.6 Conclusion

This chapter has given an overview of the scope and purpose of this research project. It has also outlined the proposed chapters that will follow. The focus of this research will be terrorism and counterterrorism in Kuwait and how terrorism and counterterrorism have developed during its history specifically since its independence in 1961. The exposition will be tested against the normative criteria of effectiveness and fairness, and the impacts of external influences will also be assessed.

This research utilised a qualitative research approach within a socio-legal study as its core fieldwork research method. However, the research also implemented other research methods, such as historical, documentary and doctrinal legal research methods.

This research encountered some methodological difficulties, in large part because the Kuwaiti government is conservative and publishes little information. However, the researcher employed every reasonable effort to obtain the information relevant to the research project. Further, the researcher conducted interviews with twenty-eight participants who are well versed in the subject matter while doing his fieldwork.

This thesis will provide important data that will permit an original exposition as well as critical analysis and evaluative study of terrorism and counterterrorism in Kuwait.

Chapter Two

The Phenomenon of Terrorism in Kuwait

2.1 Introduction and Background

This chapter intends to explore and analyse the threats of terrorism to the State of Kuwait, and how terrorism has developed since the state's independence in 1961. This analysis will be conducted in the light of regional and international pressures and the conflicts in surrounding countries. It will further explore why Kuwait has been affected by such phenomena, and how far these terrorism threats constituted internal or external threats to Kuwait. Additionally, this chapter will examine whether these activities and threats were driven by foreign or national Kuwaiti movements, and it will assess how serious the threat was to Kuwait in each period. It will evaluate the extent to which these movements remain problematic today and the potential future threats that they pose to Kuwait.

This chapter will assess the different sources of threats to the State of Kuwait in order to better evaluate the counterterrorism measures by the Kuwaiti government, which will be investigated in the chapters that follow.

Kuwait is situated in an unstable region of the world. Kuwait adjoins Iran, Iraq and Saudi Arabia, all of which, including Kuwait, face the threat of terrorism. Since its independence, Kuwait has witnessed many incidents in which terrorist groups have used such tactics as assassinations, suicide bombings and aircraft hijackings. Some of these terrorist activities were retaliatory, because Kuwait had prosecuted terrorists or put pressure on the Kuwaiti position on some regional matters.

The content of this chapter will be presented in chronological order. Kuwait has faced terrorist activities during three periods since 1968. It started when the People's Revolutionary Movement in Kuwait sought to impose its ideology of Marxism–Leninism. Kuwaiti society witnessed serious extremism from that ideology, which was accompanied by attempts to impose that doctrine on the Kuwaiti society through varied means.

In the 1980s, the Iranian revolution started to affect Kuwaiti society. Many young Kuwaiti Shiites were attracted to the revolutionaries. Consequently, during the First Gulf War, some young leaders of these movements caused explosions to occur in the country, including some in the oil fields.¹

Kuwait has endured terrorist attacks since 2001, a period that began with the incidents of September 11 and continued during the campaign in Iraq led by the United States. They included assaults on different locations and targets within the Kuwaiti territory. The terrorist attacks targeted American forces and Kuwaiti security personnel. More dangerously, during this period, Jihadist thought spread in the region, including in Kuwait. As a result, the State Security Bureau (SSB) found large stores of explosives, arms and some paper plans.²

For each of these periods, this chapter will discuss firstly the background of the terrorist movements and their context. Then it will describe the terrorist groups or individuals, their actions and activities, and the terrorist incidents attributed to each movement. Lastly, in each period, this chapter will discuss what happened to the groups and the extent to which they still present a danger to Kuwait.

This chapter will be divided into corresponding sections. The first section will be about the People's Revolutionary Movement in Kuwait, 1968–1969. The second section will talk about the Iranian-inspired domestic situation, especially after the Iranian Revolution and during the Iran–Iraq war, also referred to as the First Gulf War. The third section of this chapter will investigate the development and the root of the new phenomenon of terrorism in Kuwait, starting with the veteran Jihadists of Kuwaiti nationality, who served and returned from the Soviet war in Afghanistan, through to today. This section will also examine the organised Islamist presence in Kuwait, its connection with Al-Qaida and other issues related to the phenomenon of terrorism, such as financiers and supporters, fundamentalist religious scholars, Kuwait as a source of fighters, and Kuwait's role within the global Jihadi agenda. The fourth section of this chapter will analyse the possible future threats from terrorism in Kuwait. Finally, the chapter will conclude with an

¹ The Ministry of Awqaf and Islamic Affairs, *Strategy of the State of Kuwait to Counter the Phenomenon of Extremism*, (Kuwait: MAIA, 2006), 11.

² Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 164-166.

overall understanding of the development of the phenomenon of terrorism in Kuwait.

This chapter will assess only the threats of terrorism without considering here the definition of terrorism, but that issue will be explored in the next chapter in the context of Kuwait. However, for the purposes of this chapter, it is recognised that there are different types of terrorism, such as state terrorism, non-state terrorism, revolutionary terrorism and non-revolutionary terrorism. This thesis will focus only on non-state terrorism and more specifically on revolutionary terrorism. Therefore, the terrorist activities related to the Iraqi invasion of Kuwait are excluded from this thesis, as they represent a type of state terrorism that is not related to the aim of this thesis.

2.2 The People's Revolutionary Movement in Kuwait, 1968-69

The People's Revolutionary Movement in Kuwait is one of the political organisations that was affiliated with the Arab Nationalist Movement as a result of the multiple conflicts in that large and diverse movement in the Arab world.

2.2.1 Background of the emergence and the conflicts that happened within the Arab Nationalist Movement

The Arab Nationalist Movement was a direct result of the occupation of Palestine by the State of Israel. The Arab Nationalist Movement was established in the late 1940s at the American University of Beirut by some students who were studying there. They were from many Arab nationalities and included Dr. George Habash and Wadea Haddad from Palestine, Dr. Ahmed Al-Khateeb from Kuwait, and Hany Al-Hindi from Syria.³ They worked to establish branches of the movement all over the Arab World through the slogans that the movement raised during that period, which were composed of three words, 'unity, liberation, and retaliation.'⁴ It was a pan-Arab nationalist organisation influential in much of the Arab world, most famously within the Palestinian movement. It formed many branches in different Arab countries. In the beginning of the fifties, Dr. Ahmed Al-

³ Al-Hendi, H., and Al-Nasrawi, A., *Arab Nationalist Movement: Its origins and evolution through the documents 1951-1968*, (1st edn, Beirut: Arab Institute for Research, 2001), 36-38.

⁴ *Ibid*, 41.

Khateeb succeeded in forming the first seeds of the movement in Kuwait, as he took advantage of the relatively democratic openness in Kuwait when Sheikh Abdullah Al Salem Al Sabah became the new Amir of Kuwait.⁵ Later, the movement faced some political divergence, especially from Syria and Iraq, which became more attracted to the Nasserist ideology of pan-Arabism or Arab nationalism and indeed adopted the Nasserism path.⁶

In 1961, a group of army officers seized power in Syria and then terminated the unity between Egypt and Syria.⁷ As a result, a conflict erupted in the Arab Nationalist Movement around the feasibility of Scientific Socialism and the importance of committing to it. Accordingly, the executive committee of the Arab Nationalist Movement arranged an exceptional conference for the leaders of the Arab Nationalist Movement in Beirut in 1963.⁸ During the conference, two different tracks appeared. One advocated Scientific Socialism, while the other rejected socialism and preferred Nationalism as an objective in its struggle.⁹ However, the convened delegates suggested stopping the conference to avert the development of more conflicts between the different nationalist tracks. Later, Marxist literature started to attract different figures to the network of the Arab Nationalists Movement. Some important figures of the movement, especially those from the Gulf, studied Marxism, Leninism, and the Vietnamese Revolution. In addition, those important people, who were open to Scientific Socialism, were influenced by the Yemeni Revolution that was led by the Nationalist Front for Liberating the Occupied South of Yemen and the Democratic Revolutionary Party in Northern Yemen.¹⁰

After the defeat of the Arab armies by Israel in June, 1967, the leftist figures called for the holding of the first conference of the branches of the Arab Nationalist

⁵ Al-Medaires, F. A., *Initial profiles on the origins of the political groups and organizations in Kuwait (1938–1975)*, (2nd edn, Kuwait: Dar Qertas, 1999), 15-16.

⁶ Baroot, M. J., *Arab Nationalist Movement: Growing, Evolution and Destinies*, (1st edn, Damascus: Arab Center for Strategic Studies, 1997), 289-301.

⁷ Al-Hendi, H., and Al-Nasrawi, A., *Arab Nationalist Movement: Its origins and evolution through the documents 1951–1968*, (1st edn, Beirut: Arab Institute for Research, 2001), 64.

⁸ Baroot, M. J., *Arab Nationalist Movement: Growing, Evolution and Destinies*, (1st edn, Damascus: Arab Center for Strategic Studies, 1997), 309.

⁹ *Ibid*, 310-312.

¹⁰ Al-Medaires, F. A., *Initial profiles on the origins of the political groups and organizations in Kuwait (1938–1975)*, (2nd edn, Kuwait: Dar Qertas, 1999), 50.

Movement in Beirut.¹¹ They issued a scathing criticism of the leftist movement of Kuwait, which was responsible for regulating the branches of the leftist movement in the whole Arab Peninsula, for its failure to follow the activities of the movement in the region.¹² Consequently, the conference made several decisions. First, it decided to consider Saudi Arabia, the United Arab Emirates, Oman Sultanate and Kuwait as constituting one single regulatory region because of the similarity of the political systems in these countries. Second, it proposed to establish two central committees, one for the Peninsula and the other for the Gulf region. Third, it proposed to establish two political offices, one for the Peninsula and another for the Gulf region. Fourth, it committed to Scientific Socialism as a regulatory ideology for the movement. The conference avoided talking about Marxism–Leninism because of the sensitivity it might create in the Arab Nationalist Movement.¹³ Finally, the conference committed the region to armed resistance to the remaining British occupation and to bringing down the tribal systems.¹⁴

In 1968, a severe conflict took place during the Fourth Conference of the Nationalist Front for Liberating the Occupied South of Yemen between the right and the left wings of the Yemeni branch of the Arab Nationalist Movement. The left controlled the conference, which led to an alliance between the right wing, which was defeated in the conference, and the army. As a result, the military arrested the leaders of the left wing of the movement in Southern Yemen, which led to a declaration of armed resistance against the military coup.¹⁵ These events led the leftist figures in the branches of the Arab Nationalist Movement in the Omani coast and desert to call all of the branches of the movement in the Arab Peninsula to convene in an exceptional conference in Dubai during the second half of July, 1968.¹⁶ Accordingly, the left managed to control the conference and overran the right wing of the movement in the Arab Peninsula and the Gulf. The conference

¹¹ Al-Hendi, H., and Al-Nasrawi, A., *Arab Nationalist Movement: Its origins and evolution through the documents 1951–1968*, (1st edn, Beirut: Arab Institute for Research, 2001), 71.

¹² Al-Medaires, F. A., *Initial profiles on the origins of the political groups and organizations in Kuwait (1938–1975)*, (2nd edn, Kuwait: Dar Qertas, 1999), 51–52.

¹³ An internal bulletin issued by the Arab Nationalist Movement, in the Arabian Gulf region, No. IV, June 1968. Cited in Al-Medaires, F. A., *Initial profiles on the origins of the political groups and organizations in Kuwait (1938–1975)*, (2nd edn, Kuwait: Dar Qertas, 1999), 51.

¹⁴ *Ibid*, 51.

¹⁵ Baroot, M. J., *Arab Nationalist Movement: Growing, Evolution and Destinies*, (1st edn, Damascus: Arab Center for Strategic Studies, 1997), 315.

¹⁶ *Ibid*, 317.

then made the following decisions: firstly, it committed to Marxism–Leninism as a regulatory ideology of the Arab Nationalist Movement in the Gulf region; secondly, it adopted a centralised political office; thirdly, it froze the Kuwaiti leadership of the movement because of the leadership’s alliance with the right wing and because it rejected the Marxist–Leninist ideology; fourthly, it granted the Political Office of the Arab Nationalist Movement in the Peninsula and the Arab Gulf the authority to select another name for the organisation and to dismantle its commitments to the Arab Nationalist Movement. During the first meeting of the Political Office, a new name was approved for the movement, the People’s Revolutionary Movement in Oman and the Arab Gulf, instead of the Arab Nationalist Movement in the Peninsula and the Arab Gulf. Furthermore, it terminated its relationship with the Arab Nationalist Movement in Beirut.¹⁷

The final result of these events that passed over the organisation of the Arab Nationalist Movement was the arrangement of many local meetings to discuss the decisions of the exceptional conference of Dubai.

In summary, this section has elaborated how the conflicts within the Arab Nationalist Movement had produced a rivalry between groups in the Arab world that were revolutionary, that did not believe in the existing regimes, and that wanted to bring them down. It has also explained that the formed groups were anti-Western and their ideologies were broadly Socialist. Consequently, this section sets the background to understanding how the aforementioned conflicts contributed to the rise of the People’s Revolutionary Movement in Kuwait, which will be discussed in the next section.

2.2.2 The emergence of the People’s Revolutionary Movement in Kuwait and its terrorist activities

Some individuals within the Arab Nationalist Movement in Kuwait took advantage of the absence of the leadership of the movement in the summer of 1968 and called for a regional preparatory conference to discuss the decisions of the exceptional conference of Dubai. The leaders of this conference were Dr. Ahmed

¹⁷ *Ibid*, 318-320.

Al-Robie and Nasser Al-Ghanim.¹⁸ They were important figures in the Students' Leadership and the Workers Union, and they had significant relations with the left wing of the Arab Nationalist Movement in the branches of the Arab Peninsula and the Gulf region. As a result, the left wing of the movement managed to hold the preparatory conference in mid-October 1968 and made the following decisions: first, it committed to Marxism–Leninism; second, it expelled the leaders of the Arab Nationalist Movement in Kuwait, who were Dr. Ahmed Al-Khateeb, Sami Al-Menais, Dr. Khaled Al-Wesmi, Abdullah Al-Nibari and Ali Radwan; and, third, it chose Hussein Al-Youha, Nasser Al-Ghanim, Nashi Saad, Rashed Moharib, Dr. Ahmed Al-Robie and AbdulAziaz Al-Duaij to serve as the temporary leadership for the movement in Kuwait to manage the affairs of the movement until an organisational conference could be established. The affiliated group also decided to take another name, the People's Revolutionary Movement in Kuwait, and committed to the decisions made in the exceptional conference of Dubai in July of 1968.¹⁹

The Political Office of the People's Revolutionary Movement in Oman and the Arab Gulf proposed some conditions that, if accepted, would have the branch of the People's Revolutionary Movement in Kuwait be approved as a branch of the People's Revolutionary Movement in Oman and the Arab Gulf. One of the most serious conditions was to practice violent assaults and to lead armed revolutionary violence against the ruling regime in Kuwait.²⁰ Accordingly, the People's Revolutionary Movement in Kuwait led terrorist attacks against the ruling political regime in Kuwait. On November 1968, one of these attacks involved the use of explosives against the caravan of the Shah of Iran during his visit to Kuwait in front of the Iranian Embassy and the airport road. Another, on January 1969, included setting explosives in front of the Parliament (the National Assembly), the buildings of the Interior Ministry, and the home of the Interior Minister, all in response to the rigging of the elections of 25 January 1967.²¹ These violent acts were accompanied

¹⁸ Al-Shammeri, S., and Al-Wegayan, N., *The famous political crimes in Kuwait*, (1st edn, Kuwait: 1996), 9-10.

¹⁹ Al-Medaires, F. A., *Initial profiles on the origins of the political groups and organizations in Kuwait (1938–1975)*, (2nd edn, Kuwait: Dar Qertas, 1999), 53-54.

²⁰ *Ibid*, 54.

²¹ Salem, P., *Kuwait: Politics in a Participatory Emirate*, (Washington, DC: Carnegie Endowment for International Peace, 2007), 12.

by a campaign of publications that incited the Kuwaiti people to lead a revolutionary movement against the regime in Kuwait.²²

As a result, in mid-February of 1969, the Political Office of the People's Revolutionary Movement in Oman and the Arab Gulf accepted the People's Revolutionary Movement in Kuwait as one of its branches in the region and changed its name to the People's Revolutionary Movement in Oman and the Arab Gulf – Kuwaiti Branch. However, shortly after the emergence of this organisation, the Kuwaiti authorities arrested most of its members, although other members managed to escape the country. On November 29, 1969, twenty-one of the members were tried, all of whom were convicted and sentenced to prison, and some of them were sentenced in absentia. However, shortly after they were imprisoned, the Amir of Kuwait Sheikh Abdullah Al Salem Al Sabah issued an Amiri pardon, as the result of which all were freed.²³

Dr. Ahmed Al-Robie, who was one of its leaders, escaped to Oman, where he joined the Dhofar Rebellion. However, the Omani authorities seized and imprisoned him. Shortly after Al-Robie's arrest, the Amir of Kuwait intervened and requested that the Sultanate of Oman repatriate him to Kuwait. The Sultanate complied with the request and released Al-Robie. Upon his return to Kuwait, Al-Robie was freed due to the Amiri pardon, which was issued to all of the members of the People's Revolutionary Movement in Oman and the Arab Gulf – Kuwaiti Branch.²⁴

Although the People's Revolutionary Movement in Kuwait terminated after what happened to it, the Arab Nationalist Movement still exists in Kuwait under the name of the Movement of the Progressive Democrats – *Harakat Al-Taqaddumiin al-Dimuqratiin* (a Kuwaiti Political Party). The movement was reconstituted by its old and original members, who were expelled by the People's Revolutionary

²² Al-Shammeri, S., and Al-Wegayan, N., *The famous political crimes in Kuwait*, (1st edn, Kuwait: 1996), 10-12.

²³ *Ibid*, 13-15.

²⁴ *Ibid*, 24.

Movement in Kuwait as mentioned above.²⁵ This is a political party that rejects the revolutionary ideologies and does not engage in political violence.

2.3 The Impact of the Iranian Revolution and the Iraq-Iran War on Terrorism in Kuwait between 1979-89

2.3.1 Introduction

Kuwait faced massive terroristic attacks, some of which took an international form, through the turmoil in the Arabian Gulf region after the eruption of the Iraqi–Iranian war in 1980. When the consequences of the First Gulf War reached Kuwait, terrorist events occurred.

Kuwait has long been a target for many regional and international parties, and it was not omitted as a regional entity from the wider international political and security stage.²⁶ Indeed, since its independence, Kuwait has battled for self-establishment, identity and power in the region.

Without probing the historical facts deeper, we can summarise that the largest strategic challenges that faced Kuwait in the last quarter of the twentieth century centred on keeping the independence of the Kuwaiti identity in the face of overwhelming creeds and policies that attempted to exert their power. One of the most serious challenges was the contagious Iranian Revolution that erupted in Tehran after the rise of the Iranian religious political regime in February of 1979, which was a serious turning point in the strategic equilibrium in the Middle East.²⁷ Another serious threat came from the southern part of Iraq, where the Islamic Da'awa Party is centred.

The general and clear viewpoint of the issue of importing the Iranian Revolution was not only confined to the spread of the religious revolutionary values. It changed the political regimes and imposed special ideological alternatives

²⁵ Al-Medaires, F. A., *Initial profiles on the origins of the political groups and organizations in Kuwait (1938–1975)*, (2nd edn, Kuwait: Dar Qertas, 1999), 55.

²⁶ Pollock, D., *Kuwait: Keystone of U.S. Gulf Policy*, (United State: Washington, DC, The Washington Institute for Near East Policy, Policy Focus #76, November 2007), 2.

²⁷ The Ministry of Awqaf and Islamic Affairs, *Strategy of the State of Kuwait to Counter the Phenomenon of Extremism*, (Kuwait: MAIA, 2006), 11-12.

clearly expressed in the speech and directions of the policies of the Iranian Revolution that attracted massive congregations and followers.

Many countries use national or ethnic loyalties to create a political imbalance in another country and to extend political influence over other countries. In this way, one country seeks to take advantage of the minorities affiliated to it, who live in another country. The aggressor country seeks to use such minorities to destabilise the organisation of the political systems in the other country.²⁸ For example, the Islamic radical regime in Tehran sought to exploit the racial minorities in Gulf countries to destabilise more countries which backed Iraq in its war against Tehran between 1980 and 1988.²⁹ Thus, the region witnessed waves of sectarian polarisation after the insistence of Grand Ayatollah Sayyed Ruhollah Musavi Khomeini to export the Iranian Revolution to neighbouring states in the region. This led to a massive reorganisation of the Shiite groups scattered all over the region, applying the same model as the radical system in Iran to oppose the ruling families.³⁰ The Iraqi-Iranian War had already added to the separation of the political viewpoints in the region, and the sectarian sentiments grew massively, especially in Kuwait, due to the fact that Kuwait have more political freedom than other countries in the region.

2.3.2 The Impact of the Islamic Revolution in Iran on the Shiites of Kuwait

Kuwait has ethnic divisions in its society and practically between Sunni and Shiite. Most Kuwaiti citizens are Muslim, comprising 85% of the overall population. 70% of them are Sunni, and 30% are Shiite.³¹ Although Shiites are a minority, they play an important role in Kuwaiti society. In addition, Kuwaiti Shiites are divided into two different groups. Arab Shiites originally came from Saudi Arabia, Bahrain and southern Iraq, and Farsi Shiites came from Iran and are the majority of the Shiites in Kuwait. Farsi Shiites are more influenced by the

²⁸ Massad, N. A., *Minorities and Political Stability in the Arab World*, (Cairo: Egyptian Nahda Library, 1988), 13.

²⁹ Ramazani, R. K., *The Gulf Cooperation Council: record and analysis*, (1st edn, USA: the University Press of Virginia, 1988), 60-66.

³⁰ For more reading about the Shiite political organizations that emerged in the Arabian Gulf region, see Bill, J. A., 'Resurgent Islam in the Persian Gulf', (Fall 1984), 63(1) *Foreign Affairs*, 120.

³¹ Central Intelligence Agency, 'The World FactBook', (last updated on 26 March 2012), Available at: <<https://www.cia.gov/library/publications/the-world-factbook/geos/ku.html>> accessed 1st Dec. 2014.

Iranian ideology, as they consider Iran as the protector of their religious beliefs. Therefore, these divisions have been exploited for political purposes and have given a rise to political conflicts including terrorism.

The first declared presence of a political Shiite organisation emerged in Kuwait in 1963, as the Shiites took advantage of the democratic openness that was applied by the Amir of Kuwait, Sheikh Abdullah Al-Salem Al-Sabah. The Association of the Social Culture – *Jami'ah Al-Thaqafa al-Ejtimaiah* – was formed after Kuwaiti independence and represented the different cults of Shiite in the country. It is also considered a quasi-political foundation for the Shiites, which was a good social and religious cover despite recording it as a charity and cultural body. The Shiites in Kuwait used the organisation for their political activities. It was first controlled by political conservatives. However, after the Iranian Revolution, the Shiite revolutionary political extension, which was backed by the Iranian Khomeini political regime, achieved its first victories by overthrowing the conservatives when they won the election.

A revolutionary spirit started to spread all over the Shiites in the region after the success of the Islamic Revolution in Iran under the leadership of Ruhollah Musavi Khomeini. This was reflected in the regrouping of the Shiites in the region, such as the emergence of the Islamic revolution organisation for the liberation of the Arabian Peninsula led by Hassan Al-Safar in Saudi Arabia, which was backed by Iran. The Islamic Front for the Liberation of Bahrain was established in Bahrain.³² The Kuwaiti political arena was not far from these changes, as Shiites were divided into two parties.

One party was comprised of conservatives, who were represented by the aristocratic party of merchants, who were connected to the ruling local authorities and who shared common interests. The objective of this party was to reform the religious and social conditions in Kuwaiti society. The other party was made up of believers in revolution in Kuwait; they consisted of young Shiite people, especially

³² Ramazani, R. K., *Revolutionary Iran: Challenge and Response in the Middle East*, (Baltimore and London: The Johns Hopkins University Press, 1988), 32-35 and 42-48. For further analysis look at Long, D. E., 'The Impact of the Iranian Revolution on the Arabian peninsula and the Gulf States', in Esposito, J. L. ed., *The Iranian Revolution: Its Global Impact*, (Miami: Florida International University Press, 1990), 100-115.

those of the middle class.³³ The objectives of this party were to overthrow the conservative regimes and to replace them with an Islamic Republican regime that would follow the Iranian model. The Islamic Revolution in Iran became the source of awareness and inspiration that represented the overwhelming majority of Kuwaiti Shiites. In addition, the Iranian regime considered its embassies to be its messengers for building terrorist groups, such as Hezbollah. It was determined to export the revolution by supporting the lobbies and followers, forming financial, racial and media lobbies, and connecting them together as it did in Lebanon.

The Islamic Revolution in Iran worked to spread the revolutionary spirit among Shiites in Kuwait, especially among young people. The aim was to convince them to participate in the demonstration that started at the house of Ayatollah Sayyed Abbas Almohri, the representative of Khomeini in Kuwait, in 1979 and headed to the Iranian Embassy. The flag of the Shahhshah was removed and another was raised with 'Allah is the greatest' (Allah – u – Akbar) written all over it.³⁴ This was the first Shiite demonstration since 1938. This political movement was a massive development for Shiites, especially as it led to a clash between the demonstrators and the Kuwaiti Special Forces that tried to stop them. Some of the demonstrators were arrested. Abbas Almohri presided over a group derived from the leadership of the association. The group went to Iran to congratulate the leadership of the revolution, Ruhollah Musavi Khomeini, for its success.³⁵

2.3.3 Turning to violence: the Impact of the First Gulf War

The Revolutionary Shiite movement took, at first, a conservative stance over the policies held by the Kuwaiti government in its support of the Iraqi regime's war against Iran. Then, the Kuwaiti government started to expand its support of Iraq. This support was clear in financial, media and military aid, as the total value of the financial aid that Iraq managed to take from 1980–1988 reached 15 billion dollars. In addition, the Kuwaiti government made available for the Iraqi military the Al-Ahmadi and Al-Shuaibi ports to transport nutritional materials as well as

³³ Al-Medaires, F. A., *Shiite movement in Kuwait*, (1st edn, Kuwait: Dar Qertas, 1999), 22-23.

³⁴ Al-Nafisi, A., *Islamic movement: vision for the future: papers in self-criticism*, (1st edn, Kuwait: 1989), 248-249.

³⁵ *Ibid*, 249.

weapons.³⁶ Most of Kuwait's capabilities were used in the service of Iraq during the war with Iran.

This support for Iraq angered Kuwaiti Shiites, as they considered Iran the protector of Shiites all over the world. The Iranian political regime took advantage of the sympathy of these groups of Shiites in the region and in Kuwait to form a base for the Kuwaiti Shiites to unite in one group. The radical revolutionary Islamic regime in Iran targeted a group of Shiite militants to destabilise the political stability of Kuwait in retaliation for Kuwaiti aid to the Iraqi regime.³⁷ As a result, the Kuwaiti political arena witnessed terrorist violence between 1980–1988, characterised by the spread of terrorist operations and the incitement of the Kuwaiti people to revolt against the political ruling system. In addition, groups were established that followed the model of the revolutionary state in Iran, which conducted many terrorist activities.³⁸ These included the assassination attempt on the Amir of Kuwait, Sheikh Jaber Al-Ahmad Al-Jaber Al-Sabah, in 1985 and the association of some Shiites with explosions in 1986 and in January, May and July of 1987 that targeted the oil cities in Kuwait during the political turmoil in 1987. In addition, some disturbances occurred in Kuwait between 1980 and 1989. For instance, there was a disturbance in the city of Meshref on January 30, 1987 during the attempt by Special Forces to capture a group of Shiite militants, when relatives of the wanted members fought the Special Forces.³⁹ Moreover, there were confrontations between the Iranian-backed militant groups in the streets between 1987 and 1990. Evidence of the names of the Arabs and Kuwaitis who supported the Iranian regime and collaborated to integrate in it can be found at the web site of the Iranian cleric 'Dar Al Welayah.'⁴⁰

Different groups were behind the terrorist incidents that supported the Islamic regime in Iran, such as the Battalions of Changing the Regime in the Kuwaiti

³⁶ Assiri, A., *Kuwait's Foreign Policy: City-State in World Politics*, Westview Special Studies on the Middle East (Boulder, Cob.: Westview Press, 1990), 70-71.

³⁷ *Ibid*, 71.

³⁸ Al-Medaires, F. A., *Shiite movement in Kuwait*, (1st edn, Kuwait: Dar Qertas, 1999), 30. For further reading, see Ramazani, R. K., *The Gulf Cooperation Council: record and analysis*, (1st edn, USA: the University Press of Virginia, 1988), 36-38.

³⁹ Assiri, A., *Kuwait's Foreign Policy: City-State in World Politics*, Westview Special Studies on the Middle East (Boulder, Cob.: Westview Press, 1990), 69 and 72-73. And Al-Medaires, F. A., *Shiite movement in Kuwait*, (1st edn, Kuwait: Dar Qertas, 1999), 30.

⁴⁰ 'Dar Al Welayah', Available at: <<http://www.alwelayah.net/welayah/index.php>> accessed 1st Dec. 2014.

Republic, the Voice of the Free People of Kuwait, the Organisation of Islamic Jihad, and the Forces of the Revolutionary Organisation in Kuwait. Some say that the Forces of the Revolutionary Organisation in Kuwait was responsible for most of the terrorist operations that took place in the eighties.⁴¹ However, others believe that all of these names are contrived and that most of these terrorist incidents were organised by the Kuwaiti Hezbollah in cooperation with the Islamic Da'awa Party.⁴²

2.3.4 Hezbollah in Kuwaiti

Hezbollah in Kuwait was established in Kuwait in 1980 after the Iranian Revolution and the formation of some Shiite organisations in the regions by young Shiites, who were educated in the religious shrine in Qom.⁴³ Some examples of these organisations were Hezbollah in Hijaz in Saudi Arabia and Hezbollah in Lebanon.⁴⁴ The Kuwaiti Hezbollah was activated through aid granted to it by the Iranian political regime that supervised the establishment of the '*Al-Nasser*' (Victory) magazine as the mouthpiece of the organisation, which called itself the pure voice of Muhamedi in Kuwait.⁴⁵

Hezbollah in Kuwait is one of the integral movements led by Ayatollah Sayyid Mohammad Baqir Mousavi al-Mohri, who is a Kuwaiti Twelver Shi'a Marja. It advocates a public referendum to enable the Kuwaiti people to say for themselves what they might choose as an independent ruling system. Hezbollah in Kuwait suggests that the governmental authorities in Kuwait are determined to isolate the Shiites from participating in the political decision making by denying them

⁴¹ Assiri, A., *Kuwait's Foreign Policy: City-State in World Politics*, Westview Special Studies on the Middle East (Boulder, Cob.: Westview Press, 1990), 72.

⁴² Al-Mosalam, S. A., *The impact of Iranian foreign policy toward the Gulf region on Kuwait's National Security: between the period of 1979 – 2007*, (Egypt: Alexandria University, 2008), 53. And Al-Medaires, F. A., *Shiite movement in Kuwait*, (1st edn, Kuwait: Dar Qertas, 1999), 31.

⁴³ *Ibid.* Recruitment is often the first to associate the founding of Hezbollah branches in the Gulf countries, which was done through the city of Qom, when they went to the Shiite religious study in the seminary there. For further information, look at their website 'Dar Al Welayah', Available at: <<http://www.alwelayah.net/welayah/index.php>> accessed 1st Dec. 2014.

⁴⁴ Long, D. E., 'The Impact of the Iranian Revolution on the Arabian peninsula and the Gulf States', in Esposito, J. L. ed., *The Iranian Revolution: Its Global Impact*, (Miami: Florida International University Press, 1990), 100-115.

⁴⁵ Al-Azi, G., *Hezbollah from ideological dream to political realism*, (1st edn, Kuwait: Dar Qertas, 1998), 105.

positions as ministers.⁴⁶ Hezbollah in Kuwait has always criticised the methods of the organisation of the parliamentary constituencies and asserted that Shiites are deprived of the advantages of the main newspapers and magazines. Hezbollah in Kuwait has also criticised the government's attitude of denying the entrance of the Shiite Qur'an readers and religious figures and denounced the ban over naming schools and streets after Shiite figures. They believe that these discriminatory stances by the Kuwaiti government will lead the country to be transformed into another Lebanon.⁴⁷

Hezbollah in Kuwait opposes other political powers and rejects commitment to the constitution of 1962. They suggest that the opposition in the Parliament, who were the Nationalist at that time, lacked political ambition when they confined their ambitions in the establishment of the constitution of 1962, which was 'a foolish mistake.'⁴⁸ Hezbollah in Kuwait has declared its opposition to the whole political regime and invited other political forces to overthrow the whole political system in Kuwait. It has blamed the opposition party for its caution in dealing with the Shiite opposition in a step that strengthens the discrimination in the Kuwaiti political atmosphere, which does not serve anyone but the interests of the ruling regime in Kuwait and which widens the gap between the Sunni and Shiite communities in the country.⁴⁹

Hezbollah has been keen to stir up divisions in the country and to follow the policies of the central command in Iran.⁵⁰ The actions of this party include blessing the assassination attempt against Sheikh Jaber Al-Ahmad Al-Sabah by the Islamic Da'awa Party on May 25, 1985 while he was traveling from his residence in the Al-Dasman Palace to the Royal Palace (Al-Sief Palace) on The Arabian Gulf Street. The Amir's car was blocked by a white Nissan driven by a suicide assassin. His Excellency was sitting in front beside the driver. The assassin targeted the Amir's car, but he was not successful, as he crashed into a police car causing a massive

⁴⁶ Assiri, A., *Kuwait's Foreign Policy: City-State in World Politics*, Westview Special Studies on the Middle East (Boulder, Cob.: Westview Press, 1990), 79.

⁴⁷ Al-Mosalam, S. A., *The impact of Iranian foreign policy toward the Gulf region on Kuwait's National Security: between the period of 1979 – 2007*, (Egypt: Alexandria University, 2008), 56. And Al-Medaires, F. A., *Shiite movement in Kuwait*, (1st edn, Kuwait: Dar Qertas, 1999), 32.

⁴⁸ *Ibid*, 32.

⁴⁹ *Ibid*, 32-33.

⁵⁰ For more reading, look at Al-Azi, G., *Hezbollah from ideological dream to political realism*, (1st edn, Kuwait: Dar Qertas, 1998), 105.

explosion. Four people died in the incidents, including two of the Amir's bodyguards, but the Amir of Kuwait was not seriously hurt.⁵¹

On July 12, 1985, pro-Iranian terrorists carried out an explosion in two cafés in the city of Kuwait that left 11 civilians dead and 89 others injured.

On April 29, 1986, the Kuwaiti security force declared that it had thwarted a terrorist attack planned by 12 people to hijack a plane of Kuwaiti Airlines, which was going to East Asia.⁵²

On April 5, 1988, Ali Akbar Mohtashemi ordered the leadership of Hezbollah to hijack a Kuwaiti Airlines known as 'Al-Jabriyah' coming from Bangkok to Kuwait and to redirect it to Mashad Airport in Iran. This operation, which lasted for fifteen days, was under the leadership of Imad Fayez Mughniyah, who was considered the head of security in the Lebanese Hezbollah organisation. They tried to land at the Beirut Airport, but their requests for permission to land were rejected. They then turned to Larnaca International Airport in Cyprus, where they murdered two Kuwaiti passengers, Abdullah Al-Khaldi and Khaled Ayoub, and threw their bodies off of the plane. Then, they moved to Algeria, where the hostages were finally released, and the hijackers escaped, as the Algerian authorities had promised to free them if they released the hostages.⁵³ During this incident, the hijackers demanded that the Kuwaiti government release some prisoners in Kuwaiti jails. The prisoners were accused of conspiracy in the explosions in 1983 with the help of a branch from the party called Islamic Jihad (Al-Jihad Al-Islami organisation), that had targeted a main electric station, the Kuwait International Airport, the American and French embassies, a large petrol plant and a residential condominium.

These incidents caused 7 deaths and 62 others to be injured, all of whom were civilian technicians working in the residential and petrol sites.⁵⁴ The same organisation was also involved in the hijacking of a Kuwaiti airplane called 'Kazma' in 1984 with more than 150 passengers. They took the plane to Mashhad

⁵¹ Al-Shammeri, S., and Al-Wegayan, N., *The famous political crimes in Kuwait*, (1st edn, Kuwait: 1996), 223-240.

⁵² *Ibid*, 254.

⁵³ *Ibid*, 259-290.

⁵⁴ Al-Mosalam, S. A., *The impact of Iranian foreign policy toward the Gulf region on Kuwait's National Security: between the period of 1979 – 2007*, (Egypt: Alexandria University, 2008), 70-74.

Airport in Iran, where the Iranian special forces raided it after unsuccessful negotiations with the hijackers, yet no one knows what happened to the hijackers. The casualties were two American passengers.⁵⁵ However, Hezbollah's request to release the prisoners was rejected by the Kuwaiti government.

In 1989, the Iranian regime took part in a ruthless terrorist event that took place in Mecca when a group of armed Kuwaiti youth, linked to the Kuwaiti Hezbollah, moved to Saudi Arabia with the help of some Iranian diplomatic members. The group was provided with explosives from the Iranian embassy in Kuwait to attack pilgrims in the season of Hajj. This group named itself 'The seekers of the track of the Imam', and they executed a terroristic operation on June 23, 1989 with the help of two Iranian diplomats, Sadek Ali Reda and Mohamed Reda Gholam.⁵⁶ The Saudi authorities captured the group, who included 29 Kuwait citizens, and accused them of involvement with the Iranian intelligence to conduct terrorist activities in Saudi Arabia. The Saudi court executed 16 of them, sent 4 to prison, and acquitted the rest.⁵⁷ The arrested persons confessed that they came to Hajj with the intention of carrying out the explosive operations, that they were part of the Kuwaiti Hezbollah, and that the group was headed by Ayatollah Sayyid Mohammad Baqir Mousavi al-Mohri, who blessed the operation.⁵⁸

Hezbollah in Kuwait has been subjected to counteraction from the State Security Bureau in Kuwait, as many of its members were arrested for placing explosives in various places in the country in an attempt to overthrow the legally ruling regime in Kuwait.⁵⁹ Additionally, on November 11, 1989, the Kuwaiti government dissolved the elected Board of Directors of the Association of Social Culture, as a result of their alliance with the Iranian regime, and appointed a

⁵⁵ *Ibid*, 77.

⁵⁶ For further information about the incident, watch the recorded video by the Saudi Authorities with the perpetrators during their interrogation. 'Makkah's incidents', Available on YouTube at: <<http://www.youtube.com/watch?v=-gpfwd2LOWE>> accessed 1st Dec. 2014. For more information about the (individual) perpetrators names and their ideologies, look at 'Dar Al Welayah', Available at: <<http://www.alwelayah.net/welayah/index.php>> accessed 1st Dec. 2014.

⁵⁷ 'Dar Al Welayah', Available at: <<http://www.alwelayah.net/welayah/index.php>> accessed 1st Dec. 2014.

⁵⁸ For further information about the incident, watch the recorded video by the Saudi Authorities with the perpetrators during their interrogation. 'Makkah's incidents', Available on YouTube at: <<http://www.youtube.com/watch?v=-gpfwd2LOWE>> accessed 1st Dec. 2014.

⁵⁹ Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 164.

supervised board instead to manage the affairs of the association.⁶⁰ According to the statistics regarding Hezbollah in Kuwait, 21 of its members died and 527 were jailed from the time when the party was established and Iraqi invaded Kuwait in 1990.⁶¹ However, during the Iraqi occupation, the prisoners were able to escape, and some of them took part in resisting the occupation, while the others fled to Iran.

After the liberation of Kuwait in 1991, the government allowed some of the members and supporters of the Kuwaiti Hezbollah party, who managed to escape during the Iraqi occupation, to return to Kuwait. This was in gratitude for the role the Shiites played in the resistance of the Iraqi invasion and for the demanding that was made by the Kuwaiti Shiites at home for those who had fled the country could return home.

Additionally, political changes took place in Iran after the death of Ruhollah Musavi Khomeini. The new leadership by Ayatollah Akbar Hashemi Rafsanjani tended to oppose the external revolutionary movements and wished to establish good relations with the Gulf countries. As a result, he closed the Kuwaiti Information Centre in Tehran and banned the publication of *Al-Nasser* magazine from Iran.⁶² This magazine, the mouthpiece of Hezbollah Kuwait, changed its headquarters to London and began criticising the leadership of Iran.

The revolutionary Islamic changes in Iran led to direct changes in the political atmosphere in Kuwait. These events affirm that changes that happen in the neighbouring countries directly affect the situation inside Kuwait. In reaction, the Kuwaiti leadership worked to revise its former policies with more political openness in the post-liberation era.

Although Hezbollah, as an ideology, still exists in Kuwait, the organisation has changed its attitude and has become a structured political group that reject political violence with the new name of *Al-Tahaluf al-Islami al-Watani* (the Islamic

⁶⁰ Al-Medaires, F. A., *Shiite movement in Kuwait*, (1st edn, Kuwait: Dar Qertas, 1999), 32-33.

⁶¹ Lawson, F. H., *Opposition Movements and U.S. Policy Towards the Arab Gulf States*, (New York: Council on Foreign Relations Press, 1992), 7-32. See also Al-Medaires, F. A., *Shiite movement in Kuwait*, (1st edn, Kuwait: Dar Qertas, 1999), 33.

⁶² Al-Medaires, F. A., *Shiite movement in Kuwait*, (1st edn, Kuwait: Dar Qertas, 1999), 33.

National Alliance). This political group was created after the Gulf War in 1991, and it took full shape in 1998.⁶³

Having said that, it is worth noting that Hezbollah, as an organisation, is not prohibited by the Kuwaiti laws and this also apply for any other organisations, as there is no specific law in Kuwait listing/naming the prohibited organisations. However, if such organisation commits crimes or activities that are proscribed by the law, then individuals will be held liable for committing such crimes. In addition, Article 43 of the Kuwaiti Constitutional Law states ‘Freedom to form associations and unions on a national basis and by peaceful means is guaranteed in accordance with the conditions and manner specified by law. No one may be compelled to join any association or union.’⁶⁴ However, the explanatory memorandum of the same Article prohibited the form of political parties.⁶⁵ Additionally, Article 30 of the State Security Law prohibits any associations, groups or entities ‘which have the purpose to disseminate the principles that aimed at the demolition of the basic systems illegally or by force to the catabolism of the social system or economic system in the country.’⁶⁶

This study has shown that terrorism or revolutionary violence has occurred in Kuwait that it was inspired and to some extent aided by external influences, primarily in this case from Iran. The Iranian regime manipulated the Shiite citizens in Kuwait during the Iran-Iraq War to cause terrorist incidents.

2.4 The Development and the Root of the New Phenomenon of Terrorism in Kuwait since the 1990s

2.4.1 Background

The international and regional changes in the late eighties and early nineties and the Soviet war with Afghanistan from 1979 to 1989 led many Arabian people from the Gulf States to join the military and Jihadi operations in Afghanistan. After the defeat of the Soviets in Afghanistan, the Taliban ruled in Afghanistan, and the

⁶³ Louër, L., *Transnational Shia politics: religious and political networks in the Gulf*, (New York: Columbia University Press, 2008), 208.

⁶⁴ The Constitution of the State of Kuwait, Article 43.

⁶⁵ The Explanatory Memorandum to the Constitution of the State of Kuwait, Article 43.

⁶⁶ The State Security Law No. 31 of 1970, Article 30.

terrorist groups were reinforced through an organisation of international terrorism called Al-Qaida.⁶⁷

Al-Qaida was formed years ago when a group of young Muslim militants travelled to Afghanistan to fight the troops of the Soviet occupation forces in the early eighties under the flag of Islam.⁶⁸ The Services Office of the young militants in Afghanistan, known as Maktab Al-Khidamat (MAK), started to recruit a group of Arabs in the militant's movement in collaboration with Osama bin Laden and Abdullah Yosef Azzam between 1982 and 1984. This collaboration was meant to fight the Soviet and the Afghan Marxist regime.⁶⁹ Furthermore, the MAK's role was to transfer money collected from different countries and charity resources in the Middle East and North America to be used to fund military operations in Bosnia, Kosovo, Chechnya, the Philippines and Indonesia.⁷⁰

Osama bin Laden started in Pakistan by helping the foreign Jihadists and inaugurating the Services Office there. He then moved to Afghanistan to fight the Soviets allied with expelled Islamists from Egypt and from other Arab countries.⁷¹ Additionally, and in the same path, the Pakistani leader Zia ul-Haq used his secret service to help the Pashtun Afghanis, who played an important role in aiding the foreign Islamists and providing shelter for the other radical Afghani militants, including Ozbak, Tagic and Heraz.⁷²

After the Soviet withdrawal in February of 1989, some militants started to expand their operations and their targets. Osama Bin Laden started to organise one of these movements in 1988 to expand Jihadism.⁷³ In contrast, Azzam attempted to keep the original track in the military trend until his assassination in a car bombing

⁶⁷ Gunaratna, R., *Inside Al-Qaeda: Global Network of Terror*, (London: C. Hurst and Co. Ltd., 2002), 40-44.

⁶⁸ John, C. K., *Unholy Wars: Afghanistan, America and International Terrorism*, (3rd edn, London: Pluto Press, 2002), 67-69.

⁶⁹ Roth, J., Greenberg, D. and Wille, S., *National Commission on Terrorist Attack upon the United States*, (Monograph on Terrorist Financing, 2004), Available at: <http://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Monograph.pdf> accessed 1st Dec. 2014.

⁷⁰ *Ibid*, 88-89.

⁷¹ Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 226. For further reading, see Wright, L., *The Looming Tower: Al Qaeda and the Road to 9/11*, (New York: Knopf, 2006).

⁷² *Ibid*, 226-227.

⁷³ Gunaratna, R., *Inside Al-Qaeda: Global Network of Terror*, (London: C. Hurst and Co. Ltd., 2002), 22-26.

in 1989. As a result, the Services Office (MAK) was withdrawn from the movement of Azzam and joined the movement of Bin Laden.⁷⁴

After the withdrawal of the Soviet occupation, Bin Laden went back to Saudi Arabia in 1989, where he was arrested on accusations of weapons trafficking.⁷⁵ After that, he moved to Sudan where he commenced the activities of his movement in training camps for Jihadists. There, the movement of Al-Qaida took its complete and full shape with lists of the roles and positions of its formation committees.⁷⁶

Al-Qaida with its new ideology was formed in early the 1990s, at which time it had a degree of formal organisation.⁷⁷ There were some Kuwaiti citizens within the formation of Al-Qaida. For example, Suleiman Abu Ghaith, a Kuwaiti citizen who had lost his citizenship, was a member of the Consulting Committee and the Media Committee.⁷⁸ Therefore, it is obvious that Al-Qaida had to some extent attracted Kuwaiti people from the start of its formation.

The formation of the movement of Al-Qaida contains five Committees, through which Al-Qaida operates its movement. First, at the top level, is the Consulting Committee - Lajnat Al Shura (the Consulting Board – Al Majles Al Esteshary) - which was comprised of the closest members to Bin Laden in the Sharia and the politics committee that start making Fatwas. Second is the Military Committee, which is responsible for suggesting targets and operations reinforcement. The third is the Funding Committee, which is responsible for providing the required funds and for purchasing the necessary weapons and explosives, in addition to providing the different provisions for the training camps. The fourth is the Security Committee, which is responsible for protecting the important figures and managing enemy intelligence. The last is the Media Committee, which is responsible for the preparation of media campaigns.⁷⁹

⁷⁴ *Ibid*, 24.

⁷⁵ Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 227.

⁷⁶ Gunaratna, R., *Inside Al-Qaeda: Global Network of Terror*, (London: C. Hurst and Co. Ltd., 2002), 31-32.

⁷⁷ *Ibid*.

⁷⁸ Williams, P. L., *The Al Qaeda connection: international terrorism, organized crime, and the coming apocalypse*, (New York: Prometheus Books, 2005), 15-19.

⁷⁹ Cordesman, A. H., and Obaid, N., 'Al-Qaeda in Saudi Arabia: Asymmetric Threats and Islamist Extremists', (January 26, 2005), Center for Strategic and International Studies, Working Draft, 2-4.

Al-Qaida underwent radical changes as the result of the war led by the United States since 2001. It transformed from a unified organisational institution to a half disfigured organisation that used some terrorist activities to show that it was still capable of waging war.⁸⁰ These activities included terrorist attacks, assassinations, hijacking and taking hostages. There was also some important evidence of Bin Laden's interest in making biological and chemical weapons.⁸¹ Today, Al-Qaida is a movement or an ideology rather than a structured organisation.⁸²

After the war on the Taliban and Al-Qaida, the operations of Al-Qaida were expanded to all Gulf countries. Previously, it was confined only to some Arab countries, such as Saudi Arabia and Egypt. This was accomplished especially through issuing a Fatwa, in 2001, by Bin Laden and Al-Zawahiri and inviting those Jihadists to regroup for terrorist attacks against foreigners, especially the American forces in the region, and to expel them out of the Arabian Peninsula.⁸³ This inspired the rise of young Arabian militants that resulted in sporadic attacks throughout the Peninsula. This occurred after the incidents of 9/11, after which all Muslims were accused of terrorism and of being a threat to peace and world security.⁸⁴ This in turn led to some oppression against Muslims in some countries. Additionally, the unresolved conflict between Israel and the Arabs, especially Palestine, and the American occupation of Afghanistan and of Iraq in March, 2003, the collapse of the Iraqi regime, and the American military presence in the region worsened the relations between Muslims and the West. These events and the extreme racial conflict in Iraq led to more conflicts in the whole region and particularly in the surrounding countries.⁸⁵

The fostering of a global Jihad became more predominant in Kuwait between 2001 and 2005.⁸⁶ Perhaps most attributable to the increase in Jihadism in Kuwait

⁸⁰ *Ibid*, 3.

⁸¹ *Ibid*.

⁸² Miller, C., 'SAUDI ARABIA: In al-Qaeda's Sights', (*Council on Foreign Relations*, 11 November 2003), Available at: <<http://www.cfr.org/saudi-arabia/saudi-arabia-al-qaedas-sights/p7740>> accessed 1st Dec. 2014.

⁸³ Benjamin, D. and Simon, S., *The Age of Sacred Terror*, (New York: Random House, 2002), 147.

⁸⁴ Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 228-229.

⁸⁵ Rabasa, A. M., Benard, C., Chalk, P., Fair, C. C., Karasik, T., Lal, R., Lesser, I. and Thaler, D., *The Muslim World After 9/11*, (RAND Project Air Force, 2004).

⁸⁶ The Ministry of Awqaf and Islamic Affairs, *Strategy of the State of Kuwait to Counter the Phenomenon of Extremism*, (Kuwait: MAIA, 2006), 13.

was the constant pressure from the Al-Qaida ringleaders, Osama bin Laden and his deputy, Ayman Al-Zawahiri, from 2001 until recently for Jihad to be intensified in countries in the region that supported the American-led operation in Iraq and for the utilisation of oil as a defensive mechanism.

In addition, this was in part because of Kuwait's geography – it is situated between Saudi Arabia and Iraq, where there is a solid base of Jihadis – and partly because of the pro-American policies that it adopted. Kuwait has borne the brunt of escalating susceptibility caused by the twofold pressure of the invasion of Iraq steered by the United States and the proliferation of extremism all over the Peninsula. At the same time, as some parts of the society in Pakistan became extremist due to the 1980s anti-Soviet Jihad in Afghanistan, edging radicalisation was noted in part of the society in Kuwait due to the Jihad in Afghanistan and Iraq.⁸⁷ As such, terrorist groups, among them Al-Qaida, prefer Kuwait for their logistical operations, like the enrolment of combatants for Jihad purposes (Afghanistan, Iraq, etc.) and as a hub for the transfer of its funds, equipment and workforce to other countries, above all to Iraq.⁸⁸

2.4.2 Kuwait's position within the Global Jihadi agenda

Even though Kuwait is not a key target of Al-Qaida and its supporters, it plays a part in the global Jihadi plan largely for two reasons. The first is its affiliation with the United States especially after the First Gulf War, which illustrates significantly the 'imperialist presence' that Washington is claimed by Al-Qaida to maintain in the Arabian Peninsula.⁸⁹ Presently, a large foreign military presence exists in Kuwait, which includes 16 functioning and 6 inoperative bases and thousands of soldiers.⁹⁰ This acts as a target for different extremists following the

⁸⁷ Raman, B., 'Jihadi terrorism, from Iraq to Kuwait', (*Asia Times Online, Middle East*, 24 February 2005), Available at: <http://www.atimes.com/atimes/Middle_East/GB24Ak02.htm> accessed 1st Dec. 2014.

⁸⁸ The American Foreign Policy Council, *World Almanac of Islamism 2011 – Kuwait*, (Lanham, Md.: Rowman & Littlefield Publishers, 2011), 4.

⁸⁹ See in this regard, for example, Katzman, K., 'Kuwait: Security, Reform, and U.S. Policy', (19 May 2011), Congressional Research Service, 23-24, Available at: <<http://fpc.state.gov/documents/organization/170513.pdf>> accessed 1st Dec. 2014.

⁹⁰ Global Security, 'Kuwait Facilities', Available at: <<http://www.globalsecurity.org/military/facility/kuwait.htm>> accessed 1st Dec. 2014. See also Knights, M., 'Northern Gulf vulnerable to infiltration by terrorist groups', (1 October 2005), Jane's Intelligence Review.

Jihadist philosophy and Al-Qaida. To extremists, the Kuwaiti administration is also a good target because of its support for the United States and to some degree its only partial compliance with the Islamic/Sharia laws.⁹¹ Article 2 of the Kuwaiti Constitution states that ‘the Islamic Sharia shall be a main source of legislation’ rather than the only source of legislation.⁹² Another, and perhaps the most important, reason why Kuwait is a target of Al-Qaida is that Kuwait is a transfer country for cash, equipment and operatives in countries like Afghanistan, Iraq and Pakistani, where the ‘Holy War’ is being fought.

Physically, the operation of Al-Qaida in Kuwait is theoretically subservient to the authorised Al-Qaida franchise in the area, Al-Qaida in the Arabian Peninsula (AQAP), and to Al-Qaida in Iraq (AQI).⁹³ Headquartered mostly in Saudi Arabia and Yemen, AQAP’s control over the operations of the Jihadists in Kuwait is not clear. Even so, its itinerary implies that its reach encompasses the whole Gulf region.⁹⁴ Because of the increasing attention that AQAP received in 2009, mainly in Yemen, its expansion is expected to be hesitant.

The targeting of Yemen and Saudi Arabia by AQAP has inspired other extremists to plan attacks on Western targets in Kuwait. These extremists may have historic relations to leaders of Al-Qaida in Pakistan and Afghanistan. It is important that some of the most high-ranking Al-Qaida operational individuals, such as Ramzi Yousef, Abdul Hakim Murad and Khalid Sheikh Mohamed, the architect of the September 11 attacks, were of Kuwaiti origins and that their families and friends still reside there.⁹⁵ Moreover, the extremists have also aided the enrolment of Kuwaitis into Al-Qaida and the International Islamic Front (IIF).⁹⁶

⁹¹ Bakier, A., ‘Al-Qaeda Leaders in the Arabian Peninsula Speak Out’, (28 January 2009) 6(3) The Jamestown Foundation, Terrorism Focus, Available at: <http://www.jamestown.org/programs/gta/single/?tx_ttnews%5Btt_news%5D=34420&tx_ttnews%5BbackPid%5D=458&no_cache=1> accessed 1st Dec. 2014.

⁹² The Constitution of the State of Kuwait, Article 2.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Fouda, Y. and Fielding, N., *Masterminds of Terror: The Truth Behind the Most Devastating Terrorist Attack the World Has Ever Seen*, (United States: New York, Arcade Publishing, 2004), 88-92.

⁹⁶ *Ibid.* See also ‘Khalid Sheikh Mohammed's '31 plots'’, *BBC*, (15 March 2007), Available at: <<http://news.bbc.co.uk/1/hi/world/americas/6452789.stm>> accessed 1st Dec. 2014.

When the United States began air assaults on Al-Qaida bases in Afghanistan on October 7, 2001, approximately 150 Kuwaitis were in the Al-Qaida and IIF training bases.⁹⁷ Approximately 50 were alleged to have perished during the air assaults, but the rest either escaped to Iran or Pakistan or were seized by the Pakistani Army. A few made their way to Iraq after March of 2003. The rest succeeded in returning to Kuwait.⁹⁸

Terror events have been on the rise in Kuwait in the wake of the September 11th attacks, most of which have been linked to Al-Qaida.

In October of 2002, two Kuwaiti extremists, Anas Al Kandari and Jasem Al Hajri, opened fire at a base on Failaka Island, approximately 10 miles off the Kuwaiti City coast, killing one U.S. Marine and injuring another.⁹⁹ The attackers were killed in the confrontation; one of them was said to have sworn loyalty to Osama bin Laden. In the following month, an audiotape was released in which Osama glorified the attack and proclaimed that it was the work of ‘zealous sons of Islam in defense of their religion.’¹⁰⁰ The former Al-Qaida chief of external operations, Khalid Sheikh Mohamed, professed total responsibility for the attack.¹⁰¹ In his book *The Martyr’s Oath*, Stewart Bell gave details of how Suleiman Abu Ghaith enrolled and brainwashed the gunmen.¹⁰² Published Guantanamo trial manuscripts establish that Anas al Kandari was related to one of the detainees, Faiz al Kandari. Both were trained together with Abu Ghaith at a pre-9/11 airport

⁹⁷ Raman, B., ‘Jihadi terrorism, from Iraq to Kuwait’, (*Asia Times Online, Middle East*, 24 February 2005), Available at: <http://www.atimes.com/atimes/Middle_East/GB24Ak02.html> accessed 1st Dec. 2014.

⁹⁸ *Ibid.*

⁹⁹ Buncombe, A., ‘American Marine On Maneuvers In Kuwait Is Killed By Terrorist Attack’, *The Independent* (London, 9 October 2002), Available at: <<http://www.independent.co.uk/news/world/middle-east/american-marine-on-manoevres-in-kuwait-is-killed-by-terrorist-attack-607899.html>> accessed 1st Dec. 2014.

¹⁰⁰ Lawrence, B., ed., *Messages to the World: The Statements of Osama bin Laden*, (London and New York: Verso, 2005), 174.

¹⁰¹ ‘Verbatim transcript of combatant status review tribunal hearing for ISN 10024’, (10 March 2007), Available at: <http://www.defense.gov/news/transcript_isn10024.pdf> accessed 1st Dec. 2014.

¹⁰² Bell, S., *The martyr's oath: the apprenticeship of a homegrown terrorist*, (Canada: John Wiley & Sons Canada, Ltd., 2005), 177-187.

training camp close to Qandahar in Afghanistan, one of bin Laden's many training camps.¹⁰³

Next, two American soldiers on their way to their base in November of 2002 were attacked by a law enforcement agency officer, who worked in the Ministry of Interior. He stopped the soldiers in the 7th ring road, shot one of them in the face and the other in the shoulder. He was an Al-Qaida sympathiser and, according to BBC News, had a history of mental illness.¹⁰⁴ The officer was arrested and sentenced to jail.¹⁰⁵

Subsequently, in March of 2003, the State Security Bureau arrested a five member terrorist ring. Three members of this ring were Al Awqaf's mosque management employees. Security officers found them with ammunition and plans. According to the confiscated plans, the ring was planning an assault on Kuwaiti and American targets. Nearly all of the ring members had been to Afghanistan and received coaching on how to carry out a terroristic attack.¹⁰⁶ Three of them were sentenced to prison, and the other two were acquitted.¹⁰⁷

Two months prior to this, a few miles from the American military base called 'Camp Doha,' two civilian workers employed by the American military in Kuwait were ambushed and attacked. One was killed and the other injured.¹⁰⁸ The perpetrator was captured by the Saudi authorities and extradited to Kuwait. According to the BBC, he confessed to being an Al-Qaida and Bin Laden sympathiser.¹⁰⁹

Kuwaiti authorities apprehended approximately 37 operatives of a global jihadi ring that, in the beginning of 2005, had carried out a number of incursions. Among

¹⁰³ 'The Guantánamo Docket', *The New York Times*, (2010) Available at: <<http://projects.nytimes.com/guantanamo/detainees/552-faiz-mohammed-ahmed-al-kandari/documents/1/pages/1190#4>> accessed 1st Dec. 2014.

¹⁰⁴ 'Anti-US anger grows in Kuwait', *BBC*, (21 January 2003), Available at: <http://news.bbc.co.uk/2/hi/middle_east/2679597.stm> accessed 1st Dec. 2014.

¹⁰⁵ Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 167.

¹⁰⁶ *Ibid*, 167-168.

¹⁰⁷ *Ibid*.

¹⁰⁸ Global Security, 'Camp Doha', Available at: <<http://www.globalsecurity.org/military/facility/camp-doha.htm>> accessed 1st Dec. 2014.

¹⁰⁹ 'US army trucks attacked in Kuwait', *BBC*, (14 December 2003), Available at: <http://news.bbc.co.uk/2/hi/middle_east/3319121.stm> accessed 1st Dec. 2014.

those apprehended were citizens of Jordan, Kuwait, Saudi Arabia, Yemen and Australia.¹¹⁰ Even though it was most probable that the extremists were linked to Al-Qaida, reports indicate that a number of them were not affiliated to any organisation. While they were being interrogated, several rings were mentioned; it became apparent that these rings were independently operating as had been the case in Iraq. These rings included The Mujahideen of Kuwait, The Brigades of the Two Shrines, The Sharia Falcons Squadron, The Peninsula Lion Brigade and The Martyr Abdul Aziz al-Muqrin Brigade, the name of which indicates that it was named after an Al-Qaida's peninsula group leader, who was killed in June of 2005 by security officials in Saudi Arabia.¹¹¹

Three terrorist rings were said by the authorities in Kuwait to have operated in the country.¹¹² The first of these was under the stewardship of Amer Khalif al Enezi, who died while in police custody, and his brother, Nasser, who was killed during the confrontation with the State Security Bureau at the end of January. This ring was called The Peninsula Lions. The second ring, under the leadership of Mohsen al-Fahdli, was called The Kuwait Mujahideen. The last ring, headed by Ahmad al-Mutairi and Khaled al-Dousari, was nameless.¹¹³

Mohsen Al-Fahdli worked with Al-Qaida in Afghanistan and was affiliated with Suleiman Abu Ghaith, a former Kuwaiti who lost his citizenship in 2001 and was an Al-Qaida spokesman.¹¹⁴ While in Afghanistan, Al-Fahdli became friends with Ahmad al-Mutairi, who became a partner in 2003 in the establishment of The Peninsula Lions, an Al-Qaida network, also referred to in Kuwaiti as Al-Jazeera

¹¹⁰ Ulph, S., 'Terrorism Accelerates in Kuwait', (2 February 2005) 2(3) The Jamestown Foundation, Terrorism Focus, Available at: http://www.jamestown.org/programs/gta/single/?tx_ttnews%5Btt_news%5D=27494&tx_ttnews%5BbackPid%5D=238&no_cache=1 accessed 1st Dec. 2014. Also see SAVE A LIFE - Foreign Prisoners Support Service, Available at: <http://www.foreignprisoners.com/news-kuwait07.html> accessed 1st Dec. 2014.

¹¹¹ Raman, B., 'Jihadi terrorism, from Iraq to Kuwait', (*Asia Times Online, Middle East*, 24 February 2005), Available at: http://www.atimes.com/atimes/Middle_East/GB24Ak02.html accessed 1st Dec. 2014.

¹¹² *Ibid.*

¹¹³ Cordesman, A. H., and Al-Rodhan, K. R., *Gulf Military Forces in an Era of Asymmetric Wars*, (vol. 1, Westport, CT: Praeger Security International, 2007), 107.

¹¹⁴ Joscelyn, T., 'Report: New leader of al Qaeda network in Iran named', *The Long War Journal*, Available at: http://www.longwarjournal.org/archives/2012/02/report_new_leader_of.php accessed 1st Dec. 2014.

Lions and Asood al Jazeera.¹¹⁵ Al-Fahdli worked with an Islamic international group in Chechnya in a revolt against the Russians and he fought the Russian forces there.¹¹⁶ He partnered with, and was under, Abu Al-Walid Al-Ghamdi while he was there and later met the leader of the Arab fighters, Thamer Al-Swailem, also known as Khattab.¹¹⁷ In 2002, Al-Fahdli returned to Kuwait to supervise The Kuwaiti Mujahidin, a group that infiltrated the security authorities there.¹¹⁸

Through the help of three Kuwaiti military officers and by keeping a close relationship with the Wahhabism School of clerics in Saudi Arabia and Kuwait, Al-Fahdli orchestrated attacks on Western hotels based in Yemen.¹¹⁹ This plot was thwarted, however, by Yemeni authorities with help from Kuwaiti authorities.¹²⁰ Consequently, in mid-November of 2002, Al-Fahdli was apprehended and questioned by Kuwaiti authorities but later released.¹²¹ Thereafter, he fully incorporated his group, the Kuwaiti Mujahidin, with the Peninsula Lions. Following the Riyadh compound bombings that occurred in mid-May of 2003, Al-Fahdli's name appeared on the list of the 36 most wanted issued by the Saudi authority in 2005.¹²²

It has been established that Asood al Jazeera, Al-Jazeera Lions, or The Peninsula Lions was the name used by the Kuwaiti wing of Al-Qaida. Its operation

¹¹⁵ Ulph, S., 'Gulf – Islamic militancy kicks off in Kuwait', (1 February 2005) Jane's Islamic Affairs Analyst.

¹¹⁶ Cordesman, A. H., and Al-Rodhan, K. R., *Gulf Military Forces in an Era of Asymmetric Wars*, (vol. 1, Westport, CT: Praeger Security International, 2007), 108-109.

¹¹⁷ The Death Industry programme on al-Arabiya, 'Al Qaeda in Kuwait', *al-Arabiya*, (1 February 2008), the video is available on YouTube at: <<http://www.youtube.com/watch?v=MoRwB9Lpg5s>> accessed 1st Dec. 2014.

¹¹⁸ *Ibid.*

¹¹⁹ SMITH, C. S., 'Threats and Responses: Antiterror Arrest; Kuwait Says a Senior Qaeda Member Has Confessed to Planning 2 Attacks in Yemen', *The New York Times*, (17 November 2002), Available at: <<http://www.nytimes.com/2002/11/17/world/threats-responses-antiterror-arrest-kuwait-says-senior-qaeda-member-has.html?n=Top%2fReference%2fTimes%20Topics%2fSubjects%2fTerrorism>> accessed 1st Dec. 2014.

¹²⁰ *Ibid.*

¹²¹ Mickolus, E. F., *The Terrorist List: The Middle East*, (Vol. 1: A-K, Westport, CT: Praeger Security International, 2007), 191-192.

¹²² Look at The Royal Embassy of Saudi Arabia, 'List of 36 most-wanted terrorist suspects', (Washington DC., 28 June 2005), Available at: <<http://www.saudiembassy.net/archive/2005/statements/page16.aspx>> accessed 1st Dec. 2014.

in the Emirate ran from late 2002 to 2005, by the end of which almost all of its operatives were killed, apprehended or escaped to Iraq.¹²³

Al Jazeera is Arabic for island but is commonly used to refer to the Arab Peninsula that is bordered by the sea in three directions and by the desert in the fourth, the North in this case. Journalists allege that, while being cross-examined, Amer Al-Enezi acknowledged that the Al-Jazeera Lions were affiliated with the al-Haramain Brigades operated by the late Abdul Aziz Muqrin, an Al-Qaida leader of Saudi origin.¹²⁴ Al-Enezi confirmed that he and his younger brother, Nasser al-Enezi, were given explosives and remote control detonators and training in the Kuwaiti desert so that they could execute assaults on the American military convoys that were en route to Iraq via Kuwait. He also said that he went to Iraq, where he gained weapon and explosive use and transportation techniques.¹²⁵ He also explained the travelling to Iraq of Mohsen al-Fahdli and Khaled al-Dosari, high-ranking operatives.¹²⁶

The principal objective of the Asood al Jazeera was to ‘expel Americans from the Arabian Peninsula (Al-Jazeera).’¹²⁷ In the long run, as established by Al-Enezi, the group aimed at establishing an Islamic emirate in the region through extensive bombings and murders.¹²⁸ From the name, it can be gathered that the group’s focus is not only on Kuwait but also on administrations all across the Arab Peninsula that are friendly to the United States.¹²⁹

Following a probe on the activities and location of the murdered Fawaz al-Otaibi, security forces in Kuwait, on 30 January 2005, surrounded a six floor building in the Kuwait City neighbourhood of Salmiya, where activists of Asood al

¹²³ Pollock, D., *Kuwait: Keystone of U.S. Gulf Policy*, (United State: Washington, DC, The Washington Institute for Near East Policy, Policy Focus #76, November 2007), 21.

¹²⁴ Heffelfinger, C. and Scheuer, M., *Unmasking terror: a global review of terrorist activities*, (Washington, DC: The Jamestown Foundation, 2005), 45-53.

¹²⁵ *Ibid*, 49.

¹²⁶ *Ibid*, 50.

¹²⁷ Cordesman, A. H., and Al- Rodhan, K. R., *Gulf Military Forces in an Era of Asymmetric Wars*, (vol. 1, Westport, CT: Praeger Security International, 2007), 107.

¹²⁸ Janardhan, N., ‘Kuwait Wakes up to the Face of Militant Islam’, The Jamestown Foundation, *Terrorism Monitor* (Vol. 3, iss. 9, 6 May 2005), Available at:

<http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=159> accessed 1st Dec. 2014.

¹²⁹ *Ibid*.

Jazeera assembled.¹³⁰ After a brief shootout, Nasser Al-Enezi was among the three activists killed. He was formerly a Kuwaiti policeman and the brother of the gang leader, Amer Khlaif Al-Enezi. A fourth activist was apprehended. A security officer afterwards succumbed to his injuries suffered during the shootout.¹³¹

Using leads from the arrested activist, Amer Al-Enezi, along with two other activists, was arrested the following night about 30 kilometers south of Kuwait City in the Mubarak Al-Kabeer area. Four militants were killed in the raid.¹³² These events and those that ensued led to the arrest of seventeen Kuwaiti suspects, two Jordanians, two Saudis and four Bidoon without nationality.¹³³ Other ringleaders, such as Khaled al-Dosari and Mohsen al-Fahdli, were able to escape, never to be caught.¹³⁴ This operation, which caused the death of 8 Islamic activists and the apprehension of the others, effectively disabled the Kuwaiti Al-Qaida network.

The prosecution of 37 Al-Jazeera Lions activists began on the 24 of May in 2005 in Kuwait City. 11 of these activists were prosecuted in absentia.¹³⁵ Only eight days after being apprehended, on February 8, 2005, Amer Khlaif Al-Enezi died in jail, allegedly as a result of ‘heart failure.’¹³⁶ A cleric at the al Jahra mosque, Al-Enezi, was seized on January 31. Before his death, he was sacked in the summer of 2004 by the Awqaf (endowment) and Islamic Affairs Ministry because of his extremist opinions. In fact, he chose to ignore the many warnings from the Kuwaiti authority for his demanding Jihad against the Iraqi based U.S. Army.¹³⁷ The wife of

¹³⁰ Ulph, S., ‘Terrorism Accelerates in Kuwait’, (2 February 2005) 2(3) The Jamestown Foundation, Terrorism Focus, Available at:

<http://www.jamestown.org/programs/gta/single/?tx_ttnews%5Btt_news%5D=27494&tx_ttnews%5BbackPid%5D=238&no_cache=1> accessed 1st Dec. 2014.

¹³¹ *Ibid.*

¹³² Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 169.

¹³³ *Ibid.*

¹³⁴ ‘Kuwaiti cabinet approves new “strategy” to combat terror’, *Khaleej Times*, (6 February 2005), Available at:

<http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/middleeast/2005/February/middleeast_February166.xml§ion=middleeast&col=>> accessed 1st Dec. 2014.

¹³⁵ U.S. Department of State, *Country Reports on Terrorism 2005 – Kuwait*, (Office of the Coordinator for Counterterrorism, 28 April 2006), Available at:

<<http://www.state.gov/j/ct/rls/crt/2005/64344.htm>> accessed 1st Dec. 2014.

¹³⁶ Amnesty International, *Amnesty International Report 2006 – Kuwait*, (23 May 2006), Available at: <<http://www.unhcr.org/refworld/docid/447ff7aeb.html>> accessed 1st Dec. 2014.

¹³⁷ Heffelfinger, C. and Scheuer, M., *Unmasking terror: a global review of terrorist activities*, (Washington, DC: The Jamestown Foundation, 2005), 45.

Amer al-Enezi, Asood al Jazeera spiritual leader, Noha al-Enezi, was not put on trial because of her cancer, to which she later succumbed in April of 2005.

On December 27, 2005, all of the charges against seven suspects were dropped, among them the Islamist lawyer, Osama Al-Monawer, and Hamid Al-Ali. Three Kuwaitis and three Bidoon (without citizenship) were found guilty of planning to execute suicide attacks in Iraq and were sentenced to death. One was given a life sentence and the remaining sentences ranged from four months to fifteen years.¹³⁸ Looking at the total casualty numbers, eight terrorists, four security officers and one Bahrainian civilian were killed in the confrontations.¹³⁹

As recent as August of 2009, six members of an Al-Qaida affiliated ‘terrorist network’ who were organising attacks on an American military base ‘Camp Arifjan’ were apprehended by Kuwaiti security officers.¹⁴⁰ The camp, which is under heavy surveillance, accommodates 15,000 American soldiers and is the logistics camp for troops operating in Iraq.¹⁴¹ The six apprehended suspects, who were Kuwaiti citizens, had in their plans an attack on the command centre of the Kuwaiti internal security agency.¹⁴²

The attacks and terrorist incidents that happened in Kuwait between 2001 and 2009 can be divided into two categories: attacks that were generally directed against foreigners, specifically American forces, and attacks that were aimed at the Kuwaiti security forces.

This section has provided an overview of the Jihadi terrorist threats and their phenomenon in Kuwait. Terrorism is an enduring threat to Kuwait, and some of its activities have been internal, while others have been external. However, most of the

¹³⁸ The Death Industry program on al-Arabiya, ‘Al Qaeda in Kuwait’, *al-Arabiya*, (1 February 2008), the video is available on YouTube at: <<http://www.youtube.com/watch?v=MoRwB9Lpg5s>> accessed 1st Dec. 2014. See also U.S. Department of State, *Country Reports on Terrorism 2005 – Kuwait*, (Office of the Coordinator for Counterterrorism, 28 April 2006), 138-139, Available at: <<http://www.state.gov/j/ct/rls/crt/2005/64344.htm>> accessed 1st Dec. 2014.

¹³⁹ Pollock, D., *Kuwait: Keystone of U.S. Gulf Policy*, (United State: Washington, DC, The Washington Institute for Near East Policy, Policy Focus #76, November 2007), 21.

¹⁴⁰ U.S. Department of State, *2009 Country Reports on Terrorism – Kuwait*, (5 August 2010), 130-132, Available at: <<http://www.unhcr.org/refworld/docid/4c63b63a27.html>> accessed 1st Dec. 2014.

¹⁴¹ ‘Kuwait Foils US Army Base Plot’, *BBC*, (11 August 2009), Available at: <http://news.bbc.co.uk/2/hi/middle_east/8195401.stm> accessed 1st Dec. 2014.

¹⁴² Spencer, R., ‘Kuwait thwarts plot to attack US army base’, *The Telegraph*, (11 August 2009), Available at: <<http://www.telegraph.co.uk/news/worldnews/middleeast/kuwait/6010924/Kuwait-thwarts-plot-to-attack-US-army-base.html>> accessed 1st Dec. 2014.

terrorist incidents share an internal element, although the ideological concept has been adopted and implemented from the external influences, i.e. from Al-Qaida. Moreover, the presence of American troops in Kuwait has, to some extent, played a role in increasing the number of terrorist incidents in Kuwait, especially after the Bin Laden's Fatwas to target the foreign bases in the Peninsula.

2.5 Further Threats to Kuwait

In addition to the attacks on the Western and regime targets mentioned above, Kuwait offers other benefits to the Jihadists. To begin with, Kuwait is a critical transit station for money transfers, and equipment and workforces transfer from the countries in the Gulf to other countries like Afghanistan, Pakistan and Iraq,¹⁴³ but also to Syria since 2012. Because this route is inadequately watched by Kuwaiti security agencies, it is an important channel that sustains guerrilla and terror organisations in Afghanistan and Pakistan. Using their smuggling and document forgery systems, the terror organisations use Kuwait to sustain them fiscally and militarily. As a result, Kuwaiti extremists have become very important players at the heart of the Pakistani Al-Qaida operations, involved in both logistics and the operation of the organisation.¹⁴⁴

In the same light, Al-Qaida in Iraq (AQI), the Al-Qaida faction in Iraq, has recruited some of its operatives (troops and suicide bombers) from Kuwait.¹⁴⁵ The youth of Kuwait were and still are being enrolled and dispatched, via Syria, to Iraq to carry out their 'Jihadi duty' in attacking coalition forces. In fact, dependable sources state that a number of Kuwaiti youths have joined Al-Qaida in Iraq to fight American forces and local security services.¹⁴⁶ From these reports, eleven Kuwaitis

¹⁴³ 'Wikileaks: Saudis 'chief funders of Sunni militants'', *BBC*, (5 December 2010), Available at: <<http://www.bbc.co.uk/news/world-middle-east-11923176>> accessed 1st Dec. 2014.

¹⁴⁴ The American Foreign Policy Council, *World Almanac of Islamism 2011 – Kuwait*, (Lanham, Md.: Rowman & Littlefield Publishers, 2011), 6.

¹⁴⁵ Hewitt, C., and Kelley-Moore, J., 'Foreign fighters in Iraq', (2009) 21 *Terrorism and Political Violence* 211. See also Raman, B., 'Jihadi terrorism, from Iraq to Kuwait', (*Asia Times Online, Middle East*, 24 February 2005), Available at:

<http://www.atimes.com/atimes/Middle_East/GB24Ak02.html> accessed 1st Dec. 2014.

¹⁴⁶ Ulph, S., 'Kuwait Steps Up Anti-jihad Activities', (10 May 2005) 1(3) *The Jamestown Foundation, Terrorism Focus*, Available at:

<http://www.jamestown.org/programs/tm/single/?tx_ttnews%5Btt_news%5D=273&tx_ttnews%5BackPid%5D=237&no_cache=1#.VHQQ94tD7AM> accessed 1st Dec. 2014.

have been killed during suicide operations in Iraq between 2003 and 2005.¹⁴⁷ A case, which came to be known as the case of ‘recruiting youngsters,’ was tried in the Kuwaiti Criminal Court in 2004 that involved devout extremists, who were recruiting young men and dispatching them to Iraq to fight American troops.¹⁴⁸ In the account of an Iraqi AQI commander, tens of Kuwaitis were under his watch as of 2008.¹⁴⁹

The greatest danger to the national security of Kuwait comes from veteran Kuwaiti Jihadists, who, on completion of their ‘duty’ in Iraq and Afghanistan, are eager to put into practice in their native land what they learned abroad. Because of the extensive connections with other operatives and the required insurgent fighting and bomb-making techniques that these skilled extremists possess, the proclivity for attacks on Western and Kuwaiti administrations is heightened.¹⁵⁰ A number of reports have established that efforts have previously been made to use experts from Kuwait in attacks, and high-ranking Al-Qaida officers in Pakistan are notorious for assigning trainees from Kuwait to covert missions that are to take place in Kuwait.¹⁵¹ Nevertheless, the trend of veteran Kuwaiti Jihadists initiating attacks in Kuwait will still be restrained, provided that more appealing Jihad areas, like Afghanistan, Iraq, Somalia, and others, exist.

Since the Guantanamo Bay camps opened on January, 2002, twelve Kuwaiti prisoners, who were seized on the Afghan–Pakistan border, were held in the camps. Ten of them were later relocated and deported to Kuwait, while Fayiz Mohammed Al Kandari and Fawzi Khaled Al Odah, the remaining two, remain there.¹⁵² All of

¹⁴⁷ Raman, B., ‘Jihadi terrorism, from Iraq to Kuwait’, (*Asia Times Online, Middle East*, 24 February 2005), Available at: <http://www.atimes.com/atimes/Middle_East/GB24Ak02.html> accessed 1st Dec. 2014.

¹⁴⁸ Amnesty International, *Amnesty International Report 2006 – Kuwait*, (23 May 2006), Available at: <<http://www.unhcr.org/refworld/docid/447ff7aeb.html>> accessed 1st Dec. 2014.

¹⁴⁹ ‘Abu Islam the Iraqi: Kuwaiti Young Men Are Being Manipulated, 25 Of Them Fought With Al-Qaeda in Diyala’, *Al-Watan* (Kuwait, 16 July 2008), Available at: <<http://www.elaph.com/ElaphWeb/NewsPapers/2008/7/348810.htm>> accessed 1st Dec. 2014.

¹⁵⁰ Knights, M., ‘Northern Gulf vulnerable to infiltration by terrorist groups’, (1 October 2005), Jane’s Intelligence Review.

¹⁵¹ McCants, W., ‘Walking the Talk: Forum Members Travel to Afghanistan and Iraq (Pt. 2)’, (*Jihadica: Documenting the Global Jihad*, 2nd July 2008), Available at: <<http://www.jihadica.com/walking-the-talk-forum-members-travel-to-afghanistan-and-iraq-pt-2/>> accessed 1st Dec. 2014.

¹⁵² Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC), *List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006*, (United States Department of Defense, 15 May 2006), Available at:

the deported former inmates were charged but eventually found not guilty by the Kuwaiti Criminal Courts because of insufficient proof that they committed such offences.¹⁵³ While each of these deportees are presently living normal lives, with most getting married and starting their families, one of them, Abdallah Saleh Ali Al Ajmi, on March 28, 2008, carried out a suicide attack in the Iraqi town of Mosul.¹⁵⁴

The funding of terrorist activities is another of the problems that Kuwait faces. Since the cause of this problem is its neighbour Saudi Arabia, a number of supporters who offer financial aid to Middle East and Asian Jihadists to enable them to accomplish their terror attacks are believed to be in Kuwait.¹⁵⁵ Due to the increasing official knowledge of this trend, much energy has been put into ensuring that the transfer of criminal money is forbidden and prevented. Measures that restrict the movement and trading of arms by these extremists and that freeze terrorist funds have also been adopted by the Sanctions Committee of the United Nations Security Council.¹⁵⁶

The role played by the fundamentalist intellectuals in Kuwait is the final dynamic of Islamic activity in the country. Perhaps the most renowned case involved a Salafi cleric Hamid Abdallah Ahmad Al-Ali, who has attracted many enthusiasts. A former secretary general of al-Harakat al-Salafiyya fil-Kuwait (The Salafi Movement of Kuwait), from 1991 to 1999 and a professor of Islamic Studies at Kuwait University,¹⁵⁷ Al-Ali has been publicly labelled by the American

<<http://www.defense.gov/news/may2006/d20060515%20list.pdf>> accessed 1st Dec. 2014. For the remaining Kuwaiti prisoners look at 'Project Kuwaiti Freedom – The Prisoners', Available at: <http://www.kuwaitifreedom.org/guantanamo_bay_prisoners/iraq_prisoners_abuse.php> accessed 1st Dec. 2014.

¹⁵³ 'Kuwait Court Acquits Ex-Guantanamo Qaeda Detainees', *Reuters*, (21 May 2006), Cited in 'Project Kuwaiti Freedom', Available at:

<http://kuwaitifreedom.org/media/news/Kuwait_Court_Acquits_Ex-Guantanamo_Qaeda_Detainees.php> accessed 1st Dec. 2014.

¹⁵⁴ Rosenberg, C., 'Why Obama can't close Guantánamo', *CNN World*, (15th December 2011), Available at: <<http://globalpublicsquare.blogs.cnn.com/2011/12/15/why-obama-cant-close-guantanamo/>> accessed 1st Dec. 2014.

¹⁵⁵ Pollock, D. and Jacobson, M., 'Blacklisting Terrorism Supporters in Kuwait', (25 January 2008), The Washington Institute for Near East Policy, PolicyWatch #1333, Available at:

<<http://www.washingtoninstitute.org/templateC05.php?CID=2709>> accessed 1st Dec. 2014.

¹⁵⁶ *Ibid.* See also Chapter Five.

¹⁵⁷ McCants, W. (ed.), *The Militant Ideology Atlas*, (West Point, NY: Combating Terrorism Center, 2006), 311-312, Available at: <<http://www.ctc.usma.edu/wp-content/uploads/2010/06/Atlas-ResearchCompendium1.pdf>> accessed 1st Dec. 2014.

authorities a sponsor of, and an advocate for, terrorism all over the world.¹⁵⁸ His opinions were viewed as extremist and sympathetic to Al-Qaida, such as, for example, giving out fatwas supporting the crashing of planes into buildings.¹⁵⁹ In contrast, some of his other opinions were seen as more associated to the rational attitude forced on him by the authorities, such as, for example, influencing Muslim youth by using his sermons and articles that he broadcasts on his website.¹⁶⁰ As to his fatwas, ‘in modern time(s) this can be accomplished through the modern means of bombing, or by bringing down an airplane on an important site that causes the enemy great casualties.’¹⁶¹ These fatwas endorsed ‘the permissiveness, and sometimes necessity, of suicide operations on the conditions of crushing the enemy (or causing moral defeat to the enemy), to obtain victory.’¹⁶²

Al-Ali was among the many who demanded retaliation against America because of the humiliation of Iraqi detainees at Abu Ghraib. In May 2004, he said that ‘...the new conservatives, and particularly the gang of [U.S. President George W. Bush], are enjoying the humiliation of the Muslims.’¹⁶³ In addition to financing, recruiting, and providing ideological and logistical assistance to the extremists, Al-Ali is alleged to have aided in the provision of explosives training to possible trainees in 2004.¹⁶⁴ In his website, he published techniques for manufacturing explosives and biological and chemical weapons. After publishing fatwas proclaiming that Kuwait and other governments were kuffar (unbelievers) and hence were lawful targets for the Mujahideen (for tolerating the antagonism by non-

¹⁵⁸ *Ibid.* Also look at U.S. Treasury Department Press Release, *Treasury Designations Target Terrorist Facilitators*, (7 December 2006), Available at: <<http://www.treasury.gov/press-center/press-releases/Pages/hp191.aspx>> accessed 1st Dec. 2014.

¹⁵⁹ Heffelfinger, C., ‘Kuwaiti Cleric Hamid al-Ali: The Bridge between Ideology and Action’, The Jamestown Foundation, *Terrorism Monitor* (Vol. 5, iss. 8, 26 April 2007), Available at: <http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Bsword%5D=8fd5893941d69d0be3f378576261ae3e&tx_ttnews%5Bexact_search%5D=Kuwait&tx_ttnews%5Bpointer%5D=4&tx_ttnews%5Btt_news%5D=4112&tx_ttnews%5BbackPid%5D=7&cHash=7b2d3526b14d4cb37fe06a747f90cc56> accessed 1st Dec. 2014.

¹⁶⁰ *Ibid.*

¹⁶¹ Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, *Narrative Summaries of Reasons for Listing: QI.A.236.08. HAMID ABDALLAH AHMAD AL-ALI*, Available at: <<http://www.un.org/sc/committees/1267/NSQI23608E.shtml>>

¹⁶² *Ibid.*

¹⁶³ Janardhan, N., ‘Kuwait Wakes up to the Face of Militant Islam’, The Jamestown Foundation, *Terrorism Monitor* (Vol. 3, iss. 9, 6 May 2005), Available at: <http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=159> accessed 1st Dec. 2014.

¹⁶⁴ Heffelfinger, C., ‘Kuwaiti Cleric Hamid al-Ali: The Bridge between Ideology and Action’, The Jamestown Foundation, *Terrorism Monitor* (Vol. 5, iss. 8, 26 April 2007).

Islamic countries to Muslims), Al-Ali was arrested and handed a suspended sentence.¹⁶⁵

According to the Security Council Resolutions 1267 (1999) and 1989 (2011) regarding Al-Qaida and its associates and affiliates, Al-Ali is the sponsor and religious leader of the Kuwaiti-based The Peninsula Lions, a group that was responsible for orchestrating attacks on Kuwaiti and American targets at the beginning of 2005. The group looked up to him for ideological guidance.¹⁶⁶ In fact, it is said by the committee that Al-Ali made numerous visits to the group's Kuwaiti-based camps to provide funds in support of its terroristic activities.¹⁶⁷

Suleiman Abu Ghaith, a former religious teacher in a Kuwait City high school, was another key extreme religious individual, who later became a key Al-Qaida figure.¹⁶⁸ On becoming an Al-Qaida member in 2000, Abu Ghaith, became a member of the group's Majles al Shura, the legislation and consulting committee. He also headed the group's media committee and was in charge of propaganda, making him the group's official spokesman and one of bin Laden's most trusted advisors.¹⁶⁹ Abu Ghaith was part of a section of Al-Qaida high-ranking officials who left for Iran in 2005 and is alleged to be there presently, in what some refer to as protective detention. A publication entitled *The Long War Journal* labelled his custody 'a loose form of house arrest.'¹⁷⁰ *Al Rai*, the Kuwaiti newspaper, reported on September 9, 2010, that, in exchange for Heshmatollah Attarzadeh, a diplomat

¹⁶⁵ *Ibid.*

¹⁶⁶ U.S. Treasury Department Press Release, *Treasury Designations Target Terrorist Facilitators*, (7 December 2006), Available at: <<http://www.treasury.gov/press-center/press-releases/Pages/hp191.aspx>> accessed 1st Dec. 2014.

¹⁶⁷ Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, *Narrative Summaries of Reasons for Listing: QI.A.236.08. HAMID ABDALLAH AHMAD AL-ALI*, Available at: <<http://www.un.org/sc/committees/1267/NSQI23608E.shtml>>

¹⁶⁸ Williams, P. L., *The Al Qaeda connection: international terrorism, organized crime, and the coming apocalypse*, (New York: Prometheus Books, 2005), 15.

¹⁶⁹ *Ibid.*, 16.

¹⁷⁰ Joscelyn, T., 'Osama bin Laden's spokesman freed by Iran', (28 September 2010), *The Long War Journal*, Available at: <http://www.longwarjournal.org/archives/2010/09/osama_bin_ladens_spo.php> accessed 1st Dec. 2014.

from Iran, who was abducted in November of 2008, Abu Ghaith was released and returned to Afghanistan.¹⁷¹

In the month that followed the attacks of September 11, he was seen on two extensively distributed videos that were first broadcast by Al Jazeera defending the attacks and warning of further retaliations if the United States went ahead with the planned Afghanistan invasion. He stated: ‘The Americans should know that the storm of plane attacks will not abate, with God's permission. There are thousands of the Islamic nation's youths who are eager to die just as the Americans are eager to live.’¹⁷²

Another of the radicals is a terrorist architect and agitator based in Kuwait, Mubarak Mushakhas Sanad al-Bathali. Like Al-Ali, al-Bathali is labelled by the United Nations and the US government a financial sponsor and supporter of terrorism.¹⁷³ In Al-Qaida, he functions as a solicitor and recruiter. In a number of Kuwaiti mosques, he has spoken to fundraise for Al-Qaida.¹⁷⁴ For many years, he solicited funds for terrorist groups, which led him, in 1999, to a number of high-ranking Al-Qaida officials to whom he gave \$100,000.¹⁷⁵ Other incidents of financing in which he was involved included: giving approximately \$20,000 to an Al-Qaida finance manager in Pakistan in 2001 through a courier service; contributing, through Syrian links, \$20,000 to Ansar al-Islam in 2002-2003; funding, through AQI agents in 2003-2004; and collecting hundreds of Kuwaiti dinars weekly for terrorist groups like Al-Qaida, Lashkar-e-Tayyiba, and Ansar al-Islam in 2004.¹⁷⁶ In addition, in 2001, al-Bathali, alongside his son, produced about six thousand copies of a propaganda tape that was recorder by bin Laden’s advisor. Later in 2003, he echoed his desire to support the recruitment of Arabian Peninsula

¹⁷¹ ‘Suleiman Abu Ghaith returned to Afghanistan’, *Al Rai*, (9 September 2010), Available at: <<http://www.alraimedia.com/Alrai/Article.aspx?id=225609>> accessed 1st Dec. 2014.

¹⁷² ‘In full: Al-Qaeda statement’, *BBC*, (10 October 2001), Available at: <<http://news.bbc.co.uk/1/hi/1590350.stm>> accessed 1st Dec. 2014.

¹⁷³ U.S. Treasury Department Press Release, *Treasury Designations Target Terrorist Facilitators*, (7 December 2006), Available at: <<http://www.treasury.gov/press-center/press-releases/Pages/hp191.aspx>> accessed 1st Dec. 2014.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, *Narrative Summaries of Reasons for Listing: QI.A.238.08. MUBARAK MUSHAKHAS SANAD MUBARAK AL-BATHALI*, Available at: <<http://www.un.org/sc/committees/1267/NSQI23808E.shtml>>

Muslim youth, mainly Kuwaiti and Saudi, into Al-Qaida-allied combatants in Iraqi Kurdistan.¹⁷⁷

The support that al-Bathali was talking about consisted of soliciting contributions for the operatives and utilising the Internet to raise funds and to spread propaganda.¹⁷⁸ To show this, in 2006, he assisted the movement of operatives who were organising attacks in Afghanistan and Iraq. In an interview published in May of 2008, he conceded that he took part in the recruitment of youth and in transporting them to fight overseas, specifically in Afghanistan, and that he had on previous occasions transported some to Chechnya, Kosovo and Iraq.¹⁷⁹ In July of 2003, his son, Abdulrahman, went to Iraq to enrol in the Mujahideen but was later arrested and jailed.¹⁸⁰ Abdulrahman was later found not guilty by an Iraqi court and released after seven years in both American and Iraqi detention centres.¹⁸¹

Abdulrahman died nine months after his release after he instigated a suicide attack on Iraqi-based American troops.¹⁸² When asked to comment on the death of his son by *Al Watan* newspaper, al-Bathali said: ‘Thank God for the honour of the martyrdom of my son, Abdulrahman, and I recommend that all parents should do dearly for this great religion, because Allah has made sacrifice a way to enter Heaven.’¹⁸³ He added that, ‘if I had had another son, or sons, I would have sent them to Jihad as well.’¹⁸⁴ In conclusion, he commented that ‘I would wish to die in the same way as my son Abdulrahman did.’¹⁸⁵

It is apparent that clerics like Hamid al-Ali, Mubarak al-Bathali and Suleiman Abu Ghaith play an important part in teaching and propagandising Kuwaiti Salafis

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ WikiLeaks, ‘Viewing cable 08KUWAIT128, TERROR FINANCE: DESIGNEES CONTINUE TO RANT WITH SOME SUPPORT FROM PARLIAMENT’, (*WikiLeaks: Cablegate*, 8 December 2010), Available at: <http://wikileaks.cablegate.blogspot.co.uk/2010/12/currently-released-so-far_08.html> accessed 1st Dec. 2014.

¹⁸⁰ ‘Mubarak's Bathali to Al Qabas: my son Abdul Rahman martyred in Iraq’, *Al Qabas Newspaper*, (6 December 2010), Available at: <<http://www.alqabas.com.kw/Article.aspx?id=656910&date=06122010>> accessed 1st Dec. 2014.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ ‘Mubarak Bathali: My son Abdul Rahman have martyred, which I thank God of the honour of martyrdom’, *Al Watan Newspaper*, (5 December 2010), Available at: <<http://kuwait.tt/ArticleDetails.aspx?Id=73111>> accessed 1st Dec. 2014.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

and radicals, in particular the ones that enrol in the armed battle of the Jihadist. Therefore, it should be noted that chapter four will investigate the extent to which speech or incitement that encourages violent actions is prohibited or prevented in Kuwait.

2.6 Conclusion

This chapter has shown that there have been various sources of threats of terrorism to the State of Kuwait, as it has faced terrorism activities in three different periods. It started in 1968. Some of the earlier terrorist activities still exist to today (such as financiers and supporters, fundamentalist religious scholars), some of the earlier threats have largely ended (the People's Revolutionary Movement in Kuwait), while others pose possible future threats (the Iranian-inspired domestic or Hezbollah in Kuwait and the veteran Jihadists). It has been demonstrated that most of the terrorist actions and ideologies are generated from external influences. In fact, most of the ideologies have been imported from outside doctrines and do not relate to purely Kuwaiti causes. However, the research has illustrated that such radical doctrines have influenced Kuwaiti citizens and have thereby had an impact on Kuwait. In fact, most of the active terrorists in Kuwait were Kuwaiti citizens who adopted various radical ideologies. This chapter has also analysed the different level of threats to Kuwait. It has shown that most of the threats that Kuwait has experienced were revolutionary in nature but none remotely threatened the stability of the state or can be compared to the existential threats posed by states hostile to Kuwait, especially Iraq.

In addition, this chapter has analysed the nature of the threats and the different types and groups of terrorism that the State of Kuwait has experienced. It has established that, while externally inspired for the most part, most of the terrorist activities have an internal element. Additionally, it was shown that, overwhelmingly, ideological concepts have been adopted and implemented from external influences. This chapter has also demonstrated that some of the terrorist perpetrators have been trained outside Kuwait, for example in Iraq, Afghanistan and Iran, and when they returned they tried to implement what they have learned abroad. It has been explored that the Kuwaiti geo-political situation has to some extent exacerbated its terrorism problems, though terrorism does ultimately involve

Kuwaiti people. This chapter discovered that some of the terrorist activities in Kuwait have been aided from outside the country, especially during the Iranian Revolution. However, today most of the supporters are seen to be Kuwaiti citizens. Additionally, those supporters are not only supporting terrorist activities in Kuwait, but also they supporting terrorist activities outside the country.

Therefore, having presented and assessed the different threats and sources of terrorism to Kuwait, and after illustrating that the threats to Kuwait from terrorism were limited in nature and not extensive compared to other neighbouring countries (like Iraq), the next question to be answered is what is the appropriate reaction to those threats? Thus, the next chapters will evaluate and assess the different counterterrorism policies and laws that Kuwait has implemented and adopted to combat terrorism. These will be assessed by reference to effectiveness and fairness, and whether such initiatives were externally/internally driven.

Chapter Three

Kuwait's Counterterrorism Strategies

3.1 Introduction

Kuwait does not yet have an articulation of a comprehensive counterterrorism policy that in some manner resembles the United Kingdom's policy *CONTEST*.¹ However, this chapter will show, whilst looking at the disparate strategies which Kuwait has adopted during its history in responding to terrorism, that there is a fairly comprehensive set of strategies about countering terrorism in Kuwait. Therefore, elements like criminalisation, international cooperation, protective security and education are common themes which will emerge whilst looking at the different responsive measures that the State of Kuwait adopted since its independence. For this reason, the present chapter will consist largely of an overview of Kuwait's laws, policies, and regulations. Although Kuwaiti counterterrorism legislation has certain gaps, it tackles the terrorism threats in response to their emergence. Nevertheless, the information about counter-terrorism measures in Kuwait is fragmented, which emphasises the need to design a more comprehensive and integrated policy. The purpose of the present chapter is thus to look at the policies and strategies in Kuwait that are designed to react to terrorist threats, and the counterterrorism mechanisms and reactions that the state has developed so far. In addition, this chapter will explore whether the development of the counterterrorism strategies reflected the actual need to react to the national and international terrorism threatening Kuwait, or were they the effect of the international pressures? In the context of the present discussion, the legal, institutional, and public domains of counterterrorism activity in Kuwait will be covered.

Kuwait is a relatively young state, which must exist and develop in a problematic political environment. Being one of the Gulf countries and a neighbour of Iran and Iraq, both nurturers of terrorism, separatism, and Islamist extremism, Kuwait faces additional challenges in its democratic and human development. Even

¹ See HM Government, *CONTEST: The United Kingdom's Strategy for Countering Terrorism*, (London: The Stationery Office, July 2011).

with the multi-faceted support of the West, mainly the United States and the United Nations, Kuwait still experiences challenges in defining its domestic and international policies, in tackling the dangers of terrorism, and in identifying the workable strategies to counter terrorist activities targeted at the Kuwaiti people and, through Kuwait, at the international community.

To target terrorism effectively, Kuwait must develop a comprehensive legal, institutional, and public framework for responding to terrorist acts and threats. To accomplish that task, Kuwait must overcome a range of troubling issues, such as the initial formulation of a comprehensive domestic vision of what ‘terrorism’ is. As Ben Saul noted, even UN Resolution 1373 (2001), adopted immediately after and in response to the most notorious and large-scale act of terror occurred on 11 September 2001, did not provide a comprehensive and recognisable definition of terrorism as a phenomenon, thus complicating the task of criminalising terrorism by states.² The basis of defining terrorism in this resolution was provided by the earlier International Convention for Suppression of the Financing of Terrorism, which states in Article 2(1)(b) that terrorism is 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 organisation to do or to abstain from doing any act.³

This present definition is quite broad and does not present a clear framework for considering terrorism as distinct from any other form of criminal or political activity.

In addition to this definition, regional efforts have been made to identify terrorism. The results of legal work are seen in the 1998 Arab Convention for the Suppression of Terrorism that defined terrorism as

² Saul, B., *Defining Terrorism in International Law*, (USA: Oxford University Press, 2008), 416.

³ UNGA, International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, opened for signature 10 January 2000) (2000) 39 ILM 270.

any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardise a national resources.⁴

However, even though this definition is much more detailed and concise than the UN version, the Arab Convention has been widely blamed for restricting the individual freedom of Arab people and increasing the power of authoritarian Arab governments in identifying the actions of political opponents as terrorism.⁵ Not only is the Arab Convention accused of engendering unfairness, but also the UN documentation, in particular the Security Council Resolution 1373, has also been criticised for restricting human rights.⁶ Therefore, Kuwait and other Arab countries still face a challenge in the way in which they criminalise terrorism and its financing, as well as making their legal, institutional, and public policy mechanisms and reactions to terrorism more effective and appropriate to meet local terrorist threats.

Nevertheless, Kuwait has almost entirely followed the international definition on terrorism that has been provided under the ICSFT 1999, as discussed in chapter five, and has not produced its own definition on terrorism. Especially, since Kuwait has not passed any comprehensive counterterrorism law to date, it is therefore justifiable/reasonable that there was not any need to formulate a definition on terrorism. However, as discussed in chapter four, Kuwait needs to have a comprehensive counterterrorism law in order at least to protect its citizens and territories from the threats of terrorism that have been amplified in the region. As a result, a definition of what is terrorism means to Kuwait need to be set out, and

⁴ League of Arab States, *Arab Convention on the Suppression of Terrorism*, (22 April 1998), Available at: <<http://www.unhcr.org/refworld/docid/3de5e4984.html>> accessed 1st Dec. 2014.

⁵ Amnesty International, *The Arab Convention for the Suppression of Terrorism: A serious threat to human rights*, (2002), Available at: <<http://www.amnesty.org/en/library/info/IOR51/001/2002/en>> accessed 1st Dec. 2014.

⁶ UNGA, Human rights and terrorism: Resolution adopted by the General Assembly, (13 February 2002), A/RES/56/160, Available at: <<http://www.unhcr.org/refworld/docid/3da44af18.html>> accessed 1st Dec. 2014.

need to be in the line with the rule of law and the human rights obligations in order to make the law effective and fair.

3.2 The Legal Framework of Kuwait's Counterterrorism Response

3.2.1 Kuwait's Constitution and the Government's Response to Terrorism

The Constitution provides the framework for the legislation that should be established at all levels in Kuwait. The compliance with this framework ensures legitimacy for the laws issued in accordance with the Constitution. For this reason, an overview of the national Constitution of Kuwait is necessary within the framework of this section.

An effective counterterrorism policy based on state legislation is one of Kuwait's priorities to achieve its national stability and development. Located in the hostile environment (characterised by continuous wars, invasions, military conflicts, rivalry for economic dominance over natural resources) caused by neighbouring countries, Kuwait nevertheless seeks to follow its own counterterrorism policy.⁷ Given its strategic wealth, it is not surprising that, since the beginning of the 21st century, Kuwait has occupied a significant role in the global counterterrorism struggle.⁸

The State of Kuwait is based on the Constitution adopted in 1962 after gaining its national independence.⁹ As any other Constitution, it reveals the societal rights and values which are to be protected by law. However, it is difficult to identify whether Kuwait's Constitution provides a suitable setting for an effective national counterterrorism policy. On the one hand, the state Constitution has a relatively democratic nature, because it provides 'the broad guarantees of freedoms and rights including freedom of conscience, religion and press (Articles 35 to 37), and equality before the law (Article 29)'.¹⁰ On the other hand, according to Article 4 of the Constitution, Kuwait is an hereditary emirate that supposes the rule of a single

⁷ Looney, R. E., *Handbook of US-Middle East Relations: Formative Factors and Regional Perspectives*, (London: Routledge, 2009), 456.

⁸ *Ibid.*, 456.

⁹ Al-khateab, A., *Kuwait: from the Emirate to the State*, (2nd edn, Beirut; Casablanca: Almarkaz Athaqafi al Arabi, 2007), 297.

¹⁰ *Ibid.*, 297-298.

dynasty (currently ruled by the descendants of the late Mubarak Al-Sabah); ‘this Article, in practice, has also been extended to the nominating and appointing the Prime Minister, who also need to be from the descendants of the late Mubarak Al-Sabah’.¹¹ As a result, the practical implementation of this Article imposes restrictions and limitations related to citizens’ rights and freedoms, including, for example, a right to change their government.¹² Thus, it is reasonable to assume that the ambiguous nature of this Article complicates the ambitions to create a successful and fair counterterrorism policy.

It is worth noting that Kuwait’s legal documents do not provide comprehensive counterterrorism legislation or a definition of terrorism. Hence, the country’s laws with regard to counterterrorism and its official definition of terrorism are mostly based around the criminal law and other fragmented laws. However, the corresponding measures to the creation of legal foundations for counterterrorism are taken by the government. In this context, the essential role of the national counterterrorism establishments, including the Kuwaiti Security Services, in providing an in-depth understanding of counterterrorism cannot be underestimated.¹³ For example, these establishments were the primary institutions that revealed that religious extremists with militant intentions and explosive devices are the primary people who can be called terrorists.¹⁴

Overall, the definition of terrorism from the Kuwaiti perspective is conditioned by the country’s physical environment. From the Kuwaiti perspective, terrorism is an unacceptable phenomenon from religious, moral, and humane points of view, which needs to be eliminated.¹⁵ Within the country’s environment, terrorism is perceived as a product that emerges due to different factors, such as the ‘spread of weapons and losing every fear of using them as a result of the Iraqi occupation of Kuwait’, the ‘loss of all trust in the security figures’, and the ‘loss of religious and

¹¹ Interview with N.O.S.5

¹² Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2011*, (Bureau of Democracy, Human Rights and Labor, 2011), 1. Available at: <<http://www.state.gov/documents/organization/160074.pdf>> accessed 1st Dec. 2014.

¹³ Knights, M., ‘Northern Gulf vulnerable to infiltration by terrorist groups’, (1 October 2005), Jane’s Intelligence Review, 11.

¹⁴ *Ibid*, 11.

¹⁵ Bureau of Democracy, Human Rights and Labor, *International Religious Freedom Report for 2011*, (Bureau of Democracy, Human Rights and Labor, 2011), Available at: <<http://www.state.gov/documents/organization/193105.pdf>> accessed 1st Dec. 2014.

ethnic ideology in the young people'.¹⁶ Overall, Kuwait's engagement in combating terrorism is to be expected, because the state Constitution implies that terrorism is a challenge to the Kuwaiti society that should be overcome for the sake of the country's sustainable future and the rights of its citizens.

Moreover, Kuwait's Constitution of 1962 directly affects the government's response to terrorism. According to the Constitution, the country performs the role of furthering Arab nationalism by promoting world peace and human civilisation based on allegiance to traditions and citizens' freedom, social justice, and equality, enhancing the dignity of the individual (the Preamble), and safeguarding 'the pillars of society', 'security, tranquillity' (Article 8).¹⁷ In accord with these provisions, Kuwait's government must not support terrorism and must treat it as a threat to the Constitution. Hence, terrorism is considered a major obstacle to the country's national development and the performance of its national role stated above.

Next, the Constitution protects particular rights and freedoms that directly influence the government's response to terrorism. They should be considered so as to understand the role of Kuwait's Constitution in implementing national counterterrorism. The following rights and freedoms influence the government's counterterrorism policy: the right to complain, the right of litigation, freedom of religious belief, and freedom to hold meetings and form different societies.¹⁸ These rights and freedoms will now be explored in greater detail.

The right to complain gives an opportunity to be involved with the corresponding legislative body in alerting it to injustices. For example, according to Article 115, all Kuwaiti citizens have the right to make complaints against any injustices suffered (for example, violation of the right of free opinion). These complaints are sent to the special council and corresponding committees that help to clarify the situation that made a particular citizen complain.¹⁹ In addition, Article 45 says that, 'every individual has the right to address the public authorities in

¹⁶ UNODC, 'Study on anti-terrorism legislation in the Arab Gulf States and Yemen', (Arabic Version), (2009) United Nations, Available at:

<http://www.unodc.org/documents/terrorism/Publications/Study_CT_Legislation_Gulf_Yemen/Arabic.pdf> accessed 1st Dec. 2014.

¹⁷ The Constitution of the State of Kuwait.

¹⁸ Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 241-242.

¹⁹ The Constitution of the State of Kuwait, Article 115.

writing over his signature'.²⁰ It means that the public authorities should address the complaints of citizens.²¹ In this context, if a Kuwaiti complains about his or her civilian insecurity owing to terrorism, a corresponding council, committee, or other legislative body needs to react in an appropriate way.

The right to complain is often associated with the right of litigation. If a person complains of some injustice, a judicial procedure may help to resolve the situation. This right is one of the most important rights in Kuwaiti society, because sometimes, litigation is the only way to be protected against injustices.²² According to Article 166, 'the right of recourse to the Courts is guaranteed to all people'.²³ A corresponding legal procedure is prescribed for state courts to examine a case of a particular individual, who wants to challenge injustice in a judicial order. In addition, Article 173 provides that the state judicial apparatus is obliged to decide administrative conflicts and to put each case under close review.²⁴ Overall, the rights of complain and litigation help to satisfy the public and individual interests in securing justice, and therefore there is no need to engage in violent activities in the Kuwaiti society. In this context, the Kuwaiti judicial system provides for the litigation of cases related to terrorism.

The freedom of belief is based on the right of citizens to practice any type of religion, which, in Kuwait, refers mainly to Christianity, Judaism and Islam.²⁵ This freedom is protected by Kuwait's Constitution. Article 35 provides: 'Freedom of belief is absolute. The State protects the freedom of practicing religion in accordance with established customs, provided that it does not conflict with public policy or morals'. For the reason that acts of terror are often conducted on sectarian religious grounds in Kuwait's environment, this constitutional article suggests that, for example, the activity of Islamic extremists can be treated as terrorism, especially when their activities involve acts that violate the rights of other individuals.

²⁰ *Ibid*, Article 45.

²¹ The Explanatory Memorandum to The Constitution of the State of Kuwait, (Arabic version), Available at: <<http://www.kna.kw/clt/run.asp?id=51>> accessed 1st Dec. 2014.

²² Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 243-245.

²³ The Constitution of the State of Kuwait, Article 166.

²⁴ *Ibid*, Article 173.

²⁵ Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 245.

Finally, the freedom to hold meetings and to form different associations is also important, since it relates to terrorist groups. Article 43 says that each citizen has the ‘Freedom to form associations and unions on a national basis and by peaceful means is guaranteed in accordance with the conditions and manner specified by law’.²⁶ In addition, Article 44 states:

(1) Individuals have the right of private assembly without permission or prior notification, and the police may not attend such private meetings.

(2) Public meetings, demonstrations, and gatherings are permitted in accordance with the conditions and manner specified by law, provided that their purpose and means are peaceful and not contrary to morals.²⁷

Hence, although a terrorist group/organisation might be understood mistakenly as an association and their meeting might be treated as a private assembly, yet its measures are not peaceful and therefore are not protected by Articles 43 and 44.

Despite the fact that Kuwait’s Constitution protects the rights and freedoms of the country’s citizens as mentioned above, it presents some challenges for the creation of an effective counterterrorism policy in Kuwait.²⁸ Each of these challenges must be revealed to understand why Kuwait’s Constitution does not directly provide favourable conditions for national counterterrorism.

The first challenge associated with the legislative basis for counterterrorism is the state religion protected by the Constitution. Article 2 states: ‘The religion of the State is Islam, and the Islamic Sharia shall be a main source of legislation’.²⁹ This article may encourage the terrorist activity of Islamic extremists, especially those targeting Western. For example, a terrorist might view his/her action as a religious duty, *Jihad*.

²⁶ The Constitution of the State of Kuwait, Article 43

²⁷ *Ibid*, Article 44.

²⁸ Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 244-246.

²⁹ The Constitution of the State of Kuwait, Article 2.

The second challenge is the absence of official definitions of counterterrorism and terrorism in the national legislation allows interpreting the Constitution in the most preferable way for terrorism supporters. To be more specific, Kuwait's legislation lacks an exact definition of terrorism 'that coincides with the rule of law and human rights',³⁰ which might help the terrorists to regard themselves as a freedom fighters.

It is reasonable to conclude that, although Kuwait's Constitution supposes that terrorism should be countered, because terrorism violates citizens' rights and values, the national laws do not directly refer to terrorism. This way, constitutional rights and freedoms can be interpreted in different ways including even those that meet terrorist's interests. It is obvious that the absence of the legal foundations for counterterrorism in Kuwait leads to the challenging process of creating an effective governmental counterterrorism policy.

3.2.2 The Development of Counterterrorism Strategies in Different Historical Periods

The counterterrorism activity adopted by Kuwait's national government started at the beginning of the 1960s when Kuwait became a member state of the United Nations (UN). The present section covers the development of counterterrorism strategies provided by Kuwait's government in different historical periods, in particular, during the periods of Marxist-Leninist ideology, the Iran-Iraq war, and the Islamist extremism and Al-Qaida. Overall, this subsection will discuss laws and official documents that establish the strategies to combat terrorism within Kuwait's jurisdiction.

3.2.2.1 Counterterrorism in the time of Marxist-Leninist Ideology

The first significant period that influenced the counterterrorism approaches of Kuwait was the 1960s, when the country's revolutionaries adopted the Marxism-Leninism ideology. The year 1967, which is associated with the Six-Day War, caused by the tensions between Arab countries and Israel, and the formation of the Popular Front for the Liberation of Palestine (PFLP), was decisive for Kuwait's

³⁰ Alzubairi, F., 'Kuwait and Bahrain's Anti-terrorism Laws in Comparative and International Perspective', (Master Thesis, University of Toronto, 2011), ii.

counterterrorism policy.³¹ However, before Kuwait's counterterrorism legislation of this period is presented, the Marxist-Leninist ideology must be discussed in the context of Kuwait's terrorism and the events of the Six-Day War that caused the formation of the PFLP.

In 1967, the Arab participants in the Six-Day War and the PFLP were supporters of Marxism-Leninism. Within the environment of extremist Arabs, the absorption of this ideology led to the creation of national terrorism, through which terrorists pursued the elimination of injustice in their society through violence and terrorist acts. Taking the special perception of Marxism-Leninism by revolutionary Kuwaitis, the participation in the illegitimate armed struggle became evident in Kuwait in 1968-69. At the same time, the participants were people that did not regard themselves as terrorists but rather as soldiers, liberators, and 'legitimate fighters for noble social causes'.³²

The events of 1967-69 made the Kuwaiti government take corresponding measures aimed at effectively criminalising terrorism and punishing crimes that could be perceived as terroristic. In other words, Kuwait's government utilised criminalisation as the prime method for counterterrorism. The policy of criminalisation means that terrorists should be treated as common criminals, and there should not be any legal distinctions between the politically motivated crime and the other criminal behaviour, i.e. by dealing with it through the normal legal process.³³ As a result, the Kuwaiti Penal Code (Law No. 16 of 1960) was the most important legal document related to counterterrorism. This code was the first significant legal document that became the basis for Kuwait's counterterrorism legislation, although, in the years that followed, it was modified several times.³⁴ In the 1970s, the Kuwaiti Penal Code was modified by adding other crimes, for

³¹ Khan, A. R., 'Unraveling the Palestinian Left', [web document] (n.d.), 4. Available at: <http://www.issi.org.pk/publication-files/1302769331_58898566.pdf> accessed 1st Dec. 2014.

³² Hudson, R. A., *The Sociology and Psychology of Terrorism: Who Becomes a Terrorist and Why?*, (Washington, DC: Federal Research Division Library of Congress, 1999), 41, Available at: <http://www.loc.gov/rr/frd/pdf-files/Soc_Psych_of_Terrorism.pdf> accessed 1st Dec. 2014.

³³ For further information about the 'criminalisation policy' see Diplock Report, 'Report of the Commission to consider legal procedures to deal with terrorists' activities in Northern Ireland', (Cmnd. 5185), (London: HMSO, 1972).

³⁴ UNODC, 'Study on anti-terrorism legislation in the Arab Gulf States and Yemen', (Arabic Version), (2009) United Nations, 91-92, Available at: <http://www.unodc.org/documents/terrorism/Publications/Study_CT_Legislation_Gulf_Yemen/Arabic.pdf> accessed 1st Dec. 2014.

example, hostile actions against a foreign country that threatens Kuwait with war, acts that intentionally or unintentionally cause harm to people, etc.³⁵ In fact, after 1967 incidents mentioned in the last chapter, the State Security law (Law No. 31 of 1970) related to terrorism was enacted. This law provides the legal basis for the punishment of people who do damage and harm with the help of weapons, and the organisations or groups which use illegal methods. According to Article 4, any assembly of soldiers that does not receive prior permission from the government is punished by law.³⁶ According to an interviewed Judge,

the word ‘soldiers’ in Arabic does not only mean military personnel. In fact, the word ‘soldier’ can also mean non-military personnel, who in this term means supporters to the same ideology.³⁷

Article 29 defines the overthrow of the existing regime using force or any other illegal means as a punishable crime.³⁸ In addition, according to Article 34, participating in a gathering that has as its purpose to commit crimes or disturb the public security is a punishable crime.³⁹ Article 35 punishes foreign people who entered the country with the aim to commit or incite to commit such crimes included in Law No. 31 of 1970.⁴⁰ It is notable that according to the code, all these mentioned crimes are punished not by fines but by long-term or life imprisonment and execution. At the same time, amnesty from punishment for repentant perpetrators (Article 22) is permitted.⁴¹

Kuwait’s experience of 1968-69 increased the national awareness of the danger posed by terrorism. It also led to the creation of the first legal foundations for the country’s counterterrorism policy, i.e. by adapting the existing laws to counter the terrorism threats. Overall, the first stage of the development of Kuwait’s counterterrorism strategy included the following legal documents: the Penal Code, the Criminal Procedure Code, the Act of State Security Crimes, and the Law

³⁵ *Ibid*, 98.

³⁶ Law No. 31 of 1970 In Regards to Crimes Related to State Security.

³⁷ Interview with J.G.2

³⁸ Law No. 31 of 1970 In Regards to Crimes Related to State Security.

³⁹ *Ibid*.

⁴⁰ *Ibid*.

⁴¹ *Ibid*.

regarding Public Meetings and Assemblages. These laws will be examined in detail in the next chapter.

3.2.2.2 Counterterrorism during and after the Iraq-Iran War

The second stage of the development of Kuwait's national counterterrorism strategy is associated with the Iraq-Iran war, which was accompanied by Shiite religious terrorism. In the 1980s, Kuwait's awareness of counterterrorism grew owing to the events of that war. A brief discussion of this war and the characteristics of Shiite religious terrorism will help to understand the government's efforts to exclude terrorism from the country's environment.

The Iran-Iraq war, or the 'Gulf War', started due to Iran-Iraq tensions on the religious ground (between Shiites and Sunnis). Exactly at that time, the extremists' movement in Kuwait was initiated. These religious tensions led to the emergence of Shiite terrorists, who subsequently caused much damage and many deaths.⁴²

After the events of the 1980s, the national government had to take corresponding measures to prevent terrorist activity by Kuwait's Shiite Muslims. During the Iran-Iraq war, criminalisation as a method of countering terrorism was continued. A law which criminalises and imposes severe punishment on crimes involving explosives was passed, (Law No. 35 of 1985), in responding to the incidents happened at that time. In addition, Kuwait was supported by the United States, which partly determined the impact of Kuwait's counterterrorism policy development. To be more specific, the 'US-Kuwait defence and political relations warmed considerably at the height of the Iran-Iraq war, when the United States established a US naval escort and tanker reflagging programme to protect Kuwaiti and international shipping from Iranian naval attacks'.⁴³

After the Iran-Iraq war, and precisely after the liberation of Kuwait from the Iraqi invasion, the government of Kuwait expanded its legal basis for its national counterterrorism policy. The Law on Weapons and Ammunition (Decree of Law

⁴² Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 502-508.

⁴³ Katzman, K., 'Kuwait: Post-Saddam Issues and U.S. Policy', (2005) Congressional Research Service, Available at: <<http://fpc.state.gov/documents/organization/50259.pdf>> accessed 1st Dec. 2014.

No. 13 of 1991) was enacted, because a large amount of weapons remained in circulation in Kuwait.⁴⁴ According to this law, the acquisition or possession of weapons and ammunition without authorisation from the Minister of the Interior is a punishable crime. In addition, it stipulated that no licenses could be given to people who acquire or possess machine guns and silencers.⁴⁵ Another law that emerged in this period, Law on Concerning Crimes Relating to the Safety of Aircraft and Air Navigation (Law No. 6 of 1994), was also significant.⁴⁶ Such law can be seen as following a protective strategy in countering terrorism. It provided protection to airplanes, passengers, and airports from being vulnerable, and it protects the citizens against the danger of using weapon for terroristic purposes. In addition, this law has initiated Kuwait's judicial practice of confidential hearings of the cases associated with hijacking (Article 8).⁴⁷

Kuwait's experience with the Iran-Iraq war made the national government to develop and expand the legal basis for its counterterrorism policy by implementing new strategy, protective security, to counter the new threats. The enactment of new laws that prohibited and criminalises the use of explosives, the possession of weapons and ammunition, and the hijacking enriched Kuwait's history of fighting terrorists at the national level. Overall, the events of the 1980s helped the government to improve and protect the national security system by providing Kuwaitis with a new level of protection.

3.2.2.3 Counterterrorism in the Period of Home-grown Islamist Extremism and Al-Qaida

The third stage of the development of Kuwait's counterterrorism strategy is associated with home-grown Islamist extremism and Al-Qaida. The legal documents elaborated by Kuwait's government during this period can be divided into two phases. The first phase was about the State's involvement in the international community in the fight against terrorism. The second phase can be called as the time when the government started to engage in the battle of ideas with

⁴⁴ Alzubairi, F., 'Kuwait and Bahrain's Anti-terrorism Laws in Comparative and International Perspective', (Master Thesis, University of Toronto, 2011), 24.

⁴⁵ Decree of Law No. 13 of 1991 In Regards to Weapons and Ammunition.

⁴⁶ Law No. 6 of 1994 In Regards to Crimes Related to Safety of Aircrafts and Air Navigation.

⁴⁷ *Ibid.* For further information see Chapter Four Section 4.3.4.1

terrorists through educational programmes, and also through controlling the Internet security. Advanced technologies emerged at the beginning of the 21st century that provided terrorists with new opportunities to act distantly through cyberspace. In response to such technologies, Kuwait's national government needed to develop its counterterrorism policy in a corresponding way.

Since the end of the 20th century, Kuwait's terrorist extremism has been increasing. Immediately following the Islamic Revolution in Iran, Kuwait's terrorist activity notably grew. In addition, more of Kuwait's revolutionary Muslims took part in violent attacks beyond its borders. Most of these attacks were caused by religious tensions and a distorted understanding of the Islamic doctrines. As one of the affected Kuwaitis said, 'I present myself as a cheap commodity in the sake of Allah to defend my religion and take revenge of my brothers who were killed by Christians all over the world'.⁴⁸ Hence, it is reasonable to admit that Islamic extremism and Kuwait's terrorist activity are inseparably connected with the external radical Muslims' desire to act in correspondence with their religion seen through the subjective lenses.

Kuwaiti extremists represent Islamic fundamentalism. This term refers to people dedicated to pursuing the fundamentals of their religion even at the expense of their own lives and the lives of others.⁴⁹ Since, at the end of the 20th century, they supported the ideas of Islamic fundamentalism, it is not surprising that the majority of revolutionary Kuwaitis joined Al-Qaida, a global militant Islamist organisation that has attacked both civilian and military targets in different countries, and its former leader, the late Osama bin Laden. Kuwaiti participants in Al-Qaida attacks can refer to those supporting the radical Sunni Muslim movement, global Jihad ('struggle', a religious duty of Muslims), and rigorous advocates of Sharia.⁵⁰ The terrorist nature of Islamist extremism meant that the further development of the national counterterrorism strategy in Kuwait was required.

⁴⁸ Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 507.

⁴⁹ Hudson, R. A., *The Sociology and Psychology of Terrorism: Who Becomes a Terrorist and Why?*, (Washington, DC: Federal Research Division Library of Congress, 1999), Available at: http://www.loc.gov/rr/frd/pdf-files/Soc_Psych_of_Terrorism.pdf accessed 1st Dec. 2014.

⁵⁰ Al-Anizi, A. and Al-Motawaly, M., *Analysis of public policies to counter extremism and terrorism in the State of Kuwait*, (1st edn, Kuwait: Dar Al-Eman, 2008), 508.

The most significant official documents that further advanced Kuwait's counterterrorism strategy will now be considered. Most of them were enacted pursuant to Kuwait's involvement in international counterterrorism activity. After 2001, when Kuwait became subject to the UN Security Council Resolution 1373 and its Counter-Terrorism Committee inquiries, which was organised in the aftermath of the September 11 attacks, the country's government modified its domestic law in correspondence with UN requirements. For example, the denial of a safe haven for terrorists is presented in Kuwait's legislation, because UNSCR 1373 calls upon states 'to deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens', and 'to prevent and suppress terrorist attacks and take action against perpetrators of such acts'.⁵¹ In addition, since Kuwait was subject to the UN Counter Terrorism Committee reviews, the national government started to sign many conventions which related to countering terrorism. In particular, Kuwait's government signed the UN International Convention for the Suppression of the Financing of Terrorism 1999 (ICSFT); however, Kuwait has not ratified this convention until June 2013.⁵²

In subsequent years, various modifications to Kuwait's national legislation were made. For example, in 2002, the UN Security Council resolution related to support and assistance provided to terrorists and terrorism was signed.⁵³ In 2003, the Kuwaiti legislature enacted the Law on Approving the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, which provides for the protection of all kinds of watercraft and their passengers from terrorists (Law No. 15 of 2003).⁵⁴ In 2004, Kuwait's government signed the

⁵¹ UN Security Council, *Security Council resolution 1373 (2001) [on threats to international peace and security caused by terrorist acts]*, 28 September 2001, S/RES/1373 (2001), Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement> accessed 1st Dec. 2014.

⁵² UN Security Council (CTC), 'Kuwait's Report to the CTC (2001)', Security Council, Distr.: General, 21 December 2001, S/2001/1221, Letter dated 19 December 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 21 December 2001. See also Chapter Five.

⁵³ UN Security Council (CTC), 'Kuwait's Report to the CTC (2002)', Security Council, Distr.: General, 6 August 2002, S/2002/886, Letter dated 17 July 2002 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 6 August 2002.

⁵⁴ Alzubairi, F., 'Kuwait and Bahrain's Anti-terrorism Laws in Comparative and International Perspective', (Master Thesis, University of Toronto, 2011), 36.

Convention of the Cooperation Council for the Arab States of the Gulf for the Suppression of Terrorism and enacted the Law on Approving the International Convention for the Suppression of Terrorist Bombing (Law No. 27 of 2004).⁵⁵ In 2006, the Law on Approving the United Nations Convention against Transnational Organised Crime and its Protocols was enacted (Law No. 5 of 2006).⁵⁶

Overall, all mentioned laws were adopted within the framework of the international treaties signed by Kuwait's government. In addition, all of them became part of Kuwaiti domestic law, and provided national and international counterterrorism measures with the corresponding legal basis.⁵⁷ As a result, internationalisation emerges as a strategy to counterterrorism by adopting and implementing the international conventions against terrorism. Therefore, this development in the Kuwaiti counterterrorism strategy makes the State of Kuwait become a part in the international community in the fight against terrorism. Not only by signing up to the mentioned conventions, but by cooperating in an institutional way which will be discussed in the next section.

In addition, the issues of terrorism and antiterrorism are also addressed through education in the forms of schooling, media, and propaganda. The ultimate importance of this aspect of counterterrorism strategies became apparent after the 9/11 attacks, which made Kuwaitis aware of new and far-reaching dangers of terrorism. In October of 2004, the government established a ministerial committee that was chaired by the Ministry of Awqaf and Islamic Affairs. The committee announced a programme aimed at encouraging moderation among the youth. Subsequently, the committee maintained cooperation with the Ministry of Information and the Ministry of Communications to close access to Kuwait-based Internet sites propounding extremist ideology.⁵⁸

Another priority the Kuwaiti chose was the development and modernisation of school curricula, as 'rigid school textbooks on Islam have partly contributed to the

⁵⁵ *Ibid*, 36-37.

⁵⁶ *Ibid*, 36.

⁵⁷ Most of the Participants interviewed have confirmed the same.

⁵⁸ Terrill, W. A., *Kuwaiti National Security and the U.S.-Kuwaiti Strategic Relationship after Saddam*, Strategic Studies Institute, (Carlisle, PA: 2007), 70-71.

danger of extremism'.⁵⁹ Such measures might have also been triggered by the fear of Kuwaiti authorities that the strategic relationship between Kuwait and the United States might be affected if the state were viewed as encouraging an extremist educational system. These considerations were also provoked by domestic events, such as the conflict that occurred at the beginning of 2005 between the police and the Peninsula Lions, which resulted in the death of eight extremists. A violent response would be a logical reaction of extremist organisations to the killing of their members.⁶⁰

The Ministry of Awqaf and Islamic Affairs emphasised in its strategic initiative that it will make every effort to help people understand the benefits of moderation, which 'has always been the overwhelming character of the Kuwaiti society in its rites, intellectual thinking, moral practices, social relations, and even in political approaches'.⁶¹ Therefore, in 2006, the Ministry established the 'International Moderation Centre'. The Ministry claims that a moderate approach must prevail in its objectives, activities, and programmes. The Centre promotes 'moderate thinking, and belief, moderate worshipping performance, moderate cultural origin and moderate moral behaviour'.⁶² Therefore, the government of Kuwait has realised the important need to 'win the battle of hearts and minds'⁶³ of its citizens.

With the emergence of 'cyber terrorism' in the 21st century, Kuwait's government needed to modify its counterterrorism strategy to combat potential terrorist activities on the Web. Therefore, Kuwait's national government asserts that 'the Internet is a medium that facilitates the maintenance of a decentralised, global, violent extremist movement'.⁶⁴ In addition, the Internet is both an assistive source used for reconnaissance purposes for potential attacks, secret or private information gathering, fundraising, data mining, and the like to combat terrorists and a

⁵⁹ *Ibid*, 71.

⁶⁰ *Ibid*, 72.

⁶¹ The Ministry of Awqaf and Islamic Affairs, *Strategic Plan to The Ministry of Awqaf and Islamic Affairs, 2006/2007 – 2010/2011*, (Ministry of Awqaf and Islamic Affairs, Kuwait: 2006), 9.

⁶² *Ibid*, 13.

⁶³ Walker, C. And Rehman, J., 'Prevent' responses to jihadi extremism', in Ramraj, V., Hor, M. And Roach, K. (eds), *Global Anti-Terrorism Law and Policy*, (New York: Cambridge University Press), 242-267.

⁶⁴ Shetret, L., 'Use of the Internet for Counter-Terrorist Purposes', (2011), 1, Available at: <http://globalcenter.org/wp-content/uploads/2011/02/LS_policybrief_119.pdf> accessed 1st Dec. 2014.

preventive source used for the detection of terrorist locations, tracking terrorist activity, neutralisation, etc. for countries involved in the global fight against terrorism.⁶⁵ Furthermore, in Kuwait's context, the Internet can be viewed as 'glue' to a 'leaderless jihad'.⁶⁶

For this reason, corresponding preventive counterterrorism measures have been taken by the national government. For example, the Ministry of Interior, The General Department of Criminal Investigations – Department of Combating Electronic Crimes, was the responsible department to ensure the security of the national network system was strengthened through taking measures related to Internet security, such as the installation of an advanced system for detecting cyber terrorism and issuing related instructions prohibiting damaging national Internet based systems.⁶⁷ Recently, Kuwait's government monitored Internet communications, such as forums and blogs, for security reasons. Today, the Ministry of Communications continues to block Web sites considered to incite instability and terrorism. All Internet service providers are required to block the Web sites that violate the state's traditions and customs. Moreover, Internet café owners are obliged to obtain the names and identification numbers of customers and to submit this information to the Ministry of Communications upon request.⁶⁸

The government have also initiated the prosecution and punishment of individuals who publicly expressed their political or religious views via the Internet, including e-mail, in accordance with the laws related to libel and national security. Kuwait's government also attempted to collect individuals' private information to check the extent to which the Internet users practice peaceful expression of ideological, political, and religious beliefs. Actually, this case can be associated with the intentional violation of human rights and freedoms, especially, those related to a right to privacy and a freedom of opinion expression.⁶⁹

⁶⁵ *Ibid*, 2.

⁶⁶ *Ibid*.

⁶⁷ Freedom House, 'Freedom of the Press 2012 – Kuwait', (20 December 2012), Available at: <<http://www.unhcr.org/refworld/docid/50e1612b28.html>> accessed 1st Dec. 2014.

⁶⁸ U.S. Department of State, *2007 Country Reports on Human Rights Practices - Kuwait*, (11 March 2008), Available at: <<http://www.unhcr.org/refworld/docid/47d92c56c.html>> accessed 1st Dec. 2014.

⁶⁹ *Ibid*, 8.

Overall, the control over strategically significant Web sites and most sensitive information presented in Kuwait's networks has been strengthened. The system of users' access to the Internet has become more sophisticated and security-oriented to respond to the needs of the new environment.⁷⁰ In the context of Kuwait's national government, the Internet is primarily understood as a means to combat growing radicalisation. Recent research on the Internet has indicated that the worldwide Web is an efficient way to reach terrorists' target audience – young Kuwaiti men considered the most vulnerable to Islamic extremists' recruitment.⁷¹ In this environment, strengthening the Internet security policy as a part of the counterterrorism agenda is reasonable and necessary, because it provides Kuwaitis with a safe cyberspace.

Internet security is a vital aspect of today's public policy established by Kuwait's national government to prevent the emergence of terrorism and to neutralise the efforts of existing terrorists. The most notable feature associated with the use of the Internet on the territory of Kuwait is presented by the tendency to use this media source as a way to spread religious extremists' ideas and radical opinions related to politics and other spheres of the state's functioning. Today's content of Kuwait's official Web sites and different forms of Internet communication are to some extent controlled. The Internet security measures represented by the establishment of new systems and technologies promise to reduce Kuwait's terrorism and to maximise public safety in the cyberspace.

Thus, it can be seen that after the incidents of September 11 international cooperation against terrorism has been strengthened. The United Nations has intensified its support to the fight against terrorism, which place obligations over all countries, including Kuwait, to take actions against terrorism and Al-Qaida. Considering these factors, Kuwait's government has developed a national counterterrorism strategy that meets the needs of the current changing and challenging environment. This development is evident by the involvement of the

⁷⁰ Nacos, B. L., 'Terrorism/Counterterrorism and Media in the Age of Global Communication', (2006), 3. Available at: <http://archive.unu.edu/globseminar/files/shimane06/Nacos_text_en.pdf> accessed 1st Dec. 2014.

⁷¹ Boucek, C., 'Saudi Arabia's "soft" counterterrorism strategy: prevention, rehabilitation, and aftercare', Carnegie Papers no. 97, (Washington: Middle East Program, Carnegie Endowment for International Peace, 2008), Available at: <<http://carnegieendowment.org/2008/09/22/saudi-arabia-s-soft-counterterrorism-strategy-prevention-rehabilitation-and-aftercare>> accessed 1st Dec. 2014.

State of Kuwait in the international effort in combating terrorism, and by the advent of the new and long-term strategy which focus on fighting the battle of ideas of radical Muslims through introducing educational programmes and controlling the content of the Internet. Therefore, the modifications of domestic law in accordance with the framework of the international counterterrorism policy improved the Kuwaiti national security system. Overall, during recent years, Kuwaiti awareness of the need for counterterrorism measures has increased.

3.2.3 Kuwait's Counterterrorism Policy: Kuwait's Struggles and External Demands

3.2.3.1 Dynamics of Counterterrorism Strategies in Kuwait

The strategic counterterrorism initiatives undertaken by Kuwait have been determined, to a great extent, by the course of the country's development. The essence of the terrorist threat as seen by the Kuwaiti authorities determines the involvement of corresponding institutions. These threats are addressed through various means. Kuwait's view of a terrorist threat is linked to the milestones in its development.

Security considerations became critical for the country when Kuwait obtained its independence. Previously, the state had not been seriously disturbed by any external conflicts. In 1961, however, the political situation changed not only in Kuwait, but in the surrounding countries as well. The collapse of the Iraqi monarchy in 1958 resulted in a growing menace from the Arab nationalist movement and a radical Iraqi regime that lay claim to Kuwaiti territory.⁷²

After the withdrawal of British military forces, Iraqi forces immediately approached the border. At that time, the conflict was settled but showed all the weaknesses of the new state. After the crisis, Kuwait adopted the policy of negotiation and compensation to counteract threatening powers.⁷³ However, despite the attempts to neutralise threats by means of mutually beneficial collaboration, the country was the object of fierce attacks undertaken by Iraq (a series of such

⁷² Cordesman, A. H., *Kuwait: Recovery and Security after the Gulf War*, (Boulder: Westview Press, 1997), 7.

⁷³ *Ibid*, 7.

conflicts led eventually to the Gulf War) and Iran (caused by the support that Kuwait showed to Iraq in the conflict between the two countries).⁷⁴

The Iraqi invasion resulted in serious tension in relationships between Kuwait and the Arabic countries supporting it in the conflict and Iraq and its supporters among Arabic countries. Therefore, 'it was not possible in the post-invasion era to coordinate positions in issues relating to terrorism between these States because of the hate and mistrust the Iraqi aggression had caused among them'.⁷⁵ The concept of terrorism itself and the corresponding institutional functions were reshaped after this aggression to include the Iraqi use of violence against Kuwait, and in many speeches, this component dominated in the understanding of terrorism as a threat to the nation.⁷⁶

During these crises, Kuwait had to seek support from the Western countries, especially the United States which provided this support. American and other military forces assisted Kuwait greatly in withstanding the Iraqi threat. Moreover, the invasion entailed such a disagreement among the Arabic states that the situation fostered the ongoing enhancement of collaboration between Kuwait and other Western countries, particularly the United States, the United Kingdom, and France. Such a position resulted in the development of an appreciative attitude in Kuwait toward these Western states and Kuwait's adoption of strategies that are likely to be supported by them.⁷⁷ The regime of Saddam Hussein repeatedly showed signs of aggression toward Kuwait.⁷⁸ In addition, there remains a degree of pressure and tension between Kuwait and Iran, as the two countries never fully reached an agreement on the issue of oil and gas, though they maintain dialogue aimed at the improvement of their relations. Therefore, it can be seen that after the 1991 there has been a significant shift in the Kuwaiti policy toward the external influences.

Simultaneously, Kuwait strives to keep tension-free relations with Saudi Arabia. The nations began to collaborate more during the Iran-Iraq war. They

⁷⁴ *Ibid*, 7.

⁷⁵ Al-Ajmi, T. S., 'Legal Responses to Terrorism with Special Reference to the Position of Kuwait', (PhD Thesis, University of Wales, 2003).

⁷⁶ *Ibid*, 236-237.

⁷⁷ *Ibid*, 238.

⁷⁸ Cordesman, A. H., *Kuwait: Recovery and Security after the Gulf War*, (Boulder: Westview Press, 1997), 15.

participated in joint operations with the United States aimed at protecting their borders against Iraq and Iran and the involvement of the GCC states in their practices. Moreover, Kuwait has close relationships with the majority of the other Arab states, although the degree of success varies in each individual case.⁷⁹

Moreover, Kuwait also had to face the external factors which resulted in a number of internal issues concerning terrorism, including Shiite terrorist attacks during the Iraq-Iran war and the involvement of citizens in terrorist organisations like Al-Qaida. These events show that Kuwait had to take the issue of security seriously with regard to the constant instability in the region. Moreover, the country maintains dialogue with both Western and Eastern neighbours in the effort to counteract terrorism.

3.2.3.2 Kuwait's Counterterrorism Strategy from the Perspective of External Demands

Kuwait's counterterrorism policy has become a point of discussion within the international environment. The views of the United States government and of the UN General Assembly on Kuwait's counterterrorism policy must be discussed in this subsection, because Kuwait's international relationships are primarily connected with these foreign authorities.

After the Iraq-Iran war, and specifically after Kuwait's liberation from Iraqi occupation, Kuwait became closer to the United States because 'US forces spearheaded the liberation of Kuwait'⁸⁰ in 1991. Kuwait's government then concluded an agreement with the United States according to which Kuwaiti forces had to participate in joint military exercises, American training, arms sales, pre-positioning of the American military equipment, and gave access to Kuwaiti facilities.⁸¹ Another influence is that Kuwait has been a member of the UN since 1963.

⁷⁹ *Ibid*, 15-17.

⁸⁰ Katzman, K., 'Kuwait: Post-Saddam Issues and U.S. Policy', (2005) Congressional Research Service, 2, Available at: <<http://fpc.state.gov/documents/organization/50259.pdf>> accessed 1st Dec. 2014.

⁸¹ *Ibid*.

Although Kuwait and the United States are close allies working together in their fight against international terrorism, it is obvious that the US government does not support some aspects of Kuwait's counterterrorism strategy.⁸² For example, the administration in Washington did not support Kuwait's policy concerning the detention of convicted killers and its refusal to exchange terrorists for hostages. During the Iraq-Iran war, Kuwait witnessed violent terrorist attacks, as Shiite Muslims drove trucks carrying bombs into six major targets, including the American and French embassies and a number of Kuwaiti installations. The attacks resulted in several deaths and numerous injuries. The government arrested those responsible for the attacks and sentenced some of them to death, others received imprisonment terms of varied lengths. Intending to free the prisoners, the radicals launched several attacks to force the government to make concessions and to negotiate the freedom of the imprisoned criminals. These attacks included hijacking a plane and killing two hostages on board, driving a car into the emir's motorcade and killing four people, arranging explosions in Kuwaiti cafes with nine victims, assassinating the editor of a newspaper and sabotaging oil facilities. In each instance, the government maintained its firm position, stiffening measures against possible and actual terrorists.

The next step taken by terrorists directly involved American interests. More specifically, they made the freedom of American hostages in Lebanon contingent upon the release of Kuwaiti prisoners. However, Kuwait's government did not succumb to the pressures from the US authorities and refused to barter the prisoners.⁸³ The newspaper, *Ar-Ra'y al-'Am*, criticised the American President for making unjustified promises to the hostages' families. The paper directly appealed to Reagan's principles: 'Have you forgotten that you are the chief advocate for combating terrorism in the world? ... If we agree to exchange the sentenced prisoners in Kuwait for your hostages in Lebanon... you become an encourager of terrorism'.⁸⁴ The newspaper directly expressed suspicion of American double

⁸² Alkarama, 'Contribution to the list of issues in the context of Kuwait's second periodic report to the Human Rights Committee', *Alkarama* [web document] (2010), 2. Available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/Alkarama_Kuwait100.pdf> accessed 1st Dec. 2014.

⁸³ Pipes, D., 'Kuwait's Terrorism Policy Sets an Example', (1986), *Wall Street Journal*, para. 5., Available at: <<http://www.danielpipes.org/173/kuwaits-terrorism-policy-sets-an-example>> accessed 1st Dec. 2014.

⁸⁴ *Ibid*, para. 5.

standards, which arises when the interests of the United States conflict with the interests of other countries, specifically Kuwait's counterterrorism strategies. It viewed US policy as encouraging terrorism.⁸⁵

In addition, the emergency measures, adopted by the Kuwaiti government after the liberation of Kuwait from Iraqi occupation, of deporting over 400,000 foreigners (mainly Palestinians) in order to enhance the security regulations contradicted the strategy chosen by the United States and endorsed by the United Nations.⁸⁶ However, it showed that for Kuwait counterterrorism is the higher priority than its international reputation, at least in that era.

Another example is that although the Kuwaiti government has met the US requirements of building a rehabilitation centre for terrorists or ex-terrorists,⁸⁷ the US government still has detained the remaining two Kuwaiti prisoners, Fawzi Al-Odah and Fayiz Al-Kandari, in its detention centre in Cuba, Guantanamo Bay.⁸⁸ The *Al-Salam* Centre has been built inside the Kuwaiti prison in order to receive the released prisoners and put them under medical and psychological treatment. In addition, the prisoners will be assessed by a committee which includes officials from the Ministry of Health, Interior and Education before they are released.⁸⁹

Therefore, it can be said that the US administration does not share certain points related to Kuwait's counterterrorism policy, and it does not approve of some aspects of Kuwait's counterterrorism policy.

Although Kuwait's government currently adopts most of the UN convention requirements related to terrorism and terrorists, its modifications of the legal basis related to counterterrorism do not always correspond exactly with international requirements. Kuwait is a conservative country with a strict moral code based on religion and its own pace of national development. In comparison with the relatively humanistic criminal law presented in the Western UN member countries,

⁸⁵ *Ibid*, para. 6.

⁸⁶ Jackson, R., Murphy, E. and Poynting, S. (Eds.), *Contemporary State Terrorism: Theory and Practice*, (New York: Routledge, 2010), 242.

⁸⁷ Fenton, J., 'Kuwait rehab centre for Gitmo prisoners 'impressive'', *Kuwait Times*, (2012). Available at: <<http://news.kuwaittimes.net/2012/04/12/kuwait-rehab-centre-for-gitmo-prisoners-impressive/>> accessed 1st Dec. 2014.

⁸⁸ *Ibid*.

⁸⁹ *Ibid*.

Kuwait imposes more severe penalties and stricter counterterrorism measures. For many years, ‘Kuwaitis proposed heavier punishments than the nationals of other countries for all categories of offenses’, including terrorism.⁹⁰

Kuwait has done much to implement international laws with the help of the UN, which seems to approve of the range of legislative modifications made by Kuwait’s government during the last decade. One of the main modifications made in Kuwait’s Penalty Code relates to torture.⁹¹ Since the UN General Assembly and the UN Security Council in particular have often accused Kuwaitis of torturing, the Kuwait government has taken corresponding measures.⁹² Recently, Kuwait sent a report to the UN Committee Against Torture, in which the government explained its policy with regard to the use of torture in Kuwait.⁹³ According to this report, Kuwait’s government officially recognises that violent physiological and psychological tortures have been used against national terrorists. However, the corresponding initiatives were made to meet the UN penalty requirements. Moreover, the Committee welcomed the Kuwaiti government’s initiatives in the establishment of the Higher Committee for Human Rights in 2008.⁹⁴

Although the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was signed and ratified in 1996,⁹⁵ torture is still used as a method of gathering information from terrorist suspects. In addition, Kuwait has not ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).⁹⁶

⁹⁰ Serajzadeh, S. H., ‘Islam and Crime: the Moral Community of Muslims’, (2002), Journal of Arabic and Islamic Studies, 126. Available at:

<http://www.lanacs.ac.uk/jais/volume/docs/vol4/4_111-131serajzade1.pdf> accessed 1st Dec. 2014.

⁹¹ Articles 53, 159 and 184 of the Criminal Code forbid torture and other cruel, inhuman or degrading treatment.

⁹² Katzman, K., ‘Kuwait: Security, Reform, and U.S. Policy’, (2012), Available at:

<<http://www.fas.org/spp/crs/mideast/RS21513.pdf>> accessed 1st Dec. 2014.

⁹³ UN Committee Against Torture (CAT), *Second periodic report due in 2010; the present report is submitted in response to the list of issues (CAT/C/KWT/Q/2) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24)*, 16 June 2010, CAT/C/KWT/2, Available at: <<http://tb.ohchr.org/default.aspx?country=kw>> accessed 1 Dec. 2014.

⁹⁴ *Ibid.* See also Ministerial Decree No. 104 of 15 April 2008, establishing the Higher Committee for Human Rights.

⁹⁵ UNGA, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) UNGA Res 39/46, 39 UN GAOR, Supp. (No. 51), UN Doc A/39/51 (1984) 197.

⁹⁶ UNGA, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (adopted 18 December 2002, entered into force 22 June 2006) UNGA Res A/RES/57/199

However, after the observations of the UN Committee Against Torture in 2011,⁹⁷ Kuwait's national government started to implement more effectively the convention. This implementation was a considerable step in the current development of Kuwait's counterterrorism policy. The following subjects are included in the Convention and have been adopted by Kuwait's domestic laws: definition and criminalisation of torture, fundamental legal safeguards, monitoring, inspection of places of detention, non-refoulement, imposition of the death penalty, and training of Kuwaiti law enforcement officials about human rights. The UN welcomed Kuwait's decision to change its national legislations (the Penal Law and the Prison Law) in relation to the use of torture.⁹⁸ Overall, the UN Convention is aimed to make Kuwait's laws and practices compliant with human rights requirements on Kuwaiti territory, and Kuwait has gradually incorporated its requirements. However, although the law are now in the line with the international requirements to forbid the use of torture, yet there are still allegations of using torture in practice. A good example of this can found on the case of attempting to bomb camp Arifjan.⁹⁹

Another significant modification to the Kuwaiti legislation was, recently, the ratification of the International Convention for the Suppression of the Financing of Terrorism 1999 (ICSFT),¹⁰⁰ and the enactment of Law No. 106 of 2013 regarding Anti-Money Laundering and Combating the Financing of Terrorism,¹⁰¹ which implemented the ICSFT. However, even before the ratification of the ICSFT, the government of Kuwait has done a great deal through its Ministries and organs in

⁹⁷ UN Committee Against Torture (CAT), *Consideration of reports submitted by States parties under article 19 of the Convention - Kuwait*, 28 June 2011, CAT/C/KWT/CO/2, Available at: <<http://www.refworld.org/docid/4ef04cee2.html>> accessed 1st Dec. 2014.

⁹⁸ *Ibid.*

⁹⁹ 'The Case of attempting to bomb camp Arifjan: Court of Appeal Supports the Innocence of all Defendants', *Al Qabas Newspaper*, (2010), Available at: <<http://www.alqabas.com.kw/node/652465>> accessed 1st Dec. 2014. For further information about the camp Arifjan case see Chapter Two, Section 2.4.2

¹⁰⁰ Law No. 85 of 2013 approving the accession of the State of Kuwait to the International Convention for the Suppression of the Financing of Terrorism, Gazette Kuwait Al-Youm, No. 1133, 26 May 2013.

¹⁰¹ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Gazette Kuwait Al-Youm, No. 1137, 23 June 2013.

preventing financing terrorism domestically and internationally.¹⁰² Overall, this will be discussed in more details in chapter five.

Hence, from the perspective of Western countries, today's Kuwaiti counterterrorism policy is not yet sufficiently developed and realised. It is notable that the views of the US and the UN authorities on the Kuwaiti counterterrorism strategy differ in some important aspects. Although the US government considers Kuwait a powerful ally in the current fight against terror, it does not approve of some conservative aspects of Kuwait's legal policy with regard to terrorists. Although the UN Security Council recognises that Kuwait is not fully prepared to become democratic fighter against terrorism, it treats this country as relatively successful in terms of its modification of domestic law. Both the US and the UN authorities believe that Kuwait has advanced in the positive transformation of its counterterrorism policy and in its peaceful but powerful struggle with terrorists based on the promotion of human rights. The result is also an intensification of international influences on Kuwait's counter terrorism strategy and laws since 9/11.

3.3 Institutional Mechanisms for Countering Terrorism in Kuwait

3.3.1 The Hierarchy of Institutions Elaborating and Implementing Counterterrorism Strategies

The acts of terror that occurred on September 11, 2001, showed that antiterrorist strategies and policies required new steps and new institutions to regulate them. The Kuwaiti institutions that perform functions in the sphere of counterterrorism initiatives work in the legislative, executive, and judicial branches of the State. The number and functions of these institutions have significantly evolved since the establishment of the State. The legislative body of Kuwait, the Parliament of the people (the National Assembly), could not maintain its stable work, which seriously affected the function of legal enforcement of laws that criminalise and prevent terrorism.¹⁰³ The overall strategy was implemented by the Council of Ministers of Kuwait in governing the country. The introduction of

¹⁰² Katzman, K., 'Kuwait: Security, Reform, and U.S. Policy', (2012), Available at: <<http://www.fas.org/sgp/crs/mideast/RS21513.pdf>> accessed 1st Dec. 2014.

¹⁰³ Alzubairi, F., 'Kuwait and Bahrain's Anti-terrorism Laws in Comparative and International Perspective', (Master Thesis, University of Toronto, 2011), 6-8.

control measures was carried out through the tools of the Ministry of Interior and Foreign Affairs, including the Armed Forces, the police, Border Security, Coast Guards, and the Kuwait State Security. Preventative measures targeting financial operations that contribute to the development of terrorism were given special attention, as they were consistent with the international initiative of restricting terrorist access to financial assets. These measures presupposed the participation of the Ministry of Social Affairs and Labour, the Ministry of Commerce and Industry, the General Administration of Customs, and the Central Bank of Kuwait. Terrorism is also addressed on the level of the values sets of society and individuals through the Ministry of Education, the Ministry of Information, and the Ministry of Awqaf and Islamic Affairs. The Kuwaiti officials used Osama bin Laden's death to reiterate the country's enduring commitment to counterterrorism. Politicians used the event to advance attempts to cross a line between the message of Islam and the appeals of radical and terrorist organisations. They emphasised that terrorism distorts religious teaching of Islam and continued calling for tolerance and moderation.¹⁰⁴

The efficiency of the counterterrorism steps undertaken by Kuwait depends considerably on the cohesiveness of strategies employed by various institutions performing counterterrorism functions. In this respect, the relationship between the legislative and executive branches in Kuwait needs special attention. The state has 'a relatively open political system by Gulf standards'.¹⁰⁵ However, political disputes frequently occur as documented by several successive Parliament dissolutions since 1976.¹⁰⁶

The Parliament performs a significant role in enacting legislations that criminalise terrorist acts and maintaining the executive's accountability in its implementation of such laws, but it exerts no influence on the formation of the government in the country. Thus, the performance of state institutions causes some

¹⁰⁴ U.S. Department of State, *Country Reports on Terrorism 2011 - Kuwait*, (31 July 2012), Available at: <<http://www.state.gov/j/ct/rls/crt/2011/195544.htm>> accessed 1st Dec. 2014.

¹⁰⁵ Westall, S., 'Kuwait Government Call for Dissolution of Parliament: KUNA', *Reuters*, (2012). Available at: <<http://www.reuters.com/article/2012/10/03/us-kuwait-politics-government-idUSBRE8920E620121003>> accessed 1st Dec. 2014.

¹⁰⁶ Bertelsmann Stiftung, *BTI 2012 — Kuwait Country Report*, (Gütersloh: Bertelsmann Stiftung, 2012), 9, Available at: <http://www.bti-project.org/uploads/tx_itao_download/BTI_2012_Kuwait.pdf> accessed 1st Dec. 2014.

dissatisfaction, as the tension between the legislative and executive branches may result in the paralysis of efficient action.¹⁰⁷ The Parliament includes fifty elected members, by the people, in addition to the appointed ministers who comprise a third or less of the number of elected members.

The Council of Ministers (the Government) is headed by the Prime Minister. Previously, the Crown Prince used to combine the premiership with his position. However, the link between the Crown Prince and the premiership was removed in 2003. Moreover, the Ministry of Interior and the Ministry of Defence are always headed and allocated to the ruling family.¹⁰⁸ Therefore, the accountability of these positions become, sometimes, culturally difficult.

The government does not require the support of a majority in Parliament. Therefore, the results of elections do not directly affect the composition of the government. Legislative initiatives in fact rely on the coalition of parliamentarians, as there are no established political parties. Situations have occurred when members of the parliament successfully adopted laws against the will of the government, such as occurred in 2006, when changes to the electoral system were adopted. Nevertheless, normally Parliament does not get involved in governance directly, preferring instead to conduct inquiries into the executive's conduct.¹⁰⁹

The conflict between the two branches during the last decade led to the suspension of the Parliament in different times, which affects the issue of implementing some of the international conventions and to develop an effective counterterrorism laws. There are two observations concerning the recent political situation in Kuwait. First, the role of the legislature is quite restricted in the development of strategies for national development. Since 2006, when the current President Sheikh Sabah Al-Ahmad Al-Sabah becomes the head of the State, the Parliament has been dissolved and re-elected four times. The government enjoys a lot of power and seriously restricts the attempts to criticise its efforts. The

¹⁰⁷ *Ibid*, 9.

¹⁰⁸ Alzubairi, F., 'Kuwait and Bahrain's Anti-terrorism Laws in Comparative and International Perspective', (Master Thesis, University of Toronto, 2011), 5.

¹⁰⁹ Bertelsmann Stiftung, *BTI 2012 — Kuwait Country Report*, (Gütersloh: Bertelsmann Stiftung, 2012), 9, Available at: <http://www.bti-project.org/uploads/tx_itao_download/BTI_2012_Kuwait.pdf> accessed 1st Dec. 2014.

Constitution and its activation incite conflicts between political powers in Kuwait, as the government is reluctant to follow the Constitutional regulations.¹¹⁰

Kuwait has not codified terrorism in its legal system. Instead, the state has chosen to use fragmental security laws, the interpretation of which can be used to impose restrictions on human rights should the exercise of such rights be regarded as a crime against national security.¹¹¹ However, it appears that much effort by the government and the Parliament is aimed at the political authority and does not include actual steps to implement the chosen course of development. Instability remains the dominant feature of the relationship between the legislative and executive branches in Kuwait,¹¹² which hinder the government's ability to develop a more effective counterterrorism policy.

3.3.2 Executive Agencies Involved in Counterterrorism

The introduction of control measures to monitor the internal and external situation represent one category of protective security steps taken by Kuwait. The performance of functions in this area involve the police, Border Security, Coast Guards, Kuwait State Security, the Kuwait National Guard, the Civil Defence, the Ministry of Interior, and the Ministry of Foreign Affairs. Both the police and State Security are overseen by civilian Interior Ministry authorities.

3.3.2.1 Security Forces

The Kuwaiti Police is a national organisation with approximately 4,000 police officers, the majority of whom are concentrated in Kuwait City. The police are equipped with light weapons, small arms, and all-terrain vehicles; they are capable of handling violent disorder and performing usual police duties.¹¹³ The police are solely responsible for the implementation of laws not linked to national security.

¹¹⁰ Alzubairi, F., 'Kuwait and Bahrain's Anti-terrorism Laws in Comparative and International Perspective', (Master Thesis, University of Toronto, 2011), 8.

¹¹¹ *Ibid*, 8.

¹¹² Matabadal, A., 'Country Report – Kuwait', *Rabobank*, (the Netherlands: 2012), 4, Available at: <<https://economics.rabobank.com/PageFiles/816/Kuwait-201209.pdf>> accessed 1st Dec. 2014.

¹¹³ UK Border Agency, 'Kuwait - Country of Origin Information (COI) Report', (*UK Border Agency*, 2011), 23.

In contrast, State Security exercises control over national security affairs and intelligence. Kuwait State Security focuses on Islamist extremists and the threat posed by them. The body also performs counter-intelligence functions and arrests individuals suspected of espionage.¹¹⁴ The military carries out the responsibility of maintaining external security. In general, the police have pursued their core responsibility properly. Internal security is the first consideration of the police.¹¹⁵ Consequently, they address the issue of internal threats linked to terrorist attacks, especially those that involve injuries to Kuwaiti citizens and damage to Kuwaiti assets.

The Kuwait National Guard (KNG) is composed of several major units and it is estimated to have an approximate of 8,500 personnel. It is an all-volunteer body. The Kuwaiti government has defined its mission as ‘providing assistance to the military and security forces, in addition to the execution of any assignment entrusted to it by the Higher Defence Council, such as safeguarding establishments and utilities of a sensitive nature and importance.’¹¹⁶ The Guard’s ultimate role is to protect the royal family. During the Persian Gulf War, it was also entrusted with the function of patrolling borders of the 25 km wide UN-controlled zone of demilitarisation between Kuwait and Iraq, which saved Kuwait from any terror spillover. Counterterrorism functions of the unit also included ensuring security of crucial installations, such as diplomatic missions. Unlike the police and the army, the KNG is composed exclusively of Kuwaitis.¹¹⁷

The Civil Defence was established before the Iraqi invasion of 1990. Its function is to cope with the threat of bombing, which occurred in the late eighties.¹¹⁸ There are about 2,000 participants; the body is accountable to the Ministry of Interior. This unit also shares the responsibility of handling the effects of a possible military invasion.¹¹⁹

¹¹⁴ *Ibid*, 24.

¹¹⁵ *Ibid*, 23.

¹¹⁶ *Ibid*.

¹¹⁷ *Ibid*, 24.

¹¹⁸ See Chapter Two.

¹¹⁹ UK Border Agency, ‘Kuwait - Country of Origin Information (COI) Report’, (*UK Border Agency*, 2011), 24.

3.3.2.2 Other Government Forces

Customs plays a particular role in counterterrorism, as the Kuwaiti customs service is instrumental in detecting terrorists who seek to enter the country and who attempt to import goods and equipment that they can use.¹²⁰ In addition, the institutional efforts to counteract terrorism include steps to prevent terrorist-related customs offences. The Ministry of Interior and the General Administration of Customs cooperate to track down offenders inside Kuwait. Those offenders who manage to leave the country and avoid apprehension are tracked down through extensive cooperation between the executive units of the Ministry of Justice, the office of the Attorney-General, the General Administration of Customs and Interpol.¹²¹

The General Directorate of Border Security is also controlled by the Ministry of the Interior. Its major function is to patrol the frontier with Iraq and to prevent any inward movement that might affect the security of Kuwait; for instance, the potential threats of any terror spillover. The Kuwait Coast Guards performs similar functions.¹²²

Border management believed to be ‘a major component of homeland protection’.¹²³ For each country involved in the global counterterrorism, border management is a crucial component in preventing terrorism, and Kuwait is not an exception. Overall, border management is defined as ‘the procedures applied to persons and objects crossing the border to ensure they comply with laws’.¹²⁴ Naturally, within the framework of Kuwait’s counterterrorism strategy, strengthening and improving border management are obviously necessary, since today’s reality associated with a changing and challenging environment establishes new security needs that must be met.

¹²⁰ *Ibid.*

¹²¹ UN Security Council (CTC), ‘Kuwait’s Report to the CTC (2002)’, Security Council, Distr.: General, 6 August 2002, S/2002/886, Letter dated 17 July 2002 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 6 August 2002.

¹²² *Ibid.*, 25.

¹²³ Pawlak, P. and Xymena, ‘The fog of border’, in Kaunert C. et al. (eds.), *European Homeland Security: A European strategy in the making?*, (New York, NY: Routledge, 2012), 142.

¹²⁴ McLinden, G., Fanta, E., Widdowson, D. and Doyle, T., *Border Management Modernization*, (Washington, D.C.: World Bank Publications, 2010), 37.

Since Kuwait is a UN member state, its border management policy aimed to enforce national security is shaped by the general UN border control initiatives. Since 2006, when the UN global counterterrorism strategy was initiated, Kuwait and other GCC countries have been experiencing changes in relation to their border management.¹²⁵ These changes are provided through corresponding reformation and modernisation of the existing border management system at the national, regional, and international levels to enhance national security in the air, on land, and on the seas.¹²⁶

Within the framework of this strategy, border security is the most crucial element of the overall national and international strategy for combating terrorism. As one may agree,

while border security is a matter that almost all states have paid increased attention to in the new millennium, it must be acknowledged that transboundary activity and the relatively simple and inexpensive means of perpetrating terrorist acts means that the operational capacity of most terrorist entities should be viewed as being reasonably high.¹²⁷

Hence, the first step toward the prevention of terrorism in the area of Kuwait's national security and border management was the strengthening of its current migration law by supplement it with some ministerial decrees, which on the one hand protect the human rights of migrants, and on the other hand deter the potential trafficking in person.¹²⁸

¹²⁵ UN General Assembly, 'United Nations Global Counter-Terrorism Strategy: activities of the United Nations system in implementing the Strategy', *United Nations General Assembly* [web document] 2012, 1. Available at: <<http://www.un.org/en/terrorism/ctitf/pdfs/A%2066%20762%20English.pdf>> accessed 1st Dec. 2014.

¹²⁶ *Ibid*, 20.

¹²⁷ Conte, A., *Human Rights in the Prevention and Punishment of Terrorism: Commonwealth Approaches: The United Kingdom, Canada, Australia and New Zealand*, (London, UK: Springer, 2010), 85.

¹²⁸ For further information look at UN Security Council (CTC), 'Kuwait's Report to the CTC (2006)', Security Council, Distr.: General, 17 November 2006, S/2006/903, Letter dated 8 November 2006 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, online: UN Security Council, Counter Terrorism Committee, 17 November 2006. Also see the UN Security Council, 'Letter dated 17 April 2003 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman

In addition, the International Organisation for Migration supported by the UN offered to support the government of Kuwait with its migration initiatives. According to the UN calculations, the funding requirements needed to implement this regime in Kuwait's environment constitute US \$850,000.¹²⁹ The IOM will keep up with:

- supporting the Kuwaiti Government's efforts to counter trafficking and provide comprehensive direct assistance to trafficked persons and vulnerable migrants through continued technical assistance and training;
- supporting Kuwait and other countries in the region to manage labour migration effectively and to uphold migrants' human rights through ongoing localised technical assistance and activities to highlight good practices and lessons learned; and
- promoting intraregional and interregional dialogue and practical cooperation through inter-State meetings that bring together GCC countries and/or origin and destination countries.¹³⁰

Overall, the migration regime in Kuwait supported by the UN is associated with strengthening law enforcement on the state's border, including increased attention to compliance with human rights fixed in the national Constitution and increasing rigorous control over migrating populations (emigrants and immigrants). The detention and capture of terrorist suspects on borders, along with the investigation of their crimes, are also supposed to be provided. In addition, the corresponding agencies engaged in border management, including Kuwait's customs and national police, need to undergo special training related to the prevention of terrorism on national borders.¹³¹

of the Committee -Pursuant to Paragraph 6 of Resolution 1455 (2003)', S/AC.37/2003/1455/31, Available at: <[http://www.un.org/ga/search/view_doc.asp?symbol=S/AC.37/2003/\(1455\)/31](http://www.un.org/ga/search/view_doc.asp?symbol=S/AC.37/2003/(1455)/31)> accessed 1st Dec. 2014.

¹²⁹ International Organization for Migration, 'Migration initiatives 2012', (*International Organization for Migration* [web documentation], 2011), 43. Available at: <http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/Migration-Initiatives-Appeal.pdf> accessed 1st Dec. 2014.

¹³⁰ *Ibid*, 49.

¹³¹ *Ibid*, 51.

In addition, the provision of Kuwait's customs with new technologies is a great contribution to the enhancement of the national transport security system. This modernisation changes Kuwaitis' lives positively, since it provides them with more convenient means to cross the national border. For example, to enhance Kuwait's border control security, the establishment of machine-readable passports along with e-passport validation service, the so-called Public Key Directory, has been provided. The new e-passport technology is an extremely effective security measure 'as a means of detecting the alteration or counterfeiting of passports or the use of stolen passports'.¹³² Today's refugees crossing Kuwait's national border are automatically provided with machine-readable travel documents.¹³³ The e-passports that are expected to be introduced in the recent future contain a digitally stored image and fingerprints of their holders.¹³⁴ In addition, Kuwait's border management was provided with another supportive technology, the electronic customs-clearance system with the installed risk profiles, which help to identify whether migrating people or their transported objects present a risk to national security.¹³⁵ Kuwait's border management is reformed and modernised through the digitalisation and computerisation process that meets people's needs in the changing and challenging environment. Overall, the implementation of this process within Kuwaitis' living environment makes their lives modern, convenient, and secured.

The International Criminal Police Organisation (INTERPOL) is also involved in the UN's counterterrorism strategy. In the context of Kuwait's border management, INTERPOL provides its support and assistance in terrorism prevention through the provision of access to the international database (covering lost and stolen travel documents, terrorists' identities, etc.) that can be obviously helpful.¹³⁶ With the help of the database provided by INTERPOL, Kuwait's

¹³² UN Security Council (CTC), 'Kuwait's Report to the CTC (2006)', Security Council, Distr.: General, 17 November 2006, S/2006/903, Letter dated 8 November 2006 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, online: UN Security Council, Counter Terrorism Committee, 17 November 2006.

¹³³ *Ibid*, 10.

¹³⁴ *Ibid*, 11.

¹³⁵ UN Security Council, 'Resolution of 2011', *United Nations Security Council* [web document] (2011), 48. Available at:

<http://www.coe.int/t/dlapil/codexter/3_CODEXTER/Working_Documents/2012/S_2011_463_EN.pdf> accessed 1st Dec. 2014.

¹³⁶ UN General Assembly, 'United Nations Global Counter-Terrorism Strategy: activities of the United Nations system in implementing the Strategy', *United Nations General Assembly* [web document] 2012, 17, Available at:

authorities may detect and prevent illegal movements, and they may capture terrorists who are currently sought (for example, those from Al-Qaida).

Naturally, Kuwait's border management has its own advantages and disadvantages. Despite the UN's support and assistance in Kuwait's counterterrorism struggle, Kuwait's modernisation and reformation of border management has been realised slowly. However, Kuwait's current border management includes a modernised surveillance system.¹³⁷

In 2009, the Kuwaiti Ministry of Interior proposed a four-year action plan aimed to improve the national border management. Within the framework of this plan, the particular counterterrorism initiatives should be realised.¹³⁸ To be more specific, the following quotation represents the four initiatives that were proposed by the minister:

- Border Security (US\$ 602,000,000): This initiative proposes that national border security will be realised by monitoring and surveying restricted areas, deterring foreigners' illegal entry into the country, and preventing smuggling.
- Terrorism (US\$ 13,000,000): This initiative suggests that the counter-terrorism and counter-radicalisation project is meant to help achieve stability, securing the 'internal front', and protecting the Kuwaiti society against extremists and their activity.¹³⁹
- CCTV (US\$ 475,000): This initiative implies that this network secures land and marine borders, populous locations, islands, highways, and vital installations.

<<http://www.un.org/en/terrorism/ctif/pdfs/A%2066%20762%20English.pdf>> accessed 1st Dec. 2014.

¹³⁷ Cordesman, A. H., *Saudi Arabia Enters the Twenty-First Century: The Military and International Security Dimensions*, (Westport, CT: Greenwood Publishing Group, 2003), 248.

¹³⁸ U.S. Department of State, *2009 Country Reports on Terrorism – Kuwait*, (5 August 2010), Available at: <<http://www.unhcr.org/refworld/docid/4c63b63a27.html>> accessed 1st Dec. 2014.

¹³⁹ *Ibid.*

- Port Security (US\$ 138,000,000): This initiative ensuring security of land, sea, and air ports.¹⁴⁰

This action plan to some extent corresponds with the requirements set forth in the UNSCR 1624 paragraph 2.¹⁴¹ To improve Kuwait's counterterrorism potential and to prevent terrorism in the future, its law enforcement agencies undergo special training provided by international experts on counterterrorism. According to the UN and American national security experts, Kuwait's border security disposition needs to be improved through their specially designed counterterrorism training.¹⁴² The training is provided through the exchange of professional experience, acquisition of knowledge and skills, and enhanced awareness of the danger of terrorism for social wellbeing and national security.

The recent U.S. State Department annual report on terrorism admitted that the Kuwaiti government had taken steps to counteract terrorism and its expansion, including the implementation of biometric fingerprinting for security considerations at the Kuwait International Airport, the plans to install retina-scanning equipment at every port of entry and to elaborate a system allowing one to match border crossing information with visa submissions taking place at embassies abroad.¹⁴³

Numerous improvements should be realised in the near future to ensure the successful realisation of Kuwait's counterterrorism strategy. The current state's border management system has numerous benefits due to the modernisation, reformation, and computerisation processes and helps Kuwait's government to realise its counterterrorism strategy in public policy. The development of today's border management within Kuwait's overall framework of the fight against terrorism at the national, regional, and international levels promises the achievement of the national welfare and the provision of sustainable life for the Kuwaitis in the future.

¹⁴⁰ *Ibid.*

¹⁴¹ See UN Security Council, *Security Council resolution 1624 (2005) [on threats to international peace and security]*, 14 September 2005, S/RES/1624 (2005), Available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/510/52/PDF/N0551052.pdf?OpenElement>> accessed 1st Dec. 2014.

¹⁴² Federal Law Enforcement Training Center, *Strategic plan*, (2007), in US Department of Homeland Security [online database], accessed 1st Dec. 2014.

¹⁴³ U.S. Department of State, *Country Reports on Terrorism 2011 - Kuwait*, (31 July 2012), Available at: <<http://www.state.gov/j/ct/rls/crt/2011/195544.htm>> accessed 1st Dec. 2014.

3.3.2.3 Executive Agencies Involved in Combating Terrorism Financing

In 2002, the Central Bank of Kuwait created a department for combating money-laundering and financing terrorism operations that establishes directions concerning overseeing the units subject to control (investment companies, banks, etc.). It also works in coordination with relevant government bodies, such as the Ministry of Foreign Affairs, since international resolutions are applied to freezing assets of organisations and individuals suspected of terrorism, as well as the Ministry of Social Affairs and Labour, which is conditioned by monitoring and control over the transfers of individual public welfare organisations licensed to participate in charitable work.¹⁴⁴

The Ministry of Commerce and Industry oversees various establishments, financial and non-financial organisations, to ensure that ministerial laws and resolutions are not contravened. The Ministry gives the following instructions to each organisation that it oversees: verify identities of all of its customers with reliance on official documents; enter all conducted transactions in commercial ledgers and records, indicating the customer's personal data, contacts and type and date of the transaction (showing value and nature); keep the record of the transactions for a minimum of 10 years; refrain from hosting anonymous accounts; report in writing any suspicious operation to the Public Prosecutor Office; and elaborate and implement programmes of work procedures and monitoring systems aimed at fighting money-laundering.¹⁴⁵ The Ministry of Information also collaborates with the Ministry of Interior and the Ministry of Social Affairs and Labour in collecting monetary donations and charitable activities. More specifically, all media (television, print and radio) are instructed not to announce any collection of donations without the prior approval of the Ministry of Social Affairs and Labour.¹⁴⁶

¹⁴⁴ UN Security Council (CTC), 'Kuwait's Report to the CTC (2006)', Security Council, Distr.: General, 17 November 2006, S/2006/903, Letter dated 8 November 2006 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, online: UN Security Council, Counter Terrorism Committee, 17 November 2006.

¹⁴⁵ UN Security Council (CTC), 'Kuwait's Report to the CTC (2004)', Security Council, Distr.: General, 31 December 2004, S/2004/945, Letter dated 17 December 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, online: UN Security Council, Counter Terrorism Committee, 31 December 2004.

¹⁴⁶ *Ibid*, 5.

Therefore, it can be seen that the government of Kuwait has developed its counterterrorism measures with regard to financing terrorism. This development is evident by the involvement of the different government's ministries which will be discussed in more details in chapter five. However, it should be noted that the recent U.S. Department of State report on terrorism stressed that, although Kuwait has an anti-money laundering law and a number of successful prosecutions in related cases, the Parliament has failed to adopt a comprehensive law on AML and CFT.¹⁴⁷ In fact, it is not until June 2013 when Kuwait passed a comprehensive law on AML and CFT (Law No. 106 of 2013), which discussed in chapter five. This failure, one of many, suggests the need to introduce changes to the procedure of law enforcement, as the present procedure seriously hampers the country's initiatives and advances in counterterrorism. This is one area in which Kuwaiti authorities do not manage to maintain efficient communication and cooperation, yet the achievements in other spheres show the critical importance of such consistency and collaboration.

3.3.3 Overall Assessment of Kuwait's Counterterrorism Strategy

What becomes apparent when examining the Kuwaiti counterterrorism establishments and practices is a distribution of functions, accountability, and lines of cooperation that seek to ensure the prompt exchange of information. The mode of collaboration between the competent authorities presupposes accumulation and fast transmission of relevant information. This cooperation 'is effected through communication between the security organs of the Ministry of Interior and the authorities concerned or by means of diplomatic contacts through the organs of the Ministry of Foreign Affairs'.¹⁴⁸

What is more, it is necessary to underline one remarkable feature of Kuwait's counterterrorism policy. This feature is presented by the shift in priorities made by the national government. In the aftermath of the Iraq-Kuwait conflict and Al-Qaida

¹⁴⁷ U.S. Department of State, *Country Reports on Terrorism 2011 - Kuwait*, (31 July 2012), Available at: <<http://www.state.gov/j/ct/rls/crt/2011/195544.htm>> accessed 1st Dec. 2014.

¹⁴⁸ UN Security Council (CTC), 'Kuwait's Report to the CTC (2002)', Security Council, Distr.: General, 6 August 2002, S/2002/886, Letter dated 17 July 2002 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 6 August 2002.

terroristic activity, the counterterrorism methods provided by Kuwait's government were supposed to pay great attention to such hard security tools as 'surveillance, direct action, key point security, and censorship'.¹⁴⁹ However, after 2005, the Kuwaiti government started dealing with the root causes of terrorism.

The mentioned shift in the priorities determined the corresponding counterterrorism policy measures taken by Kuwait's national government. First, some measures are taken to attack the ideological base of violent extremism. In this context, the Ministry of Awqaf and Islamic Affairs undertake stricter monitoring of preachers. In addition, in 2006, a special commission to deal with the problems and issues believed to be important for Kuwaiti youth was organised by the International Moderation Centre. A programme called 'The Future Scholars' was initiated in order to educate youths in Islamic learning and how Islam rejects extremism and violence. The programme brings together psychologists, sociologists, educational experts, and clerics to create initiatives that help to combat extremism and terrorism at the national level.¹⁵⁰

Overall, the shift made by Kuwait's national government points to the fact that today's public policy is shaped by offensive measures rather than defensive. Whilst offensive measures mean that the 'measures taken to prevent, deter, and respond to terrorism' in order to eliminate or at least reduce it, defensive measures should be understood as the 'measures used to reduce the vulnerability of individuals and property to terrorist acts' to prevent and mitigate terrorism.¹⁵¹ A public policy aimed to eliminate the root causes of terrorism is more effective than that focused only on reducing terrorism.

Although numerous useful measures in the national public policy have been taken, several major challenges need to be overcome to achieve success in the implementation of the counterterrorism strategy. Political rivalry, absence of the central government's control over Kuwait's National Assembly, sectarian tensions

¹⁴⁹ See the International Moderation Center, 'Future Scholars', Available at: < <http://wasatiaonline.net/index.php/2014-03-10-13-08-42/51-2010-04-12-17-06-31>> accessed 1st Dec. 2014. See also Knights, M., 'Northern Gulf vulnerable to infiltration by terrorist groups', (1 October 2005), Jane's Intelligence Review, 11.

¹⁵⁰ *Ibid.*

¹⁵¹ Purpura, P., *Terrorism and Homeland Security: An Introduction with Applications* (Burlington, MA: Butterworth-Heinemann, 2007), 97.

between Sunni and Shiite Muslims, the demographic problem presented by the ‘youth explosion’, and increased radicalism among young Kuwaitis are the major challenges that complicate today’s counterterrorism-oriented public policy. Naturally, the elimination of these challenges will positively influence the implementation of the national counterterrorism strategy.

With the lapse of time, Kuwait’s counterterrorism strategy has positively changed; however, there are still many internal problems that should be solved. Today, Kuwait’s antiterrorist measures included in the national public policy promise a sustainable future for the state. Nevertheless, the real-life implementation of the counterterrorism strategy that violates Western human rights and freedoms peculiar to Kuwait must be eliminated from Kuwaiti society to ensure public safety and national security in a democratic way.

3.4 Conclusion

The counterterrorism strategies adopted in Kuwait have been formulated over many decades and constitute responses to the terrorism threats that became evident in the state during three periods of its existence – during the 1960s’ existence of Marxist-Leninist terror groups in the Middle East, during Shiite religious terrorists’ activities associated with the Iraq-Iran war, and during the recent terror threat from the Al-Qaida terrorist grouping. Though the sources of terrorism are fragmented in terms of timing and origins, it is notable that criminalisation as a strategy has been building throughout the development of the country's counterterrorism policies and has been the most basic and constant response. Protective security is another important strategy adopted by the government of Kuwait since the Iraq-Iran war. Internationalisation and countering radicalisation has been the most recent significant improvement made by the government of Kuwait to counter the threats of terrorism in an educational way and with the involvement in the international efforts on combating terrorism. In addition, the recent period of Kuwait’s existence is characterised by the multilateral assistance of powerful Western states and entities, such as the United States and the United Nations, which helps Kuwait to establish effectiveness and to formulate fair regulations to fight terrorism.

Kuwait, as a matter of political policy wants to be seen as an ally of the West, particularly to the United States. Therefore, in terms of rhetoric it goes along with the concept of the 'war on terror' and endorses it. According to the Head of the Follow-Up and Coordination Department at the Ministry of Foreign Affairs Ambassador Khalid Al-Maghames, 'Kuwait is keen on waging war against terrorism and its ramifications'.¹⁵² However, hard action does not follow, and the government of Kuwait does not mirror the American war on terror. For example, there is not any new security legislation which resembles the U.S. approach, and the Kuwaiti military stance cannot be compared with US activity. In addition, the government of Kuwait has not even mirrored the UK anti-terrorism legislations which is far more extensive compared with what Kuwait has adopted. Another approach to counterterrorism that Kuwait has not followed, apart from recently the implementation of international financial sanctions related to terrorist financiers in Kuwait, is the use of 'executive orders' (such as detention without trial). In fact, Kuwait has a modest or limited counter-terrorism strategy and catalogue of measures as outlined in this chapter.

However, it should be noted that although Kuwait's counter-terrorism strategy is restrained, yet it has been seen that for Kuwait at least it has been to some extent efficient and reasonable. For example, Kuwait has not witnessed a large number of terrorist attacks on its soil like the UK or the U.S., and therefore, it does not need to take the same actions as the UK or the U.S.. Overall, Kuwait's counter-terrorism strategies and actions have been mainly focused on criminalisation and protective security as the prime responses to terrorism threats. These two strategies mirror the UK's CONTEST strategies of 'pursue' and 'protect', albeit on a much reduced scale. Latterly, and especially because of external pressures action against terrorist financiers has been added as a strategy.

Consistent with the UN International Convention for the Suppression of the Financing of Terrorism 1999 (ICSFT) definition of terrorism and the acceptance of the Arab Convention for the Suppression of Terrorism's definitions, Kuwait has the counter-terrorism focus of its activity firmly embodied in the state Constitution and

¹⁵² Shaaban, B., 'Al-Maghames to 'Al-Anba': Kuwait fighting terrorism in all its forms', *Al-Anba*, (Kuwait, 9 April 2011), Available at: <<http://www.alanba.com.kw/ar/kuwait-news/186011/09-04-2011>> accessed 1st Dec. 2014.

many other related legislative documents. However, it is notable that, notwithstanding the respect that Kuwaiti legal authorities show toward both definitions, Kuwait has not yet ratified Arab Conventions, and as for the UN ICSFT it is not until June 2013 that Kuwait ratified it.¹⁵³ There are even doubts regarding the impact of some counter-measures within the Constitution in Kuwait, since the focus on preventing terrorism often affects the issues of privacy of personal issues, correspondence, private property, and the like. Hence, Kuwait can be considered an active combatant against terrorism in the international context, and through its legal framework for fighting terrorism, it has been prepared to strengthen counter-terrorism measures at the expense of Kuwaitis.

Overall, the counterterrorism strategies of Kuwait are designed well so far as they go, and Kuwait has implemented most of the international conventions against terrorism in so far as they relate to criminal law – specific criminal offences against terrorism, although they may be some faults/problems, as discussed in chapter four. However, there remain gaps in the provision. In fact, there were major gaps until very recently in regards to the financing of terrorism, as this thesis shall explain in chapter five. In addition, there is also a problem of bringing the laws into greater compliance with the domestic and international norms of democracy and liberty, which should be among the key priorities for the future. Therefore, this thesis shall assess in the next chapters the role of the internal and external influences in implementing these international conventions, which are also subjected to tests of effectiveness and fairness.

¹⁵³ See Chapter Five.

Chapter Four

The Kuwaiti Criminal Law: Criminal Offences Related to Terrorism

4.1 Introduction

The current chapter is dedicated to the criminal offences within the counterterrorism legislative framework of the State of Kuwait. The present chapter is organised as follows. Section I looks at the history and content of the major counterterrorist international treaties to which Kuwait acceded. In particular, Section I provides an overview of the following treaties: Convention on Offences and Certain Other Acts Committed On Board Aircraft, Convention for the Suppression of Unlawful Seizure of Aircraft, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the Montreal Protocol, Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, International Convention against the Taking of Hostages, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, and International Convention for the Suppression of Terrorist Bombings. It should be noted that this chapter will not cover the conventions on Nuclear terrorism, as it is not a major issue in Kuwait. Furthermore, the International Convention for the Suppression of the Financing of Terrorism 1999 will be discussed in detail in the next chapter. In addition, Section I offers a brief analysis of the limitations of the international treaties. The purpose of Section I is to show what kinds of obligations in the area of counterterrorism are imposed on Kuwait by international law.

Section II provides an overview and analysis of the domestically generated Kuwaiti laws that address terrorism. In particular the section looks at: Kuwaiti Penal Code No. 16 of 1960 and its Amended Laws, Law No. 31 of 1970 In Regards to Crimes Related to State Security, Law No. 6 of 1994 In Regards to Crimes Related to Safety of Aircrafts and Air Navigation, Decree of Law No. 13 of 1991 In Regards to Weapons and Ammunition, Law No. 35 of 1985 In Regards to Crimes of Explosives, and Law No. 17 of 1960 promulgating the Criminal Procedure Code.

The section discusses the ability of the laws to cover certain form of terrorism. Also, the section examines whether the domestic laws comply with the aforementioned international treaties. Furthermore, the section discusses potential interferences of the laws with the internationally accepted human rights. The main purpose of Section II is to find out whether Kuwait has comprehensive counterterrorist laws or whether it addresses terrorist acts within the general legislative framework. Furthermore, this section investigates whether international laws/agenda influenced the Kuwaiti legislator, and to what extent Kuwait has implemented the mentioned conventions in Section I.

Discussions contained in Section III flow from the finding that Kuwait lacks comprehensive counterterrorist laws. In this section the author argues that Kuwait should have comprehensive counterterrorist laws and cites reasons for that. The reasons are categorised into two groups: general and specific. General reasons explain why any State, not only Kuwait, should criminalise terrorism. Specific reasons clarify why it is important for Kuwait to have comprehensive counterterrorist laws. Section III also briefly discusses the relationship between counterterrorism laws and human rights.

4.2 Section I: International Law and Terrorism

4.2.1 Introductory Remarks

The current section discusses how international law addresses terrorism. The author looks at the key treaties designed to tackle the problem of terrorism. The presented analysis is limited only to those treaties to which Kuwait is a party. According to Article 70 of the Kuwaiti Constitution, ‘A treaty has the force of law after it is signed, ratified, and published in the Official Gazette’.¹ However, treaties that suggest additional budget expenditures or amendment of the Kuwait laws require the enactment of specific laws to enter into force.² In any case, the Kuwait Constitution allows treaties concluded by Kuwait to constitute a part of its national law. Therefore, the overview and analysis of these treaties can be regarded as an overview and analysis of Kuwaiti counter-terrorist laws.

¹ The Constitution of the State of Kuwait, Article 70.

² *Ibid.*

Thus, the purpose of this section is to find out to what extent the existing international instruments are enough to effectively fight against terrorism. The author reaches the conclusion that existing international treaties alone are unable to combat terrorism effectively. There should be further support from additional domestic laws. Such support should come in the form of further domestic implementation of international treaties, since the latter impose on Contracting States to enact necessary counter-terrorist laws. To put it simply, international treaties would be useless without counter-terrorist laws adopted by States.

4.2.2 International Conventions

4.2.2.1 Convention on Offences and Certain Other Acts Committed On Board Aircraft (the Tokyo Convention)

4.2.2.1.1 Brief History

By the year 1963, when the Tokyo Convention was concluded, aircraft hijacking became a pressing issue. For instance, the hijacking of US aircraft constituted forty percent of all the hijackings around the world.³ In particular, there was the wave of aircraft hijackings from the United States to Cuba. The United States unsuccessfully attempted to address the hijackings.⁴ The main reason for the failure was the fact that there was no formal diplomatic relationship between the United States and Cuba, and thus, it was impossible to find a formal legal solution for the problem.⁵

In 1962 at the Rome meeting of the Legal Committee of the International Civil Aviation Organisation (ICAO), a specialised UN body in the area of international civil aviation, the United States together with Venezuela suggested that the newly proposed Convention on the Legal Status of Aircraft should make a reference to aircraft hijacking.⁶ The US-Venezuela proposal met substantial support of the international community. At the Tokyo Conference which was held in September

³ Ghosh, S. K., *Terrorism: World under Siege*, (APH Publishing, New Delhi, 1995), 159.

⁴ McWhinney, E., *Aerial Piracy and International Terrorism: the illegal Diversion of Aircraft and International Law*, (2nd edn, Martinus Nijhoff Publishers, Dordrecht 1987), 34.

⁵ *Ibid.*

⁶ Romaniuk, P., *Multilateral Counter-Terrorism: the global politics of cooperation and contestation*, (Routledge global institutions, Abingdon: 2010), 34.

1963 it was generally agreed that it was important to address the issue of aircraft hijacking at the international level.⁷ The result of the conference was the conclusion of the Convention on Offences and Certain Other Acts Committed On Board Aircraft which is known as the Tokyo Convention. For Kuwait the Tokyo Convention entered into force on 25 February 1980.⁸

4.2.2.1.2 *How does the Convention address terrorism?*

The Tokyo Convention does not contain any reference to the term ‘terrorism’. However, it addresses one of the important forms of the twentieth-century terrorism which is aircraft hijacking. The notorious terrorist attack of 9/11 demonstrated the continued close link between aircraft hijacking and terrorism. Kuwait is one of the many countries that has faced the problem of aircraft hijacking. Thus, in December 1984 a Kuwait aircraft was hijacked in an attempt to release from prison the members of *Aljihad Al-Islami* organisation that claimed responsibility for the bomb attacks in Kuwait City in 1983.⁹ The aircraft was hijacked on the route from Dubai to Pakistan. During the hijacking two American passengers were killed.¹⁰ The aircraft was forced to land in Tehran, Iran.¹¹ Then the Iranian authorities raided the aircraft.¹² Thus, one may observe that aircraft hijacking serves for terrorists as one of the means to achieve their goals. Therefore, since the Tokyo Convention addresses aircraft hijacking, it addresses one of the most prominent and feared forms and means of terrorism.

Article 11 (1) of the Tokyo Convention reads as follows:

When a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight or when such an act is about to be committed, Contracting States shall take all appropriate measures to

⁷ Gist Jr., F. J., ‘The Aircraft Hijacker and International Law’, (Master of Laws Thesis, McGill University), 72.

⁸ Decree of Law No. 64 of 1979, Gazette Kuwait Al Youm, No. (1271) Year: Twenty Five.

⁹ Al-Ajmi, T. S., ‘Legal Responses to Terrorism with Special Reference to the Position of Kuwait’, (PhD Thesis, University of Wales, 2003). 314-315.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

restore control of the aircraft to its lawful commander or to preserve his control of the aircraft¹³

One may observe that Article 11 (1) does not use the term ‘hijacking’ but rather refers to unlawful interference, seizure or other wrongful exercise of control of an aircraft. Interestingly, the Convention does not denote these acts as crimes or offences. In simple terms, the Tokyo Convention does not criminalise aircraft hijacking. At this point it becomes clear that it is up to States whether or not to criminalise aircraft hijacking.

The Convention gives the Contracting States certain instruments to deal with aircraft hijacking. First, the Convention gives the State of aircraft registration the right to exercise jurisdiction over aircraft hijacking.¹⁴ Thus, if the aircraft registered in Kuwait was hijacked on the route from London to Dubai, Kuwait, under the Tokyo Convention, would have jurisdiction over the aircraft hijacking. To elaborate the hypothetical situation, suppose that under Kuwait law aircraft hijacking is not an offence. That would mean that at least in Kuwait, the hijackers would escape responsibility. This scenario shows how important it is for every country to address aircraft hijacking in their criminal law. For this reason, the Tokyo Convention foresees cases where a Contracting State which is not the State of Registration may exercise its criminal jurisdiction. Thus, Article 4 of the Convention allows a non-registration Contracting State to exercise jurisdiction over an aircraft in flight in the following cases: (1) the offence has effect on the territory of such a State; (2) it was a national or permanent resident of such as State who committed the offence; (3) the offence has been committed against a national of such a State; (4) the offence violates the laws and regulations of manoeuvre of aircraft or flight, which are in force in such a State; (5) a State should exercise such a jurisdiction in order to comply with its obligations under multilateral international treaties; (6) the offence threatens security of such a State.¹⁵

Exercising jurisdiction over aircraft hijacking can be a powerful tool for combating terrorism. In order to make the tool powerful, there should be

¹³ Convention on Offences and Certain Other Acts Committed On Board Aircraft (adopted 14 September 1963, entered into force 4 December 1969) 704 UNTS 220.

¹⁴ *Ibid*, Art. 3 (1)

¹⁵ *Ibid*, Art. 4

sustainable counter-terrorist laws in the States which are parties to the Tokyo Convention. Without such national laws, the exercise of jurisdiction is not capable to deal with terrorism effectively. Thus, Abeyratne correctly points out that ‘the Tokyo Convention is relatively ineffective if States do not make provisions in their own laws to give legal effect to the concerted action that is required at international law to combat terrorism’.¹⁶ In other words, the Tokyo Convention gives the States certain rights and imposes certain obligations. However, it is the sovereign right of States to decide in what manner these rights and obligations are to be exercised.

Another tool provided by the Tokyo Convention is powers assigned to aircraft commanders. Article 6 is assigned with powers to impose reasonable measures, including restraint, on person who commit, or is about to commit hijacking. This power, however, can be exercised only under the following circumstances: (1) aircraft is in flight (‘from the moment when all external doors are closed following embarkation until the moment when any such door is opened for disembarkation’); (2) there is a necessity to take measures to protect the safety of the aircraft, property, or persons; (3) there is a necessity to maintain discipline and order on board; (4) measures are necessary to enable the aircraft commander to deliver the hijacker to the competent authorities.¹⁷

4.2.2.1.3 *Limitations of the Convention*

The Tokyo Convention is the first attempt to address such form of terrorism as aircraft hijacking in a legally binding international document. As many first attempts, this one did not escape some flaws. The Convention contains many limitations some of which were probably the result of diplomatic compromise but others were unconsidered flaws.

The first limitation is that it does not apply to aircraft used in police services, military and customs.¹⁸ This limitation stems from the principle that international law produced within the UN framework concerns mainly international civil aviation. Indeed, the Chicago Convention, the fundamental convention which regulates international civil aviation, stipulates that it applies only to civil aircraft as

¹⁶ Abeyratne, R. I. R., *Aviation Security Law*, (Springer, 2010), 228.

¹⁷ Tokyo Convention, Art 6

¹⁸ Tokyo Convention, Art 1 (4)

opposed to state aircraft (which includes aircraft used in customs, police services and military).¹⁹ It means that if police, customs or military aircraft are hijacked, Kuwait or any other State cannot take measures provided by the Tokyo Convention.

Secondly, the Tokyo Convention imposes on the State of aircraft registration a duty to take measures to establish its jurisdiction²⁰ but it does not require the State of registration to prosecute, try, or extradite the hijackers. To recall, the treaty only requires taking a hijacker in custody. Moreover, Article 16 (2) expressly specifies: ‘nothing in this Convention shall be deemed to create an obligation to grant extradition’. The issue of prosecution, trial and extradition are left to the discretion of the State of registration or the State which may exercise its jurisdiction over the aircraft hijacking as foreseen by the Tokyo Convention. Thus, if a State of aircraft registration does not have laws which entitle its authorities to prosecute or extradite hijackers the latter can completely escape responsibility. The absence of prosecution and extradition obligations in the Tokyo Convention makes the treaty a toothless beast.

In addition, the requirement to take measures necessary to establish jurisdiction appears to be the requirement of minimum measures. Mendelsohn explains that despite the imperative language adopted in Article 3 (2) of the Convention, it leaves upon the discretion of a State of aircraft registration to decide whether establish jurisdiction over acts, even if they are criminal under the State’s law.²¹ Moreover, even a Contracting State declines to take measures to establish jurisdiction no other Contracting State can see such a decline as a violation of the Tokyo Convention.²² Indeed, one may observe that the treaty does not foresee any sanction for the disinclination to establish jurisdiction.

¹⁹ Convention on International Civil Aviation (adopted 7 December 1944, entered into force 4 April 1947) 15 UNTS 296, Art.3

²⁰ Tokyo Convention, Art 3 (2)

²¹ Mendelsohn, A., ‘In-Flight Crime: The International and Domestic Picture Under the Tokyo Convention’, (1967) 53 Virginia Law Review 509, 516.

²² *Ibid.*

4.2.2.2 Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague Hijacking Convention)

4.2.2.2.1 *Brief History*

It is soon become apparent that the Tokyo Convention was insufficient to deal with terrorism. The year 1969 witnessed the wave of aircraft hijackings. In particular, 82 hijackings were recorded.²³ This figure is almost twice much than the number of hijackings recorded in the period between 1948 and 1968.²⁴ The high number of hijackings and the weakness of the Tokyo Convention made the Legal Committee of the ICAO accept that Article 11 ‘does not provide a complete remedy’ for aircraft hijackings.²⁵ The Legal Committee worked on the draft Convention that was subsequently submitted to the ICAO Conference in The Hague. The Conference was attended by 77 States and resulted in the adoption of the draft without any alternation on 16 December 1970.²⁶ Kuwait acceded to the Convention on 25 May 1979.²⁷

4.2.2.2.2 *How does the Convention addresses terrorism?*

The Hague Hijacking Convention is referred to as ‘... a milestone both in general development of an international criminal law and in the fight against aerial hijacking specifically’.²⁸ This Convention was designed to eliminate or mitigate flaws of the Tokyo Convention. As well as the Tokyo Convention, the Hague Hijacking Convention does not contain the term terrorism. However, unlike the Tokyo Convention, the treaty expressly indicates aircraft hijacking is an offence. Thus, Article 1 of the Convention stipulates:

Any person who on board an aircraft in flight:

²³ Williams, C. and Waltrip, S., *Aircrew Security: A Practical Guide*, (Ashgate Publishing, 2004), 70.

²⁴ *Ibid.*

²⁵ Abeyratne, R. I. R., *Aviation Security Law*, (Springer, 2010), 230.

²⁶ *Ibid.*

²⁷ Decree of Law No. 19 of 1979, *Gazette Kuwait Al Youm*, No. (1245) Year: Twenty Five.

²⁸ Mankiewicz, R. H., ‘The Hague Convention’, (1971) 37 *Journal of Air Law and Commerce* 195, 195.

- a. unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or
- b. is an accomplice of a person who performs or attempts to perform any such act commits an offence (hereinafter referred to as ‘the offence’)²⁹

Defining aircraft hijacking as an offence brings more legal certainty. Thus, even if under national law of a Contracting State aircraft hijacking was not an offence, a Contracting State which acceded to the Convention now should treat it as an offence. It is also important that Article 1 covers not only a hijacker but also a person, who assists a hijacker.

Compared to the Tokyo Convention, the Hague Hijacking Convention imposes more strict duties upon the Contracting States. Thus, the Convention requires the Contracting States to make aircraft hijacking punishable by severe penalties.³⁰ It means that Contracting States have to enact specific criminal laws which foresee severe criminal responsibility for aircraft hijacking. Therefore, under this treaty Kuwait is under the duty to enact laws that would provide for a severe punishment for a crime of hijacking. While the Tokyo Convention left it up to States to decide whether aircraft hijacking is an offence and whether it should be addressed by criminal justice, the Hague Hijacking Convention allows no such a choice.

Another obligation imposed by the treaty on the Contracting States is the obligation to prosecute or extradite aircraft hijackers (*aut dedere aut judicare*). Thus, Article 7 provides that if the Contracting State on whose territory the offender is found, should, if not extradite him, then, at least, ‘to submit the case to its competent authorities for the purpose of prosecution’. One may observe that the Convention does not require the Contracting States to extradite hijackers. However, what the treaty mandates is to treat aircraft hijacking as an extraditable offence.³¹ For Kuwait this obligation means that in case an alleged hijacker is found on its

²⁹ Convention for the Suppression of Unlawful Seizure of Aircraft (adopted 16 December 1970, entered into force 14 October 1971) 860 UNTS 1971.

³⁰ *Ibid*, Art 2

³¹ *Ibid*, Art 8

territory, it should take measures, if not extradite, then at least take measures to prosecute such a hijacker.

4.2.2.2.3 *Limitations of the Convention*

As well as the Tokyo Convention, the Hague Hijacking Convention does not apply to aircraft used in military, police or customs service.³² Furthermore, some restrictions can be found in the definition of hijacking embodied in Article 1. To recall, Article 1 defines hijacking as an offence committed while aircraft in flight. Chung correctly points out that the Hague Convention, similar to the Tokyo Convention in that it covers only the so called ‘on board hijacking’.³³ The author specifies that there is another type of hijacking which is a ‘non-on-board hijacking’.³⁴ The example of a ‘non-on-board hijacking’ is when a person who is not on board of aircraft placed a bomb or other device on the aircraft and may extort the aircraft to divert from its route.³⁵ There are also suggestions that it is possible to hijack an aircraft via remote control.³⁶ Currently these cases are not addressed by the Hague Convention. It means that a person who placed a bomb or other device which enables the extortion or forced the diversion of an aircraft cannot be taken into custody or prosecuted only by virtue of the Hague Hijacking Convention. Nowadays, to bring such a person to justice, national counter-terrorist laws are needed.

At the same time, the situation may change in the near future. The point is that at the Diplomatic Conference on Aviation Security, which was held in Beijing from 30 August to 10 September 2010, States signed the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (the Beijing Protocol), which covers different forms of hijacking. The Beijing Protocol significantly expands the scope of the Hague Hijacking Convention. In particular, it amends Article 1 of the Hague Hijacking Convention.³⁷ As a result, the Protocol eliminates the ‘in flight’ restriction. The new Article 1 (1) covers all cases when a

³² *Ibid*, Article 3 (2)

³³ Chung, D. Y. S., ‘Some Legal Aspects of Aircraft Hijacking in International Law’, (PhD Thesis, University of Tennessee, 1976), 643.

³⁴ *Ibid*.

³⁵ *Ibid*.

³⁶ *Ibid*.

³⁷ For further information see ‘Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft’ (adopted 10 September 2010, not in force), Art II

person unlawfully controls an aircraft, no matter whether such person on board or not. In other words, the Beijing Protocol covers also a ‘non-board’ hijacking. Also, the Protocol addresses not only the act per se but also a threat and/or of hijacking. Furthermore, the circle of persons who can be responsible for the hijacking is enlarged. Now it includes not only the person who directly committed the offence but also those once who organised it and assisted it. Moreover, the Convention requires Contracting Parties to treat as an offence an agreement to commit hijacking (whether on board or non-on-board) or assistance to commit. To sum up the Beijing Protocol imposes more strict and precise duties on the Contracting States to address terrorism in their national laws. It should be noted that the Protocol is not yet in force.

4.2.2.3 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (sometimes referred to as the Sabotage Convention or the Montreal Convention)

4.2.2.3.1 *Brief History*

On February 21, 1970 an aircraft heading from Zurich to Tel Aviv exploded about nine minutes after take-off. The bomb that was placed in the aircraft was set to explode when the aircraft reached 30,000 feet.³⁸ In result of the attack, forty-seven passengers and crew members were killed. On the same day another explosion occurred. The aircraft assigned for the cargo flight bound for Tel Aviv exploded in mid-air.³⁹ The aircraft managed to make an emergency landing in Frankfurt.⁴⁰ As well as in the first instance, the bomb was placed in the plane. These two cases compelled the international community to take an immediate action.

There were expectations that the cases of aviation sabotage could be addressed through amendments to the Hague Hijacking Convention.⁴¹ However, the

³⁸ Comras, V. D., *Flawed Diplomacy: the United Nations and the War on Terrorism*, (1st edn, Washington, D.C., Potomac Books, 2010).

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Cheng, B., ‘Aviation, Criminal Jurisdiction and Terrorism: The Hague Extradition/Prosecution Formula and Attacks in Airports’, in Cheng, B. and Brown, E. D. (eds), *Contemporary Problems in*

Convention was not in force yet and there were fears that amendments would delay the treaty's entry into force.⁴² Therefore, it was decided to adopt a new treaty which would address aviation sabotage. The outcome is that the Montreal Treaty is almost identical to the Hague Hijacking Convention. The only difference is that the former addresses aviation sabotage. The Sabotage Convention was signed on 23 September 1971 in Montreal. For Kuwait, the Convention entered into force on 23 November 1979.⁴³

4.2.2.3.2 *How does the Convention addresses terrorism?*

The Montreal Convention addresses terrorism in the same way as the Hague Hijacking Convention does. In other words, the Sabotage Convention addresses a particular form of terrorism which is aviation sabotage. Originally, the Sabotage Convention, as well as the Hague Hijacking Convention conferred the concept of offence only to the aircraft in flight or aircraft in service. The Article 1 of the Sabotage Convention defines the aviation sabotage as follows – an act of violence against a person on board of aircraft if such act is likely to put the aircraft safety in danger, or destruction of aircraft in service, or causing such damage to aircraft that makes it incapable of flight, or placing a device or substance which is likely to destroy aircraft or render it incapable of flight, or destruction and damaging air navigation facilities, or communication of false information and thus, putting an aircraft in danger. The attempt to commit aviation sabotage is also considered as an offence.⁴⁴

On 24 February 1988 the States signed the Protocol for the Suppression of Unlawful Acts of Violence at Airports serving the International Civil Aviation (the Montreal Protocol). This Protocol is a supplement to the Sabotage Convention. For Kuwait, the Montreal Protocol entered into force on 6 August 1989.⁴⁵ The Montreal Protocol extends the scope of the Sabotage Convention to airports serving international civil aviation. Thus, the aviation sabotage, except as discussed earlier,

International Law: Essays in Honour of Georg Schwarzenberger on his Eightieth Birthday, (Stevens and Sons, London 1988), 42.

⁴² *Ibid*

⁴³ Decree of Law No. 62 of 1979, Gazette Kuwait Al Youm, No. (1271) Year: Twenty Five.

⁴⁴ Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (adopted 23 September 1971, entered into force 26 January 1973) 974 UNTS 178, Art 1 (2)

⁴⁵ Decree of Law No. 71 of 1988, Gazette Kuwait Al Youm, No. (1803) Year: Thirty Five.

also includes acts of violence against a person at an airport serving international civil aviation that leads to serious injury or death, or destruction or damaging the facilities of an airport serving international civil aviation or aircraft, which is not in service.⁴⁶ In order to qualify as aviation sabotage, the aforementioned acts should be accompanied with the use of any weapon, device, or substance and to put or likely to put an airport serving international civil aviation in danger.⁴⁷ One may observe that the purpose of the Montreal Protocol is to address aviation sabotage which takes place other than on board. One may draw an analogy with ‘on board’ and ‘not-on-board’ hijacking. Here, there can also be ‘on board’ sabotage (as originally foreseen by the Sabotage Convention) and ‘not-on-board’ sabotage (as addressed by the Montreal Protocol of 1988).

The Sabotage Convention imposes the same duties on the Contracting States as the Hague Hijacking Convention: (1) to make aviation sabotage (whether ‘on-board’ or ‘not-on-board’) severally punishable;⁴⁸ (2) to take measures to establish its jurisdiction over the aviation sabotage when it is committed on the territory of the State, or is committed on board or against aircraft registered in the State, or the aircraft with an alleged offender lands in the territory of the State, or on board or against the aircraft leased by company, whose principal place of business in the State;⁴⁹ (3) take an alleged offender into custody;⁵⁰ (4) make preliminary enquiry into facts;⁵¹ (5) notify interested States of the person in custody and circumstances of detention;⁵² (6) to, if not extradite, be obliged to present the case before the competent authorities with the purpose of prosecution of the offender;⁵³ (7) to make an effort to take all feasible measures to prevent aviation sabotage.⁵⁴

⁴⁶ Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (adopted 24 February 1988, entered into force 6 August 1989) 1589 UNTS 474,

Art II

⁴⁷ *Ibid.*

⁴⁸ Sabotage Convention, Art 3

⁴⁹ *Ibid.*, Art 5

⁵⁰ *Ibid.*, Art 6 (1)

⁵¹ *Ibid.*, Art 6 (2)

⁵² *Ibid.*, Art 6 (4)

⁵³ *Ibid.*, Art 7

⁵⁴ *Ibid.*, Art 10 (1)

4.2.2.3.3 *Limitations of the Convention*

As with all the before mentioned treaties, the Sabotage Convention does not apply to aircraft used in police, military, or customs.⁵⁵ The original weakness as regards the narrow scope (only ‘in flight’ offences were addressed) was later eliminated by the Montreal Protocol. Finally, one more weakness of the Convention is that it lacks an enforcement mechanism. In other words, even if the State fails to comply with its treaty obligations, there are no sanctions. It means if the State refuses to prosecute an alleged offender, the Convention does not offer any solution. At the same time, the lack of enforcement is the weakness of all international law in general.

4.2.2.4 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents

4.2.2.4.1 *Brief History*

Another significant form of terrorism is violent attacks on diplomats. Among numerous cases of terrorist attacks on diplomat, two instances attracted special media attention. In March 1970 Karl Count von Spreti, an ambassador of the West Germany to Guatemala was kidnapped and assassinated by guerrillas who sought to exchange him for twenty-two incarcerated rebels.⁵⁶ In March 1973, another case involving several diplomats, among which there were Belgians and Americans, were taken as hostages, and subsequently were killed, by Palestinians during a reception at the Saudi embassy in Khartoum, Sudan.⁵⁷ Both these events attracted enormous public attention throughout the world. It became clear that diplomats were increasingly becoming an attractive target for terrorists. The adoption of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents was prompted by these unfortunate

⁵⁵ *Ibid*, Art 4 (1)

⁵⁶ See Craig Barker, J., *The Protection of Diplomatic Personnel*, (Ashgate, Aldershot, 2006), 4. For details of this case see the BBC archive for 5 April 1970, Available at <http://news.bbc.co.uk/onthisday/hi/dates/stories/april/5/newsid_2522000/2522703.stm> accessed 1st Dec. 2014.

⁵⁷ See Blumenau, B., ‘The UN and West Germany’s Efforts Against International Terrorism in the 70s’, in Hanhimäki, J. M. and Blumenau, B. (eds), *An International History of Terrorism: Western and Non-Western Experiences*, (Routledge, London 2013), 73-75.

cases.⁵⁸ The Convention was adopted on 14 December 1973. In Kuwait, the Convention entered into force on 1 March 1989.⁵⁹

4.2.2.4.2 *How does the Convention address terrorism?*

First, the Convention defines who can fall under the category of internationally protected persons. Article 1 specifies that the following persons are internationally protected persons: Head of State, Head of Government, Minister of Foreign Affairs and their accompanying families; representatives and officials of a State, officials and agents of intergovernmental international organisations. Second, the Convention covers the following offences: murder, kidnapping, or other attack on internationally protected person or her liberty committed intentionally; a violent attack on the official premises, the means of transport, or the private accommodation of an internationally protected person; a threat to commit such an attack; an attempt to commit such an attack; participate in the accomplishment of such an attack.⁶⁰ Third, the Convention imposes the following obligations on a Contracting State: (1) to make the crimes punishable by appropriate penalties;⁶¹ (2) to take measures necessary to establish jurisdiction when the crime occurs on the its territory, or on board of aircraft or ship registered in the State, or when an alleged offender is a national of the State, or when a crime is committed against internationally protected person, who exercises functions on behalf of the State;⁶² (3) to take all feasible measures to prevent preparation of the crimes in its territory;⁶³ (4) to exchange information and coordinate measures to prevent the commission of the crimes;⁶⁴ (5) to communicate all relevant facts of the crime and information on identity of the alleged offender who fled from its territory;⁶⁵ (6) to endeavour to transmit information about victims and the circumstances of the crime

⁵⁸ Green, A. B., 'Convention on the Prevention and Punishment of Crimes Against Diplomatic Agents and Other Internationally Protected Persons: An Analysis' 14 *Virginia Journal of International Law* 703, 703.

⁵⁹ Decree of Law No. 72 of 1988, *Gazette Kuwait Al Youm*, No. (1803) Year: Thirty Five.

⁶⁰ Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (adopted 14 December 1973, entered into force 20 February 1977) 1035 UNTS 167, Art 2

⁶¹ *Ibid*, Art 2 (2)

⁶² *Ibid*, Art 3 (1)

⁶³ *Ibid*, Art 4

⁶⁴ *Ibid*.

⁶⁵ *Ibid* Art 5 (1)

to interested States;⁶⁶ (7) to take an alleged offender into custody with the purpose of further prosecution or extradition;⁶⁷ (8) to submit the case to competent authorities with the purpose of prosecution of an alleged offender;⁶⁸ (9) to treat the crimes concerned as extraditable;⁶⁹ (10) and to communicate the final outcome of the criminal proceedings regarding an alleged offender to the Secretary-General of UN.⁷⁰ One may observe that, as far as obligations of Contracting States are concerned, the Convention in many respects is similar to the Hague Hijacking Convention and the Sabotage Convention. Thus, the treaty imposes a duty to prosecute an alleged offender, but contains no imperative language as to extradition. In simple terms, there is no obligation to extradite an alleged offender under this treaty.

4.2.2.4.3 *Limitations of the Convention*

The major limitation of the Convention is that it protects only a very limited circle of persons. Every year many people become victims of terrorists. At the same time, the Convention protects only diplomatic personnel. Such a narrow approach is explained by the fact that the majority of States believed that it was more feasible to achieve an international accord on the Convention which covers traditional subjects of international law rather than on any other document that would give protection to all mankind in general.⁷¹ The fact that the treaty protects only a very limited circle of individuals, however, is negated to a certain extent because of the existence of other multilateral international treaties. For instance, the Tokyo Convention, the Hague Hijacking Convention and the Sabotage Convention render their protection to such broad categories as air passengers. Indeed, independently of status, nationality, origin, religious views and other factors, air passengers may enjoy the protection provided by the afore-mentioned international treaties.

⁶⁶ *Ibid*, Art 5 (2)

⁶⁷ *Ibid*, Art 6

⁶⁸ *Ibid*, Art 7

⁶⁹ *Ibid*, Art 8 (1)

⁷⁰ *Ibid*, Art 11

⁷¹ Green, A. B., 'Convention on the Prevention and Punishment of Crimes Against Diplomatic Agents and Other Internationally Protected Persons: An Analysis' 14 Virginia Journal of International Law 703, 703.

4.2.2.5 International Convention against the Taking of Hostages (the Hostages Convention)

4.2.2.5.1 *Brief History*

As it has been mentioned earlier, not only diplomats and other protected persons often become victims of terrorist attacks. Taking hostages is one of the forms of terrorism. One of the most notorious hostage crises took place in 1972 in Munich. The Israeli athletes were taken as hostages by the members of the one of the Palestinian terrorist groups. The Palestinians demanded the release of 230 prisoners from Israeli prisons.⁷² Also, they demanded West Germany to release five members of the terrorist group known as the Baader-Meinhof gang.⁷³ Israel was reluctant to negotiate or to make any concessions.⁷⁴ There were negotiations and terrorists were even able to get to the airport together with hostages.⁷⁵ However, the result of an attempt of German police to release the hostages was that the terrorists opened fire and all the hostages were killed.⁷⁶ The Munich massacre shocked the world.⁷⁷ Apart from this kidnapping became another pressing problem. Thus, there were several instances of kidnapping of German businessmen.⁷⁸ Perhaps, for this reason it was Germany that became an initiator of the International Convention Against Taking Hostages.⁷⁹ In a letter dated 28 September 1976 the Federal Republic of Germany stated that taking hostages became of the pressing global problems and proposed to adopt an international instrument that would deal with the problem of the hostage taking.⁸⁰ After this proposal the usual procedure followed: Ad-Hoc Committee was established to produce a draft Convention.⁸¹

⁷² Hunsicker, A., *Understanding International Counter Terrorism: A Professional's Guide to the Operational Art*, (Universal-Publishers, 2006), 116.

⁷³ *Ibid.*

⁷⁴ *Ibid.*, 117

⁷⁵ *Ibid.*, 119

⁷⁶ *Ibid.*, 119

⁷⁷ Murphy, J. F., *The United Nations and the Control of International Violence: A Legal and Political Analysis*, (Manchester University Press, 1983), 194.

⁷⁸ *Ibid.*

⁷⁹ United Nations, 'International Convention Against the Taking of Hostages', Available at: <http://untreaty.un.org/cod/avl/pdf/ha/icath/icath_ph_e.pdf> accessed 1st Dec. 2014.

⁸⁰ *Ibid.*

⁸¹ Murphy, J. F., *The United Nations and the Control of International Violence: A Legal and Political Analysis*, (Manchester University Press, 1983), 194.

Finally, the Convention was adopted on 17 December 1979. Kuwait ratified the Convention on 6 February 1989.⁸²

4.2.2.5.2 *How does the Convention address terrorism?*

First, the Convention defines an offence of the hostage taking which includes: seizure or detention or threat to kill or to injure or to continue to detain a hostage in order to compel a State, an international organisation or intergovernmental organisation, or natural or legal person, or group of persons to do or to abstain from doing any act; attempt to commit hostage taking; participation as an accomplice in the hostage taking.⁸³ Second, the Hostage Convention requires the States to make the hostage-taking punishable by appropriate penalties.⁸⁴ It means that a Contracting State should enact laws, if there are no any, which would foresee appropriate punishment for the offence of hostage-taking. Furthermore, the Contracting States are under the duty to take all appropriate measures to ease the situation of the hostage, e.g. to secure his release and to facilitate his departure if necessary.⁸⁵ As well as the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, the Hostage Convention requires the Contracting States to take all feasible measures to prevent the hostage taking, and exchange information and coordinate such measures with other interested States.⁸⁶

In general, the Hostage Convention is similar to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents. Thus, as well all the Conventions which have been discussed before, the Hostages Convention does not mandate the Contracting States to extradite the offender. Moreover, the Hostages Convention explicitly allows the Contracting States to deny extradition of the offender if the request for extradition is based on the aspiration to punish the offender on account of his ethnic origin, nationality, race, or political opinion.⁸⁷ Also, a Contracting State may deny an

⁸² Decree of Law No. 73 of 1988, Gazette Kuwait Al Youm, No. (1803) Year: Thirty Five.

⁸³ International Convention Against the Taking of Hostages (adopted 17 December 1979, entered into force 3 June 1983) 1316 UNTS 205, Art 1

⁸⁴ *Ibid*, Art 2

⁸⁵ *Ibid*, Art 3 (1)

⁸⁶ *Ibid*, Art 4

⁸⁷ *Ibid*, Art 9 (1)

extradition if the alleged offender may be prejudiced or if he will not be able to exercise his rights of protection.⁸⁸ These provisions essentially represent a compromise between the concerns about human rights and the need for security. During the negotiations, many countries expressed the concerns that the future Convention would result in the condemnation of hostage taking by ‘liberation fighters’, while ‘massive hostage taking’ by oppressive, racist and colonial regimes would remain unaddressed.⁸⁹ The provision that a Contracting State may refuse extradition of an alleged offender serves as a certain safeguard to persons viewed as ‘liberation fighters’. Thus, if a Contracting State, which took an alleged offender in custody, has reasons to believe that in the State, which requested his extradition, such an offender will be prejudiced by the oppressive regime because of his race or religion, it has legitimate reasons, as per the Convention, to deny extradition.

While the Convention does not explicitly mandate the extradition of an alleged offender, it does require taking measures to prosecute hostage takers. In particular, the Convention requires submitting the case before the competent authorities with the purpose of further prosecution.⁹⁰ Then, the Convention specifies that the competent authorities should take the decision in accordance with the national law of the State concerned. This specification shows the importance of national law in dealing with an offence of hostage taking.

4.2.2.5.3 *Limitations of the Convention*

The major limitation of the Hostages Convention is that the obligation to prosecute an alleged offender or consider his extradition does not apply to acts of hostage-taking committed in the course of an armed conflict.⁹¹ Moreover, the Convention does not apply in the cases of armed conflicts where people are fighting against the foreign occupation, colonial domination, and against racist regimes in the exercise of their right to self-determination.⁹² At the first glance, such conclusions seem to be supportive of ‘liberation fighters’. However, the important

⁸⁸ *Ibid*

⁸⁹ Verwey, W. D., ‘The International Hostages Convention and National Liberation Movements’, (1981) 75 *The American Journal of International Law* 69, 69-70. See also Murphy, J. F., *The United Nations and the Control of International Violence: A Legal and Political Analysis*, (Manchester University Press, 1983), 195.

⁹⁰ The Hostages Convention, Art 8

⁹¹ *Ibid*, Art 12

⁹² *Ibid*, Art 12

reservation is that the Convention does not apply in the case of armed conflicts insofar the Geneva Conventions 1949 and Additional Protocols to these Conventions apply.⁹³ The effect of these complicated provisions is that while, the Convention treats national liberation movements as legitimate,⁹⁴ it does not accept that terrorist acts may be justified by such movements. In simple terms, the Convention applies to all cases of international hostage-taking.⁹⁵ The key term here is ‘international’. It means that if a national liberation movement within a given country takes hostages, the Hostages Convention may not apply, because such act may not necessarily be seen as an international hostage taking, particularly if it does not involve nationals of other countries, but only the nationals of the given country.

4.2.2.6 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (the Rome Convention)

4.2.2.6.1 *Brief History*

As with many other counter-terrorist conventions, the Rome Convention became a response to particular acts of terrorism. In October 1985 members of one of the Palestinian terrorist groups seized an Italian vessel *Achille Lauro* when it was heading from Alexandria to Port Said.⁹⁶ Shortly after the incident, in November 1985, the problem of maritime terrorism was raised before the International Maritime Organization (IMO).⁹⁷ In particular, the United States suggested that there is a need to prevent maritime terrorism which takes a form of ship hijacking, crew kidnapping, explosion of ships, killing passengers or threat to kill them.⁹⁸ A year later, in November 1986 the governments of Egypt, Italy, and Austria submitted a proposal to draft a convention on the unlawful acts against the safety of maritime

⁹³ *Ibid*, Art 12

⁹⁴ Verwey, W. D., ‘The International Hostages Convention and National Liberation Movements’, (1981) 75 *The American Journal of International Law* 69, 86.

⁹⁵ Murphy, J. F., *The United Nations and the Control of International Violence: A Legal and Political Analysis*, (Manchester University Press, 1983), 195.

⁹⁶ Treves, T., ‘The Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation’, in Ronzitti, N., *Maritime Terrorism and International Law* (vol. 6, Martinus Nijhoff Publishers, 1990), 69.

⁹⁷ International Maritime Organization, ‘Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf’, Available at: <http://www.imo.org/about/conventions/listofconventions/pages/sua-treaties.aspx> accessed 1st Dec. 2014.

⁹⁸ *Ibid*.

navigation.⁹⁹ On March 1988, at the Rome Conference, the Convention was adopted.¹⁰⁰ Kuwait ratified the Convention on 30 June 2003.¹⁰¹

4.2.2.6.2 *How does the Convention address terrorism?*

The Convention does not explicitly refer to the term ‘terrorism’ or ‘maritime terrorism’. At the same time, the Rome Convention defines offences that constitute maritime terrorism. These offences include: unlawful and intentional seizure of a ship or exercising control over a ship by means of force, a threat of force and other forms of intimidation, or act of violence against a person of board if such an act is likely to endanger the safe navigation of a ship, or destruction of a ship or damage to it or its cargo that endangers the safe navigation of ship, placing devices that are likely to the safe navigation, destruction or damage to maritime navigational facilities, communication of a false information that endangers the safe navigation of a ship, or killing or injuring a person in connection with an attempt to commit the aforementioned offences.¹⁰² The attempt or threat to commit these acts is also treated as an offence.¹⁰³ Furthermore, abetting to commit those acts constitutes an offence as well.¹⁰⁴

The scope of the Convention is extended by the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. By virtue of this Protocol the Convention also covers the following offences: unlawful and intentional seizure or exercise of control over the fixed platforms by force or by threat of force, or act of violence against a person on board of the fixed platform which is likely to endanger the platform’s safety, or destruction or damage to the fixed platform, or placing a device that is likely to destroy the platform.¹⁰⁵ The relationship between the Rome Convention and the Fixed Platforms Protocol is the same as the relationship between the Sabotage Convention and the Protocol for

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Law No. 15 of 2003, Gazette Kuwait Al Youm, Suppl. to No. (614) Part. (1) Year: Forty Nine.

¹⁰² Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 221, Art 3 (1)

¹⁰³ *Ibid.*, Art 3 (2)

¹⁰⁴ *Ibid.*

¹⁰⁵ Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 304, Art 2

the Suppression of Unlawful Acts of Violence at Airports serving the International Civil Aviation. To recall, initially the Sabotage Convention applied only to acts of sabotage as regards of aircraft (e.g. movable item), while it did not cover sabotage as regards ground facilities located in airports. The same analogy can be found in the Rome Convention and the Fixed Platforms Protocol. Initially, the Rome Convention applied only to offences made against ships and persons on board of ships (e.g. movable property). The Fixed Platforms Protocol addresses offences against immovable property which is the fixed platform. Kuwait ratified the Protocol on 30 June 2003.¹⁰⁶

The scope of the Rome Convention is further broadened by the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. In particular, the 2005 Protocol specifies that the following acts constitute an offence: unlawful and intentional use against the ship or on the ship any radioactive material, explosive, biological or chemical weapon in manner that induces death or serious injury, or discharge from a ship of liquefied natural gas, oil, or other hazardous substance in a quantity or concentration which is likely to cause death or serious injury, or transportation on board of a ship of aforementioned substances knowing that they are to be used to threat to cause or to cause death or serious injury, or transportation on board a ship of persons who have committed terrorist acts.¹⁰⁷

The Rome Convention contains the requirement to provide for appropriate penalties for the offences concerned.¹⁰⁸ There are also obligations to establish jurisdiction over the offences. Thus, the State is under the duty to take all necessary measures to establish jurisdiction when the offence is committed against its ship (flying the flag of the State), or committed in its territory, or committed by its national.¹⁰⁹ Another previously established obligation which is set forth in the Convention is the duty to take an alleged offender into custody and investigate the

¹⁰⁶ Law No. 16 of 2003, Gazette Kuwait Al Youm, Suppl. to No. (614) Part. (1) Year: Forty Nine.

¹⁰⁷ Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (adopted 14 October 2005, entered into force 28 July 2010), Available at: <https://www.unodc.org/tldb/en/2005_Protocol2Convention_Maritime%20Navigation.html> accessed 1st Dec. 2014.

¹⁰⁸ The Rome Convention, Art 5

¹⁰⁹ *Ibid*, Art 6 (1)

facts of the offence.¹¹⁰ Also, the State which took an alleged offender into custody is under the duty to notify this fact to the State which has established jurisdiction over the offence and to other interested States.¹¹¹ Furthermore, there are certain obligations of the Contracting State as regards the definition of the authority of a master of a ship. In particular, the Rome Convention specifies that the States should ensure that the master of a ship is under the obligation, whenever it is practicable, while delivering an alleged offender to give a notification to the authorities of the receiving State and the reasons for delivery.¹¹² To put it differently, the Contracting States in their legislation should foresee the master's obligation to notify the receiving State about the delivery of an alleged offender.

The Rome Convention also set forth the well-known prosecution/extradition formula. In other words, the treaty provides that if the State chooses not to extradite the offender, it should submit the case before the competent authorities with the purpose to prosecute an alleged offender.¹¹³ The offences foreseen by the Convention and its protocols should be treated as extraditable ones.¹¹⁴

4.2.2.6.3 *Limitations of the Convention*

Article 2 (1) of the Convention stipulates that the treaty does not apply to warships, ships operated by States in the course of use for customs or police purposes, or as a naval auxiliary, or laid up ships or ships withdrawn from navigation. Here, one may draw the analogy with the counter-terrorist convention in the area of aviation. The aviation conventions do not apply to the aircraft used for the state purposes (customs, military, and police). The same concept is adopted by the Rome Convention: it does not apply to ships used for state purposes.

There are also limits set forth in the 2005 Protocol. Thus, by virtue of the Protocol the Convention does not apply to the activities of the armed forces during an armed conflict.¹¹⁵ It means that if armed forces of one country seize by force the ship flying under the flag of the belligerent country, such an act would not be

¹¹⁰ *Ibid*, Art 7 (1)

¹¹¹ *Ibid*, Art 7 (5)

¹¹² *Ibid*, Art 8 (2)

¹¹³ *Ibid*, Art 10 (1)

¹¹⁴ *Ibid*, Art 11 (1)

¹¹⁵ The 2005 Protocol, Art 3

covered by the Rome Convention. In such a case, the situation would fall under the existing international humanitarian law treaties.

One more limitation is contained in Article 4 (1) of the Rome Convention. The Article reads as follows: ‘This Convention applies if the ship is navigating or is scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States’. Apparently, this provision is inserted to ensure the ‘internationality’ of the Convention. For instance, if the seizure had taken place in the territorial sea of Kuwait, the incident would not fall under the scope of the Convention. At the same time, by virtue of Article 4 (2) if the seizure of a ship had taken place in the territorial sea of Kuwait, but the offender would be found in the territory of Saudi Arabia, the Convention would still apply. The point is that Article 4 (2) stipulates that the Convention ‘nevertheless applies when the offender or the alleged offender is found in the territory of a State Party other than the State referred to in paragraph 1’. Despite this reservation, the limitation contained in Article 4 (1) still seems unreasonably strict. Suppose a ship was seized by force in the territorial sea of Oman by a Kuwaiti national. In such a case, the Convention would not apply if such a Kuwaiti national would be found in the territory of Oman. This case would be subject to the Omani national law, and Kuwait, at least under the Rome Convention, would not be able to claim its jurisdiction over the offence.

4.2.2.7 International Convention for the Suppression of Terrorist Bombings (the Terrorist Bombings Convention)

4.2.2.7.1 *Brief History*

After the 1996 deadly bombing attack on U.S. military staff in Dhahran, Saudi Arabia, the United States started negotiating the Terrorist bombing Convention.¹¹⁶ The Dhahran attack demonstrated that existing counter-terrorist conventions did not address such a form of terrorism. The United States proposed the negotiations on an international instrument that would address terrorist bombing less than a month

¹¹⁶ Witten, S. M., ‘The International Convention for the Suppression of Terrorist Bombings’, (1998) 92 *American Journal of International Law* 774, 774.

after the Dhahran attack.¹¹⁷ Such a proposal was submitted at the meeting of counterterrorism experts of the Group of Seven Major Industrialised Countries and the Russian Federation in Paris.¹¹⁸ In the aftermath of the meeting the UN General Assembly agreed to establish an Ad-Hoc Committee to prepare the draft Convention.¹¹⁹ Shortly after the Ad-Hoc Committee prepared the draft, it was approved and signed on 15 December 1997 in New York. Kuwait ratified the Terrorist Bombings Convention on 19 April 2004.¹²⁰

4.2.2.7.2 *How does the Convention address terrorism?*

The Convention defines the offence of terrorist bombing. In particular, unlawful and intentional delivery, placing, discharging and detonating an explosive or other lethal device in, into or against the place of public use, a State or governmental facility, or an infrastructure facility, or a public transportation system with the intent to cause serious bodily injury or death, or with the intent to cause the extensive destruction of the place concerned, constitutes an offence of terrorist bombing under the Convention.¹²¹ Furthermore, an offence of terrorist bombing also includes an attempt to conduct the aforementioned acts, and participation as an accomplice, organiser, or director of such acts.¹²²

In line with other counter-terrorist Conventions, the Terrorist Bombings Convention imposes certain obligations upon the Contracting States. Thus, the Convention requires the Contracting States to criminalise the offence of terrorist bombing.¹²³ Also, the Convention mandates appropriate penalties for the commission of the offence.¹²⁴ Unlike the earlier discussed counter-terrorist Conventions, the Terrorist Bombings Convention explicitly uses the term ‘criminal offence’. To recall, all the aforementioned Conventions do not explicitly require denoting offences as a criminal offence, but simply require States to treat certain

¹¹⁷ *Ibid*, 775.

¹¹⁸ Diaz-Paniagua, C. F., *Negotiating terrorism: The negotiation dynamics of four UN counter-terrorism treaties, 1997–2005*, (City University of New York, 2008), Chap. 4, 223-337.

¹¹⁹ *Ibid*.

¹²⁰ Law No. 27 of 2004, Gazette Kuwait Al Youm, Suppl. to No. (651) Part. (4) Year: Fifty.

¹²¹ International Convention for the Suppression of Terrorist Bombings (adopted 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256, Art 2 (1)

¹²² *Ibid*, Art 2 (2), (3)

¹²³ *Ibid*, Art 4 (a)

¹²⁴ *Ibid*, Art 4 (b)

acts as offences and to provide appropriate penalties. Therefore, in this case there is no room for discussion as to whether the offence of terrorist bombing should be criminalised. The Convention mandates States to criminalise it. Moreover, the Convention imposes an obligation to ensure that domestic legislation leaves no room for justification of the terrorist bombings by considerations of ideological, political, philosophical, ethnic, racial, or religious nature.¹²⁵ Thus, one may observe that the Convention provides some sort of guidance as to the content of domestic law. Compared to other counter-terrorist Conventions, this one establishes the duties of the Contracting States in a stricter manner. It not only says that terrorist bombings should be treated as criminal offences, but also does not allow the exception for bombings committed on political and religious grounds. In addition, the Convention requires treating the terrorist bombing as an extraditable offence.¹²⁶

The Terrorist Bombings Convention shares with the other counter-terrorist Conventions the absence of a definition of terrorism. Indeed, there is not any internationally agreed definition of terrorism. It is attributable to unresolved political differences between states.¹²⁷ For this reason, the least the international community can do is to address sectoral forms of terrorism such as aircraft hijacking, aviation sabotage, hostage-taking, attacks against the diplomats and other internationally protected persons without defining terrorism as such. The Terrorist Bombing Convention, as well as the other counter-terrorist conventions, follows this approach.

Under the Convention, each Contracting Party should establish its jurisdiction over the offence of terrorist bombing when the offence took place in the territory of that State, on board of the vessel with the flag of that State or on board of an aircraft registered in that State, or when the offence is committed by a national of that State.¹²⁸ Furthermore, the Convention allows the States to establish their jurisdiction over the offence in the following cases. If the offence is committed against the national of a State, such a State may claim the jurisdiction.¹²⁹ For

¹²⁵ *Ibid*, Art 5

¹²⁶ *Ibid*, Art 9 (1)

¹²⁷ Saul, B., *Defining Terrorism in International Law*, (Oxford University Press, Oxford, 2006), 57-59.

¹²⁸ International Convention for the Suppression of Terrorist Bombings, Art 6 (1)

¹²⁹ *Ibid*, Art 6 (2) (a)

instance, if terrorist bombing is directed against Kuwaiti nationals, Kuwait may claim the jurisdiction over the offence. Also, if the offence is committed against a State or governmental facility of the State abroad, including an embassy and other diplomatic or consular premises, the State has the right to claim jurisdiction.¹³⁰ Suppose the Kuwaiti embassy in Pakistan was attacked by a terrorist bombing. In such a case Kuwait has a legitimate interest in establishing its jurisdiction over the offence. Moreover, under the Convention Kuwait has a legitimate right to claim its jurisdiction over the terrorist bombing committed on board of the aircraft operated by its government, or committed with the purpose to compel Kuwait to do some acts or abstain from some acts, or committed by a stateless person, whose habitual residence is in the territory of Kuwait.¹³¹ One should distinguish cases when the Contracting State is obliged to establish its jurisdiction over the terrorist bombing and the cases when it has the right to claim its jurisdiction. Article 6 (1) refers to cases when the Contracting State is obliged to establish its jurisdiction, e.g. cases involving its territory, its vessel or aircraft, or national, who committed the offence. Article 6 (2) enlists cases when the Contracting State may establish its jurisdiction such as a case when the terrorist bombing is committed against the State's embassy abroad.

In line with other counter-terrorist Conventions, the Terrorist Bombings Convention requires a Contracting State to take an alleged offender into custody, when such an offender is found on its territory, and to take appropriate measures under its national law to prosecute him.¹³² The extradition provisions are similar to those ones contained in other counter-terrorist conventions. Thus, the Terrorist Bombings Convention does not contain an imperative language as to extradition of an alleged offender. There are also the notification obligations. To specify, the State that took an alleged offender into custody should immediately notify the States which established a jurisdiction over the terrorist bombing and directly, or via the UN Secretary-General.¹³³ Also, the State that prosecutes an alleged offender is under the obligation to notify the UN Secretary-General of the outcome of the

¹³⁰ *Ibid*, Art 6 (2) (b)

¹³¹ *Ibid*, Art 6 (2) (c), (d), (e)

¹³² *Ibid*, Art 7 (2)

¹³³ *Ibid*, Art 7 (6)

proceedings.¹³⁴ In addition, the Convention requires the Contracting Parties to take all practical measures to prevent terrorist bombings.¹³⁵

The Terrorist Bombings Convention contains a standard clause on dispute resolution. This clause reads as follows:

Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.¹³⁶

When Kuwait acceded to the Convention, it made a reservation that it will not comply with Article 20 (1).¹³⁷ Such a reservation means that another State with which Kuwait may have unsettled differences regarding the interpretation of the Convention cannot bring Kuwait to the International Court of Justice.

4.2.2.7.3 *Limitation of the Convention*

Article 3 provides that the Convention does not apply when the terrorist bombing occurred in a single State, and the victims and the alleged offender are nationals of the State, and the alleged offender is found on the territory of that State. This reservation makes it clear that the Convention applies only when a terrorist bombing involves a foreign element. In other words, the Convention applies only to international terrorist bombings; i.e., it does not apply to cases that lack an international aspect. Suppose that terrorist bombing occurred in Kuwait, was committed by a Kuwait national, and only Kuwait nationals were victims.

¹³⁴ *Ibid*, Art 16

¹³⁵ *Ibid*, Art 15

¹³⁶ *Ibid*, Art 20 (1)

¹³⁷ United Nations, ‘Multilateral Treaties Deposited with the Secretary-General, Chapter XVIII “Penal Matter”, International Convention for the Suppression of Terrorist Bombings’ Available at: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-9&chapter=18&lang=en> accessed 1st Dec. 2014.

Furthermore, suppose that the Kuwait national who committed the bombing was found on the territory of Kuwait. One may observe that there is a lack of foreign element in this hypothetical situation. Therefore, by virtue of Article 3, the Terrorist Bombings Convention would not apply in such a case. At the same time, if at least one of the victims was of British, American, Saudi or any other foreign nationality, the Convention would apply.

4.2.3 Concluding Remarks

International treaties address various forms of terrorism, from aircraft hijacking to terrorist bombings. This section has reviewed the treaties to which Kuwait is a party, and excluded some treaties which either will be discussed in detail in the next chapter or do not present a significant issue in Kuwait. These treaties constitute part of Kuwait counter-terrorist laws. Under these treaties Kuwait is obliged to address certain terrorist acts in its domestic law. Therefore, in its 2006 report to the CTC the government of Kuwait respond that:

Article 70 of the Kuwaiti Constitution indicates that a treaty has the force of law after signature, ratification and publication in the official gazette ... Kuwait applies a monist doctrine, meaning that after ratification in accordance with article 70 of the Kuwaiti Constitution, a treaty enters into force and becomes an integral part of the national legal system without the need to turn it into a law through an act enacted by the legislative authority in accordance with the procedures for enacting domestic laws.¹³⁸

However, ‘most of the international laws against terrorism contain non-self-executing articles. This means that without enacting national/special law clarifying its mode and mechanism of enforcement, such articles cannot be applied. Therefore, the principle of ‘no crime and no punishment without a legal provision’ requires the State of Kuwait to enact laws in order to implement the international

¹³⁸ UN Security Council (CTC), ‘Kuwait’s Report to the CTC (2006)’, Security Council, Distr.: General, 17 November 2006, S/2006/903, Letter dated 8 November 2006 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, online: UN Security Council, Counter Terrorism Committee, 17 November 2006.

instruments against terrorism.¹³⁹ In addition, by virtue of the treaties Kuwait is under an obligation to prosecute alleged offenders and to make the aforementioned offences extraditable. Another requirement with which Kuwait should comply while enacting its counter-terrorist laws is provision for appropriate punishment for those, who found guilty of the aforementioned terrorist acts. Therefore, the next section examines the extent in which Kuwait implemented and embedded the international instruments against terrorism in its national legal system. In addition, section II will investigate the extent to which Kuwait has been forced to enact laws which are driven from international obligation.

4.3 Section II: The Kuwaiti Criminal Laws Against Terrorism

4.3.1 Introductory Remarks

In the previous section the author observed that international law compels States to have their own counter-terrorist laws. Kuwait is a party to a number of the treaties designed to address terrorism. Therefore, Kuwait is bound to provide a legislative framework for terrorism. The question to be answered in this section is that since Kuwait had ratified thirteen international conventions against terrorism, has Kuwait implemented them by enacting national laws? The answer is negative to some and positive to others.

In this section the author explores Kuwait laws that may cover such types of offences as terrorist acts. It should be noted that Kuwait does not have, to date, a special antiterrorism code; instead terrorism is prosecuted under the normal criminal law and its amendments. In particular, this section examines Kuwaiti Penal Code No. 16 of 1960 and its Amended Laws, Law No. 31 of 1970 In Regards to Crimes Related to State Security, Law No. 35 of 1985 In Regards to Crimes of Explosives, Decree of Law No. 13 of 1991 In Regard to Weapons and Ammunition, Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircrafts and Air Navigation, and Law No. 17 of 1960 promulgating the Criminal Procedure Code.

After the examination, the author reaches the conclusion that the common feature of these laws is that they lack specificity, as far as terrorist acts are

¹³⁹ Interview with N.O.S.2 and N.O.S.5

concerned. In addition, some of these laws were already in existence even before the emergence of the 13 relevant treaties. As a result, on the one hand, they address terrorism in general ways, and on the other hand they overlap with the international offences set in the international conventions against terrorism. Therefore, the author presents some solutions by looking at the UK jurisdiction, and at the international conventions.

This section is divided into different types of terrorism offences and the state response to it. Those offences will be the focus of section II.

4.3.2 Offences Against the Security of the State

There are a number of offences within the Law No. 31 of 1970 In Regard to Crimes Relating to State Security that may cover terrorist acts and to some extent catch the spirit of the Security Council Resolution 1373, although the 1970 law was passed three decades before.¹⁴⁰ Among such offences are: the crime of assembling soldiers without the Government's authorisation (Article 4), the crime of participating in an assembly with the purpose to commit crimes or to breach public order (Article 34), the crime of using explosives to kill persons, cause destruction, or create panic.¹⁴¹ In addition, Article 31 prohibits weapons training, training on war skills and techniques, and using ammunition with the intention of conducting illegal activities. These crimes are punished by imprisonment, the term of which may range from three years to lifelong incarceration.¹⁴²

Law No. 31 of 1970 has amended part of the Kuwaiti Penal Code No. 16 of 1960. The Law has been criticised for three reasons.¹⁴³ First, some of its articles are vague and broad, and others contain ambiguous terms. Secondly, some of its articles are tightening the freedom of expression, which might be used against

¹⁴⁰ UN Security Council, *Security Council resolution 1373 (2001) [on threats to international peace and security caused by terrorist acts]*, 28 September 2001, S/RES/1373 (2001), Available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>> accessed 1st Dec. 2014.

¹⁴¹ UN Security Council (CTC), 'Kuwait's Report to the CTC (2001)', Security Council, Distr.: General, 21 December 2001, S/2001/1221, Letter dated 19 December 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 21 December 2001.

¹⁴² *Ibid.*

¹⁴³ Interview with N.O.S.3 and N.O.S.6

opposition groups.¹⁴⁴ Third, it extended the protection set forth to the Crown Prince. In addition, Article 30 of the Amendments prohibits ‘organizations, groups, or associations, which aim to spread principles that promote the destruction of the basic systems illegally or that promote overpowering the social system or the economic system that is present in the country by force’. On the one hand, this provision can be interpreted as the one designed to prevent the formation of the terrorist groups in the territory of Kuwait. On the other hand, this provision substantially restricts such universally recognised rights as freedom of association. Article 21 of the International Covenant on Civil and Political Rights proclaims:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others¹⁴⁵

Kuwait ratified the Covenant in March 1996. Therefore, Kuwait is bound to respect the freedom of peaceful assembly. There can be, of course, arguments that Article 30 of the Law No. 31 of 1970 is designed to insure public safety and public order, and for this reason the prohibition can be seen as a legitimate exception within Article 21. Furthermore, one of the Judges interviewed explained that ‘Article 30, like any other Articles, can always fall under the revision of the court which can, after looking at each case, accept or deny such accusation’.¹⁴⁶ However, a representative from the Kuwait Human Rights Association argued that ‘the Article contains many vague terms, and this vagueness can become a loophole for

¹⁴⁴ ‘COURT CLEARS WRITER AND JOURNALIST AL-JASSEM’, *online: Reporters Without Borders*, (21 July 2010), Available at: <<http://en.rsf.org/koweit-journalist-mohamed-al-jassem-28-06-2010,37826.html>> accessed 1st Dec. 2014. See also ‘Kuwait extends activist's detention: Prominent law professor is charged with "undermining status" of country's emir’, *online: Aljazeera*, (27 December 2010), Available at: <<http://www.aljazeera.com/news/middleeast/2010/12/20101227143632271319.html>> accessed 1st Dec. 2014. See also Kuwait Society for Human Rights, *The Second Periodic Report of the State of Kuwait, to the concerned committee, on The International Covenant on Civil and Political Rights*, (Office of the High Commissioner for Human Rights, Session 100, August 2011).

¹⁴⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art 21

¹⁴⁶ Interview with J.G.1

prohibition of associations which pursue legitimate rights'.¹⁴⁷ For instance, it is not clear what is meant by 'overpowering the social or economic system'. If the majority of people wish to change the social or economic system of Kuwait in a legal way, through elections for instance, it is their legitimate right. Therefore, Article 30 of the Amendments seems to be unreasonably restrictive. There are strong grounds to suggest that Article 30 excessively restricts the freedom of peaceful assembly guaranteed by international law.

If Kuwait seeks to prohibit the formation and operation of terrorist groups on its territory, it would be preferable to find more specific ways than simply restricting freedom of association. Thus, the UK Terrorism Act 2000 prohibits only certain organisations. The exhaustive list of these organisations is contained in the law.¹⁴⁸ Moreover, Terrorism Act 2000 makes it an offence to direct a terrorist organisation contrary to Section 56. More interestingly, Section 56 applies to all organised terrorism in the UK, and not only limited to the proscribed lists.¹⁴⁹ Kuwait could follow this approach and to define the list of terrorist organisations which are to be proscribed instead of prohibiting organisations and associations in generic terms as it is done under Article 30 of the Amendments.

4.3.3 Explosives and Firearms Offences

The purpose of the current section is to look at the contemporary Kuwaiti laws against munitions offences relevant to terrorism. In particular, the focus of this section will be on the following laws: the Penal Code No.16 of 1960, Law No. 35 of 1985 In Regard to Crimes of Explosive and the Decree of Law No. 13 of 1991 In Regard to Weapons and Ammunition.

The Kuwaiti Penal Code No. 16 of 1960 has addressed the crimes of explosives under Article 161, which reads as follows:

Anyone who causes extensive harm to others by throwing any type of bomb, by attacking with a knife or any dangerous tool, by throwing an acidic liquid, or by putting this liquid or any other

¹⁴⁷ Interview with N.O.S.1

¹⁴⁸ For further detail on the list of the organisations proscribed by the UK see Part 2 of the Terrorism Act 2000.

¹⁴⁹ See Walker, C., *Terrorism and the Law*, (Oxford University Press, United States, 2011), 209-211.

explosive substance at any place with the intent to inflict harm upon a person, or handing the person drugs, is penalized with imprisonment for a term that is no more than ten years, and can be fined with an amount that is no more than 750 Dinars.

One may observe that Article 161 addresses such forms of terrorist acts as bombings. At the same time, the crime is very vaguely defined. First of all, the expression ‘by throwing any type of bomb’ raises concerns about the very narrow approach taken. A bomb can be not only ‘thrown’ but also placed, installed, delivered, and detonated and so on. It is not clear what is exactly meant by the word ‘throwing’. Does that mean if one person delivered the bomb, and another one threw it, the former cannot be punishable under Article 161? Furthermore, what if one person installed the bomb and another one detonated it, which one will be considered as the one that ‘threw’ the bomb? Thus, it remains unclear what kind of acts the word ‘throwing’ covers.

In this respect, Kuwait could follow an example of the UK and address terrorist bombing in more overreaching terms. Thus, under the Explosive Substances Act 1883 anyone who unlawfully and maliciously ‘causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property’ is liable to life imprisonment irrespectively of whether such an act caused actual death and injury.¹⁵⁰ The expression ‘causes by any explosive’ is more inclusive than the term ‘by throwing a bomb’. The verb ‘cause’ is undoubtedly broader than the term ‘throw’. The term ‘cause’ potentially covers such acts as placing a bomb and detonating a bomb. As far as the terrorist bombing is concerned, Kuwait could also look at the definition of the offence set forth in the Terrorist Bombings Convention.

Another serious concern about how Article 161 addresses bombing is that it provides for a very light punishment. Indeed, the offence foreseen by Article 161 is punishable by imprisonment for no more than ten years. To compare, such an act in the UK is punishable by life imprisonment even if it did not cause injury or harm.¹⁵¹ The way Article 161 is drafted does not allow seeing what kind of harm is

¹⁵⁰ Explosive Substances Act 1883 (c.3), s 2

¹⁵¹ *Ibid.*

considered to be ‘an extensive harm’. If the term ‘extensive harm’ covers serious physical injury to persons, the punishment is very light indeed. One of the prosecutors explained, ‘the measurement of such term is left to the discretion of the Forensic Medical Department, which is under the General Department of Criminal Evidence in the Ministry of Interior’.¹⁵² Reading Article 161 in conjunction with Article 163 raises even more concerns about the inadequacy of the penalties. Thus, Article 163 of the Kuwait Penal Code stipulates that anyone who commits a minor assault that does not lead to the previously mentioned consequences (e.g. extensive injury to others –Art 161–, or causing a permanent disability –Art 162–), is punishable only by imprisonment for a term not exceeding three months. The Article can be potentially read as providing for the no-more-than-three-months-punishment if throwing a bomb did not lead to serious consequences, e.g. permanent disability or serious physical injury, an offender will have to spend no more than three months in a prison. In other words, a failed terrorist will be exposed to a very liberal punishment. All these suggestions lead to the conclusion that Kuwait needs to reconsider its approach to terrorist bombings.

4.3.3.1 Law No. 35 of 1985 In Regard to Crimes of Explosives

In the 1980s, the issue of bombing became sensitive for Kuwait. The country suffered from terrorist bombings on several occasions. On December 12, 1983 Hezbollah together with members of the Iraqi Shiite group, *Da'wa*, conducted seven coordinating the bombings in Kuwait City.¹⁵³ As the result of the bombings, six people lost their lives and more than ninety people were injured.¹⁵⁴ The terrorists targeted French and US embassies, an oil rig of the Kuwait National Petroleum Company, the Kuwait airport and some other places.¹⁵⁵ The government of Kuwait realised that the current law, i.e. the Kuwaiti Penal Code No. 16 of 1960, is not efficient. Thus, Law No. 35 of 1985 was enacted two years after the bombings and to a certain extent represented a response to the terrorist attacks. The Law In Regard to Crimes of Explosives foresees penalties for a number of offences

¹⁵² Interview with P.P.1

¹⁵³ Levitt, M., ‘29 Years Later, Echoes of Kuwait '17’, (Weekly Standard, 13 December 2012), Available at: <<http://www.washingtoninstitute.org/policy-analysis/view/29-years-later-echoes-of-kuwait-17>> accessed 1st Dec. 2014.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

involving explosives. One of the offences laid down by the Law is the use or attempted use of explosives with the purpose to kill people, create panic and damage utilities and buildings.¹⁵⁶ One may observe that these provisions may cover various forms of terrorist bombings.

An offence provided by the 1985 Law is the use or attempt to use an explosive in a manner that endangers lives of persons or their property.¹⁵⁷ This provision may cover cases when terrorists did not intend to induce deaths or mass destructions, but merely wanted to send warning signals to the government by exposing people and their property to danger. If the use of an explosive resulted in the injury of a person, the punishment is an imprisonment for a term not less than ten years.¹⁵⁸ If the acts led to the death of a person, it is punishable by life imprisonment or death penalty.¹⁵⁹

Furthermore, the 1985 Law criminalises unauthorised acquisition, possession, manufacture, procurement, import and export, transportation and trafficking of explosives.¹⁶⁰ There is a possibility of legal acquisition, manufacture, procurement, export and import, and transportation of explosive if there is a license. The license is assigned by the Minister of Interior. To commit these acts without properly obtained license is an offence which is punishable under Law No. 35 of 1985. The attempt to commit such acts is also criminalised.¹⁶¹

In addition, the 1985 Law makes it an offence to train persons or to incite them to manufacture or use explosive for the achievement of illegal ends.¹⁶² The illegal ends concept is very broad and certainly covers the purposes of terrorism. In other words, if someone trains another to manufacture and use explosive with the purpose to commit or facilitate a terrorist bombing, his acts will be covered by the provision concerned.

Finally, if a person, who has the knowledge about any plan to commit the aforementioned offences and who fails to notify the competent authorities, commits

¹⁵⁶ Law No. 35 of 1985 In Regards to Crimes of Explosives, Art 1

¹⁵⁷ *Ibid*, Art 2

¹⁵⁸ *Ibid*.

¹⁵⁹ *Ibid*.

¹⁶⁰ *Ibid*, Art 3

¹⁶¹ *Ibid*, Art 3

¹⁶² *Ibid*, Art 4

an offence under Law No. 35 of 1985.¹⁶³ The Law also criminalises assistance to an offender to flee from justice and concealing or destroying the relevant evidence.¹⁶⁴

Next it is interesting to see whether Kuwait fully complies with the obligations imposed upon it by the Terrorist Bombings Convention.¹⁶⁵ The Convention obliges Kuwait to criminalise the following acts: (1) unlawful and intentional delivery, placing, discharge, detonating an explosive or other lethal device in, into, or against place of public use, a State or government facility, an infrastructure facility, or a public transportation system with the purpose to cause death or serious bodily injury or to cause destruction of a place, facility or system concerned; (2) attempt to commit the aforementioned acts; (3) participation as an accomplice in such an offence; (4) organisation and direction of the offence; (5) intentional contribution to the offence.¹⁶⁶ The Law No. 35 of 1985 fails to address the organisation and direction of the bombings. Of course, one may argue that this is covered by the concept of participation in the offence. However, it is not an accident that the Terrorist Bombings Convention makes a distinction between mere participation, and organisation and direction of the offence. The latter is obviously more outrageous crime because it involves the mastermind behind terrorist-related crimes. The Kuwait laws, as far as terrorist bombings are concerned, unfortunately, do not make such a distinction. Such a distinction is desirable because it shows that the State and Kuwaiti people perceive the organisation and direction of terrorist bombing as an even more serious crime than mere participation in the terrorist-related crimes. Therefore, Kuwait could enhance its laws by addressing the illegal use of explosive by inserting more precise and clearer terminology. One should draw attention to the fact that Law No. 35 of 1985 employs such generic term as ‘use’. By contrast, the Terrorist Bombing Convention enlists particular forms of use: delivering, placing, discharging, and detonating. The approach adopted in the Convention ensures a better legal certainty. Kuwait could consider following such an approach.

¹⁶³ *Ibid*, Art 5

¹⁶⁴ *Ibid*.

¹⁶⁵ International Convention for the Suppression of Terrorist Bombings (adopted 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256.

¹⁶⁶ *Ibid*, Art 2, Art 4

4.3.3.2 Decree of Law No. 13 of 1991 In Regard to Weapons and Ammunition

One of the legacies of the first Gulf War for Kuwait was that a large number of weapons remained in the country.¹⁶⁷ Naturally, for the sake of security and public order, such situation needed strict regulation. Therefore, nine months after the end of the first Gulf War Kuwait adopted an act imposing stricter penalties for illegal possession and use of weapons - Law No. 13 of 1991 In Regard to Weapons and Ammunition, which abolished the Law No. 16 of 1961 on Weapons and Ammunition.¹⁶⁸ In addition, 'an Amiri decree was issued to form a special task force named 'the Arms Collection Squad' and was given the necessary powers in order to achieve its goal. The Arms Collection Squad practiced its work for more than 8 years which resulted in the collection of many weapons and ammunitions.'¹⁶⁹

The 1991 Law covers all types and sizes of rifles and guns capable of firing gunshots, cannons (firearms producing powerful gunshots), machine guns, and ammunition.¹⁷⁰ The illegal possession of weapons and ammunition involves possession without a license from the Minister of Interior. The licensing requirements limit those who can legally possess weapons and ammunition. Thus, to be eligible for the licence a person should be a Kuwaiti citizen who reached age of 21, who has no sentencing history as far as crimes involved weapons are concerned, who has a legitimate source of income, who has necessary physical fitness, and who is not a suspect, or under police surveillance, or homeless.¹⁷¹

To a certain extent, the licensing requirements may serve as a measure that prevents terrorism. Thus, by virtue of the licensing requirements only Kuwaiti citizens are eligible for legal possession of weapons. There is, however, a reservation that the Minister of Interior can make exceptions to this rule.¹⁷² The rule that weapons can be, in general, legally possessed by Kuwaiti citizens means that

¹⁶⁷ Explanatory Memorandum for the Decree of Law No. 13 of 1991 In Regards to Weapons and Ammunition.

¹⁶⁸ Alzubairi, F., 'Kuwait and Bahrain's Anti-terrorism Laws in Comparative and International Perspective', (Master Thesis, University of Toronto, 2011), 24.

¹⁶⁹ Interview with G.O.3. Also see the Minister of Interior Resolution 192 of 1992 to create a central security command to force the collection of arms.

¹⁷⁰ Law No. 13 of 1991 In Regards to Weapons and Ammunition, Art 1

¹⁷¹ *Ibid*, Art 3

¹⁷² *Ibid*.

real or potential terrorists of other nationalities cannot legally possess and acquire weapons. Thus, a potential terrorist, who holds, for example, British citizenship, will not be able to acquire and possess weapons legally. Also the age requirement eliminates the legal acquisition and possession of weapons by real or potential terrorists of young age. Finally, the requirement that an eligible candidate should not have a history of sentencing for crimes involving the use of weapons also may eliminate potential terrorist from legal acquisition and possession of weapons.

The Kuwaiti government considers the 1991 Law as establishing an effective control on preventing access to weapons by terrorists.¹⁷³ In its report to the UN Security Council Committee concerning counterterrorism, the Kuwaiti government specified that the Law does not have any limits of number of licenses that can be obtained by the same person.¹⁷⁴ However, the government noted that the usual practice is to assign one weapons license to an applicant.¹⁷⁵ The assignment of an additional license can be conducted in special cases involving public good or individual's benefit.¹⁷⁶

The 1991 Law restricts the use of even those weapons which are legally possessed. In particular, Article 13 of the Law prohibits using weapons and ammunitions in oil and industrial regions, residential areas, areas of public gatherings, and other areas which can be determined by the Minister of Interior. Furthermore, the Law proscribes carrying a licensed weapon in conventions and public meetings, harbours and airports, sports club (except licensed shooting clubs), and other areas that can be determined by the Minister of Interior.¹⁷⁷ These limitations can serve the purposes of preventing terrorist acts.

Export and import of weapons and ammunition require licensing.¹⁷⁸ This provision ensures governmental control over the flow, whether inward or outward, of weapons and ammunitions. Controlling export and import of weapons is one of

¹⁷³ UN Security Council (CTC), 'Kuwait's Report to the CTC (2004)', Security Council, Distr.: General, 31 December 2004, S/2004/945, Letter dated 17 December 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, online: UN Security Council, Counter Terrorism Committee, 31 December 2004.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ Law No. 13 of 1991 In Regards to Weapons and Ammunition, Art 14

¹⁷⁸ *Ibid.*, Art 16

the major tasks in the fight against terrorism. The license for export or import of weapons or ammunitions is assigned by the Minister of Interior.¹⁷⁹ The Minister has the power to revoke the license at any time.¹⁸⁰ Thus, one may observe that the Minister of Interior has the extensive powers over the export and import of weapons. This has both positive and negative aspects. The positive aspect is that such powers allow the Minister to react promptly to situations, when, he, for instance, find out that the weapon is exported or imported for the purposes of terrorist activity. The negative aspect is that if the Minister lacks integrity and diligence and does not act in a good faith, there is a loophole for supply of weapons and ammunitions to potential terrorists.

Another weapon-related activity which is strictly controlled by the government is the production of weapons. Article 19 of the Law prohibits establishing any weapon manufacturing facility without a duly obtained license from the Ministry of Interior and the Ministry of Defence. In other words, the production of weapons and ammunitions is regulated even stricter than export and import. In case of export and import, there is only one supervising body which is the Ministry of Interior, while production of weapons is subject to authorisation of two bodies – the Ministry of Interior and the Ministry of Defence.

Next, the physical movement of weapons is firmly regulated. Thus, Article 20 of the Law prohibits transfer of weapon from one place to another without authorisation of the Minister of Interior. The Minister's permission is subject to certain rules. Thus, the permission should indicate the amount of weapon that is allowed to be transported, its type, the destination, the name of the receiver, the name of the transporter, and the transportation map.¹⁸¹ This information can enable the Kuwaiti government to control all circulation of weapon in the country, and thus, give an opportunity to prevent any unauthorised handing over the weapon.

Potential terrorists, deprived of the possibility to buy and possess weapons legally, may resort to illegal means. In simple terms, they may acquire and keep weapons illegally. In order to fight against illegal acquisition and possession of

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*, Art 20

weapons, the Law imposes serious sanctions. Thus, failure to comply with the rule that prohibits unlicensed acquisition and possession of weapons and ammunitions is punishable by imprisonment for a term which is not less than five years.¹⁸² Furthermore, failure to comply with licensing requirements for the use and carrying legally acquired and possessed weapons and ammunitions is punishable by which is no more than one year.¹⁸³ The punishment for failure to comply with the weapon export and import licensing requirements is an imprisonment for a term which does not exceed seven years.¹⁸⁴ The same kind of punishment is foreseen for those who obtain a license for weapon production due to deceit and invalid documents.¹⁸⁵

The main drawback of the 1991 Law is that it does not address terrorism as a special crime. Thus, the Law does not specifically address cases when weapons and ammunition are intentionally supplied to terrorists. The Law only addresses cases when the supply of weapons is unauthorised. However, the intentional supply of weapons to terrorists is obviously a graver crime compared to merely unauthorised supply of weapons, and thus, deserves a more severe punishment. Also, the Law does not cover cases when a potential terrorist violates the prohibition to use weapons in public places with the purpose of committing of terrorist acts. Such a crime is much more socially dangerous than a mere violation of the prohibition.

In the UK the terrorist related crimes involving weapons are addressed separately. Thus, according to the Terrorism Act 2000 s 57, possession of articles for terrorist purposes is a criminal offence which is punishable by imprisonment for a term not exceeding fifteen years.¹⁸⁶ One may observe that the term ‘articles’ is very broad and may cover weapons and ammunition. Kuwait may consider following the UK approach and addressing terrorism-related crimes involving weapons in a more specific way.

¹⁸² *Ibid*, Art 21

¹⁸³ *Ibid*, Art 22

¹⁸⁴ *Ibid*, Art 24

¹⁸⁵ *Ibid*.

¹⁸⁶ See Terrorism Act 2000 (c.11) s 57, for further analysis see Walker, C., *Terrorism and the Law*, (Oxford University Press, United States, 2011), 211-215.

4.3.4 Transport Security

This section will explore the Kuwaiti national laws on transportation security against the threat of terrorism. The focus will be on the Penal Code No. 16 of 1960, the Law No. 31 of 1970 In Regard to Crimes Relating to State Security and the Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircrafts and Air Navigation.

The Penal Code No. 16 of 1960 addresses terrorist acts that may endanger aviation and maritime safety. In particular, Article 170 makes it an offence to send misleading signals, or issuing misleading announcement, warning or instruction which may lead to the misguidance of an aircraft or ship. The offence is punishable by imprisonment for a term of no more than five years.¹⁸⁷ If such an offence leads to serious injury of one or more persons the penalties increase – imprisonment for term of no more than fifteen years.¹⁸⁸ Finally, if the offence resulted in a person's death, it is punishable by life imprisonment or death penalty.¹⁸⁹ It is worth mentioning that, although the offence foreseen by Article 170 was passed years before the advent of the international conventions against terrorism, it to some extent corresponds with offences set forth in the Sabotage Convention and in the Rome Convention.¹⁹⁰ To recall, the Sabotage Convention and the Rome Convention make it an offence to communicate false information which endangers the safety of aircraft or navigation of a ship.¹⁹¹ As far as the false communication aspect is concerned, it can be said that Article 170 in part provides a compliance of the Kuwaiti laws with international laws.

In addition, Article 171 of the Penal Code No. 16 of 1960 makes it an offence to communicate any hoax information by sending misleading signals or issue misleading instructions, warnings or calls which endanger persons and property transported on a public thoroughfare. One may observe that the provision is similar

¹⁸⁷ Kuwaiti Penal Code No. 16 of 1960, Art 170.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ UN Security Council (CTC), 'Kuwait's Report to the CTC (2003)', Security Council, Distr.: General, 19 November 2003, S/2003/1103, Letter dated 10 November 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 19 November 2003.

¹⁹¹ The Rome Convention, Art 3 (1) (f); the Sabotage Convention, Art 1 (1) (e)

to the provision contained in Article 170 which was discussed earlier. Article 170 covers air and maritime transportation, while Article 171 applies to road transportation. The offence defined in Article 171 is punishable by imprisonment for a term which does not exceed five years or by fine. If the acts criminalised in Article 171 lead to serious injury of persons the punishment is up to fifteen years of imprisonment. Finally, if the offence results in death of a person, it is punishable by life imprisonment or death penalty.¹⁹²

The Penal Code partly addresses offences covered by the Rome Convention. Thus, Article 251 of the Penal Code No. 16 of 1960 makes it an offence the intentional sinking or destruction of a ship or other means of naval transportation.¹⁹³ The Rome Convention defines, among acts that may constitute the offence, destruction or damage to a ship.¹⁹⁴ Therefore, Article 251 is a demonstration that Kuwait, at least in part, complies with the requirement of the Convention to make acts enlisted in Article 3 of the Convention offences. Under Article 251 the offence is punishable by imprisonment for a term not exceeding seven years. If the act led to serious injury of a person the term of imprisonment is increased up to ten years.¹⁹⁵ Finally, if the act resulted in the death of a person, it is punishable by life imprisonment.¹⁹⁶

The Penal Code No. 16 of 1960 covers such an offence as an attack on a ship in the open sea with the intention to exercise control over ship or take over the cargo the ship carries, or with the intention to inflict harm on the individuals on board of the ship.¹⁹⁷ Such a provision corresponds to the offence of seizure or exercise of control over a ship by force set forth in the Rome Convention.¹⁹⁸ Under Article 252 of the Penal Code such an offence is punishable by a lifetime

¹⁹² Kuwaiti Penal Code No. 16 of 1960, Art 171.

¹⁹³ UN Security Council (CTC), 'Kuwait's Report to the CTC (2001)', Security Council, Distr.: General, 21 December 2001, S/2001/1221, Letter dated 19 December 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 21 December 2001.

¹⁹⁴ The Rome Convention, Art 3 (1) (c)

¹⁹⁵ Kuwaiti Penal Code No. 16 of 1960, Art 251.

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*, Art 252

¹⁹⁸ The Rome Convention, Art 3 (1) (a)

imprisonment. If the offensive acts resulted in the death of one or more individuals, they are punishable by death penalty.¹⁹⁹

Article 8 of the Law No. 31 of 1970 In Regard to Crimes Relating to State Security makes it an offence to cause damage or defects to infrastructure that is used for the defence purposes. Such infrastructure includes aircraft and ships, obstruct weapons, means of public transport, equipments and facilities, ammunition, rations, or drugs.²⁰⁰ Article 8 also covers some sabotage acts such as intentional not-repairing the items of infrastructure or making them dysfunctional intentionally. This article potentially covers terrorist sabotage acts.

4.3.4.1 Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircrafts and Air Navigation

As has been mentioned earlier, Kuwait is a party to a number of international treaties that address terrorist acts against aviation. Under these conventions, Kuwait accepted an obligation to criminalise aircraft hijacking and the acts of sabotage in aviation. At the same time, the Penal Code did not fully address aircraft hijacking and the acts of sabotage. Indeed, previously it has been observed that the Penal Code deals only with crime of false communication with aircraft. Such lack of provisions made the Kuwaiti government pass the Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircraft and Air Navigation that would address crimes relating to aviation in a more comprehensive way. Therefore, Tokyo, Hague and Montreal conventions, as well as Montreal Protocol on combating terrorist crimes against civil aviation have been incorporated and implemented within the Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircrafts and Air Navigation. In other words, Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircrafts and Air Navigation was passed in order to implement the international requirements on aviation security.²⁰¹

The Law In Regard to Crimes Related to Safety of Aircraft and Air Navigation was enacted in 1994. Article 1 of the Law outlines the key definitions. The analysis

¹⁹⁹ *Ibid.*

²⁰⁰ Law No. 31 of 1970 In Regard to Crimes Relating to State Security, Art8.

²⁰¹ Explanatory Memorandum for the Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircraft and Air Navigation.

of these definitions demonstrates that the law follows the approaches set forth in international treaties. For instance, the Law defines aircraft in flight in the same manner as the Tokyo Convention does. In particular, under the Law aircraft is considered to be in flight from the moment of closure of all external doors until the moment they are opened. The Law also specifies the meaning of the expression of aircraft in service. The definition of aircraft in service under the Law is the similar to the definition contained in Article 2 (b) of the Sabotage Convention. Thus, according to Article 1 (c) of the Law an aircraft is considered to be in service from the beginning of the pre-flight preparations and until the expiration of 24 hours after the landing of aircraft. Interestingly, however, Law No. 6 of 1994 does not only apply to civil aircraft but it also covers aircraft used in military, police and customs services. This can be read by Article 1 (A) of the law, which does not make any differentiation between civil and non-civil aircrafts. Article 1 (A) state ‘Aircraft: is any means used or meant to be used for aviation or navigation in air or space’.²⁰² Thus, it can be said that Law No. 6 of 1994 is wider than the International conventions on aviation area.

Furthermore, the Law defines crimes related to the safety of aircraft and air navigation. Thus, Article 2 of the Law makes it a crime to attack a person on board of aircraft in flight, when such an attack endangers the safety of aircraft.²⁰³ This provision covers not only ordinary violent crimes committed on board of aircraft but also terrorist attacks. Suppose that terrorists attack a chief pilot, who undoubtedly can be considered as a person on board, with the purpose to gain control over the aircraft. Article 2 covers this hypothetical situation and thereby covers terrorist attacks.

Another offence determined by Article 2 is making or inserting device or substance on board of aircraft in service that caused damage to or destruction of aircraft so that the aircraft is unable to fly or flying of aircraft is endangered.²⁰⁴ What raises concerns in this formulation is the term ‘makes’. It may happen that the device was legitimately made. After all, there are companies which are duly licensed to produce explosives and weapons. What if such legitimately produced

²⁰² Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircrafts and Air Navigation, Art 1 (A)

²⁰³ *Ibid*, Art 2 (A)

²⁰⁴ *Ibid*, Art 2 (B)

device occurred in the hands of terrorists without actual knowledge of a manufacturer? Here one should note that the article does not specify that the maker of the device should have knowledge that it will be used by terrorists to destroy or damage an aircraft in service. It would be more accurate to make it an offence the production of devices and substance with the purpose of its subsequent use for destruction and damaging the aircraft in service. Such an approach would exclude the legitimate manufacturers of devices and substances. Instead, it would target the production of devices for the sole purpose of using them for terrorist attacks.

Furthermore, Article 2 makes it an offence to commit actions that lead to the destruction or damaging airport equipment and facilities or to the interruption of airport operations or to exposing the aircraft in flight to danger.²⁰⁵ One may observe that this is a very broad formulation. The positive aspect of this wording is that it covers terrorists attacks or terrorist sabotage acts. The negative aspect is that it covers all other less grave crimes and offences. Article 2 states that ‘Anyone who commits one of the following acts deliberately is penalized with temporary imprisonment for a term that is no less than seven years’.²⁰⁶ In other words, Article 2 does not make a distinction between terrorist sabotage and simply a hoax call stating that there is a bomb in an airport. The latter would undoubtedly interrupt the operations of airport since the security services had to check the airport. While the hoax call is a serious offence because it leads to interruption of airport services, rescheduled flights, and many inconveniences for passengers, it is still hardly comparable to the terrorist sabotage acts. In other words, the hoax call and a terrorist sabotage act are not the same in terms of the degree of danger they pose. For this reason, the terrorist sabotage acts should be a separate kind of crime.

The final offence defined by Article 2 is a false communication with aircraft that put an aircraft in flight to danger.²⁰⁷ This provision is traditional for the aviation and maritime counter-terrorist conventions. At the same time, the similar provision is already contained in Article 170 of the Penal Code No. 16 of 1960. To recall, Article 170 makes it an offence to issue misleading signals, instructions and warnings to aircraft. One may observe that there is a great likelihood that Article

²⁰⁵ *Ibid*, Art 2 (C)

²⁰⁶ *Ibid*, Art 2

²⁰⁷ *Ibid*, Art 2 (D)

170 of the Penal Code and Article 2 of the Law may overlap. It is unclear what kinds of acts are to be qualified under Article 170 of the Penal Code and what kinds of acts fall under Article 2 of the Law. In its report to the CTC, the government of Kuwait stated that:

The Office of the Prosecutor-General affirms that there is no conflict between these texts because the accepted legal principles of interpretation applied in Kuwaiti criminal legislation stipulate that the provisions of any special act override the provisions of general law if they conflict. This is based on the principle that the special law particularizes the general law.²⁰⁸

As a result, Article 2 of the Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircrafts and Air Navigation, as a Special Act, is the one that apply at present instead of Article 170 of the Kuwaiti Penal Code No. 16 of 1960.

Article 3 of the Law criminalises use of force or threat to use it with the purpose to take over an aircraft in flight, to exercise control over it, or to change its direction. The article clearly covers the cases of aircraft hijacking. The punishment for such a crime is imprisonment for a term not less than 10 years. If the aforementioned crime was accompanied by making persons to go to the destination other than the supposed on, the punishment is no less than ten-year imprisonment or life time imprisonment. The last provision, perhaps, is designed to address the hostage-taking. At the same time, it does not make much sense. Thus, if an aircraft was taken over by a terrorist, all passengers are hostages, no matter what destination the aircraft adopts under the control of terrorists. It is unclear why the legislator treats the case when the taken over aircraft lands follows its supposed destination and the case when such an aircraft diverts from the original destination differently. In both cases there is the same degree of danger by virtue of the fact that the aircraft is taken over by terrorists.

²⁰⁸ UN Security Council (CTC), 'Kuwait's Report to the CTC (2004)', Security Council, Distr.: General, 31 December 2004, S/2004/945, Letter dated 17 December 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, online: UN Security Council, Counter Terrorism Committee, 31 December 2004.

The Law further specifies that if a crime specified in Article 2 or Article 3 resulted in injury to persons, or destruction of aircraft, or cause damage to airport facilities or equipment, such a crime should be punishable by life imprisonment or death penalty.²⁰⁹ If the crimes resulted in death of a person, the punishment is death penalty.²¹⁰ These provisions shed a light on the nature of acts foreseen by Article 2 and Article 3. Both articles employ the expression ‘expose aircraft to danger’ or ‘endanger the safety of aircraft’. Apparently, Article 2 and Article 3 imply that the actual destruction or damage did not occur, but there was only the danger of such occurrence. Article 4 thus provides a more severe punishment in case if such danger actually occurs and results in damage and destruction, and in injury of persons.

Article 5 of the Law criminalises an intentional attempt to commit crimes set forth in Article 2 and 3. In addition, Article 5 criminalises the assistance to the offender in the form of helping him to escape from justice, or by concealing or destroying the evidence. This approach is compatible with the philosophy of the Hague Hijacking Convention and the Sabotage Convention. To recall, these treaties make it an offence not only acts which endanger civil aviation but also an attempt to commit such acts. At the same time, Article 5 criminalises not only an attempt to commit the crime but also a failure to notify about such crimes if a person had knowledge that they will occur. The punishment for an attempt to commit the crimes, assistance to the crimes, failure to notify about the crimes is punishable by the imprisonment for a term which does not exceed five years.²¹¹

The Law also discusses certain procedural and penal matters. Thus, the Law confers the jurisdiction over the crimes set forth in it to the State Security Court.²¹² Although the State Security Court was repealed in 1995,²¹³ this provision can be interpreted as the reflection of the official position of the government to the aforementioned crimes. In particular, the Kuwaiti government views these crimes as directed against the security of the State.

²⁰⁹ Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircrafts and Air Navigation, Art 4

²¹⁰ *Ibid.*

²¹¹ *Ibid.*, Art 5

²¹² *Ibid.*, Art 8

²¹³ Law No. 55 of 1995 In regards to abolition of the State Security Court.

It will now be considered whether the Law provides for full compliance with Kuwait's obligation under the counter-terrorist conventions related to the safety and security of civil aviation. The Hague Hijacking Convention imposes on the Contracting States to treat as offences the following acts: unlawful seizure or exercise of control over aircraft in flight by use of force, a threat of thereof, or any other form of intimidation, and assistance to commit such acts.²¹⁴ Furthermore, the Sabotage Convention requires to make as offences the following acts: (1) violence against a person on board of an aircraft in flight; (2) destruction of or damage to aircraft in service which makes aircraft incapable of flying; (3) placing device or substance in aircraft which is likely to destroy or damage aircraft so as it is incapable of flight; (4) destruction of or damage to air navigation facilities or interference with the facilities; (5) intentional communication of false information which endangers the safety of aircraft in flight.²¹⁵ In addition, the Montreal Protocol to the Sabotage Convention obligates the State to treat as offences the following acts: (1) acts of violence against persons in airport if it is likely to cause serious injury or death; (2) destruction and damage of airport facilities or aircraft not in service, or disruption of airport services.²¹⁶

In response, the Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircrafts and Air Navigation criminalises: (1) an attack a person on board of aircraft in flight when it endangers the safety of aircraft in flight; (2) damage to or destruction by making or inserting device or substance in aircraft in service; (3) the destruction of or damage to aircraft equipment or interruption of airport operation and thereby exposing aircraft in flight to danger; (4) communication of false information; (5) the unlawful takeover of aircraft and exercise of control by use of force or threat to use thereof; (6) attempt, failure to notify, assistance to the aforementioned offences. This survey shows that the Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircrafts and Air Navigation fails to criminalise the following acts: (1) destruction of or damage to air navigation facilities or interference with the facilities; (2) acts of violence against persons in airport if it is likely to cause serious injury or death. Since the Law does not address these crimes, it cannot be said that Kuwait fully complies with the duties imposed by the

²¹⁴ Hague Hijacking Convention, Art 1

²¹⁵ Sabotage Convention, Art 1

²¹⁶ Montreal Protocol, Art II

international treaties. One may argue that these crimes potentially fall under the Penal Code. However, it is important to address these crimes in the specific act so as to bring more legal certainty and to underline the gravity of these acts.

As mentioned in Chapter Two, Kuwait was one of the many countries that suffered from aircraft hijacking in the 1980s. Two Kuwaiti aircrafts have been hijacked by pro-Iranian *Shia*. Their demands were to release their friends from Kuwaiti prisons. It should be noted that no one knows what happened to the hijackers of the *Al-Kazma*, as they have been captured by the Iranian authorities and nothing has been heard afterward. As for the hijackers of the *Al-Jabriah* they have been escaped after they negotiated their escape with the Algerian authorities for the release of the hostages.²¹⁷

4.3.5 Diplomats

As mentioned in the previous section, the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents has been ratified by Kuwait on 1 March 1989.²¹⁸ However, till today the convention has not been implemented by domestic Law. The obvious reason for not implementing this convention is the fact that the crimes covered in this convention are already covered by the Kuwaiti Penal Code No. 16 of 1960, but under the name of common crimes.

The Penal Code No. 16 of 1960 addresses this form of terrorism in several ways. The Code criminalises homicides and murders.²¹⁹ The former is punishable by life imprisonment or the death penalty, and a fine can be added to it.²²⁰ The latter is punishable by death penalty.²²¹ One may observe that this is a very broad way to address terrorism. In other words, any terrorist act that results in the assassination of diplomatic personnel may fall under the aforementioned provisions of the Penal Code. At the same time, if a terrorist act did not result in death of a person, but only in injuries or destruction of property or infrastructure, or kidnapping, other

²¹⁷ See chapter two for further detail.

²¹⁸ Decree of Law No. 72 of 1988, Gazette Kuwait Al Youm, No. (1803) Year: Thirty Five.

²¹⁹ Kuwaiti Penal Code No. 16 of 1960, Arts 149, 150.

²²⁰ *Ibid*, Art 149

²²¹ *Ibid*, Art 150

provisions in the criminal law can be applied.²²² As one of the interviewed Judges said ‘most of the terrorist crimes involve killing innocent people, kidnapping, assault or causes grievous bodily harm ... These acts are already punished by the Penal Code and its amendments, and they are punished with a severe penalties’.²²³

Another representative from the National Assembly stated that,

what we have so far is sufficient ... Although we need to develop our contemporary criminal law in order to meet the international requirements on terrorism, we afraid to do so now especially in this political situation ... We are afraid to make the same mistake which has been done with the Law No. 31 of 1970 In Regard to Crimes Relating to State Security.²²⁴

In addition, in terms of establishing jurisdiction over the crimes occur within the territory of Kuwait, the government of Kuwait stated in its report to the CTC that: ‘the Kuwaiti Penal Code applies in respect of all acts committed inside Kuwaiti territory, whether by a Kuwaiti or by an alien, in accordance with the principle of the territoriality of the Kuwaiti Penal Code’.²²⁵ Furthermore, Article 11 of the Penal Code No. 16 of 1960 expand the Kuwaiti jurisdiction to criminals who are not residence in Kuwait where their acts contribute to the crime that occurred fully or partially in the territories of Kuwait. Thus, Article 11 stated that ‘This Code is applied also on any individual who commits a crime outside the territories of Kuwait where this individual is the actual criminal or is accomplice in crime that occurred fully or partially in the territories of Kuwait’.²²⁶ Moreover, Article 12 of the Penal Code stipulates that:

The provisions of this law shall apply also to every Kuwaiti citizen who, outside Kuwait, commits a crime that is punishable under the provisions of this law and of the law in force at the place where this

²²² *Ibid*, Art 160-163

²²³ Interview with J.G.2

²²⁴ Interview with G.O.4

²²⁵ UN Security Council (CTC), ‘Kuwait’s Report to the CTC (2002)’, Security Council, Distr.: General, 6 August 2002, S/2002/886, Letter dated 17 July 2002 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 6 August 2002. See also the Kuwaiti Penal Code No. 16 of 1960, Art 11

²²⁶ Kuwaiti Penal Code No. 16 of 1960, Art 11

crime was committed, when a Kuwaiti citizen returns to Kuwait without having been acquitted by the foreign courts of the charge against him.²²⁷

The problem with this Article is that when the attack is not punishable by the Kuwaiti laws or vice versa. Another interesting point is that when non-Kuwaiti citizen who resident in Kuwait committed a crime outside the territory of Kuwait, then the Penal Code will not apply to such an example. However, in its report to the CTC, the government of Kuwait stated that:

in this case, the State of Kuwait is obliged to extradite the perpetrator of the crime to the State in which it occurred to be tried there, in accordance with judicial cooperation agreements or the principles of reciprocity applicable in this regard.²²⁸

4.3.6 Hostage-Taking

Although Kuwait has ratified the Hostage Convention on 6 February 1989,²²⁹ it has not implemented it. Specifically, the reason for not implementing the Hostage Convention is exactly the same reasons mentioned for diplomats.

The Penal Code No. 16 of 1960 contains provisions which may potentially cover hostage taking. Thus, Article 178 of the Penal Code makes it an offence to abduct a person by force to move from place where he normally resides and to detain such a person. This article is very broad and may, indeed, cover the incidents of hostage taking. However, as far as hostage taking is concerned, Article 178 fails to cover a situation when a person was detained and forcibly moved from places other than the place of his usual residence. Suppose the person's usual place of residence is Kuwait City. Then, suppose a person, while being on a business trip in Salmiya City. If such a person would be taken as a hostage in Salmiya City, where he came voluntarily for business purposes, the case of hostage taking could not fall

²²⁷ UN Security Council (CTC), 'Kuwait's Report to the CTC (2004)', Security Council, Distr.: General, 31 December 2004, S/2004/945, Letter dated 17 December 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, online: UN Security Council, Counter Terrorism Committee, 31 December 2004.

²²⁸ *Ibid.*

²²⁹ Decree of Law No. 73 of 1988, Gazette Kuwait Al Youm, No. (1803) Year: Thirty Five.

under Article 178. However, Article 180 eliminates such deficiency. Article 180 makes it an offence to anyone who uses force, threats or deception to abduct a person ‘with the intention of killing him, inflicting harm upon him, having sexual intercourse with him, committing indecent assault against him, inducing him to engage in prostitution or extorting something from him or from third person’.²³⁰ An important specification in this Article is that ‘extorting something from him or from third person’, as one of the public prosecutors said ‘extort as a word can be mean: doing or abstaining from doing some acts in order to release the person detained ... And third person can be mean: a third person or a governmental body’.²³¹ One may observe that Article 180 of the Penal Code grasps hostage taking as a form of a terrorist act in a more comprehensive way. First, the Article clearly makes an offence to cover the terrorist hostage-taking by specifying that such an act should be done with the purpose to compel a government or other persons to do or not to do something. This is a traditional tactic of terrorists. Second, the wording employed in the Article 180 allows coverage of all instances of hostage taking irrespectively of place the detained person at the moment of the taking was located. Under Article 180 the offence is punishable by death penalty.

4.3.7 Concluding Remarks

The examination of Kuwait laws shows that, most of the examined laws were already in existence before the advent of the international treaties. Furthermore, although most of the international conventions on terrorism have been ratified by Kuwait, only very few have been implemented. Thus, the Penal Code addresses terrorism in very general terms. In other words, terrorist acts are criminalised only as long as they fall under the provisions of the general criminal law, and under some other offences laid down in its amendment laws. The deficiency of such an approach is that terrorism is not recognised as a special problem, while it should be treated separately to underline its outrageous nature.

Although Law No. 6 of 1994 In Regard to Crimes Related to Safety of Aircrafts and Air Navigation was passed in order to implement the international conventions on aviation security; however, the law fails to cover some offences

²³⁰ *Ibid*, Art 180.

²³¹ Interview with P.P.2

which Kuwait is obliged to address under international law. In particular, the Law does not specifically address such offences as destruction of or damage to air navigation facilities or interference with the facilities and acts of violence against persons in airport if it is likely to cause serious injury or death.

In addition, Decree of Law No. 13 of 1991 In Regard to Weapons and Ammunition lacks specificity: it does not make a distinction between crimes involving unauthorised use, possession, export and import and production of weapons and ammunition, and the same offences committed with the purpose to support terrorism. Moreover, the Law No. 35 of 1985 In Regard to Crimes of Explosives does not specifically address the organisation and direction of the bombings as it is required by the Terrorist Bombings Convention. Finally, the aforementioned laws contain provisions that raise serious concerns about the observance of human rights. All these drawbacks demonstrate that Kuwait should reconsider its approach toward the counterterrorism legislative framework.

4.4 Section III: Why Kuwait Needs Comprehensive Counterterrorism Laws

4.4.1 Introductory Remarks

In the previous section it was explained that current laws fail to some extent to comply with the international requirements when it comes to counterterrorism. In a wake of such a conclusion the next question arises: why Kuwait would need comprehensive counterterrorism laws at all? Indeed, as has been mentioned earlier, terrorist acts can be treated as crimes of murder, injury to a person, destruction of and damage to property and so on. Therefore, one may have a reasonable question why the Kuwaiti legislator should think of enacting comprehensive counterterrorism laws. In the present section the author explains the reasons for the need of having counterterrorism laws. The author outlines general as well as specific reasons.

4.4.2 Reasons to Have Comprehensive Counterterrorism Laws

4.4.2.1 General Reasons

4.4.2.1.1 *Terrorism – Outrageous Conduct of International Concern*

A good explanation for the criminalisation of terrorism was given by the US Military Tribunal in the *Hostages* case at Nuremberg.²³² The Tribunal pointed out that an international crime should be criminalised because it is recognised as a grave matter of international concern.²³³ It is well established that terrorism is an international crime.²³⁴ Indeed, there are fourteen international conventions that prohibit various forms of terrorism. These treaties were developed under the auspices of the UN.²³⁵ In other words, they reflect the will of the international community.²³⁶ Therefore, it is essential to implement these conventions and passing national laws against terrorism in order to present a ‘symbolic solidarity’ to the international effort to combat terrorism.²³⁷

In recent decades terrorism became a matter of international concern. The reason for that is not only the immense suffering it induces but also the fact that it has transnational impact. Indeed, nowadays one may often hear or read the term ‘international terrorism’. This is not simply a buzzword adopted by the media but the term which actually reflects the nature of the phenomenon. The most outrageous terrorist attacks, as a rule, have an international nature. The 9/11 attack was of the international nature for several reasons. First, the nationality of the terrorists was diverse. The majority of the 9/11 attackers held the Saudi nationality.²³⁸ In addition, there were terrorists with Egyptian, Lebanese and the

²³² Saul, B., ‘Reasons for Defining and Criminalizing" Terrorism" in International Law’, (2010) 6 *Anuario Mexicano de Derecho Internacional* 419, 421.

²³³ *Hostages* case (1953) 15 *Ann Dig* 632, 636 (US Military Tribunal Nuremberg).

²³⁴ Lawless, M., ‘Terrorism: An International Crime’ (2007) 63 *International Journal* 139, 140

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ See Walker, C., ‘The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law’, in Masferrer, A. (ed.), *Post 9/11 and the State of Permanent Legal Emergency: Security and Human Rights in Countering Terrorism*, (Springer, Dordrecht. 2012), 121-152.

²³⁸ Central Intelligence Agency (CIA), ‘11 September 2001 Hijackers’, Available at: <https://www.cia.gov/news-information/speeches-testimony/2002/DCI_18_June_testimony_new.pdf> accessed 1st Dec. 2014.

UAE nationality.²³⁹ Second, people from different parts of the world became victims of the terrorists. Thus, citizens of the United States, Canada, Mexico, Colombia, Venezuela, Brazil, Peru, Egypt, Ethiopia, UK, France, Germany, Turkey, Syria, Italy, Belarus, Russia, China, Kazakhstan, Iran, India, Pakistan, Australia and other countries became victims of 9/11 attacks.²⁴⁰ One may observe that the map of the victims is quite impressive. It allows one to state that the 9/11 attacks were directed against the entire world. Third, a rather symbolic reason is that the attacks were made *inter alia* against the World Trade Centre which is by definition an international environment. Therefore, it is not surprising why the 9/11 attacks shocked not only the United States but the entire international community. Even before the attacks, terrorism has been a matter of international concern, but after 9/11 counterterrorism became practically the priority for the international community agenda.

The fact that the international community sees the problem of terrorism as utterly grave shows that despite significant cultural differences, the States share some universal values. One of the examples of universal values is respect for human life. For this reason, virtually in all countries of the world unlawful murder is regarded as an extremely serious crime. The crimes of murder touch the very bottom of morals in any society. Murder is outrageous from any religious perspective. Indeed, the major religions of the world, Christianity, Islam, Buddhism, and Judaism treat murder as a grave sin. Terrorist attacks often involve murder and other despicable consequences. Therefore, terrorism attacks some universally agreed human values. For this reason, UN Security Council Resolutions 1373, 1456, 1566 and 1624 require from States to take an action against terrorism by criminalising it.²⁴¹

²³⁹ *Ibid.*

²⁴⁰ U.S. Department of State, 'Victims of the 9/11 Attacks' (Map), Available at: <http://photos.state.gov/libraries/barbados/128443/september/map-911-victims.pdf> accessed 1st Dec. 2014.

²⁴¹ For UN Security Council Resolutions 1373, 1456, 1566 and 1624, Available at: <http://www.un.org/en/sc/ctc/resources/res-sc.html> accessed 1st Dec. 2014.

4.4.2.1.2 *Condemnation and Stigmatisation of Unacceptable Behaviour*

Criminalisation of a certain conduct in national law serves as a tool for advancing of certain policy purposes.²⁴² Among such purposes are: incapacitation, rehabilitation, punishment or retribution, and general and specific deterrence.²⁴³ However, not all of these policy purposes can be effective in combating terrorism. For instance, deterrence is a less relevant purpose when it comes to terrorism. Saul reasonably expresses doubts that terrorists are likely to be deterred by condemnation or imprisonment because they reject the legitimacy of legal systems that imprison and condemn them.²⁴⁴ Moreover, there are even more doubts that suicide bombers are inclined to be concerned about prosecution or any other processes that will have an extremely negative impact on their lives.²⁴⁵ In a word, deterrence is a weak argument for the criminalisation of terrorism.

Another doubtful argument for criminalisation is incapacitation. It is true that such punishment as imprisonment is likely to incapacitate terrorist of committing terrorist attacks. However, Saul correctly points out that terrorists can be incapacitated within the ordinary crime conviction.²⁴⁶ Indeed, a terrorist can be imprisoned for the crime of murder, and thus, incapacitated anyway.²⁴⁷ To clarify, here the author is concerned with the question of why terrorists should be brought to justice not on the account of ordinary crime but on the specific account of terrorism as a grave crime.

In the wake of such an analysis, it seems that the most justifiable purpose of criminalisation of terrorism is retribution and punishment. Saul refers to retribution and punishment as ‘the most significant factor supporting the distinct criminalisation of terrorism’.²⁴⁸ The author explains that retribution and punishment reflect condemnation and stigmatisation of the offender and brings ‘some sense of

²⁴² Saul, B., ‘Reasons for Defining and Criminalizing" Terrorism" in International Law’, (2010) 6 *Anuario Mexicano de Derecho Internacional* 419, 427.

²⁴³ *Ibid.*, 427-428

²⁴⁴ *Ibid.*, 430

²⁴⁵ *Ibid.* See also Walker, C., ‘The Impact of Contemporary Security Agendas against Terrorism on the Substantive Criminal Law’, in Masferrer, A. (ed.), *Post 9/11 and the State of Permanent Legal Emergency: Security and Human Rights in Countering Terrorism*, (Springer, Dordrecht. 2012), 121-152.

²⁴⁶ *Ibid.*, 429

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

justice for victims’.²⁴⁹ If Kuwait specifically criminalises terrorism, it will mean that the country officially condemns and stigmatises it. In simple terms, Kuwait will officially reflect its extremely negative position toward terrorism as a phenomenon. Moreover, a terrorist convicted under the comprehensive counterterrorism law would be aware that he is punished not simply for murder, injury, destruction and damage, but also for the purposes he pursued. Criminalisation of terrorism makes the purposes of terrorism illegitimate. As far as Kuwait is concerned, there is no sign in the laws that the country deeply condemns the purposes of terrorism. For instance, in Kuwait, a terrorist who committed a bombing which caused death, injuries and destruction would be convicted only for these acts. The purpose with which these acts are committed has lesser relevance, and thus, so does terrorism as a phenomenon.

4.4.2.1.3 *Absence of Internationally Agreed Definition of ‘Terrorism’*

As has been mentioned before, there is no internationally agreed definition of the term ‘terrorism’. There are, however, ongoing efforts to insert such a definition in an international treaty. Thus, in 1996 the UN General Assembly decided to establish an Ad-Hoc Committee to tackle further means of developing a comprehensive international legal framework to address terrorism.²⁵⁰ At the twelfth meeting of the committee India submitted a draft for a comprehensive convention against international terrorism.²⁵¹ The draft convention incorporates some key provisions of the major counterterrorism conventions.²⁵² For instance, the draft convention contains an obligation to criminalise the offences laid down in the Convention and to provide an appropriate punishment for them.²⁵³ However, at the current stage the further development of the draft convention is deadlocked by virtue of the absence of the agreement on the scope of international terrorism. In particular, States cannot agree on a clear distinction between terrorist acts and right to self-determination. For instance, the Arab States consider the actions of Israel

²⁴⁹ *Ibid.*

²⁵⁰ UNGA Res 51/210 (17 December 1996) 88th plenary meeting A/RES/51/210

²⁵¹ UNGA Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 Fourth session (14-18 February 2000), A/55/37

²⁵² Deen, T., ‘Politics: UN Member States Struggle to Define Terrorism’, *Inter Press Service*, (25 July 2005), Available at: <<http://www.ipsnews.net/2005/07/politics-un-member-states-struggle-to-define-terrorism/>> accessed 1st Dec. 2014.

²⁵³ UNGA Measures to Eliminate International Terrorism: Report of the Working Group (2010), A/C.6/65/L.10

toward Palestine as ‘official state terrorism’.²⁵⁴ At the same time, the representatives of the Arab States noted that Palestine legitimately struggles for its right to self-determination.²⁵⁵ Thus, one may observe that the major concern of some countries is that the ‘liberation fighters’ will be treated as terrorists under the comprehensive convention. The distinction represents not only a political problem, but also an academic one.²⁵⁶ Buchanan explained that in order to draw the line between terrorists and ‘liberation fighters’, it is necessary to have a clear understanding of the concept of state legitimacy.²⁵⁷ The scholar draws attention that namely against this concept the claims of self-determination are to be evaluated.²⁵⁸ Overall, the disagreement over the scope of international terrorism indicates that it will take a while for the international community to agree upon the definition of ‘terrorism’.

Many countries instead of waiting for the internationally agreed definition of terrorism, determined the scope of terrorism in their domestic laws. Thus, the UK law, for example, provides that terrorism is defined as the action or threat of action that: (1) involves serious violence against a person or serious damage to property; (2) expose to danger a person’s life (meaning the person other than perpetrator); (3) produces a serious risk to public health and safety; (4) is intended to provide a serious interference or disruption to an electronic system.²⁵⁹ These actions fall under the definition of terrorism only if they are designed to affect the government or intimidate public, or to advance ideological, religious or political cause.²⁶⁰ In July 2013, Kuwait passed the Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT), which is explained in detail in chapter five. Within this Law Article 1 has defined Terrorism, Terrorist Person and Terrorist Organisation. The effectiveness of these definitions will be discussed in detail in the next chapter.

²⁵⁴ UNGA Legal Committee Urges Conclusion of the Draft Convention on International Terrorism (8 October 2012) GA/L/3433

²⁵⁵ *Ibid.*

²⁵⁶ Saul, B., *Defining Terrorism in International Law*, (Oxford University Press, Oxford, 2006).

²⁵⁷ Buchanan, A., *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, (Oxford University Press, 2004), 11. See also Stephens, T., ‘International Criminal Law and the Response to International Terrorism’, (2007) 27 UNSW Law Journal, Available at: <<http://worldlii.austlii.edu.au/au/journals/UNSWLJ/2004/30.html>> accessed 1st Dec. 2014.

²⁵⁸ *Ibid.*

²⁵⁹ Terrorism Act 2000 (c.11), s 1

²⁶⁰ *Ibid.*

4.4.2.2 Specific Reasons

4.4.2.2.1 *Need to Comply with International Law*

As it has been discussed earlier, Kuwait took certain obligations under international treaties. In particular, Kuwait committed to criminalise certain forms of terrorism, as it has ratified most of the international conventions on terrorism. However, closer examination of the Kuwaiti laws shows that it still fails to address in clear terms the particular types of offences. Among such offences are: (1) destruction of or damage to air navigation facilities or interference with the facilities; (2) acts of violence against persons in airport if it is likely to cause serious injury or death; (3) organisation and direction of terrorist bombings.

Also, Kuwait law does not specifically address taking diplomats and other internationally protected persons as hostages. In reply to the UN Security Council inquiry regarding legislation and procedures that exist to prevent terrorists from acting against other States or citizens, the Kuwait government cited Article 4 of the Law No. 31 of 1970 In Regard to Crimes Relating to State Security.²⁶¹ Article 4 prohibits hostile action against a foreign State when such an action might expose Kuwait to the severance of diplomatic relations or to the risk of war.²⁶² One may observe that this article has a very limited scope. In particular, it is limited to situations involving real risk of declaring war from the State, whose nationals suffered from terrorist attacks. However, in the age of sophisticated diplomacy and intensive peace-making efforts, it is difficult to imagine that one nation would declare war to another only because its citizens suffered from a terrorist attack. The same concerns the severance of the diplomatic relations. The predominant trend in the modern foreign policy is the philosophy of practical politics. In simple terms, in international relations States are mainly governed by their practical interests rather than by ideologies, values, emotions and so on. It means that even if foreign nationals were targeted by terrorists in Kuwait, it is highly unlikely that the foreign nations would freeze diplomatic relations with Kuwait. If a given nation has its

²⁶¹ UN Security Council (CTC), 'Kuwait's Report to the CTC (2001)', Security Council, Distr.: General, 21 December 2001, S/2001/1221, Letter dated 19 December 2001 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 21 December 2001.

²⁶² *Ibid.*

interests in Kuwait, it would not fuel a conflict with Kuwait merely to demonstrate how protective it is, when it comes to its citizens. Therefore, there is a very little possibility that a terrorist attack in Kuwait would become a pretext for war or freezing the diplomatic relations. In a word, Article 4 of the Law No. 31 of 1970 In Regard to Crimes Relating to State Security has little to do with the protection of foreign nationals from terrorist attacks. Overall, Kuwait should pass a specific law that would define the crime of hostage taking with consideration of the Hostages Convention and the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents.

4.4.2.2.2 *Need to Prevent Violation of Human Rights*

In Section II the author noted that some of the provisions of the Penal Code raise serious concerns about the restriction of the universally recognised human rights. To recall, the broadness and vagueness of some of the provisions in the Penal Code create a room for the suppression of human rights. The risk of limitation of freedom of association and speech were cited as one of the examples. The example shows that there is a risk that Kuwait may justify violations of basic human rights by the necessity to enforce the counterterrorist provisions of the Penal Code.

The debate about security considerations versus human rights is extensive. The views on the relationship between national security and human rights can be divided into three major groups.²⁶³ The first group is centred on the idea that national security is more important and thus, should be maintained at the expense of human rights if necessary. The second group holds that human rights are superior to national security considerations, and thus, they should be given a priority. Finally, the third includes views according to which it is possible to find an appropriate balance between national security and human rights.²⁶⁴ For a long time, the views belonging to the first group prevails. Indeed, even in the United States that has a reputation of a democracy watchdog for the past fifty years policymakers treated

²⁶³ Roach, K., 'Must We Trade Rights for Security? The Choice Between Smart, Harsh or Proportionate Security Strategies in Canada and Britain', (2006) Vol. 27 *Cardozo Law Review*, 2151.

²⁶⁴ Sottiaux, S., *Terrorism and the Limitation of Rights: The ECHR and the US Constitution*, (Har Publishing, Oxford, 2008), 472

the goal of promoting human rights and goal of protection of national security as mutually exclusive.²⁶⁵

Because national security often clashes with human rights, some may argue that it is not desirable to enact comprehensive counterterrorism laws. In other words, there are certain apprehensions that counterterrorist laws may have a negative impact on fundamental human rights. At the same time, those, who believe that the counterterrorism laws are unnecessary because they may suppress fundamental human rights, should take into account that terrorism brings more harm to such rights than a well-balanced counterterrorist legislation. Indeed, terrorist acts violate such fundamental human rights as right to life and right to security and liberty. Moreover, it would be an absurd to compare the harm done to human rights by the counterterrorism legislature with that one inflicted by terrorist attacks. The author, however, acknowledges that one of the ways in which terrorism suppresses human rights is that it compels the government to adopt restrictive laws that, in fact, limit human rights. Brysk correctly points out that:

Terrorism has succeeded in destroying democracy when a national security state, without knowledge or consent of its citizens, tortures and kills detainees, runs secret prisons, kidnaps foreign nationals and deports them to the third countries to be abused, imprisons asylum seekers, spies on its citizens, and impedes freedom of movement, association, and expression on the basis of religion and national origin.²⁶⁶

While there are risks that counterterrorism legislation may restrict human rights, it is possible to find an appropriate balance between counterterrorist considerations and the observance of human rights.

²⁶⁵ Burke-White, W. W., 'Human Rights and National Security: The Strategic Correlation' (2004) 17 HARV. HUM. RTS. J 249, 249.

²⁶⁶ Brysk, A., 'Human Rights and National Insecurity', in Brysk, A. and Shafir, G. (Eds), *National insecurity and human rights: Democracies debate counterterrorism*, (vol 5, University of California Press, 2007), 1.

4.4.3 Concluding Remarks

Kuwait counterterrorism laws lack specificity. Why should they be specific? Why cannot terrorism be addressed under the general framework of criminal offences? Firstly, terrorism represents an outrageous conduct of international concern. The international community agreed that terrorism is an extremely grave crime. For this reason, the international community developed and concluded a series of the international treaties that address various forms of terrorism. Such an attitude makes terrorism a very special crime. Such crimes should be treated separately by virtue of the specificity. Second, there is a need to condemn and stigmatise terrorism, thereby showing that Kuwait does not tolerate terrorist acts, and that terrorists would not find a safe haven in the country. Third, comprehensive counterterrorist laws are necessary to enable Kuwait to define the scope of terrorist. Fourth, the analysis of the Kuwait laws shows that it does not fully comply with the obligations imposed by the counterterrorist treaties. Finally, the comprehensive counterterrorism laws are necessary to limit the broad scope of the Kuwait law, and thereby provide better guarantees for the observance of human rights.

4.5 Conclusion

The international community regards terrorism as one of the most pressing global threats to international peace and security.²⁶⁷ This vision compels States to take decisive action at the international level. In response to a growing number of instances of terrorist acts, States have adopted a series of the multilateral international treaties designed to address terrorism. The treaties cover various forms of terrorism: aircraft hijacking, attacks on diplomats and other internationally protected persons, attacks on ships and seizure of ships, hostage taking, aviation sabotages, attacks on fixed platforms in the sea, and terrorist bombings. The conventions define such acts, attempts to commit such acts, or assistance to commit such acts as offences.

²⁶⁷ See UN Security Council, *Security Council resolution 1368 (2001) Threats to international peace and security caused by terrorist acts*, 12 September 2001, S/RES/1368 (2001), para. 1, Available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>> accessed 1 Dec. 2014

The counterterrorist conventions contain a standard set of obligations imposed on the Contracting States. Such obligations include: (1) to establish the aforementioned acts as offences (or criminalise them); (2) provide appropriate punishment for the offences; (3) to establish jurisdiction over offences under prescribed conditions; (3) to treat the offences as extraditable; (4) to take an alleged offender into custody; (5) submit the case to the competent authorities for further prosecution of an offender, if the State chooses not to extradite him; (6) to notify interested States about the prosecution of an alleged offender; (7) to cooperate with other states to prevent the offences, and some other obligations. The common weakness of all the conventions is lack of enforcement. In other words, if a State does not comply with the obligations, there are no direct sanctions, though there may be indirect measures such as economic and diplomatic retaliation.

Kuwait is a party to most of the counterterrorist international treaties. By virtue of its participation in such treaties Kuwait is bound to address the aforementioned offences in its national law. In particular, Kuwait should criminalise aircraft hijacking, hostage taking, terrorist bombing, attack on ships and seizure of ships and a number of other acts set forth in the international law. In a word, the international legal framework compels Kuwait to enact counterterrorism laws to show its solidarity to the international efforts to combat terrorism.

Unlike the UK, Kuwait does not have comprehensive counterterrorism criminal laws beyond the precise implementation of the international conventions. Terrorist acts are to be addressed within the framework established for ordinary crimes. Thus, a terrorist bombing would be treated as a crime of ‘throwing a bomb’. However, the crime of ‘throwing a bomb’ may not necessarily cover terrorist bombing, since it is unclear what is meant by ‘throwing’. The offence of false communication to aircraft or ships may fall under the crime of sending misleading signals and warnings as set forth in the Kuwaiti Penal Code.

Close examination of the relevant Kuwait laws that may potentially address terrorist acts shows that they are not even fully in compliance with the international requirements to combat terrorism. In addition, they contain at times obscure wording. The obscurity hinders legal certainty and, as a result, may lead to violation of human rights. Equally, legal uncertainty allows interpreting laws in a broad

sense. For instance, a broad provision can cover not only wrongful conduct but also legitimate conduct, as discussed in section II. Thus, the prohibition of associations aiming to spread principles that promote the destruction of the basic State systems illegally or that promote the overpowering the social system or the economic system that is present in the country by force, when interpreted broadly, may cover some legitimate associations. At this point, it is important to recall that Kuwait is a party to the International Covenant on Civil and Political Rights which guarantees a range of freedoms. Therefore, Kuwait is bound to respect the internationally accepted rights and freedoms and take it into account in applying these provisions. In order to ensure the respect of human rights, it would be preferable for Kuwait to provide a better legal certainty in its laws.

In addition, there are general reasons why every State should have comprehensive counterterrorist laws. The first reason is that terrorism represents an outrageous conduct of international concern. In other words, terrorism is different from ordinary crime by the reason of its gravity, and thus, should be treated in a distinctive manner. The second reason is that the gravity of terrorism necessitates the States to condemn it at the official level. Criminalisation, in fact, indicates such condemnation. Putting it differently, the fact that terrorism is criminalised shows the State's official negative position toward it. In addition, judicial authorities will be able to prosecute terrorists more effectively. The third reason is that there is no internationally agreed definition of terrorism. In order to effectively combat terrorism, it is necessary to have a clear understanding of the essence of terrorism. It is doubtful that without such understanding anyone would succeed in the fight against terrorism. States should define terrorism in their national laws so as to create a comprehensive legal framework for tackling terrorism. A definition of terrorism in national law would serve as a foundation for such a framework.

Also, there are some specific reasons why Kuwait should have laws which are expressly designated to address terrorist acts. The examination of the more indirect Kuwait laws shows that they contain a lot of drawbacks. Among such drawbacks are: lack of compliance with international law, and risks of violation of human rights. As a result, Kuwait need to pass comprehensive counterterrorism laws in order to fill the gap between the international obligations outlined in the

conventions and the current national legislation, to comprehensively cover terrorism beyond the international conventions, but equally to eliminate the undue breadth of laws that pose a threat to human rights. Although there were not so many cases in Kuwait related to terrorism, yet it has been found that some of the terrorists have escaped the punishment due to the lack of offences in the current criminal law. In addition, considering the surrounding threats and the instabilities in Iraq and Syria from the Islamic State, and the possible future threats from such instabilities to Kuwait, provide an evident need to pass comprehensive counterterrorism laws, which will help Kuwait to prevent and counter such threats in the long run. However, any such law/code must adhere the human rights standards set out in the Constitutional law of Kuwait and the other international laws in human rights to which Kuwait has acceded.

Chapter Five

Terrorist Financing: Kuwait's Response

5.1 Introduction

Terrorism financing became one of the major international security threats during the last two decades. The September 11 attacks in the United States changed the perception of international security in the world and triggered a global revolution in combating terrorism financing and money laundering that led to the restructuring of major international bodies, including the United Nations (UN) which set up new institutions and the Financial Action Task Force (FATF) which refocused its regulatory attention.¹

Historically, terrorist activities have been funded by a wide range of methods, such as 'state sponsorship, diaspora donations, charitable contributions, drug trafficking, extortion, and involvement in criminal activities'², and these methods have developed over time. Today, however, terrorists resort to other multiplicities of sources, which are difficult for governments to stop. Therefore, much focus has been aimed at supervising and protecting the Money Services Businesses (MSBs), including those engaged in informal money or value transfers (MVTs), and non-profit organisations from being misused by financiers of terrorism. The cash flow in such cases is sometimes small and thereby difficult to stop. However, it can be traced by ensuring that all suspicious financial transactions are reported and investigated. In addition, correct measures should be taken by governments to

¹ See Financial Action Task Force, *IX Special Recommendations*, Available at: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/ixspecialrecommendations.html>> accessed 1st Dec. 2014.

² Shapiro, J. N., 'Terrorist Financing and State Response', American Political Science Association, Available at: <https://www.apsanet.org/imgtest/Shapiro_TerroristFinancingStateResponse.pdf> accessed 1st Dec. 2014. See also Biersteker, T. J., and Eckert, S. E., 'The Challenge of terrorist financing', in Biersteker, T. J., and others (eds.), *Countering the Financing of Terrorism*, (Routledge: London, 2008), 12. See also Independent Monitoring Commission (IMC). *Fifth Report of the Independent Monitoring Commission: Presented to the Government of the United Kingdom and the Government of Ireland under Articles 4 and 7 of the International Agreement establishing the Independent Monitoring Commission*, (HC 46), (24 May 2005), (London: The Stationery Office), 31-39. See also Financial Action Task Force, *Terrorist Financing*, (OECD: Paris, February 2008). See also Roth, J., Greenberg, D. and Wille, S., *National Commission on Terrorist Attack upon the United States*, (Monograph on Terrorist Financing, 2004), Available at: <http://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Monograph.pdf> accessed 1st Dec. 2014.

regulate the uses of such services and to stop or suppress the unregulated uses. Therefore, the ‘economic life has been affected by the surveillance of financial transactions.’³

Examples of such measures undertaken by the United Nations are the adoption of numerous resolutions with regard to financing terrorism, including Security Council Resolutions 1267, 1333, 1373, and 1989 discussed in this chapter. In addition, the UN General Assembly adopted the International Convention for the Suppression of the Financing of Terrorism 1999 (ICSFT) that entered into full force in 2002.⁴ Since then, a number of resolutions and recommendations have been developed to boost the effectiveness of combating terrorist financing. A good example of such measures are the 40 + 9 recommendations put forward by the FATF to counter the crimes of terrorist financing and money laundering.⁵

These international obligations and standards are to some extent overlapping. For instance, both the UN resolutions and the FATF recommendations urge all states to ratify the ICSFT and to implement it nationally. In addition, the ICSFT, the UN resolutions, and the FATF recommendations deal with such characteristics as freezing, seizure, and confiscation of terrorist assets. Moreover, the ICSFT compels member countries to consider following and implementing some of the standards contained in the FATF recommendations on AML/CFT. Interestingly, however, each obligation has provisions that are not found in the others. For instance, the FATF recommendations direct how to regulate the alternative remittance systems, wire transfers and non-profit organisations, which are not covered by the ICSFT and the UN resolutions.⁶

Therefore, and as explained in chapter four, this chapter explores the measures imposed on terrorist financing and money laundering crimes in Kuwait before and after June 2013, when Kuwait criminalised terrorism financing. The measures have

³ See Walker, C., *Blackstone's Guide to The Anti-Terrorism Legislation*, (2nd edn, Oxford University Press, United States, 2009).

⁴ Durrieu, R., *Rethinking money laundering & financing of terrorism in international law: Towards a new global legal order*, (Leiden: Martinus Nijhoff Publishers, 2013), 111.

⁵ See the last revision of the FATF Recommendations 2012, Available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf> accessed 1st Dec. 2014

⁶ International Monetary Fund, *Suppressing the Financing of Terrorism: a Handbook for Legislative Drafting*, (Washington, D.C., International Monetary Fund, 2003).

been evaluated in terms of compliance with the 40 + 9 recommendations developed by the FATF. The chapter also looks at the reasons behind the delay in implementing the ICSFT in Kuwait, and how external pressures have helped in paving the way to implement the international standards. However, before looking at the situation in Kuwait, it is worth elaborating the international efforts on countering terrorism financing and money laundering. Therefore, this chapter is divided into three sections. The first section outlines the development of the international responses and obligations to combat terrorism financing. The second and third sections examine and evaluate Kuwait's efforts to combat terrorist financing before and after June 2013 respectively. The analysis of this chapter considers the effectiveness and fairness of the measures imposed in order to combat terrorism financing. However, as Law No. 106 of 2013 has enacted recently, measuring the effectiveness of its practical implementation is premature.

5.2 Section I: International Responses to Combat Terrorism Financing

5.2.1 Introduction

This section investigates how the international community has developed its legal framework for combating terrorism financing. It first examines the situation before and after the 9/11 attacks against the United States. Then the section examines the three international legal reactions to terrorist financing, specifically the freezing of terrorist assets, the international regulatory measures, and the criminalising of terrorism financing. Therefore, this section outlines the international instruments against terrorism financing and explores the obligations that international bodies have imposed upon their member states. In addition, this section sets out how countries should criminalise the financing of terrorism and how that crime is a separate and independent crime that differs from other crimes relating to money laundering or corruption.

5.2.2 The International Legal Framework Prior to September 11, 2001

Before the 9/11 incidents, the international community did not prioritise its efforts to prevent terrorism financing, even though they were aware that terrorists

need money to carry out their attacks.⁷ In fact, although frameworks had been developed to fight against terrorism financing, states showed little inclination to adopt them. Therefore, Al-Qaida, the Taliban, and other terrorist organisations faced no serious financial interdiction efforts from the international community. In addition, international criminal enforcement actions against the terrorist financial networks and their financial donors did not exist. For example, prior to 9/11, the Justice Department of the United States was involved in counter-terrorism prosecution. These included prosecutions against the perpetrators of the World Trade Centre bombing that took place in 1993 and the attacks in 1998 against the United States embassies in Kenya and Tanzania. Yet, the individuals who were prosecuted were those who had plotted and carried out the attacks, not those who had financially sponsored the attacks.⁸ Moreover, before September 11, no international efforts were undertaken to initiate criminal prosecutions against the facilitators, the financial sponsors and donors of international acts of terror.

In addition, the international bodies did not take serious action against terrorism financing. In fact, international standards against the financing of terrorism had not been developed. FATF, the international organisation that has the responsibility of establishing international standards, adopted ‘Forty Recommendations on Money Laundering’.⁹ However, none of these recommendations provided international standards specifically to suppress terrorism financing prior to 9/11. It is true that in December 1999, the International Convention for the Suppression of the Financing of Terrorism (ICSFT) was drafted and opened for signature.¹⁰ However, countries did not have the sense of necessity

⁷ Gurulé, J., *Unfunding Terror: The Legal Response to the Financing of Global Terrorism*, (Cheltenham, Edward Elgar Publishing Limited; 2009), 3-4.

⁸ See *United States v. Osama Bin Laden, [et al.]*, Indictment, No. S(6) 98 Cr. 1023 (LBS) (S.D.N.Y. 2000) (indictment charging Osama bin Laden and 14 other defendants with the bombings of the U.S. embassies in Kenya and Tanzania; see also *United States v. Rahman*, 189 F.3d 88 (2d Cir.), *cert. denied*, 528 U.S. 982, 120 S.Ct. 439, 145 L.Ed.2d 344 (1999) (Sheik Omar Abdel Rahman was convicted of conspiring to commit acts of terrorism against the United States).

⁹ See Financial Action Task Force on Money Laundering, *The Forty Recommendations*, 1996, Available at: <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%201996.pdf>> accessed 1st Dec. 2014. See also Gardner, K. L., ‘Terrorism Defanged: The Financial Action Task Force and International Efforts to Capture Terrorist Finances’ in Cotright, D. and Lopez, G. A., *Uniting Against Terror: Cooperative Nonmilitary Responses to the Global Terrorist Threat*, (Cambridge and London: MIT Press; 2007), 157-186.

¹⁰ UNGA International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, opened for signature 10 January 2000) (2000) 39 ILM 270.

to approve the Convention until after the 9/11 terrorist attacks. To be precise, only four countries, including the United Kingdom, had ratified the ICSFT as of 9/11.¹¹ In addition, the ICSFT did not enter into force until April 10, 2002.¹²

Despite the effort to ensure that counter-terrorist financing measures were implemented and adopted through the United Nations Resolutions 1267 (1999) and 1333 (2000), many countries showed little interest in the matter. The Resolutions required the Member States to enact these measures in addition to fighting against international terrorism. In October 1999, the Security Council decided to use its power under the UN Charter Chapter VII to combat Al-Qaida terrorist threats.¹³ It was realised by the Security Council that Osama bin Laden and Al-Qaida had a safe haven in Afghanistan, where terror attacks were plotted. It was in Afghanistan that the terror group managed to plan, supervise and initiate the August 1998 bombing of the United States embassies in Kenya and Tanzania.¹⁴ As a result, the Security Council imposed sanctions on the Taliban, which represented the Afghanistan *de facto* government, as a way to confront Al-Qaida. Moreover, the Security Council approved Resolution 1267 as a mechanism to bar the Taliban from hosting Bin Laden and Al-Qaida members.¹⁵ The Resolution also forced countries to implement several economic measures to fight the Taliban. The measures included the responsibility to freeze the assets of the Taliban and associated individuals and entities.¹⁶ A UN Committee consisting of the Security Council members was given the mandate to monitor the implementation of the measures that Resolution 1267 required. The 1267 Committee was referred to as the ‘Al-Qaida and Taliban

¹¹ See Lehto, M., *Indirect Responsibility for Terrorist Acts: Redefinition of the Concept of Terrorism Beyond Violent Acts*, (Leiden: Nijhoff, 2010), ch. 6. See also Walker, C. ‘Terrorism Financing and the Policing of Charities: Who Pays the Price?’, in King, C. and Walker, C., *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets*, (Ashgate, Farnham, 2014), ch. 11.

¹² *Ibid.*

¹³ Chapter VII of the United Nations Charter gives the Council the power to ‘determine the existence of any threat to the peace, breach of the peace, or act of aggression’ and to take military and nonmilitary action to ‘restore international peace and security’. See Charter of the United Nations, Chapter VII: action with respect to threats to the peace, breaches of the peace, and acts of aggression, Available at: <<http://www.un.org/en/documents/charter/chapter7.shtml>> accessed 1st Dec. 2014.

¹⁴ Gurulé, J., *Unfunding Terror: The Legal Response to the Financing of Global Terrorism*, (Cheltenham, Edward Elgar Publishing Limited; 2009), 5.

¹⁵ UN Security Council, *Resolution 1267 (1999) Adopted by the Security Council at its 4051st meeting on 15 October 1999*, 15 October 1999, S/RES/1267 (1999), Available at: <<http://www.refworld.org/docid/3b00f2298.html>> accessed 1st Dec. 2014.

¹⁶ *Ibid.*, para. 4(b). First called the 1267 Committee; since September 2003 officially titled ‘The Al-Qaida and Taliban Sanctions Committee’, see UN Security Council document SC/7865, of 4 September 2003.

Sanctions Committee'.¹⁷ Nonetheless, most countries did not comply with the resolution, hence making it ineffective.

On October 12, 2000, a small boat exploded upon impact with the USS Cole in Aden, Yemen. Seventeen American sailors were killed, and thirty others were seriously injured.¹⁸ This attack together with other Al-Qaida terrorist activities prompted the adoption of Resolution 1333 by the Security Council in December 2000.¹⁹ In addition to the enforcement of economic sanctions against the Taliban, Resolution 1333 requested that countries freeze the financial assets of Bin Laden, Al-Qaida, and other entities and individuals associated with them.²⁰ Moreover, Resolution 1333 established a list of people who had a relationship with Bin Laden or the Al-Qaida, known as the United Nations 'Consolidated List'.²¹ Unfortunately, compliance with Resolution 1333 was similarly disappointing at that time, since no names were forwarded to the committee that was responsible for implementing the asset freeze and for imposing other sanctions against the Taliban and Al-Qaida.²² Thus, before 11th September 2001, the international community's efforts to combat terrorism funding were weak and ineffective.

5.2.3 The International Legal Responses to the 9/11 Terrorist Attacks

Within a few months after the 9/11 attacks, the international community developed and implemented a global legal framework to deprive Al-Qaida and its affiliated terrorist organisations of funding. A few days after the incidents, a major law enforcement initiative was adopted to combat terrorist financing. On September 28, 2001, the United Nations Security Council adopted Resolution 1373 to ensure that the assets of terrorists, terrorist organisations and the individuals and other

¹⁷ *Ibid*, para. (6)

¹⁸ Comras, V. D., *Flawed Diplomacy: the United Nations and the War on Terrorism*, (1st edn, Washington, D.C., Potomac Books, 2010).

¹⁹ UN Security Council, *Resolution 1333 (2000) / adopted by the Security Council at its 4251st meeting, on 19 December 2000*, 19 December 2000, S/RES/1333(2000), Available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/806/62/PDF/N0080662.pdf?OpenElement>> accessed 1st Dec. 2014.

²⁰ *Ibid*, 8(c)

²¹ *Ibid*.

²² See UN Security Council, *Analytical Support and Sanctions Monitoring Team, Seventh Report of the Analytical Support and Sanctions Monitoring Team*, para. 25, (U.N. Doc. S/2007/677, November, 2007), Available at: <http://www.un.org/ga/search/view_doc.asp?symbol=S/2007/677> accessed 1st Dec. 2014.

entities associated with them were seized and frozen.²³ One month later, in October 2001, FATF implemented Eight Special Recommendations on terrorist financing, which set out the first international standards on the suppression of the financing of terrorism.²⁴ The International Convention for the Suppression of the Financing of Terrorism became effective in April 2002, the purpose of which was to impose several legal responsibilities on State signatories to ensure that terrorist funding was curtailed.²⁵ In this way, the legal framework needed to combat terrorist financing was put in place. In fact, the international legal framework against terrorism financing available today was to a large extent constructed based upon these initiatives that were developed within 7 months after the 9/11 incidents.

The legal reaction to terrorist financing has three major components. The first is freezing both domestic and international terrorist assets. The second component is the implementation and enforcement of regulatory measures against the terrorists' misuse of international financial systems. The third involves the prosecution of terrorist financiers. A brief description of the legal framework to deny and deprive terrorists of funding follows.

5.2.4 Freezing Terrorist Assets

The adoption of Resolution 1373 by the United Nations Security Council imposed a number of important responsibilities on countries to fight against international terrorism.²⁶ According to Resolution 1373, member states should prevent terrorists' movement through their territory by establishing border controls

²³ UN Security Council, *Security Council resolution 1373 (2001) [on threats to international peace and security caused by terrorist acts]*, 28 September 2001, S/RES/1373 (2001), Available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>> accessed 1st Dec. 2014.

²⁴ In October 2004 the FATF published a Ninth Special Recommendations. See Financial Action Task Force, *IX Special Recommendations*, Available at: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/ixspecialrecommendations.html>> accessed 1st Dec. 2014.

²⁵ UNGA International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, opened for signature 10 January 2000) (2000) 39 ILM 270

²⁶ UN Security Council, *Security Council resolution 1373 (2001) [on threats to international peace and security caused by terrorist acts]*, 28 September 2001, S/RES/1373 (2001), Available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>> accessed 1st Dec. 2014.

and restricting the issuance of travel documents (by a travel ban).²⁷ The Resolution also encouraged a weapons embargo to ensure that terrorists did not have access to weapons. In addition, Resolution 1373 ensured that terrorist individuals, who are planning, supporting and committing terrorist acts, are denied safe haven (safe haven ban). The Resolution also sought to ensure mutual assistance and cooperation among member states with regard to terrorism investigation activities (mutual assistance). Lastly, Resolution 1373 imposed a number of duties on states to suppress and prevent financing terrorism and to freeze ‘without delay funds and other financial assets or economic resources’ of individuals who commit, finance and facilitate acts of terrorism together with individuals and entities associated with them.²⁸ In comparison to its predecessors, Resolutions 1267 and 1333, Resolution 1373 was much broader, since Resolutions 1267 and 1333 were limited to freezing the financial assets of Bin Laden, Al-Qaida, the Taliban and their associated entities. Resolution 1373 extended the freeze to cover all terrorists and terrorist organisations by ordering member states to freeze without delay all assets of individuals and entities identified in the Security Council resolution. However, Resolution 1373 does not refer to its predecessor resolutions, which set up the responsibility to freeze the assets of named persons and entities, nor does it mention any list of such persons and entities established under its predecessor resolutions. Consequently, the general responsibility of freezing terrorist assets in accordance with the Resolution does not depend on the regime established under the earlier resolutions.²⁹ The general responsibility of freezing terrorist assets according to the Resolution is comparable to the ICSFT responsibility to take measures toward freezing funds that are set aside for terrorist activities. In fact, according to Article 8 of the Convention, each signatory party ‘*shall* take appropriate measures ... for the identification, detection and freezing or seizure of any funds used or allocated for the purpose’ of committing acts of terrorism.³⁰ The Resolution and the Convention afford the states considerable latitude to ensure that there is appropriate freezing,

²⁷ *Ibid*, 2(a), (c) and (f). For further analysis see Millar, A. and Rosand, E., *Allied against Terrorism: What's Needed to Strengthen the Worldwide Commitment*, (New York: The Century Foundation, 2006), 17-25.

²⁸ *Ibid*, 1(c).

²⁹ International Monetary Fund, *Suppressing the financing of terrorism: a handbook for legislative drafting*, (Washington, D.C., International Monetary Fund, 2003), Ch.2.

³⁰ See International Convention for the Suppression of the Financing of Terrorism, Art. 8 paras. 1 and 2.

seizure and confiscation of the targeted assets, and the Resolution obliges them to take action.

The adoption of Resolution 1373 by the international community reinforced the significance of restraining the flow of funds to terrorist organisations. Before the 9/11 attacks, many countries did not comply with Resolution 1267 or with Resolution 1333. However, Resolution 1373 confirmed the commitment of the United Nations Security Council to fight the sources of funds to finance terrorist activities. Therefore, the resolution renewed and strengthened the commitment of the Security Council to reinforce both Resolution 1267 and Resolution 1333. Consequently, the Al-Qaida and Taliban Sanctions Committee began to receive names submitted by member states, mainly the United States, to ensure that they are included on the UN Consolidated List. The UN Sanctions Committee received 285 names by the end of 2001, and the Committee ordered that terrorist assets worth \$52 million be frozen worldwide.³¹ In 2008, more than 480 names were included by the UN Sanctions Committee on the Consolidated List, and a total of \$85 million worth of assets were frozen.³² By June 2014, the number of individuals and entities listed on the Al-Qaida Sanctions list had been reduced to 212 and 67 respectively; five of whom are related to Kuwaiti citizens.³³ The reduction in the number of the listed individuals and entities can be attributed, first, to the states' reluctance to submit names to the Consolidated List for freezing and designation. The states are reluctant, because

the UNSCR 1267 scheme in its original form failed to afford any avenue for challenges by listed individuals, and any review by the Security Council encouraged by diplomatic pressure was lacking in

³¹ See UN Security Council, *Analytical Support and Sanctions Monitoring Team, Seventh Report of the Analytical Support and Sanctions Monitoring Team*, Annex III, (U.N. Doc. S/2007/677, November, 2007), Available at: <http://www.un.org/ga/search/view_doc.asp?symbol=S/2007/677> accessed 1st Dec. 2014.

³² See UN Security Council, *Analytical Support and Sanctions Monitoring Team, Eighth Report of the Analytical Support and Sanctions Monitoring Team*, para. 23, (U.N. Doc. S/2008/324, 14 May 2008), Available at: <http://www.un.org/ga/search/view_doc.asp?symbol=S/2008/324> accessed 1st Dec. 2014. See also The Consolidated List maintained by the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities, Available at: <www.un.org/Docs/sc/committees/1267/consolist.shtml> accessed 1st Dec. 2014.

³³ See The List established and maintained by the Al-Qaida Sanctions Committee with respect to individuals, groups, undertakings and other entities associated with Al-Qaida, 26 June 2014, Available at: <<http://www.un.org/sc/committees/1267/pdf/AQList.pdf>> accessed 1st Dec. 2014.

transparency, fairness, proportionality in duration, and objectivity in the absence of clear standards and procedures.³⁴

The second reason is the establishment of the Office of the Ombudsperson by the Security Council Resolution 1904 (2009), which is responsible for the delisting processes.³⁵ The third reason for the reduction is the attraction and the states' resort to the UN Security Council Resolution 1373 sanctions regime. The benefit from resorting to the UNSCR 1373 is that countries can 'operate more autonomously from the UN at the state level', and, if any problem occurs, 'it is possible to pass the problem down the line for national governments and courts to resolve'.³⁶

Today, Resolutions 1267, 1333, 1373, 1989, and successor resolutions together with the ICSFT and the FATF 9 Special Recommendations have imposed the responsibility of freezing terrorist assets on the States. Therefore, the responsibility to freeze terrorist assets is set out by different international instruments, and they constitute the main focus of the international legal framework in fighting terrorist financing.

5.2.5 International Regulatory Standards on Terrorist Financing

Before 2001, the FATF was primarily involved in the development of international standards on combating money laundering. However, after the 9/11 incidents, the FATF expanded its mission to address terrorist financing.³⁷ In October 2001, the FATF published its Eight Special Recommendations that deal specifically with the issue of terrorist financing.³⁸ In October 2004, the FATF

³⁴ See Clubb, K. and Walker, C., 'Heroic or hapless? The legal reform of counter-terrorism financial sanctions regimes in the European Union', A paper presented at the IACL Round Table, held at Harvard Law School (USA) – 6-7 March 2014 "*Constitutionalism Across Borders in the Struggle Against Terrorism*".

³⁵ UN Security Council, *Security Council resolution 1904 (2009) [on continuation of measures imposed against the Taliban and Al-Qaida]*, 17 December 2009, S/RES/1904 (2009), Available at: <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/656/62/PDF/N0965662.pdf?OpenElement>> accessed 1st Dec. 2014.

³⁶ See Clubb, K. and Walker, C., 'Heroic or hapless? The legal reform of counter-terrorism financial sanctions regimes in the European Union', A paper presented at the IACL Round Table, held at Harvard Law School (USA) – 6-7 March 2014 "*Constitutionalism Across Borders in the Struggle Against Terrorism*".

³⁷ See the Financial Action Task Force, 'History of the FATF', Available at: <<http://www.fatf-gafi.org/pages/aboutus/historyofthefatf/>> accessed 1st Dec. 2014.

³⁸ *Ibid.*

issued a ninth Special Recommendation related to terrorism financing.³⁹ The total of forty-nine Recommendations represents the international standards for combating money laundering and terrorism financing. In February 2012, the FATF codified those Recommendations into one document.⁴⁰ The 9 Special Recommendations require countries to ratify the ICSFT (1999) and to adopt the measures set out in Security Council Resolutions 1267, 1333 and 1373. In addition, States are required to pass domestic law that criminalises terrorism financing and to freeze and seize terrorist assets without delay. Furthermore, countries are recommended to instruct financial institutions in their jurisdictions to report every suspected transaction linked to terrorism and to allow other States great measures of assistance and cooperation with regard to terrorism financing investigations. Another important recommendation is to protect the alternative remittance system by applying the Anti-Money Laundering Laws and to instruct the financial institutions to implement accurate originator information on money transfers. Finally, countries are required to prevent the misuse of non-profit organisations by terrorists, to protect the funds from being diverted to finance terrorism, and to prevent and detect large amounts of cash smuggling.⁴¹

Remarkably, the FATF developed international standards within seven weeks after the 9/11 terrorist attacks, the main aim of which was to prevent terrorism financing that had previously been ignored by the international community.

5.2.6 Criminalising the Financing of Terrorism

5.2.6.1 The International Convention for the Suppression of the Financing of Terrorism (1999)

The ICSFT was a French initiative supported by the Group of Eight (G-8). In May 1998, the G-8 Foreign Ministers recognised the preclusion of terrorism fund-

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ See Financial Action Task Force, *IX Special Recommendations*, Available at: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/ixspecialrecommendations.html>> accessed 1st Dec. 2014. See also Chatain, P., [et al.], *Preventing Money Laundering and Terrorist Financing: A Practical Guide for Bank Supervisors*, (Washington, D.C., the International Bank for Reconstruction and Development/The World Bank, 2009), 259-261.

raising as a ‘precedence [area] for additional action’.⁴² In early 1998, France instigated the Convention's negotiations while proposing a text to the United Nations. In December 1998, an Ad Hoc Committee, which was established by Resolution 51/210, elaborated the Convention as agreed upon by the General Assembly.⁴³ On 9 December 1999, the General Assembly adopted the Convention.

The 9/11 terrorist attacks in the United States prompted the international community to ratify and implement the ICSFT. In fact, the Convention was ratified by the required number of countries and entered into force in April 2002.

The Convention clearly articulates three main duties for all state parties. One of them is to criminalise all forms of funding that support terrorists and their activities by imposing upon each state the duty to establish the offenses of financing terrorism within their national legislation.⁴⁴ As a result, the Convention demands that each state party assume the following measures: (a) within their domestic law, establish the offenses related to financing terrorist activities laid out in the Convention; and (b) establish appropriate penalties that consider the grave nature of such offences. The Convention defines the financing of terrorism as a crime committed when someone ‘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 will be used in full or in part, in order to carry out [a terrorist act as defined in the Convention]’.⁴⁵ Both the mental and the material elements of the crime will be discussed next.

5.2.6.1.1 *The mental element (mens rea)*

The Convention defines the mental element of the financing of terrorism as including two aspects. First, the crime must be wilfully done. Second, the

⁴² See Johnson, C. M., ‘Introductory Note to the International Convention for the Suppression of the Financing of Terrorism’, (2000) 39 ILM 268. See Also *Conclusion of G8 Foreign Ministers*, May 1998, paragraph 28, Available at: <http://www.dfait-maeci.gc.ca/g8rmae/bir_g8concl-en.asp> cited in International Monetary Fund, *Suppressing the financing of terrorism: a handbook for legislative drafting*, (Washington, D.C., International Monetary Fund, 2003).

⁴³ Measures to Eliminate International Terrorism, G.A. Res. 53/108, U.N. GAOR, 53rd Sess., 83rd mtg. Supp. No. 49, at para. 12, U.N. Doc. A/Res/53/108 (1999). The International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly in resolution 54/109 of 9 December 1999 as corrected.

⁴⁴ *Ibid*, Art. 4.

⁴⁵ *Ibid*, Art. 2, para. 1.

perpetrator must have been aware that the funds will be utilised for such acts or at least have the intention that the funds will be utilised to finance terrorist actions.⁴⁶ Within the second aspect, the intent and the knowledge are alternative elements. However, the Convention provides no further details regarding the two aspects of these mental element and their application within each state, but they must be in harmony with the state's general criminal laws.⁴⁷

5.2.6.1.2 *The material elements (actus reus)*

The Convention contains two aspects in defining financing terrorism offenses based on the material element. The first aspect entails financing, which is widely defined as the collection or the provision of funds. The element is established when a person ‘by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds [...]’.⁴⁸ The second material element is a relationship to terrorist actions that are defined in the Convention in reference to two different sources. The first source contains a list of international treaties; specifically, the nine treaties that were opened to signatures between 1970 and 1997, which require the parties to institute various terrorism offenses in their national legislation. The list is set out in the Convention's Annex. The Convention gives each state party the privilege to exclude any treaty from the list only if the particular state is not a party to it. The exclusion privilege becomes ineffective if the state becomes a party to the treaty. Conversely, when a state party stops being a party to one of the listed conventions, it can also be eliminated from the enlisted treaties applicable within the Convention.⁴⁹

The other source is a ‘self-contained’ definition of terrorist actions stipulated in the Convention itself. It describes terrorist actions as: ‘Any [...] 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

⁴⁶ *Ibid.*

⁴⁷ International Monetary Fund, *Suppressing the financing of terrorism: a handbook for legislative drafting*, (Washington, D.C., International Monetary Fund, 2003), Ch.2.

⁴⁸ International Convention for the Suppression of the Financing of Terrorism, Art. 2, para. 1.

⁴⁹ *Ibid.*, Art. 2, paras. 2(a) and (b).

Government or an international organisation to do or to abstain from doing any act'.⁵⁰

Therefore, under the Convention's general definitions, an action becomes a terrorist act if it meets the mentioned conditions: (1) its intention is to cause the death or severe bodily injuries of any civilian or persons not actively involved in the hostile situation or an armed conflict, and (2) its purpose is to intimidate residents or compel an international organisation or government to do or refrain from a certain act.

Although the ICSFT required state parties to adopt the definition of terrorism financing as stated in the Convention, which included the abovementioned elements, nothing prevents states from going further than the mental element (*mens rea*) and the material element (*actus reus*) of the ICSFT definition, a good example of which can be found in the UK Terrorism Act 2000.⁵¹ However, there is a risk if a state goes further than the Convention requires, as it might result in failing to win international acceptance of such an initiative, which could hinder international cooperation.

5.2.6.2 United Nations Security Council Resolution 1373 (2001)

The Resolution contains two separate requirements concerning the fight against terrorist financing. One relates to the funding of the terrorist actions, while the other relates to funding the terrorist. The first requirement is covered in paragraphs 1(a) and 1(b) within the Resolution. According to paragraph 1(a), states must 'prevent and suppress' the funding of terrorist actions.⁵² Paragraph 1(b) requires the states to criminalise any deliberate provision or collection by whatever means, either directly or indirectly, of the funds by their respective nationals or within their borders with the intent that the funds be utilised or in the awareness that are to be utilised to conduct terrorist actions.⁵³ Noticeably, paragraph 1(b) is close to the ICSFT language. In addition, under paragraph 3(d), the Security

⁵⁰ *Ibid*, Art. 2 para. 1(b).

⁵¹ See Terrorism Act 2000, Sections 15-19, Available at: <<http://www.legislation.gov.uk/ukpga/2000/11/contents>> accessed 1st Dec. 2014. See also Walker, C., *Terrorism and the Law*, (Oxford University Press, United States, 2011), 390-393.

⁵² UN Security Council, *Security Council resolution 1373 (2001) [on threats to international peace and security caused by terrorist acts]*, para. 1(a).

⁵³ *Ibid*, para. 1(b).

Council calls upon states to become parties to the Convention as soon as possible.⁵⁴ Also, under paragraph 2(e), every state must ensure that such terrorist acts are instituted as grave criminal offenses as part of their domestic laws and that the criminal punishment related to such crimes reflects their gravity.⁵⁵ Similar provisions are contained within the Convention. Therefore, the abovementioned paragraphs of the Resolution appear to refer to the Convention.

The other requirement contained in paragraph 1(d) of the same Resolution is that states prohibit their residents, citizens and entities within their borders

from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.⁵⁶

Paragraph 1(d) of the Resolution sets out an independent obligation that is not contained in the Convention, since the Convention does not address questions regarding any financial aid to terrorists or terrorist bodies.⁵⁷ Therefore, there are two different but related types of conduct based on terrorism funding. The first is the financing of terrorist acts as defined within Article 2 of the Convention. The other is the provision of financial support to terrorists or terrorist organisations as stipulated in paragraph 1(d) of the Resolution. Even though the requirements regarding these forms have similar conduct, they are not entirely alike, and each state is left to decide how to characterise the conduct within their local laws.

While both the ICFSTF and paragraph 1(d) of Resolution 1373 deal with the provision of financial assistance in relation to terrorism, the two have notable differences. First, the Convention clearly states that it requires the criminalisation

⁵⁴ Bantekas, I., 'The International Law of Terrorist Financing', (2003) 97(2) *The American Journal of International Law*, 315-333.

⁵⁵ UN Security Council, *Security Council resolution 1373 (2001) [on threats to international peace and security caused by terrorist acts]*, para. 2(e).

⁵⁶ *Ibid*, para. 1(d).

⁵⁷ See Gilmore, W. C., *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*, (4th edn, Strasbourg: Council of Europe, 2011), 122-126.

of the financing of terrorist acts, whereas paragraph 1(d) of the Resolution requires states to prohibit people within their borders from making financial assistance available to terrorists and terrorist organisations.⁵⁸ Paragraph 1(d) appears to be deliberately different from the language used in paragraph 1(b), which requires states to criminalise the financing of terrorist acts. The ultimate aim of paragraph 1(d) is to prevent the flow of funds and to dry the financial assistance to terrorists and terrorist organisations, whether this is achieved through criminalisation or other means.

Secondly, as for the type of such assistance, the requirement in paragraph 1(d) of Resolution 1373 is broader than the requirement in the ICSFT. The Convention criminalises the provision of ‘funds’,⁵⁹ whereas the Resolution covers a wider range of activities by using the broader term ‘funds, financial assets or economic resources or financial or other related services’.⁶⁰ Despite the broad definition of ‘funds’ in the Convention, the Resolution covers the provision of ‘financial or related services’, which is not expressly covered by the ICSFT.

Lastly, the range of people and entities that must be prohibited from receiving funds or services is defined in the Resolution but not in the Convention. According to Resolution 1373 paragraph 1(d), the list not only includes individuals who commit or attempt to commit, or facilitate or participate in acts of terrorism, it also includes the entities owned or controlled, directly or indirectly, by such people and entities acting on behalf or at the direction of such people.⁶¹

Thus, in addition to criminalising the financing of terrorist acts as stipulated in the Convention, paragraph 1(d) of Resolution 1373 requires that countries prevent the flow of funds and facilities to terrorists and terrorist organisations. The Resolution leaves to each country the implementation of suitable measures to accomplish this mission. For example, one way to achieve this could be to freeze the assets of the classes of people and entities listed in paragraph 1(d) of the

⁵⁸ *Ibid.*

⁵⁹ International Convention for the Suppression of the Financing of Terrorism, Arts. 2 and 8.

⁶⁰ UN Security Council, *Security Council resolution 1373 (2001) [on threats to international peace and security caused by terrorist acts]*, para. 1(d). It is unclear what ‘economic resources’ adds to the other terms on the list.

⁶¹ *Ibid.*

Resolution and to forbid the provision of financial and other services to such individuals.⁶²

5.2.6.3 Terrorist Financing as a Distinct Crime

5.2.6.3.1 *Financing of Terrorism Compared to Money Laundering*

Through the adoption of money laundering legislation, some countries contended in their responses to the questionnaires given by the United Nations Counter-Terrorism Committee (CTC) that they complied with the Resolution 1373 provisions that require the criminalisation of terrorism funding. However, the countries' responses appeared to the CTC not to appreciate and embrace the spirit of the Resolution and the Convention. An autonomous offence of terrorist financing acts is established differently by the Convention. Terrorism financing and money laundering are distinct, even though the two phenomena share the common idea of attacking criminal groups using measures that target their financial activities. To be precise, the funds used to finance terrorist activities need not be laundered or be the proceeds of illicit acts, because it is possible that terrorism funds might be acquired legally and deposited in financial organisations without breaking any laws.⁶³ Thus, criminalising one source of terrorism financing does not criminalise all sources of terrorism financing. It is the intended use of the funds to facilitate an attack that established the offense of financing of terrorism.⁶⁴ Therefore, legislation will have a significant gap whenever the country exclusively depends on existing money laundering offenses to criminalise terrorism financing. In that instance, terrorism financing offences will be established only when the monies that are aimed to finance a terrorist act come from an illicit origin. Consequently, funding terrorist acts with legally obtained funds cannot be prosecuted.

Nevertheless, money laundering and terrorism financing are linked inasmuch as FATF Special Recommendation II requires the inclusion of terrorism

⁶² International Monetary Fund, *Suppressing the financing of terrorism: a handbook for legislative drafting*, (Washington, D.C., International Monetary Fund, 2003), Ch.4.

⁶³ See Parkman, T., *Mastering Anti-Money Laundering and Counter-Terrorist Financing*, (FT Press, 2013). See also International Monetary Fund, 'Anti-Money Laundering/Combating the Financing of Terrorism', Available at: <<http://www.imf.org/external/np/leg/amlcft/eng/aml1.htm>> accessed 1st Dec. 2014.

⁶⁴ *Ibid.*

financing by jurisdiction as a money-laundering predicate offense. For countries that consider the predicate offenses to be ‘all crimes’, such as, for instance, has been required by the Strasbourg Convention, the inclusion is, then, automatic.⁶⁵ The inclusion of terrorism financing as a predicate offence can also be automatic if the predicate offences are defined as all ‘serious crime’ and the terrorism financing offenses fall within the ‘serious crimes’ definition in the jurisdiction.⁶⁶ There is also a need to amend the list in countries that set out the predicate offences in a list, in which the predicate offenses are defined to make sure that the terrorist financing offenses are included in the list.

5.2.6.3.2 *Aiding and Abetting and Conspiracy as Substitute Offences*

In some countries, the offense of financing terrorism has been included in the offence of aiding and abetting acts of terrorism. However, according to the ICSFT, an act of terrorism need not have been carried out or even attempted to convict a person of financing terrorist acts.⁶⁷ Paragraph 3 of article 2 of the Convention states:

For an act to constitute an offense set forth [in the Convention], it shall not be necessary that the funds were actually used to carry out an offense [under the Convention].⁶⁸

In the case of the Convention, the intent of the usage of the funds is crucial. If the party intended that the funds be used to commit acts of terrorism, then that party can be found guilty of financing acts of terrorism. This holds whether or not the acts were actually carried out. Therefore, terrorism financing offences are separate and independent from the terrorist acts. This is in contrast to aiding and abetting. To be found guilty of aiding and abetting, an offense must either have been attempted

⁶⁵ Under Article 1e of the Strasbourg Convention, “‘predicate offence’ means any criminal offence as a result of which proceeds were generated that may become the subject of an offence as defined in Article 6 of this Convention.” COUNCIL OF EUROPE (1990), 8 November 1990, “European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime”, Strasbourg, *CETS* 141.

⁶⁶ International Monetary Fund, *Suppressing the financing of terrorism: a handbook for legislative drafting*, (Washington, D.C., International Monetary Fund, 2003), Ch.4.

⁶⁷ See Durmaz, H., [et al.] (eds.), *Understanding and Responding to Terrorism*, (Amsterdam: IOS Press, 2007), 246-247.

⁶⁸ International Convention for the Suppression of the Financing of Terrorism, Arts. 2 para. 3.

or have taken place. In addition, aiding and abetting occur only when the accused is proven to have had prior knowledge of the act or the attempt to commit the act.⁶⁹

Similarly, the offense of financing terrorism has sometimes also been joined with the charge of conspiracy.⁷⁰ However, being a distinct crime, as stated above, the act of terrorism financing can be committed by one person acting alone, which is inconsistent with conspiracy's mode of operation.⁷¹

5.2.7 Conclusion

International efforts to combat terrorism financing have developed dramatically since the 9/11 incidents. Before 9/11, preventing terrorism financing was not a priority for the international community. Today, however, combating the financing of terrorism is not a choice, and every member state of the international community has the duty to adopt and implement the international instruments on the suppression of terrorism financing and the international standards developed by the FATF. This section has elaborated that terrorism financing is a distinct crime; its nature is separate and independent from any other related offences discussed in this section. As a result, countries should pass domestic laws and regulations that criminalise terrorism financing and secure its national financial/non-financial bodies according to the demands of the international instruments and standards. Therefore, the next two sections of this chapter examine the Kuwaiti response to combating terrorism financing before and after June 2013 respectively.

5.3 Section II: Kuwait Response to Terrorist Financing before June 2013

5.3.1 Introduction

Although money laundering is believed not to be a major problem in Kuwait,⁷² that country's geographic location in the Gulf has made Kuwait serve 'as a transit

⁶⁹ See Saul, B., 'Criminality and Terrorism' in de Frias, A. M. S., [et al.] (eds), *Counter-Terrorism: International Law and Practice*, (Oxford University Press, United States, 2012), 147-150.

⁷⁰ Koh, J., *Suppressing Terrorist Financing and Money Laundering*, (Springer Berlin, Heidelberg, 2006), 65-66.

⁷¹ *Ibid.*

⁷² U.S. Department of State, *International Narcotics Control Strategy Report: Volume II Money Laundering and Financial Crimes "Kuwait"*, (Washington D.C.: March 2009), 321. See also International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and*

country for money, equipment and operatives into countries in which “Holy War” is being waged – mainly Iraq, Pakistan and Afghanistan, but also Syria since 2012’.⁷³ In addition, there are still concerns from the international bodies and the US Department of State about the potential misuse of charities in Kuwait by terrorist financiers.⁷⁴ Therefore, this section explores and evaluates the legal framework of the Kuwaiti government for combating terrorism financing and anti-money laundering operations before the ratification of the ICSFT. The available measures have been studied in accordance to the level of compliance with the ICSFT, the UN resolutions on terrorism financing and the 40 + 9 FATF recommendations. As such, this section looks, first, at how the government of Kuwait criminalised terrorism financing before June 2013. Then, the section outlines and assesses the institutional framework developed to combat terrorism financing and money laundering, after which the section explores how and the extent to which the State of Kuwait implements the UN Security Council resolutions demands against terrorist financiers and the 40 + 9 FATF recommendations.

5.3.2 Criminalising Terrorism Financing in Kuwait

Until June 2013, Kuwait had neither criminalised terrorism financing in itself nor ratified the ICSFT. After the 9/11 incidents, most of the Islamic and Arab governments expressed their deepest condolences and sympathies to the people and the government of the United States⁷⁵ and all of those who were affected by the terrorist attacks. The government of Kuwait and the members of the Kuwait National Assembly, for example, condemned the 9/11 attacks and described those who committed them as criminals and deviants.⁷⁶ As a legislative response, on 10 March 2002, the government of Kuwait enacted Law No. 35 of 2002 for Combating Money Laundering Operations believing that it would comply with all international

Combating the Financing of Terrorism, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 19.

⁷³ The American Foreign Policy Council, *World Almanac of Islamism 2013 – Kuwait*, (Lanham, Md.: Rowman & Littlefield Publishers, 2013), 2.

⁷⁴ U.S. Department of State, *International Narcotics Control Strategy Report: Volume II Money Laundering and Financial Crimes “Kuwait”*, (Washington D.C.: March 2009), 321.

⁷⁵ Giraldo, J. K. and Trinkunas, H. A., *Terrorism Financing and State Responses: A Comparative Perspective*, (Stanford University Press, California, 2007), 152.

⁷⁶ The American Foreign Policy Council, *World Almanac of Islamism 2013 – Kuwait*, (Lanham, Md.: Rowman & Littlefield Publishers, 2013), 2. Also Interview with G.O.4

obligations. Unfortunately, Law No. 35 of 2002 does not specifically criminalise terrorist financing and is mainly about criminalising money laundering processes.

Nevertheless, the Kuwaiti authorities stated that ‘Kuwait had ratified all of the treaties listed in the ICSFT Annex and that, therefore, financing of such crimes can be prosecuted under the general penal code of instigation, conspiracy, aiding and abetting.’⁷⁷

The 2002⁷⁸ and 2003⁷⁹ Kuwait reports to the CTC stated that articles 48 and 52 of the Penal Code criminalise terrorist financing, but the text of the articles does not explicitly identify terrorist financing.

Article 48 states:

The following shall be regarded as an accomplice in the crime before it is committed:

First: any person who instigates the commission of an act constituting a crime...

Second: any person who agrees with another to commit an act constituting a crime...

Third: any person who, by any means whatever, knowingly assists the perpetrator in actions in preparation for a crime...

Similarly, paragraph 1 of article 52 of the Penal Code specifies that ‘any person who participates in a crime before it is committed shall be liable to its punishment, except where the law prescribes otherwise’. According to these two articles, terrorism financing can be included amongst the crimes to which these punishments apply, since such acts are considered to be one form of participation in the crime by instigating it, consenting to it or assisting in it.

⁷⁷ Interview with G.O.5, J.G.2, P.P.2 and N.O.S.6

⁷⁸ UN Security Council (CTC), ‘Kuwait’s Report to the CTC (2002)’, Security Council, Distr.: General, 6 August 2002, S/2002/886, Letter dated 17 July 2002 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 6 August 2002.

⁷⁹ UN Security Council (CTC), ‘Kuwait’s Report to the CTC (2003)’, Security Council, Distr.: General, 19 November 2003, S/2003/1103, Letter dated 10 November 2003 from the Chargé d’affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 19 November 2003.

Furthermore, in its reports of 2003 and 2004⁸⁰ to the CTC, the government of Kuwait stated that terrorism financing might be criminalised under the general terms of ‘criminal arrangements’ (or conspiracy) in accordance with article 56 of the Penal Code. Article 56 states:

If two or more persons arrange to commit an offence, whether serious or less serious, and make preparations to do so in a manner which gives no reason to expect their abandonment of the arrangement, they shall each be deemed responsible for a criminal arrangement, even if the offence which is the subject of the arrangement did not take place.

Nevertheless, as mentioned in Section I of this chapter, terrorism financing differs from aiding and abetting and conspiracy.⁸¹ Therefore, relying only on the general criminal liability for those who support, incite, conspire, or help others in the commission of a criminal offense ‘will not satisfy Kuwait’s post 9/11 obligations under the international requirements’.⁸² Consequently, the absence of specific legislation that criminalises terrorism financing left the financial system in Kuwait both vulnerable and under threat of being misused by terrorist financiers.

Nevertheless, the authorities claimed that the attempt to commit terrorism financing was criminalised under the Kuwaiti Penal Code. The 2006⁸³ Kuwaiti report to the CTC stated that an attempt to commit terrorism financing can be criminalised under article 45 of the penal code. Article 45 provides that

an attempt to commit an offence is the commission of an act with the intention to complete it inasmuch as the actor is unable to complete the offence for reasons in which his will plays no part.

⁸⁰ UN Security Council (CTC), ‘Kuwait’s Report to the CTC (2004)’, Security Council, Distr.: General, 31 December 2004, S/2004/945, Letter dated 17 December 2004 from the Chargé d’affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, online: UN Security Council, Counter Terrorism Committee, 31 December 2004.

⁸¹ See subheading 5.2.6.3.2 of Section I of Chapter Five.

⁸² Interview with F.I.2, F.I.5 and N.O.S.4

⁸³ UN Security Council (CTC), ‘Kuwait’s Report to the CTC (2006)’, Security Council, Distr.: General, 17 November 2006, S/2006/903, Letter dated 8 November 2006 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, online: UN Security Council, Counter Terrorism Committee, 17 November 2006.

However, since terrorism financing is not a crime in itself under the national laws of Kuwait, how can attempting to commit terrorism financing be a crime?

As for the predicate offense for money laundering, Kuwait follows the ‘all crimes’ approach. Thus, all of the crimes included in the treaties listed in the annex of the ICSFT are automatically included as predicate offenses to money laundering. Nevertheless, since terrorism financing, in itself, is not a crime in Kuwait, it is not considered a predicate offence for money laundering. More importantly, since terrorist financing is not a crime in itself, the Kuwaiti jurisdiction-related issues for terrorist financing offence cannot be applied. Specifically, since articles 11 and 12 of the Penal Code require the act to be a criminal offense under the Kuwaiti Penal Code in order for applying and extending the jurisdiction of the Kuwait.⁸⁴

Finally, the fact that terrorism financing is not criminalised in Kuwait can cause problems when dealing with international cooperation cases. For example, extradition requires the crime to be criminalised in both countries under the doctrine of ‘dual criminality’.⁸⁵

5.3.3 Regulatory Framework Against Terrorism Financing in Kuwait

5.3.3.1 Overview of the Financial Sector

Since the economy of Kuwait is relatively open, it has attracted a significant number of foreign investors, who have been involved in different sectors of the economy including the banking and industry sectors. As mentioned earlier, Kuwait’s economy depends mainly on petroleum products processed within the public sector. In addition, Kuwait’s banking sector provides one of the main economic pillars of the economy. The country hosts a number of banks, some local and others international. Foreign-owned banks are permitted to open only one branch in Kuwait and to offer only investment banking services.⁸⁶ In addition,

⁸⁴ Kuwaiti Penal Code No. 16 of 1960, Arts 11 and 12.

⁸⁵ El Khoury, N., ‘Implementing Human Rights and Rule of Law Aspects of the UN Global Counter-Terrorism Strategy: The UNODC/TPB Experience’ in de Frias, A. M. S., [et al.] (eds), *Counter-Terrorism: International Law and Practice*, (Oxford University Press, United States, 2012), 1040. See also UNODC, ‘Legislative Guide to the Universal Legal Regime against Terrorism; Prepared by the United Nations Office on Drugs and Crime’, (UN, New York 2008), 40.

⁸⁶ See ‘Principles, Rules and Regulations for the Licensing and Operation of Foreign Banks’ Branches in the State of Kuwait, According to Amended Article (56) of Law No. 32 of year 1968

foreign-owned banks are prohibited from competing in the retail banking sector.⁸⁷ However, all banks are allowed to work under the guidelines of the Central Bank of Kuwait (CBK). Tables 5.1 and 5.2 below show the general structure of the Kuwaiti banking and financial sector.

Table 5.1: The General Structure of Kuwait’s Financial Sector up to August 2014

	Number of Institutions	Authorised/Registered & Supervised by:
Commercial banks ⁸⁸	22	Central Bank of Kuwait
Conventional banks	16	Central Bank of Kuwait
Islamic banks	6	Central Bank of Kuwait
Specialised banks ⁸⁹	1	Central Bank of Kuwait
Foreign banks (Both conventional and Islamic)	12	Central Bank of Kuwait
Investment companies	88	Central Bank of Kuwait
Conventional	41	Central Bank of Kuwait
Islamic	47	Central Bank of Kuwait
Exchange companies/houses (engage in the transfer of money abroad and currency exchange)	39	Central Bank of Kuwait
Exchange organisations ⁹⁰ (engage only in currency exchange)	159	Ministry of Commerce and Industry

Concerning Currency, the Central Bank of Kuwait and the Organisation of Banking Business’, (21 March 2004), Available at: <<http://new.cbk.gov.kw/en/images/foreign-banks-branches-10-2727-2.pdf>> accessed 1st Dec. 2014.

⁸⁷ United States Department of State, *International Narcotics Control Strategy Report: Volume II Money Laundering and Financial Crimes “Kuwait”*, (Washington D.C.: March 2009), 321.

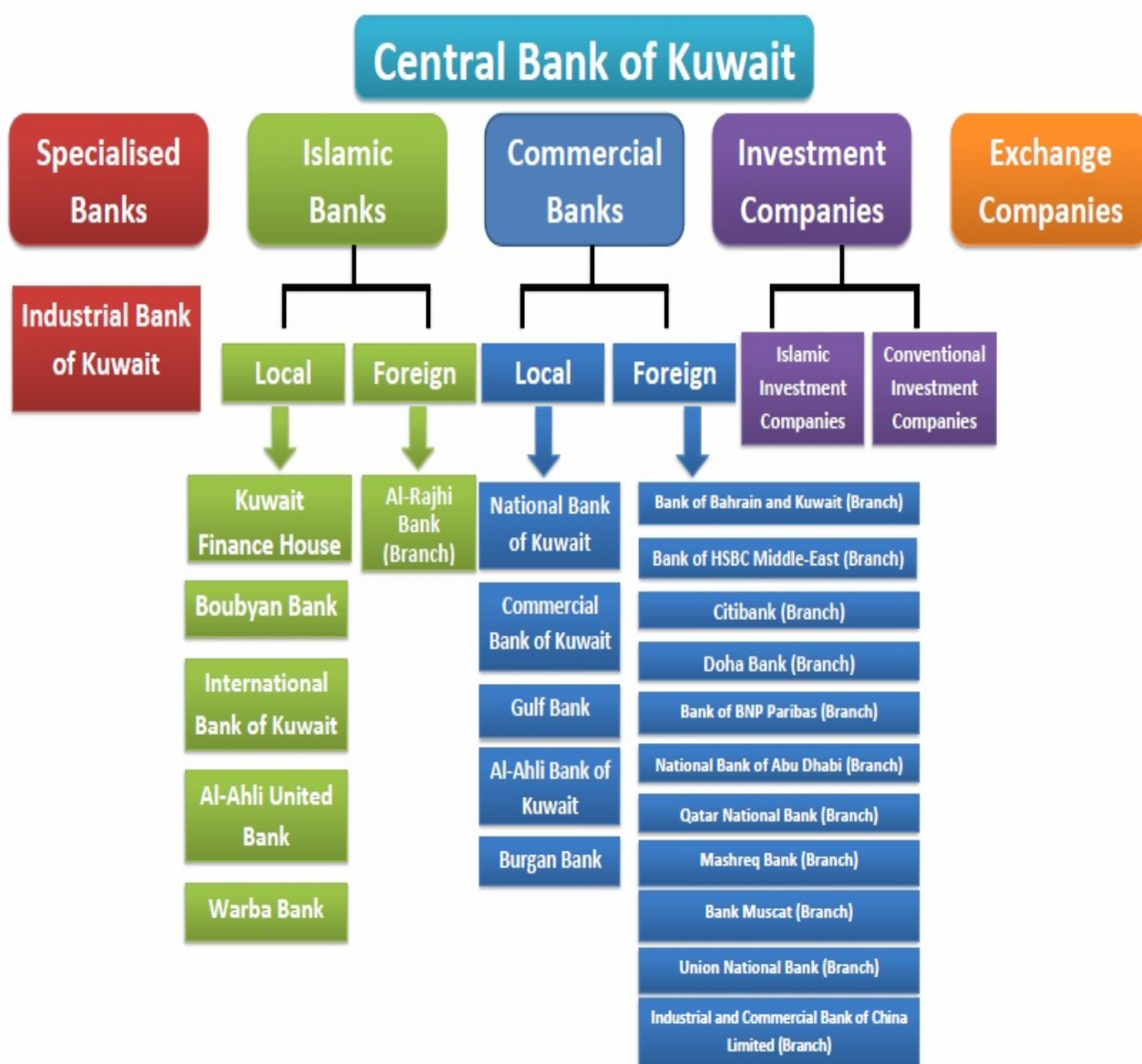
⁸⁸ Data provided in this table for banks, investment companies, and exchange companies are available on: The Central Bank of Kuwait Official Website: Supervision. Available at: <<http://new.cbk.gov.kw/en/supervision/financial-units/kuwaiti-banks.jsp>> accessed 1st Dec. 2014.

⁸⁹ According to Article 76 of the CBK Law No. 32 of 1968, ‘Specialized banks refer to banks whose main function of which is to finance certain economic sectors, such as the real estate, industrial or agricultural sectors, and which do not accept demand deposits as part of their basic activities.’ Due to their nature, specialized banks are not included in the total number of conventional banks.

⁹⁰ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011).

Insurance companies ⁹¹	36	Ministry of Commerce and Industry
Brokerage companies ⁹²	14	Kuwait Stock Exchange

Table 5.2: Banking and Financial System Structure up to August 2014⁹³



⁹¹ Data provided for Insurance Companies are Available on: Al Jarida Newspaper, 27 July 2014. Available at: <<http://www.aljarida.com/news/index/2012674244/ال-اتأمين-قطاع-ال-جرى-دلة-ال-عتال>> accessed 1st Dec. 2014.

⁹² Data provided for Brokerage Companies are available on: Kuwait Stock Exchange Official Website: Brokerage Firms. Available at: <<http://www.kuwaitse.com/KSE/Broker.aspx>> accessed 1st Dec. 2014.

⁹³ Data provided in this table for banks, investment companies, and exchange companies are available on: The Central Bank of Kuwait Official Website: Supervision. Available at: <<http://new.cbk.gov.kw/en/supervision/financial-units/kuwaiti-banks.jsp>> accessed 1st Dec. 2014.

As shown by Table 5.2, the CBK controls and supervises the performance of all banks (Islamic, commercial, foreign and local), investment companies (Islamic and conventional) and exchange companies in Kuwait based on the requirements stipulated in the CBK Law No. 32 of 1968.

Referring to Table 5.1, there are 22 commercial banks in Kuwait. About 30% of the banks are Islamic, while the remaining 70 percent are conventional banks. This implies that Islamic banks have not dominated the financial sector as may be expected. About 55 percent of the banks are foreign as compared to 45 percent that are locally owned.

There are 88 investment companies in Kuwait, 46 percent of which are conventional in nature, while 54 percent are Islamic. This shows that there are more Islamic investment companies in the country. Most of the foreign investment companies are conventional in nature, since they are universal in their mode of operation. However, 'all investment companies serve the citizens irrespective of their religion'.⁹⁴

The data also shows that there are 39 exchange companies in Kuwait. Just like banks and investment companies, exchange companies are registered and supervised by the CBK. Finally, a total of 36 insurance companies and 14 brokerage companies were registered in Kuwait by the end of August 2014 under the supervision of the Ministry of Commerce and Industry (MOCI) and the Kuwait Stock Exchange (KSE).

Although there are two different banks and investment companies characterised by their mode of operation and the sources of guidelines, 'both Islamic and conventional organisations are subjected to similar AML/CFT regulations'.⁹⁵ Islamic financial institutions operate under the regulations stipulated in Sharia law⁹⁶ while conventional institutions are governed by the general conventional rules and regulations.

⁹⁴ Interview with F.I.4.

⁹⁵ *Ibid.*

⁹⁶ Islamic Shari'a prohibits the payment or acceptance of interest charges for the lending and accepting of money. It also prohibits investment in goods or services considered contrary to the principles of Shari'a.

According to a representative of the CBK, to eliminate any form of illegal financial activities through institutions, ‘the government of Kuwait imposes strict regulations on all financial institutions when opening and while in operation’, and ‘terrorism financing and money laundering activities can only be suppressed through the control of financial institutions’.⁹⁷ In the state of Kuwait, the license of activity for banks must be obtained from the CBK and approved by the Ministry of Finance (MOF). In addition, banks must be registered with MOCI.⁹⁸ All investment companies are required to obtain a commercial registration certificate with MOCI followed by registration with the CBK.⁹⁹ Similarly, all exchange companies must be registered with both MOCI and the CBK before being allowed to transact in the country.¹⁰⁰ ‘During operations, all banks, investment companies and exchange companies are subject to close supervision and regulation by the CBK’, said a representative of the CBK.¹⁰¹

However, insurance companies are supposed to be registered only with MOCI, which supervises their operations. Brokerage companies under the supervision of the KSE are supposed to be registered with both MOCI and the KSE.¹⁰²

The KSE, MOCI and CBK act as legal agencies that control the flow of finances within the country in a bid to limit the occurrence of illegal activities, such as terrorism financing and money laundering. Since banks are the most vulnerable financial institutions, the country imposes stricter rules and regulations on them compared to other institutions. The suppression of terrorism financing and money laundering can be achieved through the establishment of a proper institutional framework. The next sub-section discusses the existing institutional framework in Kuwait with respect to money laundering and terrorist financing.

⁹⁷ Interview with G.O.8.

⁹⁸ The CBK Law No. 32 of 1968, Chapter III: Organisation of Banking Business, Section 2: Registration of Banks.

⁹⁹ Ministerial Order Concerning subjugation of the Investment Companies to the Control of the Central Bank of Kuwait (Issued January 1987).

¹⁰⁰ Ministerial Order Concerning subjugation of the Currency Exchange Companies to the Control of the Central Bank of Kuwait (Issued 19 March 1984).

¹⁰¹ Interview with G.O.8.

¹⁰² International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011).

5.3.3.2 The Institutional Framework for Combating Terrorism Financing

This section discusses the role of different ministries and legal entities that combat terrorism financing and money laundering.

The MOF contributes to combating terrorism financing and money laundering by issuing and implementing the necessary regulations in accordance with the country's law. The MOF has issued a number of executive decrees for the Law No. 35 of 2002, with decree No. 15/2002 being the most important. This latter decree was issued on April 14, 2002 and was written with regard to legal and judicial proceedings followed in cases of money laundering. Furthermore, decree No. 252/2002 issued on September 22, 2002 specified instructions that must be adopted to combat money laundering and to prevent terrorist financing operations, and decree No. 9/2003 issued on June 7, 2003 pertained to travellers to and from the country who carry national or international currencies or gold alloys or merchandise that are worth more than three thousand Kuwaiti Dinars. In addition, regulation 5/2005 was issued by the MOF to authorise the CBK Governor to lead both the National Anti-Money Laundering and Countering the Financing of Terrorism Committee, which is charged mainly with strategic and policy matters regarding the AML/CFT, and the Kuwait Financial Investigation Unit (KFIU) and to define the way forward. The regulation culminated in the establishment of a special Money Laundering Department that has been leading the fight against terrorist financing and money laundering since then. The department represents all of the matters of state at all levels, including locally, regionally and internationally. MOF also holds the authority to implement local legislation and measures with regard to terrorist financing and money laundering through available channels.

The Ministry of Interior (MOI) has the responsibility to maintain internal security for all citizens and foreigners. To combat terrorism financing and money laundering, MOI launched the Criminal Investigation Department (CID) that investigates money laundering cases within the country. However, the 'MOI does not deal with cases originating from other countries without having a direct effect on internal security', said a representative from the MOI.¹⁰³ In addition, the MOI provides the necessary documentation for all draft reports concerning the

¹⁰³ Interview with P.O.2.

investigation of money laundering cases to the Public Prosecutor Office (PPO). The PPO then implements the law (Law No. 35 of 2002) by deciding whether the suspects should be arrested. To improve security even more, the CID might ask to be granted permission by the PPO to investigate suspicious bank accounts and records of properties owned by suspicious individual or groups.¹⁰⁴ Furthermore, the State Security Bureau (SSB) is responsible to investigate terrorist financing cases in the country. However, since there is no terrorist financing offence, convictions against perpetrators were hindered.

MOCI is one of the most important supervisory authorities for institutional frameworks in Kuwait. MOCI holds the authority to register various financial institutions, including banks, investment companies, insurance companies and exchange companies. By so doing, MOCI controls financial processes executed by the institutions registered under its umbrella. In most cases, MOCI's activities do not cross with those of the CBK, since they operate independently. In 2003, MOCI issued a Ministerial Decree No. 284 of 2003 to establish the Office of Combating Money Laundering Operations within the Ministry to investigate, supervise and issue instructions related to money laundering and terrorist financing to the institutions under its supervision (exchange organisations and insurance companies).

The Ministry of Foreign Affairs (MFA) 'is the responsible authority to receive information, through its permanent mission at the United Nations (UN), on the listing and de-listing procedures with regard to UNSCRs 1267 and 1989 and to distribute them to the relevant authorities at the national level.'¹⁰⁵

The stock market in Kuwait is organised and controlled by the KSE. In addition, all activities having a relationship with the trading of securities are monitored appropriately. KSE registers and offers working licenses for brokerage companies operating within the state of Kuwait. Another legal authority for finance institutions is the CBK. Though the CBK works under the MOF, it is an

¹⁰⁴ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 30-31.

¹⁰⁵ Interview with G.O.6 and G.O.5.

independent body that controls and monitors the operations of banks, exchange companies and investment companies in Kuwait.

5.3.3.3 The Role of Kuwait Financial Investigation Unit (KFIU)

Decree No. 10/2003 was issued by the MOF on June 10, 2003 authorising the Governor of the CBK to form the KFIU within the Central Bank of Kuwait. The Governor of the CBK then issued a resolution No. (1/191/2003) on June 23, 2003 with regard to that resolution, and another decision was issued by the director of the KSE with regard to money laundering and terrorist financing.

According to the Egmont Group definition, an financial investigation unit should be

a central, national agency responsible for receiving (and, as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds of crime, or (ii) required by national legislation or regulation, in order to counter money laundering.¹⁰⁶

However, one of the problems is that the KFIU is not established as a national centre that has the responsibility for receiving, analysing and disseminating Suspicious Transaction Reports (STRs) and other information related to possible money laundering or terrorist financing. In fact, the KFIU works in collaboration with the PPO, which is a major department of the legislative authorities of Kuwait, pursuant to article No. 167 of the Kuwaiti Constitution and articles No. 53 and 54 of the amended Judicial Regulation Law No. 23/1990. Law No. 35 of 2002 for Combating Money Laundering Operations gives the PPO the authority to investigate and prosecute crime related to money laundering. Under Law No. 35, the PPO is responsible for receiving reports of suspicious transaction operations.¹⁰⁷ Then, in accordance with the memorandum of understanding between the KFIU and the PPO, the latter can, upon receiving these reports, refer them to the KFIU, the subsequent role of which is to investigate and gather available data and

¹⁰⁶ Masciandaro, D. and Volpicella, A., *Economics and Politics in Designing Supervision: The Case of the FIUs Against Money Laundering*, (BAFFI Center Research Paper Series No. 2014-156, Milan, 2014).

¹⁰⁷ Law No. 35 of 2002 for Combating Money Laundering Operations, Art. 5

information and then advise the PPO of its technical opinion based on its analysis of such data.¹⁰⁸ The PPO uses the reports sent by the KFIU to launch the necessary investigations for the prosecution of all money laundering cases. Furthermore, according to a representative from the PPO,

the PPO considers it possible to take measures to trace and confiscate belongings and assets used or derived from money laundering and the financing of terrorism, should such measures be requested by foreign judicial authorities in accordance with judicial-cooperation agreements or on the basis of reciprocity with friendly States until a judicial ruling is issued.¹⁰⁹

However, the overall role and operation of the KFIU is not efficient, since the PPO has the central role in receiving the STRs from the financial institutions and then giving the KFIU particular powers to review each report.

5.3.3.4 Regulating the Non-Profit Organisations in Kuwait

The Ministry of Social Affairs and Labour (MOSAL) has the responsibility to supervise and provide registration certificates and licenses to organisations, such as Non-Profit Organisations (NPOs), operating within the state of Kuwait. Before 9/11 ‘some of the NPOs in Kuwait have been subject to misuse by terrorist financiers’ said a government official.¹¹⁰ As a result, after 9/11 MOSAL started to control the operation of NPOs and carries out regular investigations into their activities to measure their compliance with the law and regulations.

Even before the incidents of 9/11, MOSAL issued resolution No. 101 of 1995, which included rules to regulate collections by charities by forcing those who are interested in collecting for charities to obtain permission from the MOSAL.¹¹¹ This ensures adherence to the purpose of the charity and that the money collected will be

¹⁰⁸ United States Department of State, *International Narcotics Control Strategy Report: Volume II Money Laundering and Financial Crimes “Kuwait”*, (Washington D.C.: March 2009), 323.

¹⁰⁹ Interview with P.P.1.

¹¹⁰ Interview with G.O.1.

¹¹¹ UNODC, ‘Study on anti-terrorism legislation in the Arab Gulf States and Yemen’, (Arabic Version), (2009) United Nations, 100-101, Available at:

<http://www.unodc.org/documents/terrorism/Publications/Study_CT_Legislation_Gulf_Yemen/Arabic.pdf> accessed 1st Dec. 2014.

used for the purposes that have been previously specified. Nevertheless, MOSAL did not monitor the application of resolution No. 101 of 1995 effectively. In fact,

after 9/11, inspections showed that there were some money boxes and kiosks spread around the country, which intended to collect money, clothes, furniture and so on, that did not obtained any permission from the MOSAL.¹¹²

Following the incidents of September 11, 2001, the Kuwaiti Council of Ministers, on 7 October 2001, issued decree No. 867, which set up a ministerial committee co-chaired by the Deputy Prime Minister and the Minister of Foreign Affairs to review and implement the recommendations and proposals made by the Council of Ministers at its meeting number 2001/36. It also established the ‘Supreme Committee for the Control of Charitable Work’, under the chairmanship of the MOSAL, to act as a permanent authority for the control of charitable work and to define policies and regulations for the collection of donations.¹¹³ Furthermore, the Council of Ministers issued decree No. 868 of 2001 regarding transactions of public welfare charities and foundations that provide charitable work. Article 2 of this decree states: ‘It is prohibited for all local banks and Kuwait Finance House to open bank accounts or to conduct any foreign remittances for charity organisations and foundations unless these organisations and foundations were licensed to collect money and to perform foreign remittances’. Furthermore, paragraph 2 of the article prohibits these actions as well within money exchange companies.¹¹⁴

All NPOs in Kuwait were originally supervised by the Department of Non-Profit Organisations (DNPO), now known as the Department of Associations. However, on 5 August 2002, MOSAL introduced the ‘Department of Charities and Foundations (DOCF)’ pursuant of the ministerial decree No. 104 of 2002. The

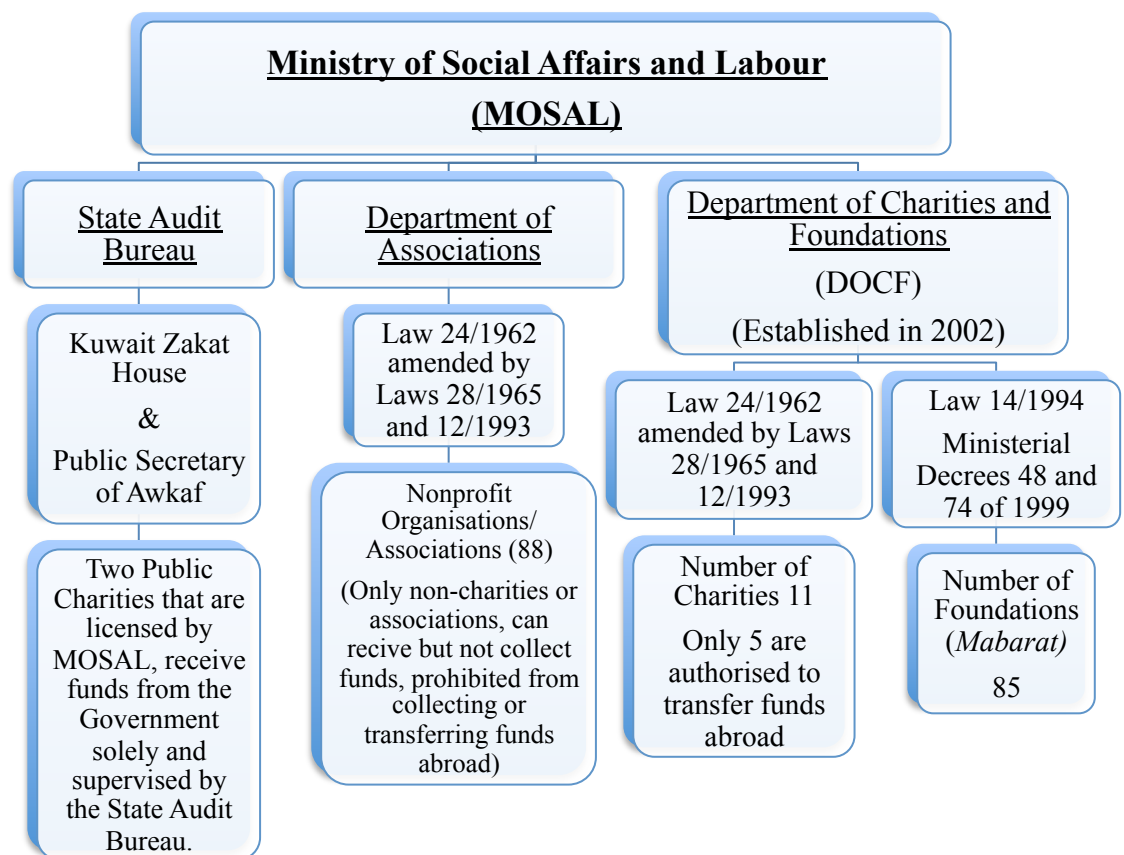
¹¹² Interview with N.O.S.2.

¹¹³ UN Security Council (CTC), ‘Kuwait’s Report to the CTC (2002)’, Security Council, Distr.: General, 6 August 2002, S/2002/886, Letter dated 17 July 2002 from the Permanent Representative of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 6 August 2002.

¹¹⁴ UNODC, ‘Study on anti-terrorism legislation in the Arab Gulf States and Yemen’, (Arabic Version), (2009) United Nations, 100-101, Available at: http://www.unodc.org/documents/terrorism/Publications/Study_CT_Legislation_Gulf_Yemen/Arabic.pdf> accessed 1st Dec. 2014.

DOCF's primary duties are to continue receiving applications for registration, monitoring, inspecting, and following up of all of the charitable works in Kuwait and to supervise all currently licensed and future NPOs with a charitable purpose (charities) and foundations to ensure that they observe their obligations under Kuwaiti laws. The previous department, the DNPO, continues its role in supervising NPOs that are not authorised to conduct charitable activities (associations).¹¹⁵

Table 5.3: Non-Profit Organisations (NPOs) Supervision



According to the authorities, associations and foundations are not allowed to collect donations, yet they can receive funds from companies and persons. In addition, they cannot transfer funds abroad or conduct international projects. On the

¹¹⁵ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 179. Also Interview with G.O.I.

other hands, charities can collect funds (including Zakat), and, if authorised, they can transfer funds abroad.¹¹⁶

The 2003 Kuwait report to the CTC indicated that the local banks send out monthly reports to the CBK on all money transactions performed by charitable organisations and foundations that are allowed to carry out charitable work in Kuwait. These reports also have to be audited and certified by foreign accounts auditors. ‘Currently, eleven charities are authorised by MOSAL, only 5 of which are authorised to transfer funds abroad.’¹¹⁷ MFA works closely with MOSAL to supervise and monitor charity activities conducted abroad by coordinating with the recipient governments and by steering visits to the projects overseas funded by Kuwaiti charities.¹¹⁸ In addition, MOSAL demands that ‘all transfers of funds abroad be made between authorized charity officials after getting an approval from the MFA.’¹¹⁹

According to the authorities, the collection of public donations (including Zakat) is forbidden unless it is authorised by MOSAL. In addition, a representative from MOSAL stated that

the Ministry encourages the authorised charities to collect their donations/or Zakat by K-net or electronic bank transfer instead of cash. However, if it happened that the donor wanted to pay by cash, a personal detail together with a photocopy of his/her Civil ID or any official document should be retained and the charities should give the donor a receipt of his/her donation.¹²⁰

Furthermore, money boxes and kiosks that are intended to collect for charities are prohibited, except those that are licensed by MOSAL for that purpose. MOSAL performs field inspections for charitable activity and detects violations of the Law of Regulation Licensing for collecting money and Law No. 24 of 1962 that is related to clubs and public welfare associations. In addition, a Committee for Field

¹¹⁶ *Ibid.*

¹¹⁷ Interview with G.O.1.

¹¹⁸ *Ibid.*

¹¹⁹ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 181. Also Interview with G.O.1.

¹²⁰ Interview with G.O.1.

Inspection of Charitable Work was formed inside Kuwait pursuant to the resolution of the Undersecretary of MOSAL No. 2724 on July 23, 2003. This Committee constitutes representatives of the MOI, the MOCI, and the Municipality of Kuwait.¹²¹

Meanwhile, the Ministry of Information is responsible for monitoring advertisement by the public welfare associations and committees that collect charity from the public to ensure that these charities are used for the purposes previously specified. Finally, the MOI and the Ministry of Information prohibit advertisements and commercials that advertise the collection of charities in visual, audible, or printed media communications unless permission is first obtained from MOSAL and after particular procedures are followed with regard to each advertisement.¹²²

In addition to the abovementioned charities, associations and foundations, there are also two charities, the Kuwait Zakat House and the Public Secretary of Awkaf, that are supervised by the State Audit Bureau. On January 16, 1982, Law No. 5 of 1982 was issued to establish the Kuwait Zakat House as an independent government body with an independent budget. The ultimate aim of the Kuwait Zakat House is to collect Zakat and donations and spend them domestically and abroad.¹²³ The Public Secretary of Awkaf, also known as the Kuwait Awqaf Public Foundation, was established by an Amiri Decree No. 257 of 1993 to practice the call for waqf¹²⁴ and to conduct all matters related to its affairs. For the most part, these two charities follow the same law and regulations as the normal charities.

5.3.4 Freezing Terrorist Assets in Kuwait

Before June 2013, there was no legal framework or basis that effectively implemented UN Security Council Resolutions 1267 and 1373. However, there was

¹²¹ UN Security Council (CTC), 'Kuwait's Report to the CTC (2004)', Security Council, Distr.: General, 31 December 2004, S/2004/945, Letter dated 17 December 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, online: UN Security Council, Counter Terrorism Committee, 31 December 2004.

¹²² *Ibid.*

¹²³ See Kuwait Zakat House, 'About Us', Available at:

<https://www.zakathouse.org.kw/AxCMSwebLive/en_about.cms> accessed 1st Dec. 2014.

¹²⁴ A waqf, also spelled wakf, is, under the context of 'sadaqah', an inalienable religious endowment in Islamic law, typically donating a building or plot of land or even cash for Muslim religious or charitable purposes. The donated assets are held by a charitable trust. The grant is known as *mushrut-ul-khidmat*, while a person making such dedication is known as *wakif*.

an ‘informal way’, which was not provided under any legal text, of implementing them. According to representatives from the CBK, the MOF and MOCI:

We coordinate with the Ministry of Foreign Affairs, which provides us with an updated list of the designated individuals and entities, and, upon the receiving of the lists, we issue instructions to all financial sectors under our supervision to comply with the UN resolutions.¹²⁵

As for the implementation of Resolution 1267, in its report of December 2001 to the Counter Terrorism Committee, the government of Kuwait stated:

The Central Bank has issued a number of circulars on this subject, such as that dated December 1999 concerning the freezing of assets and other financial resources directly or indirectly connected with the Taliban movement, adopted pursuant to Security Council resolution 1267 (1999).¹²⁶

In addition, according to a representative from the CBK:

Articles 21 and 71 of the CBK Law No. 32 of 1968 give the Governor of the CBK the authority to issue the necessary regulations and instructions, including those related to AML/CFT, to all Financial Institutions under its supervision (namely banks, investment companies and exchange companies), and, if the mentioned Financial Institutions failed to comply or violate the CBK instructions and regulations issued to it by the Governor of the CBK, such FIs may be sanctioned by warnings, imposing financial penalties, temporarily suspending some or all its operations, and

¹²⁵ Interview with G.O.2, G.O.6 and G.O.10

¹²⁶ UN Security Council (CTC), ‘Kuwait’s Report to the CTC (2001)’, Security Council, Distr.: General, 21 December 2001, S/2001/1221, Letter dated 19 December 2001 from the Chargé d’affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, online: UN Security Council, Counter Terrorism Committee, 21 December 2001.

such penalty may reach to a withdrawal of and deleting from the Register of Banks.¹²⁷

In its Instructions No. (2/BS/92/2002) regarding Combating Money Laundering Operations and the Financing of Terrorism, the CBK ordered all local banks to give special attention to the circulars sent to them by the CBK related to freezing assets, accounts and financial activities belonging to individuals and entities listed in the UN Consolidated List.¹²⁸ However, it did not define the methods or formal ways of reporting back to the CBK, and the instructions were addressed only to banks and not to other FIs.

Not until October 19, 2004, did the CBK issue a circular regarding the unification of the form of replying to the CBK concerning the freezing of the assets and funds of some entities and individuals. It ordered all local banks, investment companies and exchange companies to report to the CBK within five working days from the date of receiving the respective circular sent to them with regard to freezing the assets and funds of those whose names appeared in the Consolidated List. In addition, the circular expresses the CBK's desire to unify the form of letters received from the FIs under its supervision with regard to this issue.¹²⁹ However, none of the names and entities listed on the UN Consolidated List at that time included any Kuwaiti citizens, and none of the names and entities listed had any accounts in Kuwait. Therefore, the assessment of the effectiveness of the above mentioned 'informal way' was not questioned.

In 2004, the first Kuwaiti citizen, Sulaiman Abo Ghaith, was listed as being associated with Al-Qaida.¹³⁰ However, he has not returned to Kuwait since he joined Al-Qaida, and, after the incidents of 9/11, the government of Kuwait withdrew Abo Ghaith's citizenship.¹³¹ Abo Ghaith was captured in Jordan on

¹²⁷ Interview with G.O.8.

¹²⁸ Instructions No. (2/BS/92/2002) of combating money laundering operations and terror financing transactions.

¹²⁹ Circular dated 19/10/2004 regarding the unification of the form of replying to Central Bank's concerning the freezing of the assets and funds of some entities and individuals.

¹³⁰ Abo Ghaith was listed on 16 January 2004 pursuant to paragraph 1 and 2 of resolution 1390 (2002), Available at: <<http://www.un.org/sc/committees/1267/NSQI15404E.shtml>> accessed 1st Dec. 2014

¹³¹ See Chapter Two for Further information. See also Joscelyn, T., 'Report: New leader of al Qaeda network in Iran named', The Long War Journal, Available at:

March 7, 2013 and was subsequently extradited to the United States. On September 23, 2014, Abo Ghaith was sentenced to life in prison.¹³²

In February 2005, just after one month after the incidents of the Peninsula Lions in Kuwait, Muhsin Al-Fadhli¹³³ became the second Kuwaiti citizen listed as being associated with Al-Qaida.¹³⁴ However, Al-Fadhli did not have any bank accounts in Kuwait. On September 23, 2014, Al-Fadhli was believed to be killed by an American strike during the military intervention in Syria. However, on November 1, 2014, CNN reported that American officials believed that Muhsin Al-Fadhli ‘almost certainly survived the strikes’.¹³⁵

In July 2006, The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury designated three Kuwaiti citizens, Mubarak Al-Bathali, Hamid Al-Ali and Jaber Al-Jalahmah, as being associated with Al-Qaida.¹³⁶ Nevertheless, since there was no legal basis for freezing the assets of the designated persons in Kuwait, Kuwait’s ability to implement the OFAC request successfully was hampered. Thus, when the Kuwait Finance House (KFH) froze Al-Bathali’s bank account based on the OFAC listing, he brought a legal action before the Kuwaiti court, which fined the KFH bank 500 KD for breaching the account contract, and forced the bank to reactivate his account.¹³⁷

<http://www.longwarjournal.org/archives/2012/02/report_new_leader_of.php> accessed 1st Dec. 2014.

¹³² ‘Sulaiman Abu Ghaith sentenced to life in prison’, *BBC*, (US & Canada, 23 September 2014), Available at: <<http://www.bbc.com/news/world-us-canada-29331395>> accessed 1st Dec. 2014.

¹³³ See Chapter Two for further information about Muhsin Al-Fadhli and the Peninsula Lions in Kuwait.

¹³⁴ Al-Fadhli was listed on 17 February 2005 pursuant to paragraphs 1 and 16 of resolution 1526 (2004), Available at: <<http://www.un.org/sc/committees/1267/NSQI18405E.shtml>> accessed 1st Dec. 2014.

¹³⁵ Cruickshank, P., ‘French bomb-maker with Khorasan radicalized over ‘several years’’, *CNN*, (U.S., 1 November 2014) Available at: <<http://edition.cnn.com/2014/10/31/world/meast/syria-khorasan-bomb-maker/>> accessed 1st Dec. 2014.

¹³⁶ U.S. Treasury Department Press Release, *Treasury Designations Target Terrorist Facilitators*, (7 December 2006), Available at: <<http://www.treasury.gov/press-center/press-releases/Pages/hp191.aspx>> accessed 1st Dec. 2014. See also Pollock, D. and Jacobson, M., ‘Blacklisting Terrorism Supporters in Kuwait’, (25 January 2008), The Washington Institute for Near East Policy, PolicyWatch #1333, Available at: <<http://www.washingtoninstitute.org/templateC05.php?CID=2709>> accessed 1st Dec. 2014.

¹³⁷ ‘Verdict in favour of Al-Bathali against Kuwait Finance House’, *Alaan*, (29 April 2008), Available at: <<http://www.alaan.cc/pagedetails.asp?cid=48&nid=12761>> accessed 1st Dec. 2014.

In January 2008, the UN's Consolidated List designated Al-Bathali, Al-Ali and Al-Jalahmah as being associated with Al-Qaida.¹³⁸ As a result, on May 7, 2008, the CBK issued a circular to all financial sectors under its supervision to freeze without delay their financial assets, to deny them from opening bank accounts and to deny them from dealing in any financial activities.¹³⁹

As for Resolution 1373, the authorities have stated that the government of Kuwait is using the same 'informal way' discussed above. It seems from their responses that they do not recognise the differences between Resolutions 1267 and 1373 discussed in section I of this chapter. In fact, Resolution 1373 gives the member states the duties to identify and designate, based on concrete evidence, those individuals and entities that are associated with terrorism and to freeze without delay their assets and funds.

Moreover, according to a representative from the MOI with regard of the availability of any lists of designated individuals or entities:

Of course, all countries have lists of individuals and groups that are suspected to or are actually involved in crimes related to terrorism and terrorist financing. However, such lists are always kept in secret, and if there is any evidence of committing such crime then a criminal suit/case will be launched against them.¹⁴⁰

However, it seems that the lists that he mentioned relate to general security intelligence lists and do not relate to individuals and entities associated with terrorist financiers.

¹³⁸ Al-Bathali, Al-Ali and Al-Jalahmah were listed on 16 January 2008 pursuant to paragraph 1 and 12 of resolution 1735 (2006), Available at:

<<http://www.un.org/sc/committees/1267/NSQI23808E.shtml>> accessed 1st Dec. 2014. Also see Chapter Two for further information about the abovementioned individuals.

¹³⁹ Circulated to all local banks, investment companies and exchange companies, (7 May 2008), Circulated no. 1/105/5494 [Confidential], disclosed and Available at:

<<http://www.youtube.com/watch?v=CK-k7zap9NY>> accessed 1st Dec. 2014.

¹⁴⁰ Interview with P.O.I.

5.3.5 Kuwait's Compliance with the 40 + 9 FATF Recommendations and the Effectiveness of AML/CFT System in Kuwait

The techniques employed in money laundering and terrorism financing have significantly altered the response and effectiveness of the counter-measures deployed in the past. For instance, the FATF noted that money laundering and terrorism financing in the last decade developed into a relatively complex process that employed a number of sophisticated techniques. Accordingly, modern money laundering has used professional advice on how to propagate the illegal process and has used legal persons in a bid to disguise the illegitimate possession of property and money.

Because of these challenges, it was inevitable that new measures would be developed that would combat money laundering and suppress terrorism financing. In addition, the FATF XI Special Recommendations propose a set of feasible measures necessary and important to combat terrorism financing through individuals and/or organisations. In this regard, countries are required to implement the FATF recommendations, which set an international standard, to combat money laundering and terrorist financing. Kuwait is a member of the Gulf Cooperation Council (GCC), which is itself a member of the Financial Action Task Force (FATF). Furthermore, Kuwait is a member of the Middle East and North Africa Financial Action Task Force (MENAFATF), a Financial Action Task Force (FATF)-style regional body.

On February 16, 2012, the new revision of the Forty Recommendations was developed by the FATF for adoption.¹⁴¹ Though this was not the first revision, it was the most effective revision, since it incorporated the rules against money laundering and terrorism financing. This section of the paper focuses on the 40¹⁴² + 9¹⁴³ FATF recommendations of 2003 as the basis for compliance with Kuwait's domestic law and measures. In addition, this section implements the results of the detailed assessment by the International Monetary Fund (IMF) about Kuwait on

¹⁴¹ See the last revision of the FATF Recommendations 2012, Available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf> accessed 1st Dec. 2014.

¹⁴² Financial Action Task Force, *FATF 40 Recommendations*, October 2003 (incorporating all subsequent amendments until October 2004), (FATF/OECD: Paris, 2010).

¹⁴³ Financial Action Task Force, *FATF IX Special Recommendations*, October 2001 (incorporating all subsequent amendments until February 2008), (FATF/OECD: Paris, 2010).

anti-money laundering and combating the financing of terrorism in 2011,¹⁴⁴ and evaluates the development of the government of Kuwait since then.

In this section, an overview of the 40 + 9 recommendations and Kuwait's compliance with the recommendations prior to June 2013 will be discussed. For simplicity, the letter 'R' shall be used to represent recommendation and the letter 'n' will be used to represent the recommendation number. Therefore R1 represents recommendation 1 and so on.

5.3.5.1 Kuwait Compliance with 40 Recommendations before June 2013

Recommendations 1 and 2 (Now Recommendation 3)

R1 requires that all activities falling under money laundering be criminalised. A further requirement put forward in R1 is that the authorities are recommended to undertake money laundering prosecutions effectively irrespective of whether any prior conviction were obtained. In addition, R1 requires that all forms of terrorist financing and smuggling of immigrants be included in the list of predicate offences with regard to money laundering in the domestic law. In terms of compliance, an evaluation by the IMF of Kuwait's law prior to 2013 revealed that compliance with the requirements stipulated in R1 were not fully achieved. For instance, terrorist financing and immigrant smuggling were not included in the list of predicate offences with regard to money laundering. In addition, there was a significant reluctance to prosecute money laundering without the initial conviction of the corresponding predicate offences.¹⁴⁵

In addition, all authorities are recommended to ensure that criminal liability is extended to legal persons and not just to MOCI-licensed companies. An evaluation by the IMF of compliance revealed that compliance with R2 was not fully achieved before 2013. For instance, it was found that criminal liability was applied only to MOCI registered companies, leaving out other legal persons, such as NPOs and public stockholding companies. As a result, only the individual persons who act as

¹⁴⁴ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011).

¹⁴⁵ *Ibid*, 33-41.

managers of the NPO can be charged with money laundering crimes, and not the NPO itself, which limits the purposes of this recommendation.¹⁴⁶

Recommendation 3 (Now Recommendation 4)

This recommendation lays down the guidelines for freezing, seizing and confiscating finances and related assets having a link to terrorism and money laundering. In reference to Kuwait's domestic law prior to 2013, R3 is supported by article 78 of the Penal Code and article 6 of Law No. 35 of 2002 for Combating Money Laundering Operations that require that all crime related instrumentalities, money and proceeds be confiscated. Dealing with property liable to confiscation is regulated by provisional measures stipulated in the Criminal Procedure Code (CPC).¹⁴⁷ In articles 78 to 97, the CPC provides a channel for the PPO to locate and seize all properties that are subject to confiscation. According to the law, any person who deals with the properties due for confiscation will be found guilty and sentenced to imprisonment.¹⁴⁸ Even after such individuals have been sentenced to imprisonment, the corresponding properties remain seized until all of the legal matters are addressed and fully settled.¹⁴⁹ Ultimately, R3 calls for the confiscation of properties related to terrorist financing and money laundering. In addition, R3 calls for an effective implementation of the anti-money laundering regime that recommends confiscation of all criminal assets and those related to predicate offences.

Based on the level of incorporation of R3 in Kuwait prior to 2013, most of the money laundering requirements were met. However, as mentioned above, terrorism financing was not clearly defined as a crime in Kuwait's domestic law prior to June 2013. Thus, the implementation of R3 requirements related to the crime of terrorist financing has faced 'a significant level of difficulty in practice due to the absence of criminalisation of terrorism financing'¹⁵⁰ as discussed earlier. In addition, the confiscation process constantly experienced difficulties due to the lack of sufficient

¹⁴⁶ *Ibid.*

¹⁴⁷ Law No. 17 of 1960 promulgating the Criminal Procedure Code.

¹⁴⁸ Law No. 35 of 2002 for Combating Money Laundering Operations. Also Article 1(f) of Resolution 9 of 2005 for "Procedures and Rules Required to Execute Provisions of Law 35/2002 for Combating Money Laundering".

¹⁴⁹ *Ibid.*

¹⁵⁰ Interview with N.O.S.2 and N.O.S.5

evidence and effectiveness of the framework of confiscation with regard to the terrorist financing offense. Thus, making the implementation of R3 with regard to terrorist financing ineffective.

Recommendation 4 (Now Recommendation 9)

This recommendation addresses matters related to the confidentiality and secrecy of financial institutions, including banks, investment companies, exchange companies and brokerage companies. According to the CBK Law No. 32 of 1968, articles 78 and 82, and Resolution 113 adopted in 1992, access to financial information, including those related to money laundering or terrorist financing, can be granted. However, article 85(bis) of the CBK law demands that nobody should disclose any piece of information to another entity except the CBK itself. Also, the CBK has been provided with the authority to investigate investment records from any investment company and to ask for information from any exchange companies operating within Kuwait.¹⁵¹

In addition, R4 requires the CBK to share information with foreign counterparts to provide an efficient mechanism through which terrorist financing and money laundering can be combated effectively.

Based on Kuwait's law, R4 could not be complied with fully prior to 2013, because the financial law governing the CBK, specifically articles 78 and 82(3) of the CBK law, did not allow information to be shared or regulatory cooperation outside of consolidated supervision.¹⁵² As such, the requirements put forward in the context of R4 could not be accomplished without amending the existing domestic law.

Recommendation 5 (Now Recommendation 10)

This recommendation addresses matters related to the due diligence of customers during execution of financial transactions both locally and internationally.

¹⁵¹ The CBK Law No. 32 of 1968, Article 78(b)

¹⁵² International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 96.

According to the IMF, Kuwait's incorporation of R5 requirements prior to 2013 lacked a well-defined and explicit obligation for customer due diligence on different occasions, such as, for instance, when executing occasional transactions, such as a wire transfer in accordance with Special Recommendation 7 (Now Recommendation 16), in cases when money laundering or terrorist financing is suspected regardless of exemptions, and in cases when the FI develops doubts concerning the adequacy or veracity or of financial information provided by the customer.¹⁵³

The IMF detailed assessment of 2011 found that the means of identifying the identity of persons claiming to act on behalf of a legal person and verifying their information were lacking. Such persons should be identified by investigating all transactions carried out by persons who purport to be acting on behalf of legal persons. According to the IMF, Kuwait law or regulations had not fully developed a platform for identifying persons, who transact on behalf of another, especially online, prior to 2013.¹⁵⁴

In addition, under Article 3 of the Ministerial Resolution 9/2005 issued by the MOF for implementing Law No. 35 of 2002 for Combating Money Laundering Operations requires all FIs to verify the identity of the customer and the actual beneficiary of transactions of 3000 KD and above. This, however, limits the application of CDD measures for transactions under 3000 KD. An overview of the situation before 2013 revealed that R5 was not implemented effectively because of two main challenges. First, there was a lack of sufficient supportive evidence in applying the CDD, especially with regard to exchange companies, brokerage companies and insurance companies. Secondly, potentially risky firms, including insurance companies, brokerage companies and exchange organisations, were poorly supervised and controlled.

Recommendation 6 (Now Recommendation 12)

This recommendation focuses on politically exposed persons (PEPs). An investigation on the Kuwait's legal framework with regard to PEPs showed that

¹⁵³ *Ibid*, 81-83.

¹⁵⁴ *Ibid*.

there lacked a clear definition of the term PEP until 2009. As a result, no regulations were imposed on financial institutions, such as banks and investment companies among others in this regard. In addition, the law lacked clear requirements for banks and investment companies to carry out customer due diligence assessments and to launch relevant measures in accordance with the law. However, in 2009, the CBK issued its instruction No. (2/BS, IBS, RS, IRS/242/2009) in respect of dealing with politicians – non-residents in Kuwait, which for the first time defined those politicians, representing risk.¹⁵⁵

Recommendation 7 (Now: Recommendation 13)

This recommendation seeks to govern cross-border correspondent banking matters in accordance with terrorist financing and money laundering regulations. Based on the report by the IMF, compliance with the R7 requirements were not fully achieved.¹⁵⁶ However, Kuwait showed great interest in 2010, when it incorporated some elements of terrorist financing in the guidelines for running financial institutions.¹⁵⁷ Nevertheless, there lacked the necessary regulations for banks, brokerage companies and exchange companies to collect enough information concerning respondent institutions that could enable the authority to establish whether the institutions were associated with money laundering or other forms of regulatory actions or not. Also, most financial institutions, especially banks, had not satisfied the requirement of record keeping. This made it difficult to obtain past records that might have been important for investigations.¹⁵⁸

Recommendation 8 (Now: Recommendation 15)

Recommendation 8 addresses the guidelines for successful utilisation of new technologies in the financial sector and the use of other activities that are not face-

¹⁵⁵ See Circular No. (2/BS, IBS, IS, IIS/242/2009) on the manner of dealing with political persons non-resident in Kuwait, and who represent risks in the area of AML/CFT. See also Instructions local banks and investment companies in respect of dealing with politicians – non-residents in Kuwait – representatives of risk in the area of AML to all CFT No. (2/BS, IBS, RS, IRS/242/2009).

¹⁵⁶ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 85-87.

¹⁵⁷ Circular No. (2/BS, IBS/300/2010) regarding the amendment of certain clauses of the instructions No. (2/BS/92/2002) regarding AML/CFT.

¹⁵⁸ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 85-87.

to-face. The use of the Internet to transfer money through credit cards, wire transfers and other types of online money transfers have complicated the process of controlling money laundering and terrorist financing. As such, relevant regulations, such as those suggested in recommendation 8, are worthy of consideration. However, Kuwait did not fully incorporate R8 requirements prior to 2013.¹⁵⁹ For instance, there were no feasible guidelines that could govern the misuse of new technologies in the transfer of money both locally and internationally. In addition, the law did not stipulate any requirements for financial institutions regarding the misuse of financial activities that are not face-to-face leading to execution of legal transactions.¹⁶⁰

Recommendations 9, 10 and 11 (Now Recommendations 17 and 11)

Recommendations 9, 10 and 11 addressed financial matters related to third parties, record keeping and unusual transactions. Prior to 2013, Kuwait's law did not regulate the use of third parties by financial institutions to perform customer due diligence measures in accordance to the requirements stipulated under R9. Secondly, the law did not regulate the storage of identification data for the termination of an account or business relationship, because the CBK instructions only required financial institutions to retain such information for transaction for five years.¹⁶¹ For instance, once an account was terminated for any reason, the details were deleted from the institution's database to avoid overburdening the system with redundant data. Finally, the law lacked the necessary regulations for the control of insurance companies, brokerage companies, and exchange companies against unusual transactions, and there were no obligation on them to provide information on a timely basis to the competent authorities.¹⁶²

¹⁵⁹ *Ibid.*, 87-88.

¹⁶⁰ *Ibid.*

¹⁶¹ See Instructions No. (2/BS/92/2002) regarding Combating Money Laundering Operations and the Financing of Terrorism.

¹⁶² International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 98-109.

Recommendations 12, 13, 14 and 15 (Now Recommendations 22, 20, 21 and 18 respectively)

Recommendation 12 applies the requirements stipulated under R5, R6 and R8 – R11 to Designate Non-Financial Business and Professions (DNFBPs). As such, its compliance is defined by the corresponding compliance with R5, R6, 8, R9, R10, R11, R13, R14 and R15 that address issues related to reporting suspicious transactions, protecting reported suspicious transactions, and internal audit and compliance respectively.

Referring to R13, Kuwait's law prior to 2013 did not provide any regulations that prohibited the execution of suspicious transactions within the state. Furthermore, failed transactions related to terrorist financing were not regulated under the law due to the lack of an effective implementation of requirements for suspicious transactions.¹⁶³

Referring to R14, the law did not prohibit existing financial institutions, including investment companies, brokerage companies and exchange companies, from leaking or disclosing reported information to unauthorised bodies.¹⁶⁴ In fact, the institutions were not supposed to inform any other authoritative or non-authoritative bodies that a specific suspicious transaction was reported to the CBK.

In relation to the requirements of R15 about internal audit, control and compliance, the domestic law did not provide the necessary regulations for some financial institutions, such as brokerage companies, with regard to the maintenance of internal policies and procedures geared toward the prevention or suppression of terrorism financing.¹⁶⁵ Furthermore, no law sought to govern the hiring of new workers in sensitive financial institutions, such as banks and investment companies.¹⁶⁶ According to R15, such financial institutions are required to employ proper worker-screening techniques before hiring new employees, because the institutions could otherwise hire the accomplices of terrorists, resulting in serious difficulties in the control of terrorist financing and money laundering within the institutions.

¹⁶³ *Ibid.*, 109-111.

¹⁶⁴ *Ibid.*, 112-113.

¹⁶⁵ *Ibid.*, 118-123.

¹⁶⁶ *Ibid.*

Recommendations 16 – 21 (Now Recommendations 23, 35, 26 and 19 respectively)

Recommendation 16 applies the requirements stipulated under R13 – R15 and R21 to DNFBPs. In terms of compliance with regard to R 13, there lacked the necessary requirements in Kuwaiti law that could regulate DNFBPs on submission of reports to the Financial Investigation Unit (FIU). In addition, in accordance with R14, no regulatory measures, other than suspicious transaction detection, were put in place to ensure that all financial institutions maintain proper internal policies and procedures aimed at preventing or suppressing terrorist financing and money laundering.¹⁶⁷

Recommendation 17 addresses the imposition of sanctions on various financial institutions. However, the level of compliance of Kuwait with this recommendation was relatively low. For instance, the law lacked a consistent definition and designation of authorities mandated to impose sanctions on exchange organisations and insurance companies that failed to comply with the anti-money laundering requirements as stated in the law. Finally, agencies in the security sector, MOCI and KSE have not been effective in their roles, which contributed much to the low level of compliance with the requirements of R17.¹⁶⁸

In reference to Kuwait law, R18 addresses the establishment of shell banks in the country. According to R18, Kuwait should erect the necessary legal provisions that seek to prevent the establishment and operation shell banks within the state. However, the IMF assessment to Kuwaiti law before June 2013 showed that it was lacked the necessary legal provisions that could govern the physical presence of banks in the country in accordance with the requirements provided by FATF.¹⁶⁹ Finally, only banks¹⁷⁰ and investment¹⁷¹ companies are prohibited from entering into, or continuing, correspondent banking relationships with shell banks, leaving exchange companies without any prohibition.

¹⁶⁷ *Ibid*, 168-171.

¹⁶⁸ *Ibid*, 161.

¹⁶⁹ *Ibid*, 129-131.

¹⁷⁰ Article 6.1 of the CBK Instructions No. (2/BS/92/2002) regarding Combating Money Laundering Operations and the Financing of Terrorism

¹⁷¹ Article 13 of the CBK Instructions No. (2/IS-IIS/180/2005) For all local investment companies on combating money laundering and terrorist financing operations

R19 addresses forms of reporting other than those addressed in R13 (reporting of currency transactions above a threshold). Based on the IMF report, compliance with all of the requirements stipulated in R19 was achieved. For example, section 20 of the CBK Instructions to banks, section 12 of CBK Instructions to investment companies and section 13 of CBK Instructions to exchange companies require them to provide the CBK with data, using an online system and on a daily basis, on any cash transactions equal to or above 3000 KD or its equivalent in foreign currency. The CBK Instructions also prohibit all financial institutions, except banks, to accept cash transactions above 3000 KD.¹⁷²

In accordance with the requirements stipulated under R20 concerning secure transactions, R5, R6, R8 – R11, R13 – R15 and R17's application to DNFBPs requirements have not been fully satisfied. R20 requires a reduction in reliance on cash transactions, since they are relatively insecure to handle. In addition, cash payments have been subject to misuse by providing a non-traceable method of payment. Kuwait has developed different measures to reduce cash payments within the economy, but this was not fully assimilated into the financial system prior to 2013 because of the very high reliance on cash among the large expatriate community in the country.¹⁷³

Recommendation 21 required financial institutions to apply enhanced due diligence measures to business relationships and transactions, with the ability to apply appropriate countermeasures, and to pay special attention to terrorist financing and money laundering when dealing with natural and legal persons, and financial institutions from countries listed in the high-risk regions. Based on the FATF definition, high-risk countries are those that do not apply the recommendations put forward by FATF. According to the IMF, prior to 2013, Kuwait did not apply any requirements for exchange companies, insurance companies, exchange organisations, or brokerage companies regarding business relationships and transactions with natural and legal persons, and financial institutions from countries that labelled by the FATF as high-risk countries. Kuwait

¹⁷² Instructions No. (2/BS/92/2002) of combating money laundering operations and terror financing transactions.

¹⁷³ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 175-176.

also did not launch appropriate measures to help financial institutions to identify non-compliant countries and countries whose anti-money laundering laws were compromised. Finally, Kuwait did not apply appropriate measures to countries that listed as high-risk countries.¹⁷⁴

Recommendations 22 – 26 (Now Recommendations 18, 26, 28, 34 and 29 respectively)

Recommendation 22 addresses the requirements of subsidiaries and foreign branches of financial institutions in Kuwait with respect to anti money laundering measures put forward by FATF. In terms of compliance, Kuwait did not stipulate the necessary requirements and regulations to ensure that subsidiaries of financial institutions located in other countries followed the requirements put forward by FATF.¹⁷⁵ Since some countries may fall under the high-risk regime, failure to incorporate proper restrictive measures might result in poor coordination and increased perpetuation of terrorist financing and money laundering offences without the knowledge of government.

Recommendation 23 focuses on monitoring, regulating and supervising financial institutions to prevent the commission of terrorist financing and money laundering offences. Kuwait's law lacked a clear basis for the supervision of insurance companies with the requirements of anti-money laundering and terrorism financing within the state. In addition, no clear regulatory measures were undertaken to prevent criminals from having an ownership interest in Kuwait's financial institutions.¹⁷⁶ Supervision and control of the conduct of financial institutions is the task of authoritative bodies, such as the CBK, the KSE and MOCI.

Recommendation 24 focuses on the regulation, monitoring and supervision of DNFBPs. Assessment has shown that compliance with R24 was not achieved prior to 2013. For instance, DNFBPs in Kuwait were not subject to effective monitoring systems that ensured improved compliance with the existing anti-money laundering and terrorist financing requirements. The noncompliant behaviour could be

¹⁷⁴ *Ibid*, 106-108.

¹⁷⁵ *Ibid*, 123-125.

¹⁷⁶ *Ibid*, 161.

attributed to the lack of a necessary legal framework that would bring all stakeholders together in favour of R24 requirements.

Referring to R25 that focuses on feedback and guidelines put forward and provided by supervisory authorities, the recommendation was not fully satisfied prior to 2013. For instance, no guidelines were stipulated with respect to STRs and other reporting for brokerage companies, exchange organisations and insurance companies on the matters relating to money laundering and terrorist financing. In addition, the CBK did not erect a platform for reporting cases of suspicious transactions. Furthermore, there were lacks of sufficient and appropriate feedback from competent authorities.¹⁷⁷

Recommendation 26 focuses on the FIU and its role. Based on evaluation, compliance with R26 was not achieved prior to 2013, because Kuwait lacked the necessary legal platform for the establishment of Kuwait FIU and assigning it the appropriate functions and powers, as discussed earlier. Furthermore, there was insufficient strategic tactical analysis of suspicious transaction reports. According to the IMF, there was no periodic publication of terrorist financing and money laundering reports as well as insufficient protection of premises information.¹⁷⁸

Recommendations 27 – 32 (Now Recommendations 30, 31, 27, 2 and 33 respectively)

Recommendation 27 suggests the best operation procedures for law enforcement bodies. Evaluation has shown that compliance with R27 was partially achieved. It was found that Kuwait's investigation authorities and prosecution bodies did not pursue money laundering cases satisfactorily in accordance with the requirements of R27 prior to 2013. In addition, insufficient evidence and lack of relevant statistical data were the main causes of the partial compliance state. Similarly, compliance with R28, which addresses the powers of competent authorities, was only partially achieved. Also, the challenges that faced R28 were similar to those of R27.¹⁷⁹

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*, 51-57.

¹⁷⁹ *Ibid.*, 57-62.

Recommendation 29 covers the requirements of supervisory authorities in the fight against money laundering in Kuwait. The main supervisory authorities that were affected by R29 include the KSE and MOCI. According to the research findings covered in this paper, this recommendation was not implemented prior to 2013.

It was found that MOCI lacked the necessary power to regulate exchange organisations and insurance companies in accordance with R29 requirements with regard to money laundering. In addition, the KSE lacked sufficient powers to control the existing financial institutions through a clear process.

Other challenges that led to non-compliance with R29 include the low efficiency of operation of supervisory bodies, insufficient powers for the KSE and MOCI to impose sanctions whenever necessary, and a lack of clear evaluation procedures for MOCI on matters regarding money laundering and terrorist financing.

Recommendation 30 takes care of training, resources and integrity of various bodies that are directly involved in the control of money laundering and terrorist financing activities. This recommendation was not implemented prior to 2013. One of the major causes of this noncompliance was the uneven allocation of available resources.¹⁸⁰ Also, both professional and confidentiality standards in Kuwait were not developed to a level that could guarantee successfully combating terrorist financing and money laundering crimes within the state. This can be attributed to insufficient training of responsible personnel, including the Kuwait FIU, the KSE and MOCI on the control of terrorist financing and money laundering activities.

Recommendation 31 focuses its attention toward national cooperation of all bodies responsible for the control of terrorist financing and money laundering offences. At the Kuwaiti national level, four competent authorities are specialised in combating money laundering and terrorism financing, namely the National Committee for Anti-Money Laundering and the Combating of Terrorist Financing, the Kuwait Financial Intelligence Unit, the Office of Combating Money Laundering Operations, and lastly the Department of Charitable Organizations. Evaluation by

¹⁸⁰ *Ibid*, 209.

the IMF has shown that compliance with this recommendation was only partially achieved. For instance, there lacked proper mechanisms that could enhance improved coordination of relevant authorities at the domestic level. As such, the poor development of strategies and implementation of existing policies become inevitable. Also, poor coordination resulted in inefficient implementation of UNSCRs 1267 and 1373.¹⁸¹

Recommendation 32 addresses the importance of statistics as a way to accelerate the identification and successful investigation of terrorist financing and money laundering activities. Compliance with this recommendation was not achieved prior to 2013, because the existing authorities were not in a position to develop the relevant statistics needed to accelerate an efficient investigation of terrorist financing and money laundering activities within the state. Some of the statistics deemed highly important in this context included prosecution reports, investigation information, confiscated properties, convictions, on-site examinations and frozen property. Also lacking were governmental review reports concerning the effectiveness of an anti-money laundering system.¹⁸²

Recommendations 33 – 40 (Now Recommendations 24, 25, 36, 37, 38, 39 and 40 respectively)

Recommendation 33 suggests the necessary requirements for combating terrorist financing and money laundering through the access to beneficial ownership and control information related to legal persons. Compliance with this recommendation was not achieved prior to 2013. For instance, it was found that changes in ownership and corporate information took too long to be updated.¹⁸³ Consequently, adequate and reliable information of the current beneficial ownership and control of legal persons could not be obtained efficiently at any time by competent authorities involved in the fight against terrorist financing and money laundering activities.

Based on Kuwait's law, no legal entities, such as trusts, exist. As a result, Recommendation 34, which deals with the requirements of legal arrangements, did

¹⁸¹ *Ibid*, 185-187.

¹⁸² *Ibid*, 209.

¹⁸³ *Ibid*, 177-179.

not apply.¹⁸⁴ Recommendation 35 suggests the requirements for the adoption of important conventions that seek to prevent or suppress terrorist financing and money laundering offences in all countries. Partial compliance with this recommendation was achieved prior to 2013, because Kuwait has not ratified the 1999 ICSFT. In addition, the Palermo¹⁸⁵ and Vienna¹⁸⁶ Conventions have not been implemented satisfactorily. For instance, Kuwait's law defines criminal liability as applicable only to natural persons and companies leaving out other legal persons. Furthermore, terrorist financing and the smuggling of migrants are not included as predicate offences for money laundering.¹⁸⁷

Recommendation 36 encourages Mutual Legal Assistance (MLA) among countries as a strategy to suppress terrorist financing and money laundering internationally. The lack of MLA inhibits the investigation of terrorist financing and money laundering offences, since only the requests should emanate from competent judicial authorities can be investigated. This limit cooperation to requests issued from other competent authorities in another country. As such, MLA in Kuwait was provided at a relatively slow pace. On the other hand, compliance with R37, which addresses MLA and dual criminality matters, was not achieved prior to 2013. Kuwait's national law lacked clarity with regard to the implementation of the requirements of paragraph 9 of article 18 of the Palermo Convention (providing assistance irrespective of dual criminality). In addition, the Kuwaiti authority stated that providing MLA is solely a discretionary decision by the requested State (Kuwait) on a case-by-case basis.¹⁸⁸

Kuwait has partially succeeded in its adoption of Recommendation 38, which delves into the importance of MLA with respect to the freezing and confiscation of property. However, there were no specific arrangements with other countries with regard to coordination of seizure and confiscation actions. In addition, there have

¹⁸⁴ *Ibid*, 179.

¹⁸⁵ Kuwait ratified the 2000 United Nations Convention against Transnational Organized Crime (Palermo Convention), including the Protocols thereto on May 16, 2006.

¹⁸⁶ Kuwait has ratified the 1988 United Nations Convention on Illicit Drugs and Psychotropic Substances (Vienna Convention) on November 3, 2000.

¹⁸⁷ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 187-189.

¹⁸⁸ *Ibid*, 193.

been serious constraints due to the lack of legislation in relation to value-based assets confiscation.

Recommendation 39 addresses extradition of suspects involved in terrorist financing and money laundering within the state of Kuwait. However, evaluation by the IMF revealed that compliance with R39 was not fully achieved prior to 2013, because there were two reasons that made it impossible to carry out the assessment of the efficiency of the state's extradition system. First, since terrorism financing is not criminalised in Kuwait, the effectiveness of the extradition process was hampered especially where dual criminality remains a requirement for Kuwait. Second, there was only one case relating to money laundering.¹⁸⁹

Finally, R40 addresses on the other forms of international cooperation. However, Kuwait was partly complied with R40 since the KFIU was not able to exchange information with its counterparts due to the central role of the PPO, as discussed above. In addition, the international cooperation by the CBK is restricted by a prior approval from the PPO. Furthermore, there was a lack of clear gateways for international cooperation and sharing with regard to MOCI and the KSE.¹⁹⁰

5.3.5.2 Kuwait's Compliance with the 9 Special Recommendations before June 2013

The 40 FATF recommendations of 2003 discussed in the previous section of this paper addressed mainly matters related to money laundering. However, some recommendations incorporated some elements of the control of terrorist financing. The FATF developed the 9 Special Recommendations (9 SRs) to address matters of terrorism financing more deeply.¹⁹¹ The main purpose of the 9 SRs, however, is not to replace the 40 recommendations (40 R) but to work in conjunction with each other for the sole purpose of strengthening the fight against terrorists and their financiers.

¹⁸⁹ *Ibid*, 199-200.

¹⁹⁰ *Ibid*, 201-206.

¹⁹¹ See Financial Action Task Force, *IX Special Recommendations*, Available at: <<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/ixspecialrecommendations.html>> accessed 1st Dec. 2014.

The 9 SRs were created by FATF in October 2001. The recommendations propose a set of feasible measures deemed necessary and important as tools with which to combat terrorism financing through individuals and/or organisations. The 9 SRs can be divided into two broad categories depending on the desired function. The first category consists of recommendations that seek to establish a platform for detecting and convicting terrorist financing offences through a legal framework. This category includes SR 1 – SR 5. The second category, which is comprised of SR 6 to SR 9, provides the necessary specific measures aimed to enhancing the detection of terrorist financing acts.

This section shall focus on the 9 SRs with respect to Kuwait. To accomplish the main aim of this section, the level of compliance of the 9 SRs was evaluated. The 9 SRs are as discussed in the following sub sections.

Special Recommendation 1 (Now Recommendation: 36)

To stress the importance of international security by combating of terrorism financing, SR 1 calls for all member states to adopt the 1999 UN ICSFT and other relevant resolutions, including Resolutions 1267 and 1373. Before 2013, Kuwait was not a party to and did not implement the ICSFT. In addition, UNSCRs 1267 and 1373 have not been implementing effectively by Kuwait.¹⁹² Therefore, it can be concluded that compliance with the recommendation was not achieved prior to 2013.

Special Recommendation 2 (Now Recommendation: 5)

The main purpose of SR 2 is to provide all member states with the necessary legal powers with which to investigate, prosecute and implement relevant sanctions against criminal persons found committing the act of terrorist financing. Basically, SR 2 calls for the criminalisation of acts of terrorism financing and all related activities, including those perpetuated by individuals and/or terrorist organisations. The recommendation therefore offers sufficient flexibility to all member countries, thus establishing a common platform through which all members can cooperate for the sake of international security. However, SR 2 was not achieved in Kuwait prior

¹⁹² See Chapter Five, Section 5.3.4

to June 2013, because there was no legal provision which criminalised terrorism financing.¹⁹³

Special Recommendation 3 (Now Recommendation: 6)

With the sole purpose of creating an atmosphere conducive to punishing participants in terrorist financing, SR 3 requires all member countries to confiscate or freeze all assets owned by terrorists or their financiers without delay. Generally, SR 3 calls for the provision of relevant powers to competent authorities, such as MOCI, the CBK and the KSE in Kuwait, to seize or confiscate all financial assets linked to terrorists and their financiers.

Compliance with this recommendation was not achieved prior to 2013 for a number of reasons. For instance, there lacked a clear basis for the implementation of UNSCRs 1267 and 1373 that focus on terrorist financing suppression by ordering direct asset freezing. In addition, the implementation of freezing orders took more time than necessary – ‘within two/three working days’, thus slowing down the process of investigating terrorist financing offences.¹⁹⁴ In Kuwait, most of the financial institutions run under the supervision of the CBK. However, some operate under the supervisory authorities, including MOCI and the KSE. For the institutions that do not run under the supervision of the CBK, there lacked a proper mechanism that could ensure coordination through communication between authorities and financial institutions.¹⁹⁵

Due to the poor development of sanctioning and monitoring procedures, the implementation of asset freezing orders remained ineffective. Finally, Kuwait lacks an efficient coordinating mechanism that could enhance the implementation of Resolutions 1267 and 1373.

¹⁹³ See Chapter Five, Section 5.3.2

¹⁹⁴ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 47-48.

¹⁹⁵ *Ibid*, 51.

Special Recommendation 4 (Now Recommendation: 20)

Detection of the act of terrorist financing is not a straightforward process. To enhance improved detection, SR 4 imposes effective reporting requirements for financial institutions and other forms of businesses that are vulnerable to the act. In most cases, terrorists take advantage of organisations that deal with numerous transactions to conceal their financial operations against suspicion by the authority. To counter this, SR 4 recommends that all vulnerable institutions, such as banks, develop proper and efficient terrorist financing and money laundering reporting channels to ensure that all suspicious transactions are identified and investigated and that the responsible persons are contacted for further investigation. Therefore, SR 4 comes into action once detection measures raise an alarm concerning a given suspicious transaction. Comparing the requirements stipulated in SR 4 with Kuwait's law, it can be concluded that compliance with this recommendation has not been achieved.

Kuwait's law did not provide effective regulation of financial institutions against disclosure of attempted suspicious transactions prior to 2013.¹⁹⁶ Regardless of the amount or value of any suspicious transaction, SR 4 recommends that such transactions be reported as soon as they have been detected to initiate and accelerate the investigation process. Also, the legal system lacked the obligation to control the manner in which suspicious transactions were reported to the authorities. This could be attributed to the absence of an autonomous terrorism financing offence.

Special Recommendation 5 (Now Recommendation: 37)

While internal security can be achieved by developing tight local security measures, international security and action against terrorist financing require great cooperation between countries. SR 5 provides the necessary measures needed to ensure that countries assist each other optimally in cases relating to terrorism financing. Basically, SR 5 calls for an effective MLA reinforced with proper information sharing. The requirements of SR 5 aim to prevent opportunistic terrorists, who flee from prosecution by migrating to countries that have loose

¹⁹⁶ *Ibid*, 118.

restrictions with regard to terrorism and terrorist financing. An overview of SR 5 with respect to Kuwait revealed that full compliance has not been possible hitherto.

A number of deficiencies may be attributed to the partial compliance achieved in Kuwait. It was very difficult to carry out the assessment of MLA alongside extradition regimes with regard to terrorist financing, especially since terrorist financing is not a crime, and there were a limited number of cases. In fact, there was only one MLA request to Kuwait that was partly related to terrorist financing in the last decade, and the request is still pending a decision by the authorities.¹⁹⁷ In addition, the exchange of information related to terrorist financing between different authorities was relatively ineffective.¹⁹⁸ This led to a lack of valuable statistical data necessary for continued investigation and analysis of transaction patterns related to terrorism financing.

Special Recommendation 6 (Now Recommendation: 14)

The previous recommendations provided the necessary infrastructure required to identify, prosecute, criminalise and finally punish individuals or groups of individuals involved in the illegal act of terrorist financing. To tighten the measures even more, SR 6 attempts to regulate Money or Value Transfer services (MVTs). SR 6 requires that all MVTs must be licensed appropriately and registered with a competent authority that should supervise their operations to note any misconduct in relation to SR 6 requirements.

Kuwait complied with most of the SR 6 requirements prior to 2013. For instance, the CBK is provided with the authority to register, control and supervise MVTs operating in the country. According to Article 59 of the CBK law, banks and exchange companies are the only legal MVTs operating in the country. However, it was noted by the IMF that there was ‘lack of effective system to identify and monitor a potential small informal money/value transfer system operating in Kuwait’.¹⁹⁹ On the other hand, some elements of SR 6 were not satisfied prior to

¹⁹⁷ *Ibid*, 193.

¹⁹⁸ *Ibid*.

¹⁹⁹ *Ibid*, 163.

2013. For instance, no effective financial system could guarantee a successful detection of suspicious informal money transfers within Kuwait.²⁰⁰

Special Recommendation 7 (Now Recommendation: 16)

The advancements in electronic money transfer methods, such as wire transfers and other online money transfer channels, have attracted the attention of terrorists and their financiers. Since they are informal, these methods can easily be used to make illegal transactions without the knowledge of respective authorities. In this regard, SR 7 addresses wire transfers as one of the most potent electronic money transfer methods used by terrorists. SR 7 requires that all wire transfer transactions to be accompanied by specific details about the sender and the recipient, including their name, address, account number, the locations of the sender and the recipient, and the specific time that the transaction was executed. The recommendation obliges all financial institutions to carry out extensive scrutiny of all wire transfer transactions performed without a clear indication of the required details especially for the sender.

Kuwait only partially complied with the above SR 7 requirements. Though suspicious wire transfer transactions involving huge amounts of funds are mostly detected, small transactions are sometimes overlooked due to the large number of transactions and internal flaws in the detecting system. In addition, the requirements stipulated in R 17 of the 40 recommendations presented a few challenges that affect SR 7 implementation. For example, the CBK did not apply sanctions effectively to all identified cases due to poor coordination with competent authorities and existing financial institutions regarding issues related to wire transfers.²⁰¹ The ineffectiveness of the imposition of sanctions can be attributed to difficulties in obtaining important statistical data for the identified cases related to suspicious wire transfer transactions.

Special Recommendation 8 (Now Recommendation: 8)

As mentioned earlier in this chapter, some entities are more vulnerable to terrorist financing and money laundering compared to others. SR 8 seeks to prevent

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*, 101-105.

the perpetuation of terrorist financing by focusing on entities that are constantly exploited by terrorists to carry out their illegal acts. A research conducted by FATF revealed that the most vulnerable entities are non-profit organisations.²⁰² These organisations are mostly non-governmental and are often easily exploited. In effect, FATF requires that all member states implement restrictive measures to ensure that these organisations are not used in terrorist financing acts. According to SR 8, vulnerable entities should be protected against terrorist financing perpetration through close monitoring, sector outreach and supervision by a competent authority. Finally, SR 8 supports international cooperation between countries as a tool to fight terrorist financing at the international level.

Based on the situation in Kuwait, the above SR 8 requirements were not achieved prior to 2013. The execution of supervision by competent authorities to association and foundations were not as effective compared to charitable organisations, because Kuwait did not intensify its concern about non-profit organisations despite the call by FATF to do so.²⁰³ Virtually no non-profit organisations in Kuwait keep records of terminated processes for the recommended five years.²⁰⁴ While not keeping such records might be viewed as an important way to reduce the number of redundant records in the organisation's archive, it impedes the process of terrorist financing investigation due to data unavailability. In addition, sanctions for non-compliance with the existing registration requirements were not effective and dissuasive, due to the absence of outreach to non-profit organisations.²⁰⁵

Special Recommendation 9 (Now Recommendation: 32)

SR 9 seeks to combat terrorism financing by imposing strict measures on the physical transportation of money across borders. To accomplish this, SR 9 obliges all member states to develop feasible methods of detecting physical currency transportation across borders. It was recommended under SR 9 that viable

²⁰² Financial Action Task Force, *Best Practices: combating the abuse of non-profit organisations (recommendation 8)*, (OECD: Paris, June 2013). See also Financial Action Task Force, *Risk of terrorist abuse in non-profit organisations*, (OECD: Paris, June 2014).

²⁰³ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011), 184.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

disclosure requirements or an effective declaration system be developed to combat the crime.

When false declarations are made, SR 9 calls for an immediate imposition of sanctions, including seizure of all funds under the names of suspects and asset freezing. Terrorists trust other terrorists, and their accomplices prefer manual cross-border money transfers over electronic transfers, since no financial details were required at the borders of most countries prior to the inception of the 40 recommendations and the 9 special recommendations discussed herein.

An overview of Kuwait's compliance with the requirements of SR 9 shows that compliance with most of the requirements was not achieved prior to 2013. Kuwait's border declaration system was not developed fully to make it effective in the identification of bearer negotiable instruments (BNI) and the related outbound transportation of funds across the border. In addition, no clear and comprehensive definition of BNI instruments existed under Kuwaiti law.²⁰⁶ Kuwait's border investigation team lacked clear powers to obtain and request details about the origin of the transported currency or BNI and their intended use from the responsible carrier in cases of suspected money laundering or terrorist financing.²⁰⁷ The most important details include the source of the funds and the reasons behind the manual money transfer across the border. In addition, Customs are not provided with proportionate sanctions for those who false to disclose, or failure to disclose, or cross-border transportation for money laundering and terrorist financing purposes.²⁰⁸ Finally, the lack of sufficient data for use during evaluation of the effectiveness of existing measures reduced the level of compliance significantly.

5.3.6 Conclusion

The research considered in this section has shown that Kuwait has been the subject of criticism by the international community (IMF, FATF and UN) due to its delayed implementation of measures against terrorism financing. Though the crime of money laundering was addressed under Law No. 35 of 2002 for Combating

²⁰⁶ *Ibid*, 62-67.

²⁰⁷ *Ibid*.

²⁰⁸ *Ibid*.

Money Laundering Operations, terrorist financing was not criminalised until June 2013.

According to the authorities, Kuwait was not considered a high risk country with regard to terrorist financing. However, the UN and other security agencies continued pressuring the Kuwaiti government to criminalise terrorist financing to help suppress terrorist activities within the region. Though terrorist financing and money laundering crimes were not rampant compared to other countries in the region,

a significant number of terrorist financing criminals were operating within the country without being noticed. In addition, terrorist financing crime is usually committed by individuals who have a common agenda, and most of the funds used to finance terrorists are obtained from illegal activities.²⁰⁹

Kuwait established a number of supervisory authorities, including MOCI, the KSE and the CBK, which are responsible for ensuring financial security and combating of terrorist financing and money laundering crimes. However, prior to June 2013, Kuwait had not criminalised terrorist financing, and, therefore, these authorities could not impose effective measures against terrorism financing.

The compliance level of Kuwait with regard to the FATF 40 + 9 recommendations was established to be relatively low. For instance, only a few recommendations were implemented prior to June 2013. The main challenge that contributed to reducing compliance levels was the absence of important legal requirements that could sufficiently address money laundering and terrorist financing crimes. In fact, during an evaluation by the IMF in 2011,²¹⁰ Law No. 35 of 2002 for Combating Money Laundering Operations was found to harbour numerous shortcomings. According to the IMF, Law No. 35 was unsuccessful, since it failed to criminalise the act of terrorist financing within its scope. In addition, the law did not require the necessary measures that would enable effective

²⁰⁹ Interview with N.O.S.4.

²¹⁰ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011).

detection of terrorist financing acts and other related offences, such as money laundering. Similarly, Law No. 35 did not provide a platform for freezing financial assets and seizing funds from terrorist financing suspects and their accomplices.²¹¹ Though the government of Kuwait has constantly asserted that issues of terrorism financing are not widespread in the country,²¹² legislative shortcomings and lack of money laundering and terrorist financing statistics form a fertile environment for money laundering and terrorist financing. The next section evaluates the level of compliance after June 2013.

5.4 Section III: Kuwait's efforts to Combat Terrorist Financing after June 2013

5.4.1 Introduction

This section considers the Kuwaiti government's legal regime for combating money laundering and terrorist financing established after the ratification of the ICSFT.²¹³ In addition, this section examines Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism,²¹⁴ which implements the ICSFT. This section is a continuation after June 2013 of the evaluation carried out in section II. As such, the section evaluates the current level of Kuwait's law with the international regulations provided by FATF and other international agencies. To accomplish this, the requirements of Law No. 106 will be studied extensively, and each of the 40 + 9 FATF recommendations will be evaluated for compliance with Kuwait's law.

At the outset, it is worth noting that there were three reasons why the government of Kuwait took so long to ratify the ICSFT and to issue a comprehensive CFT law. The first reason is related to the political unrest in the

²¹¹ *Ibid*, 46-51.

²¹² *Ibid*, 20.

²¹³ *Gazette Kuwait Al-Youm*, 'Law No. 85 of 2013 approving the accession of the State of Kuwait to the International Convention for the Suppression of the Financing of Terrorism', *Gazette Kuwait Al-Youm*, No. 1133, 26 May 2013.

²¹⁴ *Gazette Kuwait Al-Youm*, 'Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism', *Gazette Kuwait Al-Youm*, No. 1137, 23 June 2013.

country, as the parliament was dissolved by the Emir five times in seven years, and ‘the political situation was not stable in Kuwait’.²¹⁵

Secondly, during the last decade, the Islamist bloc seats were to some extent dominant, ranging between 15 to 24 members. In February 2012, the election increased the seats of the conservative tribal and Islamist members of parliament to 35 seats out of 50. As a result, there were many debates in the parliament during 2012 about whether to separate the comprehensive draft law on money laundering and the law on combating the financing of terrorism. ‘The reason behind these discussions was to pass the money laundering law and to abandon the law on combating the financing of terrorism’ according to a representative from the Council of Ministers.²¹⁶ In October 2012, the Emir issued a Decree Law to amend the electoral law by decreasing the number of votes that each Kuwaiti could cast from 4 to 1 vote.²¹⁷ Consequently, the Islamists and the tribal groups, which form the opposition in the country, boycotted the December 2012 election resulting in the emergence of a new political class that tends to cooperate with the Emir’s government.²¹⁸ Consequently, 2013 has witnessed the issuance of more than one hundred laws ranging from the ratification of bilateral and multilateral conventions to passing national laws, including the ratification of the UN ICSFT and the passing of Law No. 106 of 2013.²¹⁹

The third reason, and the most important, is related to the pressure applied by the international bodies on the government of Kuwait to pass laws that criminalised terrorist financing and money laundering according to the international standards. As already noted, Kuwait was identified and listed by the FATF as having Anti-Money Laundering deficiencies.²²⁰ A representative from the National Assembly said:

²¹⁵ Interview with G.O.2 and F.I.1

²¹⁶ Interview with G.O.6

²¹⁷ *Gazette Kuwait Al-Youm*, ‘Decree Law No. 20 of 2012 amending Law No. 42 of 2006 to redefine the constituencies for membership of the National Assembly’, *Gazette Kuwait Al-Youm*, No. 1102, 23 October 2012.

²¹⁸ For further information see The American Foreign Policy Council, *World Almanac of Islamism 2013 – Kuwait*, (Lanham, Md.: Rowman & Littlefield Publishers, 2013), 10.

²¹⁹ Mohamoon Al-Kuwait, ‘Legislations passed in 2013’, Available at: <<http://www.mohamoon-kw.com/default.aspx?Action=DispalyAllLegs&type=1&year=2013>> accessed 1st Dec. 2014.

²²⁰ KnowYourCountry, ‘Kuwait’, Available at: <<http://www.knowyourcountry.com/kuwait1111.html>> accessed 1st Dec. 2014. See also

The State of Kuwait was warned by the international bodies that either Kuwait pass laws which criminalised money laundering and terrorism financing or Kuwait may join in the month of June (of 2013) to the blacklist on the fight against terrorism and money laundering; and as a result, the Kuwaiti banking transactions will be affected significantly if it did not join the international convention in this regard.²²¹

5.4.2 Law No. (106) of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism

An evaluation of the level of compliance of Kuwait with respect to the 40 + 9 recommendations prior to June 2013 revealed that some of the requirements were not met. Though Kuwait delayed in adopting the requirements stipulated in the ICSFT and the 40 + 9 recommendations, 2013 became the turning point. In that year, Kuwait ratified the UN ICSFT and developed a number of suitable measures. Law No. 106 adopted in 2013 seeks to combat crimes related to terrorism financing and money laundering in Kuwait by superseding Law No. 35 of 2002 and supporting the terrorist financing and money laundering requirements put forward by FATF and other international security organisations.

5.4.2.1 Criminalising Terrorist Financing Under Law No. 106 of 2013

Law No. 106 criminalises terrorist financing and all related offences included under article 3, which defines terrorist financing and states the guidelines for identifying the terrorist financing crime. Article 3, paragraph 1 states:

A person is considered an offender in a crime of terrorism financing, if the person willingly and unlawfully provided or attempted to provide or collect monies, directly or indirectly, with the purpose to use it in committing a terrorist act, or with knowledge that it will fully or partially be used for such act, or for the benefit of a terrorist organisation or a terrorist.

International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011).

²²¹ Interview with G.O.4

Article 3 paragraph 2 of the Law goes further to establish that the crime of terrorism financing is committed

even if the terrorist act was not committed, or even if the monies were not actually used for the execution or the attempt to execute the terrorist act, or if the monies were linked to a specific terrorist act regardless of the country where the terrorist act attempt occurred.

Furthermore, Article 1 of the Law No. 106 of 2013 defines ‘terrorist act’ as any of the following actions or the attempt to commit these actions in the State of Kuwait:

A. If the action’s purpose was to cause the death or to inflict serious physical injuries to a civilian, or to any other person who is not participating in hostile actions if an armed conflict arose, and when the natural purpose of the action or its context was to spread panic among people or to force the government or an international organization to perform a particular act or to prevent it from doing an act.

B. If the action constitutes an offence within the scope of and as defined in one of the treaties listed in the annex of the International Convention for the Suppression of the Financing of Terrorism.

The State of Kuwait has ratified all nine treaties and protocols listed in the annex of the UN ICSFT.²²² Moreover, Law No. 106 of 2013 included a tenth

²²² (1) Decree of Law No. 19 of 1979 approving the accession of the State of Kuwait to the Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague Hijacking Convention), Gazette Kuwait Al Youm, No. (1245) Year: Twenty Five.;

(2) Decree of Law No. 62 of 1979 approving the accession of the State of Kuwait to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (the Sabotage Convention or the Montreal Convention), Gazette Kuwait Al Youm, No. (1271) Year: Twenty Five.;

(3) Decree of Law No. 71 of 1988 approving the accession of the State of Kuwait to the Protocol for the Suppression of Unlawful Acts of Violence at Airports serving the International Civil Aviation (the Montreal Protocol), Gazette Kuwait Al Youm , No. (1803) Year: Thirty Five.;

(4) Decree of Law No. 72 of 1988 approving the accession of the State of Kuwait to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Gazette Kuwait Al Youm, No. (1803) Year: Thirty Five.;

(5) Decree of Law No. 73 of 1988 approving the accession of the State of Kuwait to the International Convention against the Taking of Hostages (Hostages Convention), Gazette Kuwait Al Youm , No. (1803) Year: Thirty Five.;

element under (B), which stated that ‘Any other international conventions, or other international protocols that are in regards to terrorism or its financing that were ratified by the State of Kuwait and were published in the official newspaper (Gazette Kuwait Al-Youm).’²²³ As a result, Law No. 106 does not limit the criminalisation of terrorist financing to the nine treaties and protocols listed in the annex of the ICSFT but extends the criminalisation of terrorist financing to all treaties and protocols related to terrorism that the State of Kuwait has ratified. This gives the government of Kuwait the flexibility to include future treaties and protocols related to terrorism and its financing, which keeps the State of Kuwait current in this regard. In addition, the crime of smuggling migrants that has been linked to terrorist financing and money laundering becomes a predicate offence after the enactment of Law No. 91 of 2013 concerning the fight against trafficking in persons and smuggling migrants.²²⁴

Law No. 106 imposes penalties and sanctions on persons convicted of undertaking activities that are criminalised under the Law. If article 2, which criminalises money laundering, is violated, article 28 requires that the criminal be sentenced to jail for a period of 10 years or less depending on the degree of violation. In addition, article 28 requires a financial penalty to be imposed on the criminal for an amount equal to or less than the laundered sum depending on the seriousness of the case.²²⁵ By comparison, any person who violates article 3 and is found guilty of committing a terrorist financing offence under the requirements of article 29, may be sentenced to jail for up to 15 years. On top of the sentence, such

(6) Law No. 15 of 2003 approving the accession of the State of Kuwait to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Gazette Kuwait Al Youm, Suppl. to No. (614) Part. (1) Year: Forty Nine.;

(7) Law No. 16 of 2003 approving the accession of the State of Kuwait to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Gazette Kuwait Al Youm, Suppl. to No. (614) Part. (1) Year: Forty Nine.;

(8) Law No. 12 of 2004 approving the accession of the State of Kuwait to the Convention on the Physical Protection of Nuclear Material, Gazette Kuwait Al Youm, Suppl. to No. (651) Part. (1) Year: Fifty.;

(9) Law No. 27 of 2004 approving the accession of the State of Kuwait to the International Convention for the Suppression of Terrorist Bombings, Gazette Kuwait Al Youm, Suppl. to No. (651) Part. (4) Year: Fifty.

²²³ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 1.

²²⁴ *Gazette Kuwait Al-Youm*, ‘Law No. 91 of 2013 concerning the fight against trafficking in persons and smuggling of migrants’, Gazette Kuwait Al-Youm, No. 1123, 17 March 2013.

²²⁵ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 28

a criminal is fined for an amount ranging between the amount involved in the crime and double that amount.²²⁶

As a method of obtaining terrorist financing and money laundering information, article 31 allows the court to exempt from the penalties those who are involved in terrorist financing and money laundering crimes if they cooperate with the authority thereby aiding in the investigation, which might otherwise not be launched due to lack of relevant information. According to article 31, the penalties imposed on offenders under articles 28 and 29 mentioned above may be exempted by the court under the following circumstances:

- A. Preventing a money laundering or terrorism financing crime.
- B. Enabling authorities to capture or prosecute the other criminal offenders.
- C. Enabling authorities to obtain evidence.
- D. Preventing or minimising the consequences of the crime.
- E. Depriving terrorist groups or criminal groups of any monies that the accused offender does not have a right in or cannot control.

5.4.2.2 Regulatory Measures that Aim to Counter Terrorism Financing

The competent authorities did not change any of the regulatory measures after the adoption of Law No. 106 of 2013. However, the scope of their responsibilities was expanded.²²⁷ For instance, financial institutions are still under the supervision of the CBK. Other supervisory authorities involved in the execution of the requirements of Law No. 106 include the KSE and MOCI. The CBK has issued instructions to financial institutions after the adoption of Law No. 106 ordering them to consider the new requirements from all perspectives including strict adherence to their customers' due diligence.²²⁸ This allows for the quicker incorporation of the new requirements in accordance with Law No. 106

²²⁶ *Ibid*, Art. 29

²²⁷ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 14. See Also Ministerial Decree No. (37) for the year 2013 by issuing the executive regulations of the law against money laundering and terrorist financing No. (106) for the year 2013, Art. 1 Paragraph 4.

²²⁸ Instructions No. (2/BS/IBS/308/2013) issued by the Central Bank of Kuwait in respect of AML and CFT.

requirements. Customer Due Diligence (CDD) acts as a tool through which all competent authorities and financial institutions notify each other about detected suspicious transactions. The law provides CDD measures under article 5, together with other necessary measures that need to be undertaken by financial institutions operating within Kuwait. In addition, article 10 (B) of Law No. 106 requires all financial institutions to ensure that their staff are trained professionally on how to detect and handle suspicious transactions and to ensure their familiarity with anti-money laundering and anti-terrorism financing requirements and with requirements for customer due diligence.²²⁹ Consequently, the law insists that workers should be in a position to note suspicious customers' behaviours and report accordingly.

The existence of Hawaladers and their courier services in Kuwait and other countries in the Middle East presents a great potential challenge to CTF. It has been found that Hawaladars offer their services without sufficiently inquiring about the source and the intention of the transfer.²³⁰ Consequently, terrorists and their financiers have been using these agents to conduct their illegal transactions. However, as stated in the previous section, only banks and exchange companies are authorised to provide Money or Value Transfer services (MVTs) in Kuwait, and both of them must be registered by the CBK. In addition, article 9 of Law No. 106 obliges the financial institutions that perform electronic transfer activities to obtain information regarding the transfer order requestor and the receiver during the transaction procedures. In fact, article 9 requires all financial institutions to ensure that the funds receiver and the requestor have presented enough details before a transaction can be initiated. They must also ensure that this information is stored with the transfer order or with any related correspondents of serial payments.²³¹ Such a requirement has been implemented to limit the misuse of electronic money transfer methods, such as wire transfer by terrorists.

Another notable method of financial transaction in the Middle East is the courier service. The courier is an agent who offers physical money transaction

²²⁹ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 10 (B)

²³⁰ For further information see IMF/World Bank, *Informal Funds Transfer Systems*, (Washington, DC, 2003). See also McCulloch, J. and Pickering, S., 'Suppressing the financing of terrorism', (2005) 45 *British Journal of Criminology* 470-486.

²³¹ *Ibid*, Art. 9

services both locally and internationally.²³² In fact, it is one of the Hawala processes.²³³ Therefore, Law No. 106 has ensured that such services are not used. The government of Kuwait has laid special requirements under article 20 which help to detect the physical cross-border transportation of currency and bearer negotiable instruments. Article 20 requires any person leaving or entering the country to disclose the amount of cash they intend to travel with to the customs authority if the amount exceeds 3000 KD.²³⁴ The information disclosed to the authority may as well be subject to evaluation by the KFIU whenever necessary.

According to article 4, DNFBPs and all financial institutions are required to evaluate their businesses in the presence of any potential risk of terrorism financing and money laundering. In addition, article 4 imposes an obligation on the financial institutions and DNFBPs to ‘keep records of evaluation of risks and information that is related to these evaluations in written documentations, and should update these documents periodically, and provide them for supervisory authorities upon their request’.²³⁵ It is further required that strict measures be put in place to achieve CDD when terrorist financing and money laundering cases are at a peak.²³⁶ Most terrorists fabricate their identities and open new bank accounts with fictitious names. As a result, any investigation carried out does not yield any reliable results, as such persons are not registered under any legal register. To counter this, article 5 together with the CBK instructions No. (2/BS/IBS/308/2013) require that all financial institutions, especially banks, make sure that no anonymous persons are allowed to open bank accounts in Kuwait by imposing the necessary CDD measures. Consequently, the institutions are supposed to verify the identity of all new customers and their beneficiaries using available reliable information. Also, the institutions should understand the main purpose of the business before activating business accounts. Moreover, it is recommended that close follow up be maintained on suspicious accounts to detect any perpetuation of terrorist financing

²³² See FATF (2013), *The role of Hawala and other similar service providers in money laundering and terrorist financing*, (OECD: Paris, October 2013), 21-28.

²³³ *Ibid*, 23.

²³⁴ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 20. Also Ministerial Decree No. (37) for the year 2013 by issuing the executive regulations of the law against money laundering and terrorist financing No. (106) for the year 2013, Art. 6.

²³⁵ *Ibid*, Art. 4

²³⁶ *Ibid*.

and money laundering illegal acts.²³⁷ Similarly, article 8 prohibits registration and licensing of Shell Banks within the state of Kuwait. In effect, all financial institutions are required to avoid any relationship with Shell Banks not licensed under Kuwait legislation. The CBK bears the capacity to register institutions in conjunction with Ministry of Commerce and Industry (MOCI), and therefore the supervisory authorities are required to carry out sufficient investigation before registering and giving a license of operation to any new financial institution.

Brokerage companies, especially in the real estate industry, are required to observe the regulations stipulated under article 6 of Law No. 106 regarding terrorist financing and money laundering offences perpetuation within the industry.

Unavailability of CDD information had been great concern in Kuwait since the inception of Law No. 35 of 2002. To counter this, article 11 of Law No. 106 requires DNFBPs and all financial institutions to maintain records for at least 5 years, even when the owner has terminated the account or relationship with the institution. This move attempts to eliminate the spread of terrorist financing and money laundering acts by terrorists who open bank accounts for short periods to carry out some illegal transactions only and later block the investigation by terminating the accounts. Basically, the institutions are required to keep records relating to CDD, including identity documents, account files, names of clients, and their business among other personal details.

Article 13 prohibits employees working in financial institutions from disclosing the reporting to the authorities of suspicious transactions to the suspects by whatever means. If this were to happen, the effectiveness of the investigation would be hampered significantly. Therefore, the financial institutions and their employees are required to observe the requirements stipulated under article 13. In addition, the institutions are required to adhere to all requirements/instructions put forward by supervisory authorities, such as MOCI, the CBK and the KSE, regarding terrorist financing and money laundering acts.²³⁸

²³⁷ *Ibid*, Art. 5

²³⁸ Ministerial Decree No. (37) for the year 2013 by issuing the executive regulations of the law against money laundering and terrorist financing No. (106) for the year 2013, Arts. 2, 3, 4, 5.

Supervisory authorities are required to adhere to article 14 of Law No. 106, which orders them to regulate, monitor, and supervise the compliance of financial institutions and DNFBPs with the terms mentioned in the law and its executive regulations along with the related ministerial decisions and instructions. In addition, the supervisory authorities must inspect to obtain important information regarding DNFBPs and financial institutions.²³⁹ The authorities are also mandated to impose necessary fines to DNFBPs and financial institutions that fail to comply with the requirements of the law.²⁴⁰ Moreover, article 33 penalises the DNFBPs and financial institutions if they violate the stipulated rules and regulations under articles 5, 9, 10 and 11 with a fine that is not less than five thousand Dinars and no more than five hundred thousand Dinars for each violation or for any intentional violation or gross negligence of the mentioned provisions.²⁴¹

5.4.2.2.1 *The Role of the KFIU after June 2013*

In the light of Law No. 106, Kuwait has developed the KFIU to ensure that terrorism financing and money laundering acts are suppressed. The KFIU acts in accordance with the requirements under article 16, which provides that the KFIU is formed with legally independent presence and is the only special investigative body that receives detected cases of terrorist financing and money laundering for further analysis and investigation, and if necessary can request further information.²⁴² As such, the new role of the KFIU depicts a new image of Kuwait in being proactive against terrorism through suppression of their funding sources.

The KFIU has the responsibility to investigate and identify the countries that are listed in the high-risk category and to determine the measures that should be followed when dealing with these countries.²⁴³ Once these countries have been identified by the FATF, the KFIU forwards the list to the national competent authorities that impose the necessary regulations on financial institutions to ensure complete compliance with the law. However, supervisory authorities have no direct link to suspects and such high-risk countries, because the authority directs financial

²³⁹ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 14

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*, Art. 33

²⁴² *Ibid.*, Art. 16

²⁴³ *Ibid.*, Art. 17

institutions that have a direct relationship with the suspects. Therefore, the financial institution has the duty to apply the requirements put forward by supervisory authorities. In terms of the sanction lists, Kuwait is still using the method developed by the CBK, which was discussed in Section II of this chapter.

5.4.2.3 Freezing and Confiscating Terrorist Assets

As mentioned in section 5.3.4 of this chapter, the implementation of UN Resolutions 1267, 1333 and 1373 together with other international sanction lists was enforced administratively and not based on any legal measure in Kuwait. However, Law No. 106 has now laid down the first legal bases under article 25, which provides:

The Council of Ministers, in accordance to proposals submitted by the Minister of Foreign Affairs, issues the necessary decisions to execute the Security Council Resolutions of the United Nations pursuant of Chapter VII of the United Nations Charter that is related to terrorism, terrorism financing, and financing weapons of mass destruction proliferation.²⁴⁴

In addition, the CBK's Instruction No. (2/BS/IBS/308/2013) ordered all financial institutions under its supervision not to deal with any persons or entities listed in the international recognised sanction lists. For example, the last policy statement on AML/CFT submitted by the Commercial Bank of Kuwait stated:

[T]he Bank is not dealing with customers included in the sanction lists of the United Nations (UN), European Union (EU), Office of Foreign Assets Control (OFAC) and United Kingdom (UK Treasury) and other official lists given the fact that the Bank counts on database prepared and updated by major institutions specialised in this area.²⁴⁵

To improve the effectiveness of Law No. 106, relevant measures are taken into account regarding the immediate freezing of terrorist funds as stated in article 22.

²⁴⁴ *Ibid*, Art. 25.

²⁴⁵ Commercial Bank of Kuwait, 'Policy Statement on AML & CFT', Available at: <<http://www.cbk.com/en/media/AMLCFT.pdf>> accessed 1st Dec. 2014.

The power to freeze financial assets associated with terrorists and their financiers is bestowed on the Attorney General or public lawyers that he assigns in accordance with the requirements of article 22. In addition, the Attorney General is empowered to initiate the confiscation of instruments and/or funds identified and proved to be obtained through illegal acts of money laundering, terrorist financing, or predicate offences.²⁴⁶

If property is confiscated by the government, article 41 states that it shall remain and hold its initial rights according to the law for persons declared to have good faith. If money is confiscated, it shall be transferred to the public treasury until all disputes are settled.²⁴⁷

5.4.3 Kuwait's Compliance with the 40 + 9 FATF Recommendations and the Effectiveness of AML/CFT System in Kuwait

5.4.3.1 Kuwait's Compliance with 40 Recommendations after June 2013

Section 5.3.5 of this chapter was concerned with defining and establishing the level of Kuwait's compliance with FATF's 40 + 9 recommendations prior to June 2013 and established that the level of compliance was relatively low. However, the enactment of Law No. 106 and other related measures by the government of Kuwait has significantly improved the level of compliance. This section of the chapter evaluates the new level of compliance of Kuwait's law to the requirements stipulated under the consolidated FATF 40 recommendations on money laundering and terrorism financing.

5.4.3.1.1 Criminal Law Compliance

Kuwait has criminalised money laundering crimes and terrorism financing under articles 2 and 3 of Law No. 106, thus complying with the requirements put forward by FATF Recommendations 3 and 5 respectively (previously

²⁴⁶ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 22

²⁴⁷ *Ibid.*, Art. 41

Recommendations 1 and 2, and Special Recommendation 2 respectively).²⁴⁸ In addition, the crime of smuggling migrants that has been linked to terrorist financing and money laundering became a predicate offence after the enactment of Law No. 91 of 2013 concerning the fight against trafficking in persons and smuggling of migrants.²⁴⁹ Before 2013, evaluation has shown that the effectiveness of the prosecution of money laundering in the absence of a prior conviction was problematic.²⁵⁰ However, this has not yet been established under Law No. 106, as it has still not been used in practice. Therefore, it can be concluded that compliance with Recommendations 3 and 5 have largely been achieved. As such, this is an improvement, since, prior to 2013, there was no compliance with these recommendations even to the slightest degree.

A comparison between current Kuwaiti law and the previous level of compliance revealed that compliance with Recommendation 3 (previously Recommendation 2) was fully achieved, because the law has extended criminal liability to legal persons.²⁵¹ Prior to 2013, it was impossible to confiscate financial assets owned by money laundering suspects due to the lack of the necessary measures. However, this issue has been addressed satisfactorily under articles 2 and 40 of Law No. 106. In addition, Kuwaiti law has addressed the issue of ineffectiveness in the entire confiscation framework. Based on the evaluation, full compliance with Recommendation 4 (previously Recommendation 3) has been achieved.

5.4.3.1.2 *Administrative Compliance*

The FATF Recommendations address the necessary preventive measures to be undertaken to prevent money laundering in Kuwait.

²⁴⁸ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations*, February 2012, (OECD/FATF: Paris, 2012).

²⁴⁹ *Gazette Kuwait Al-Youm*, ‘Law No. 91 of 2013 concerning the fight against trafficking in persons and smuggling of migrants’, *Gazette Kuwait Al-Youm*, No. 1123, 17 March 2013.

²⁵⁰ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011).

²⁵¹ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 32

Prior to 2013, an overview of the CBK financial secrecy law (FSL) showed that it ‘impedes regulatory cooperation and sharing at the international level outside of the context of consolidated supervision and criminal cases’.²⁵² However, under Law No. 106, international cooperation was enhanced under articles 19 and 23. Article 19 gives the KFIU the authority to disclose its information to any foreign entity, whether voluntarily or if requested based on reciprocity agreements or agreements of exchange of information that are based on cooperation arrangements between the KFIU and the other entity.²⁵³ Moreover, article 23 states:

The Attorney General’s office exchanges international cooperation requisitions with the competent foreign authorities in regard to penalties of crimes of money laundering, predicate offenses, or crimes of terrorism financing, where these requisitions are with respect to assistance, judicial delegation, and extradition of accused and sentenced individuals as well as requisitions regarding allocating, tracking, freezing, reservation, or confiscating monies. All this must be performed in accordance with the rules that are determined in bilateral or multilateral agreements ratified by the State of Kuwait or in accordance to reciprocity.²⁵⁴

As a result, compliance with Recommendation 9 (previously Recommendation 4) has been achieved.

Articles 4, 5, and 7 of Law No. 106 have developed a focus on CDD with respect to the operation of DNFBPs and financial institutions. For instance, verification of the identity of legal persons when transacting has been emphasised under the law. It can be concluded that compliance with Recommendation 10 (previously Recommendation 5) has been fully achieved.

An evaluation of compliance of corresponding banking requirements as stipulated under Recommendation 13 (previously Recommendation 7) reveals a

²⁵² International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011). 95-98.

²⁵³ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 19

²⁵⁴ *Ibid*, Art. 23

great improvement. Article 7 of Law No. 106 requires that all financial institutions investigate the details provided by respondent institutions to ascertain that they have not been subject to money laundering offences before entering into any form of business relationship.²⁵⁵ In addition, the law requires that all financial institutions develop a good and reliable documentation system and ensure that all information is retained at least for five years.²⁵⁶ This enables the authorities to carry out their investigations faster using past records. Based on this evaluation, it can be concluded that compliance with Recommendation 13 has been fully achieved.

According to Recommendation 11 (previously Recommendation 10), financial records should be retained for at least five years irrespective of whether the relationship between the client and the financial institutions has ceased (record keeping). Article 11 of Law No. 106 addresses this by ordering the existing financial institutions to store copies of documents containing CDD transaction investigations as provided in article 5. It is also required that the stored records be available and accessible in a timely manner by the supervisory authorities that are mandated to carry out terrorist financing and money laundering investigations in accordance with the law. Therefore, it can be concluded that compliance with Recommendation 11 has been fully achieved.

Based on the compliance results for Recommendations 10 and 11 (previously Recommendation 11) presented in the previous section, the only deficiency noted was lack of the necessary requirements for brokerage companies, insurance companies and exchange organisations with regard to identification and the handling of unusual transactions. However, this deficiency was addressed under article 5 of Law No. 106 and articles 13 and 16 of the Ministerial Decree No. 37 for the year 2013. According to Kuwait's law, DNFBPs and financial institutions must apply strict CDD measures to unusual transactions as such, all transactions that lack legal or economic aims must be investigated, and the information availed to competent authorities for further action.²⁵⁷ Since the deficiency of

²⁵⁵ *Ibid*, Art. 7

²⁵⁶ *Ibid*, Art. 11

²⁵⁷ *Ibid*, Art. 5 Paragraph 8. Also Ministerial Decree No. (37) for the year 2013 by issuing the executive regulations of the law against money laundering and terrorist financing No. (106) for the year 2013, Arts. 13 and 16.

Recommendations 10 and 11 has been addressed, compliance with the recommendation has been achieved.

Recommendation 22 (previously Recommendation 12) applies to the CDD and record-keeping requirements set out under Recommendations 10, 11, 12, 15 and 17 with regard to DNFBPs.²⁵⁸ Focusing on the deficiencies identified during evaluation for compliance prior to June 2013, it can be shown that most of the deficiencies have been addressed under Law No. 106 of 2013. For instance, article 5 of Law No. 106 obliges the financial institutions and DNFBPs to apply strict due diligence measures for all complex and major unusual transactions and for unusual transactions that do not have purposes or obvious legal economic aims. Therefore, they should examine the background of these transactions and their purposes and record all information that is related to the transactions and the identities of all participating parties, where these records should be stored in accordance with the provisions of Article (11) of this law. Furthermore, this information must remain accessible for the competent authorities upon their request to access it.²⁵⁹ In addition, article 5 of the same law gives the DNFBPs and the FIs the right to apply additional measures on CDD if they determine that the client or the beneficial owner is a politically exposed person.²⁶⁰ Also, article 5 gives permission for the DNFBPs to obtain the assistance of other organisations to perform some of the elements of the due diligence operations in accordance with Recommendation 17.²⁶¹ Based on the above compliance information, compliance with Recommendation 22 has been fully achieved.

Article 12 stresses the importance of filing STRs and forwarding them to the KFIU. This addresses Kuwait's compliance with Recommendation 20 (previously Recommendation 13). Law No. 106 of 2013 under article 12 requires all financial institutions and DNFBPs to report STRs as soon as they are detected or there is enough evidence of suspicion.²⁶² Consequently, since the necessary measures for

²⁵⁸ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations*, February 2012, (OECD/FATF: Paris, 2012), 19-20.

²⁵⁹ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 5 Paragraph 8

²⁶⁰ *Ibid*, Art. 5 Paragraphs 6 and 7

²⁶¹ *Ibid*, Art. 5 Paragraph 12

²⁶² *Ibid*, Art. 12

identifying STRs have been enforced, the deficiency of poor reporting experienced prior to 2013 and discussed in Section II of this chapter has been resolved. Similarly, compliance with Recommendation 21 (previously Recommendation 14), which deals with protection against the disclosure of information that an STR has been reported to the authorities, has been achieved, because article 13 addresses the issue by providing the necessary requirements to supervisory authorities and financial institutions. Article 13 states:

Financial institutions and DNFBPs, their directors, and their employees are prohibited from notifying clients or others regarding reports that were performed in accordance to the previous article, or any information that is related to the unit, or anything that is related to the investigation of money laundering or financing of terrorism.²⁶³

In reference to Recommendation 18 (previously Recommendations 15 and 22), Kuwait's Law No. 106 has erected the necessary requirements needed to enhance internal communication and understanding of employed institution policies by employees to accelerate the fight against money laundering through effective detection and investigation. In addition, the law provides the requirements for forcing financial institutions to create their own efficient management systems that can be used to evaluate the compliance of institutional operations with Recommendation 18 demands. According to article 10, all financial institutions and DNFBPs must establish policies, procedures, systems, and internal controls, including proper arrangements to control compliance and adequate screening measures that ensure the use of high standards when hiring employees.²⁶⁴ In addition, they need to implement a continuous programme that trains their employees to ensure their familiarity with anti-money laundering and anti-terrorism financing requirements; their familiarity with new developments, common methods, techniques, and trends in the field of money laundering and terrorism financing; and their familiarity with requirements for due diligence and for reporting of suspicious transactions.²⁶⁵ Moreover, the financial institutions and DNFBPs should establish independent internal auditing tasks to ensure compliance

²⁶³ *Ibid.*, Art. 13

²⁶⁴ *Ibid.*, Art. 10 (A)

²⁶⁵ *Ibid.*, Art. 10 (B)

with policies, procedures, systems, and internal controls, and to ensure its efficiency and its compliance with the provisions of the national law.²⁶⁶ Furthermore, under article 10 (D), financial institutions and DNFBPs must develop mechanisms for the exchange of available information and for maintaining its confidentiality within the financial institution and its domestic and foreign subsidiaries and affiliates in accordance with articles (4) and (5) of Law No. 106. It can therefore be concluded that compliance with Recommendation 18 has been fully achieved.

The deficiencies witnessed by the IMF during the evaluation of compliance with Recommendation 23 (previously Recommendation 16) prior to 2013 were all related to the Kuwait FIU. Article 19 now states that the KFIU must evaluate and provide results to competent authorities for all suspected terrorist financing offences. The KFIU may also obtain past records from competent authorities whenever deemed necessary to improve functioning. Finally, since Recommendation 23 applies to the requirements stated under Recommendations 18, 20 and 21 that have already been addressed, compliance with the recommendation can be concluded to have been achieved.

As mentioned in section II of this chapter, compliance with the requirements of Recommendation 35 (previously Recommendation 17) was not achieved prior to 2013. However, in 2013, the enactment of Law No. 106 Section 4 sought to address all of the noted deficiencies. Articles 27 to 40 outline the requirements for imposing penalties and sanctions on individuals or organisations convicted of money laundering within the State of Kuwait. In addition, a clear basis for the application of sanctions by MOCI, the KSE and the CBK has been established. Therefore, all of the deficiencies noted in the previous section have been resolved. For deficiencies related to shell banks, addressed under Recommendations 13 and 23 (previously Recommendation 18), Law No. 106 provides enough legal provisions for the evaluation of the institutions to prevent terrorists from using them to continue their illegal activities under cover. In fact, article 8 makes clear:

It is not permissible to license a fictitious/shell bank or to allow this bank to perform any actions inside Kuwait. Financial institutions are

²⁶⁶ *Ibid.*, Art. 10 (C)

prohibited from starting or continuing working through correspondent relationships or through business relationships with fictitious/shell banks or a correspondent financial institution in a foreign country that allows the use of accounts for a fictitious/shell bank.²⁶⁷

Article 34 of the law penalises anyone who establishes or attempts to establish a shell bank in Kuwait, the punishment for which can be a fine of not less than 5000 KD and not more than 500,000 KD or a term of imprisonment of not less than three years. The article also punishes any financial institution that starts a business relationship with such a bank, the penalty for which will be no less than 5000 KD and can be raised up to 1,000,000 KD if a legal person commits the violation.²⁶⁸

Cash transactions are more vulnerable to money laundering and misuse by terrorists for their financing and are therefore insecure compared to other methods. Compliance with the requirements of Recommendation 20 of the FATF recommendations of 2003 to reduce cash transactions was partly achieved in Kuwait prior to 2013. Law No. 106 was silent on this issue, which means that Kuwait still has not fully complied with this recommendation, because there is still a heavy reliance on cash as a payment method in Kuwait, especially among the large expatriate community.²⁶⁹

The deficiencies identified in relation to Recommendation 19 (previously Recommendation 21) compliance evaluation prior to 2013 have been addressed fully under article 17 of the Law No. 106 as discussed earlier in this section.

The defined roles of supervisory authorities, such as MOCI, the CBK and the KSE, have enabled the resolution of Recommendation 26 (previously Recommendation 23) deficiencies identified during the previous compliance evaluation for the period prior to 2013. In addition, monitoring, supervising, and regulating DNFBPs have been addressed under articles 4 and 5 of Law No. 106 of 2013.

²⁶⁷ *Ibid*, Art. 8

²⁶⁸ *Ibid*, Art. 34

²⁶⁹ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011). 175-176.

Law No. 106 not only addresses the crime of money laundering through the establishment of independent bodies, such as the KFIU, but it also defines the role of competent authorities in the fight against money laundering and terrorism financing. Recommendations 27, 29, 30 and 31 focus on the requirements of law enforcement, competent authorities, and financial institution supervisors with regard to the crime of money laundering. During the previous compliance evaluation, compliance with the requirements was partially achieved. However, since the inception of Law No. 106 of 2013, under Section 2 – Chapter 1, articles 14 and 15 stipulate the new requirements for supervisory authorities. The authorities are obliged to apply penalties and to collect relevant information from financial institutions to investigate, monitor and control the conduct of the institutions in accordance with the anti-money laundering law.²⁷⁰ As such, deficiencies related to a lack of evidence and ineffectiveness of supervisory authorities have been addressed fully.

Referring to Recommendation 2 on national cooperation and coordination and considering the deficiencies prior to 2013, it can be concluded that it has been addressed fully with Law No. 106 of 2013. Article 19 of the Ministerial Decree No. 37 of 2013 established the National Anti-Money Laundering and Combating the Financing of Terrorism Committee, which is the mechanism to ensure cooperation among the national authorities in the fight against money laundering and terrorist financing. The National AML/CFT Committee includes the KFIU, the CBK, the MOI, the Ministry of Foreign Affairs, the PPO, the MOJ, MOCI, the MOF, the Ministry of Social Affairs and Labour, the KSE, and the General Administration of Customs.²⁷¹ After June 2013, the KFIU was included within the structure of the National Committee. However, the law is still new, and the effectiveness of this Committee needs some time to be evaluated.

With regard to Recommendation 33 (previously Recommendation 32), which requires states to maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of their AML/CFT systems, prior to 2013, Kuwait had not complied with the stipulated requirements. However, article 14 (10) obliged the

²⁷⁰ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Arts. 14 and 15.

²⁷¹ Ministerial Decree No. (37) for the year 2013 by issuing the executive regulations of the law against money laundering and terrorist financing No. (106) for the year 2013, Arts. 19.

supervisory authorities to retain statistics of the measures that taken and the penalties imposed that are determined by the supervisory authorities. Thus, it can be concluded that compliance with Recommendation 33 has been fully achieved.²⁷²

As stated earlier in this section, Kuwait has addressed virtually all of the requirements of the UN ICSFT. Kuwait Law No. 35 of 2002 had already addressed some issues related to money laundering. However, terrorist financing in Kuwait was not officially criminalised until 2013, when Law No. 106 was adopted. Therefore, having addressed the issue of terrorist financing, compliance with Recommendation 36 can be concluded to have been fully achieved.

In reference to Recommendations 39 and 40, the inception of Law No. 106 has addressed all of the deficiencies identified for the period prior to 2013. The extradition system has been refined under the penalties and punishment section of Law No. 106. However, the deficiency identified against Recommendation 37 of the FATF recommendation of 2003 relating to the lack of clarity and implementation of article 18 paragraph 9 of the Palermo Convention has still not been addressed.

5.4.3.2 Kuwait's Compliance with the 9 Special Recommendations after June 2013

Kuwait ratified the UN ICSFT and implemented it in June 2013. In addition, Article 25 of Law No. 106 of 2013 implemented UNSCRs 1267, 1333 and 1373 as mentioned earlier in this section. Thus, compliance with all of the requirements and guidelines stipulated under the convention and the resolutions has been achieved. As a result, it can be concluded that compliance with Recommendation 36 (previously Special Recommendation 1) has been fully achieved. Furthermore, Law No. 106 criminalises terrorism financing and all related acts. This implies compliance with Recommendation 5 (previously Special Recommendation 2) has been fully achieved.

Based on the deficiencies identified for Recommendation 6 (previously Special Recommendation 3) regarding property and funds confiscation and freezing respectively, Law No. 106 provides a complete solution. The KFIU is designated

²⁷² Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 14 (10).

and equipped with the power to investigate all sorts of terrorist financing and money laundering crimes and to avail the results later to competent authorities for further action. This addresses one of the Recommendation 6 deficiencies for the period prior to 2013. Also, the law under article 22 authorises the Attorney General to order monies and instrument freezing or to confiscate them, provided that there is sufficient evidence that these items are related to crimes of money laundering, or terrorism financing, or predicate offenses.²⁷³

In addition, the ineffectiveness experienced prior to 2013 in relation to requisitions, tracking, confiscation or freezing of monies has been addressed under article 23 of the Law No. 106. As such, the requirements stipulated under UN's Resolutions 1373 and 1267 with regard to the handling of confiscation requests have been addressed. The evaluation reveals that all deficiencies identified prior to 2013 in relation to Recommendation 6 have been addressed, thus raising the level of compliance with the international standards.

Prior to 2013, compliance with Recommendation 20 (previously Special Recommendation 4) was not achieved due to a number of notable deficiencies. The two main deficiencies included lack of proper regulation of financial institutions with regard to the reporting of STRs and the absence of the autonomous terrorist financing offence. In effect, article 10 of Law No. 106 addresses the requirements of STRs and the best way for them to be employed by DNFBPs and financial institutions to handle them within their operations. Specifically, article 10 requires financial institutions to develop proper training programmes for their workers to place them in a position to handle STRs that are related to terrorist financing and money laundering crimes. Also, articles 12 and 13 give the directions for reporting suspicious transactions without delay once detected. Finally, article 3 criminalises terrorist financing and all related offences within Kuwait's law. As such, it can be concluded that compliance with Recommendation 20 has been fully achieved.

Recommendation 37 (previously Special Recommendation 5) calls for international cooperation between countries as a tool to enhance information sharing and to create an environment that discourages terrorist financing and money laundering acts. Prior to 2013, compliance with Recommendation 37 was not fully

²⁷³ *Ibid*, Art. 22.

achieved as a result of several deficiencies within the law. Among these deficiencies were lack of sufficient statistical data, low effectiveness of information exchange and lack of cooperation among authorities and financial institutions. Article 19 of Law No. 106 requires information sharing on the basis of reciprocity and mutual agreement among authorities and other entities responsible for maintaining financial security.²⁷⁴ The Kuwait FIU is the only special body authorised to carry out investigations and avail the results to supervisory authorities on matters relating to terrorist financing and money laundering. This is in accordance with article 16 of Law No. 106. With all of the explained measures in place, it can be concluded compliance with Recommendation 37 has been fully achieved.

Compliance with Recommendation 14 (previously Special Recommendation 6) was partially achieved prior to 2013. Although MVTs are regulated under Kuwaiti law, one of the deficiencies that contributed to partial compliance included the absence of an effective transaction monitoring system that could detect terrorist financing and money laundering acts irrespective of transaction values. An overview of the Law No. 106 and other imposed measures with regard to monitoring small transactions revealed that there are no effective measures to address the deficiency satisfactorily. Therefore, full compliance with Recommendation 14 has not yet been achieved.

Compliance with Recommendation 16 (previously Special Recommendation 7) concerning measures against the misuse of wire transfer services for carrying out illegal terrorist financing transactions was partially achieved prior to 2013. The deficiencies related to supervision and monitoring, ineffective sanctions and scarcity of important statistical data. Though Law No. 106 does not address wire transfers in particular, electronic money transfers that include wire transfers have been addressed sufficiently. Article 9 provides that sufficient details must be provided by the sender clearly stating the details of the recipient and the sender. Consequently, financial institutions are required to retain the information for the purposes of investigation if the need arises. The law also provides the necessary

²⁷⁴ *Ibid*, Art. 19 Paragraph 3.

requirements for the imposition of sanctions and penalties.²⁷⁵ The issue of data unavailability has been discussed in this section and was concluded to have been resolved. Therefore, based on the above provisions, compliance with Recommendation 16 has been fully achieved.

The issue of non-profit organisations and their positive contribution with respect to terrorist financing and money laundering crimes is addressed under Recommendation 8 (previously Special Recommendation 8). Prior to June 2013, compliance with Recommendation 8 was partially achieved in relation to Kuwait's law.²⁷⁶ However, an evaluation of the Law No. 106 and other imposed measures did not reveal any positive attempt to address the identified deficiencies. As such, it can be deduced that compliance with Recommendation 8 is still only partially achieved.

The basic requirements for an effective cross-border disclosure and declaration system are addressed under Recommendation 32 (previously Special Recommendation 9). Prior to June 2013, compliance with the recommendation was partially achieved, since a number of challenges resulting from the absence of law impacted negatively on the border processes. Article 20 requires bearer negotiable instruments (BNIs) with respect to cross-border currency transportation as discussed earlier in this section. The article allows the authorities to seize the monies being transported as soon as sufficient evidence is available to convict the owner as a terrorist financing or of laundering money. In addition, article 37 provides that whoever violates the provisions of article 20 or gives a false report about a currency or bearer negotiable instruments, or whoever intentionally or in gross negligence conceals facts that should be reported shall be jailed for at least one year and fined in an amount more than 50 percent of the value of transported currency or BNI.²⁷⁷ Since the identified deficiencies have been addressed, it can be concluded that compliance with Recommendation 32 has been fully achieved.

²⁷⁵ *Ibid*, Art. 9.

²⁷⁶ International Monetary Fund, *Kuwait: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism*, IMF Country Report No. 11/268, (International Monetary Fund: Washington, D.C., September 2011). 179-184.

²⁷⁷ Law No. 106 of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism, Art. 37.

5.4.4 Conclusion

The levels of compliance of Kuwait with FATF recommendations and the requirements stipulated under UN ICSFT were boosted significantly by the adoption of Law No. 106 and other relevant internal measures.

Law No. 106 sought to address the requirements put forward by international securing agencies against terrorist financing and money laundering crimes. Articles 3 and 28 criminalise terrorist financing and other related acts, a move that was eagerly anticipated by the UN. Also, various measures were developed to improve the effectiveness of implementing the Law No. 106 and to succeed in combating terrorist financing and money laundering.

This section has extensively discussed the compliance of Kuwait with the requirements stated in the 2012 FATF 40 recommendations after June 2013 and noted a significant improvement. For instance, criminalisation of terrorist financing and the establishment of the KFIU resulted in a high compliance level. In addition, most of the deficiencies that revolved around the ineffectiveness of the legal framework due to poor coordination and cooperation and the absence of regulations against terrorist financing have been resolved. However, there is still room for improvement, since compliance with a number of requirements has not yet been achieved.

As Law No. 106 of 2013 is still new, a detailed evaluation of its practical effectiveness cannot be given. However, the recommendations set out by FATF have been embraced and taken on board by the Kuwaiti Government and thus included in the Law No. 106 of 2013.

5.5 Conclusion

This chapter has extensively explored the measures taken against terrorism financing and money laundering in Kuwait with respect to the requirements put forward by the UN under various platforms. The research has established that terrorist financing in Kuwait was not effectively criminalised until June 2013, when Law No. 106 was adopted. The level of compliance of Kuwait law with the FATF 40 recommendations prior to June 2013 was found to be relatively low, because

most of the recommendations called for the establishment of legal requirements that were lacking in Kuwait. The lack of interest by the national government led to low efficiency of implementation of the existing law against money laundering, thus increasing the level of threats and vulnerability to terrorist financing offences.

Perhaps one of the reasons for this belated timetable and why the crime-related conventions have been implemented earlier than the finance-related conventions is that the former criminalise offences which rarely happen and therefore implementing them by the Kuwaiti national government is at no great internal cost and is therefore preferable to upsetting the international community. However, with regard to the ICSFT and its measures, the situation is different because it requires national authorities to apply these measures on a daily basis which makes the government to some extent resistant to implementing such demanding legislations and measures which cause problems for administrators and Kuwaiti citizens. Therefore, such hesitancy may be understandable. The relevant international obligations have been associated with international measures pushed by the FATF which to some extent being viewed as a hegemonic-western body, which trigger the questioning of legitimacy and causing national tensions that in turn caused the hesitancy in implementing such external standards.

Though Kuwait delayed in developing the requirements against terrorist financing and money laundering, the enactment of Law No. 106 was the turning point. It was enacted in response to the help and the pressure of the international bodies. In addition, the law was able to address nearly all of the deficiencies that were present prior to its adoption. Therefore, it can be concluded that Kuwaiti law now performs well on paper against terrorism by suppressing sources of finances using the rule of law. Nevertheless, although Law No. 106 has been implemented by the government of Kuwait, there are still allegations that terrorists in Syria are financed by individuals in Kuwait.²⁷⁸

Based on the research considered herein, it is recommended that Kuwait proceed with the implementation of the requirements of Law No. 106 to address the existing deficiencies in the previous provisions. Although externally inspired and

²⁷⁸ Keatinge, T., 'The importance of financing in enabling and sustaining the conflict in Syria (and beyond)', (2014) 8.4 Perspectives on Terrorism, 56.

imposed, Kuwait should establish and implement fully the relevant procedures necessary for an effective identification of suspicious behaviour and transactions and impose relevant measures, including asset freezing and funds seizure. Moreover, the government of Kuwait needs to ensure that the KFIU is very effective in its functions especially with regard to operational autonomy. Finally, Kuwait must create an environment that allows all financial institutions to report suspicious transactions efficiently to the KFIU. The curtailing of terrorism financing can only be effective by way of these further actions and laws. While there may have previously been some room for doubt and prevarication, the situation in Iraq and Syria and the threat of powerful groups like Islamic State surely shift the balance of convenience in Kuwaiti national policy interests and those of the protection of its citizens towards more action against terrorism financing. That this trend has been externally imposed may be distasteful to Kuwait, but it may be an important and positive result in the long run.

Chapter Six

Conclusion

6.1 Introduction

The main purpose of this study has been to investigate how Kuwait, as a Gulf nation with limited geo-political influence and very much dependent on the protection of others, is subjected to international influences and seeks to interpret, modulate, and apply international expectations within its own jurisdiction to prevent and fight terrorism and its financing. The study has included all of the available measures to counter terrorism and its financing in Kuwait since its independence in 1961 until 1st August 2014. In addition, the study has evaluated and assessed the effectiveness and fairness of the different counterterrorism policies and laws that Kuwait has implemented and adopted to combat terrorism and its financing. In that regard, the study has also focused on criminal law and counter terrorism financing measures.

As a result, this study has uncovered and analysed important and original research findings that permitted an original exposition and critical analysis and an evaluative study of terrorism and counterterrorism in Kuwait. This study provided for the first time an in depth analysis of the phenomenon of terrorism in Kuwait and how the government of Kuwait has developed its counterterrorism policy and measures since its independence in 1961. In addition, the exposition of detailed measures has been tested against the normative criteria of effectiveness and fairness, and the impacts of the external influences were assessed, especially within the contexts of criminal law and counterterrorism financing law in Kuwait.

In response to these materials, this study has focused on four issues related to terrorism and counterterrorism in Kuwait, which reflect and respond to the main objectives of the research study. It first analysed the different level of threats of terrorism to Kuwait and provided a comprehensive understanding of the level of the threats and the phenomenon of terrorism in Kuwait since its independence in 1961. Second, the study explored and documented the counterterrorism policies and strategies that Kuwait has developed to react to the different phases of threats of

terrorism to Kuwait. Third, the criminal offences related to terrorism in Kuwait have been analysed. Finally, this study has explored and evaluated the measures that Kuwait has developed to combat terrorism financing over two distinct periods before and after the implementation of ICSFT 1999 by Kuwait in June 2013.

This concluding chapter aims to summarise the findings of this study in relation to the abovementioned research aims and objectives. The present chapter will also reflect on the adopted research methodology and proposed future studies that could enrich the analysis of terrorism and counterterrorism in Kuwait. Finally, the chapter will conclude with final comments and remarks related to the future development of counterterrorism in Kuwait.

6.2 Research Findings in Kuwait

This study has determined that, although concerns about terrorism became very prominent after 9/11, terrorism first affected Kuwait well before the incidents that occurred that day, and counterterrorism initiatives were to some extent developed by the government of Kuwait even before those attacks. Chapter two has provided a comprehensive analysis of the different phases of threats and sources of terrorism to Kuwait since its independence in 1961. The study has demonstrated how the conflicts in the region have affected Kuwait and created an environment conducive to radicalisation. Kuwait has suffered three episodes of terrorist activities since 1961.

The first episode was related to the People's Revolutionary Movement in Kuwait, which occurred between 1968 and 1969. The study has explored how the conflicts within the Arab Nationalist Movement produced a rivalry between groups in the Arab world that were revolutionary in nature and that did not believe in the existing regimes and wanted to bring them down. It also showed how the nature of their ideology was broadly socialist and anti-Western.

The second episode was the Iranian-inspired revolution between 1979 and 1989. Within this concept this study has analysed the impact on the Shiites of Kuwait of the Islamic Revolution that occurred in Iran in 1979. The Farsi Shiites, and more precisely the young Shiite people, in Kuwait were more influenced by the

Iranian ideology, as they consider Iran the protector of their religious beliefs. It also analysed the consequences of the First Gulf War and the Kuwaiti political stance arising from that war. This study has explored how the radical revolutionary Islamic regime in Iran targeted those Shiite sympathisers to destabilise the political arena in Kuwait in retaliation for the Kuwaiti support of the Iraqi regime. This study has also shown how the Iranian regime has inspired and aided a group of armed Kuwaiti youth to carry out terrorist attacks outside the territory of Kuwait. Finally, this study has examined how the political changes that took place in Iran after the death of Ruhollah Musavi Khomeini led to direct changes in the political atmosphere in Kuwait. Nevertheless, those Iranian-inspired domestic or Hezbollah in Kuwait still pose possible future threats to Kuwait, especially with the recent changes in the region that might affect Kuwait in the near future.

The third episode related to the development and the root of the new phenomenon of terrorism in Kuwait and the future threats from terrorism to Kuwait. In fact, this study looked at Kuwait's position within the global Jihadi agenda and explored how Al-Qaida's ideology has influenced Kuwaiti citizens on the one hand and how terrorism has exploited Kuwait on the other hand. First, this study has determined that, although Kuwait is not a key target of Al-Qaida, it has played an important role within the global Jihadi agenda. Kuwait hosted American troops and bases, which act as a target for different extremists following the Jihadist philosophy. At the same time, and perhaps more importantly, Kuwait is a crucial transit station for money transfers, equipment and operatives from the countries in the Gulf to other countries in which 'Holy War' is being waged.

Furthermore, this study has also illustrated the future threats to Kuwait from terrorism. Four continuing threats pose potential future threats to Kuwait's national security. The first threat comes from the veteran Jihadists who began returning in the 1990s. The second threat relates to Kuwait's geographical position within an unstable region. The third threat comes from those who finance terrorist activities. The final threat relates to the role played by the fundamentalist intellectuals in Kuwait who spread extremist views that can encourage terrorism.

This study has explored how changes that happened in the region directly affected the situation within Kuwait. It was clear that external influences generated

most of the terrorist ideologies and actions in Kuwait. Undoubtedly, the doctrines have had great effect on the people of Kuwait, who adopted and implemented them. Nevertheless, terrorist threats to Kuwait were limited in nature and have not remotely threatened the stability of the state or compared to the existential threats posed by states hostile to Kuwait, especially Iraq.

Chapter three has analysed and documented for the first time the counterterrorism strategies that the government of Kuwait has adopted since its independence in responding to terrorism. Kuwait lacks a comprehensive policy statement on counterterrorism. In fact, this chapter has shown how in practice, while Kuwait's political policy wants to be seen as an active player in the American concept of the 'war on terror', firm action does not follow, and the government of Kuwait has not mirrored the war on terror concept. Nevertheless, the chapter has explored some strategies that Kuwait has implemented in its reaction to terrorism throughout history. One problem that has been faced is that Kuwait's legal documents do not provide comprehensive counterterrorism legislation nor even a definition of terrorism. Hence, the country's laws with regard to counterterrorism and its official definition of terrorism are mostly based around the criminal law and other fragmented laws. Despite fragmentation in information on counterterrorism strategies, the study has found an association between the measures and elements, such as criminalisation, protective security, internationalisation and countering radicalisation. Criminalisation as a strategy has been the most basic and continuous response to terrorism. In fact, criminalisation was the main strategy to counterterrorism during the three different periods of threats that Kuwait has faced from terrorism. The second strategy that has been explored was related to the protective security strategy that Kuwait has implemented since the Iraq-Iran war. These two strategies mirrored, yet on much reduced scale, the UK's CONTEST strategies of 'pursue' and 'protect'. Furthermore, although Kuwait's counterterrorism measures are restrained, they have confronted the terrorism threats in response to their emergence.

In addition, chapter three has explored the Kuwaiti institutions that perform functions in the sphere of counterterrorism initiatives. Kuwait's counterterrorism establishments and practices are based on the distribution of functions,

accountability, and lines of cooperation between the involved agencies. Yet, the involved agencies work too much in isolation and not adequately in coordination. Therefore, for effectiveness and efficiency, Kuwait needs to define a public, institutional and legal framework to react to terrorist acts and threats. In fact, Kuwait needs to establish clear counterterrorism methods for those of its institutions that are involved in counterterrorism and to define their roles within the counterterrorism agenda. One way to help this effort would be to create a national counterterrorism centre that would ensure effective coordination between the involved agencies.

Chapter four provided a critical analysis of the criminal offences that are related to terrorism in the Kuwaiti criminal laws. The chapter was divided into three sections. Section I illustrated the international obligations in the area of counterterrorism that have been imposed on member states, including Kuwait, by international conventions on terrorism. Section II analysed the national laws related to terrorism in Kuwait and evaluated their effectiveness and fairness. It also investigated whether such laws were enacted in response to external influences or internal initiatives. Section III cited general and specific reasons why Kuwait needs to have comprehensive counterterrorism law.

Most of the examined laws already existed before the advent of the relevant international treaties. In fact, very few of the ratified conventions have been specifically implemented by Kuwait. Therefore, terrorist acts have been addressed within the framework established for ordinary crimes. As a result, the current laws have failed to cover some offenses, which Kuwait ought to address under international law, thereby, hindering the effective implementation of the international conventions on terrorism. As stated in chapter four, this point is effectively illustrated by Law No. 6 of 1994 in Regard to Crimes Related to Safety of Aircraft and Air Navigation, the Decree of Law No. 13 of 1991 in Regard to Weapons and Ammunition, and Law No. 35 of 1985 in Regard to Crimes of Explosives. Therefore, since one of the aims of this study was to test the Kuwaiti laws against the normative criteria of effectiveness and fairness, it has found that the current laws contain instances of non-compliance with the international requirements stipulated in the related international conventions on terrorism. In

addition, the current laws contain some articles that risk violating internationally accepted rights and freedoms. In fact, Law No. 31 of 1970 in Regard to Crimes Relating to State Security contains provisions that raise serious concerns about the observance of human rights as discussed in chapter four.¹

Chapter five explored and evaluated the measures developed by the government of Kuwait to combat terrorist financing and money laundering crimes before and after June 2013. The chapter was divided into three sections. Section I set out the international development and efforts to combat terrorism financing. It explained that terrorism financing is a distinct crime and that countries need to prevent and criminalise it by following the related international requirements and standards. Sections II and III extensively examined and evaluated Kuwait's efforts to combat terrorist financing before and after June 2013 respectively. The effectiveness and fairness of the adopted measures have been evaluated in terms of compliance with the ICSFT 1999 requirements and the FATF 40 + 9 recommendations on combating terrorist financing and money laundering.

As discussed in chapter five, Kuwait took so long to ratify and implement the ICSFT 1999 and other international standards for four reasons.² Kuwait did establish a number of supervisory authorities, including the CBK, MOCI, and the KSE, which are responsible for ensuring financial security and for combating terrorist financing and money laundering crimes. In addition, the MOSAL has the responsibility to supervise and register all NPOs operating within the state of Kuwait. However, prior to June 2013, Kuwait had not criminalised terrorist financing, and, therefore, these authorities could not implement effective measures against terrorism financing. Freezing terrorist assets was not implemented in line with the international requirements. According to the internal authorities, Kuwait was not considered a high-risk country with regard to terrorist financing. However, chapters two and five have shown that Kuwait has been accused of funding terrorists, and there are individuals who financed terrorism. Consequently, the UN and other security agencies continued pressuring the Kuwaiti government to criminalise terrorist financing to help suppress terrorist activities within the region. In fact, external pressures have helped to pave the way to implementing the

¹ See Chapter Four, Section 4.3.2.

² See Chapter Five, Sections 5.4.1 and 5.5.

international standards on terrorism financing and anti-money laundering. As a result, in June 2013, Kuwait ratified and implemented the ICSFT 1999. Law No. 106 of 2013 implemented most of the international requirements and standards in combating terrorism financing and money laundering. In fact, with the help and pressure of the international bodies, Kuwait was able to address nearly all of the deficiencies that existed before June 2013. Therefore, this study has shown that, today, Kuwaiti law regarding combating terrorism financing and money laundry crimes performs well on paper.

6.3 Future Research

Among the potential future research projects that can be carried out in Kuwait and that can build upon this study would be a study of the impact of the new law CFT/AML (Law No. 106 of 2013), especially with regard to its implementation. As discussed in chapter five, terrorism has been defined in line with the 1999 International Convention for the Suppression of the Financing of Terrorism. However, a practical assessment of this definition needs to be undertaken. For example, it is still unclear, for Kuwait at least, what is meant by those who are not taking an active part in the hostilities in a situation of armed conflict.

Another worthwhile future study is to look at Kuwait's role within the regional cooperation on countering terrorism. Kuwait's role can be divided into two different levels of cooperation. The first level is related to state cooperation, which involves state engagement in multilateral and bilateral treaties. In terms of a regional multilateral convention, one of the most important multilateral conventions can be found within the GCC organisation. The importance of looking at the GCC organisation comes from the fact that Kuwait may have more influence in such a regional organisation than it has, for example, in the United Nations. Therefore, it becomes more important to look at Kuwait's involvement and role within this context of regional cooperation. Nevertheless, the GCC organisation aims to bring its member states into one consolidated convention by adopting the GCC Counter Terrorism Convention. Yet, it is not sure whether it has done so to Kuwait, especially since Kuwait is not yet a member of this convention. Therefore, and until it become such a member, Kuwait will continue to rely on bilateral conventions on countering terrorism. Therefore, the study also needs to look at Kuwait's

engagement in bilateral treaties on countering terrorism, especially with regard to its neighbouring countries.

The second level is related to sub-state cooperation, which involves the cooperation between and among the individual organisations in one country and in other countries (e.g. the police, the border agency, the courts through MLA, etc.). Therefore, it is worthwhile and important to investigate the sort of cooperation/or rules between these different organisations and how effective Kuwait is in implementing and accommodating the regional multilateral and bilateral conventions on terrorism. Further, the study could explore how the GCC organisation and the regional countries have defined terrorism and Kuwait's stance regarding these definitions. Are the regional conventions on countering terrorism providing a different perspective on terrorism, or are they similar to the United Nations conventions on countering terrorism? This study would be especially important, since it would reveal how small and vulnerable countries cooperate to strengthen their borders and intelligence against potential terrorist threats.

Finally, another related issue that has not been covered in this study and should be the task for future study is to examine how Kuwait has implemented UNSCR 2178 on 'Foreign Terrorist Fighters' (FTFs). On September 24, 2014, the United Nations Security Council adopted this resolution under Chapter VII of the UN Charter, which requires states to take certain steps to address the threat from FTFs. The resolution is mainly concerned with the threat of FTFs in Iraq and Syria. Therefore, the resolution ordered member states, first, to prevent individuals believed to be FTFs from crossing or entering their borders; second, to stop and ban financing and facilitating such individuals; third, to prosecute, rehabilitate and reintegrate returning foreign fighters; fourth, to enhance international cooperation to counter FTFs; and, fifth, to stop and prevent 'recruiting, organising, transporting, and equipping' those FTFs.³ These obligations can be categorised as criminal, administrative (e.g. passports), and counter-radicalisation interventions. Therefore, it would be worthwhile to investigate what Kuwait has done in this regard. The

³ See UN Security Council, *Resolution 2178 (2014) [on foreign terrorist fighters]*, Adopted by the Security Council at its 7272nd meeting, on 24 September 2014, S/RES/2178 (2014), Available at: <[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2178%20\(2014\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2178%20(2014))> accessed 1st Dec. 2014.

study could also look at what other countries have done to implement this resolution and to benefit from their responses.⁴

6.4 Final Comments

To conclude, this study has demonstrated that terrorism is a threat to Kuwait and that Kuwait is not immune from the consequences of the conflicts that have occurred in the region and specifically in the surrounding countries. The study has provided information that will be very useful for the government of Kuwait practitioners, and analysis. It has provided a deeper and further understanding of some of the major threats facing Kuwait. In addition, it has revealed major risks facing Kuwait, since it does not have substantial law governing counter terrorism. The study has identified different threats and sources of terrorism that endanger Kuwait. As a result, it will be possible for Kuwait to take appropriate action against those threats. Since the threats are limited and are not extensive as compared with the threats against Kuwait's neighbours (like Iraq), Kuwait should be able confront and overcome the threats. Therefore, Kuwait needs to develop its current counterterrorism policies to bring them in line with the UN global counter-terrorism strategy⁵ and to enhance the effectiveness of the legal and institutional ability to counter any potential terrorist activities. One way to enhance the institutional ability is to establish a national centre to combat terrorism in Kuwait, which would include members from different disciplines. Such a centre should first assess the security situation through the study and review of the local, regional and international terrorist events, the extent of the deterioration of the security situation, the possible outcomes, estimate its dimensions, reactions and expected strength and weaknesses against terrorist acts and evaluate the available capacities and capabilities. Second, the centre should predict future terrorist trends, by collecting the necessary information about the threats and dangers from extremist and terrorist groups that threaten security in Kuwait and the region. Third, the centre should develop plans and scenarios to deal with terrorism through analytical study and planning to confront and resolve the crisis in addition to developing effective strategies and

⁴ See Vidino, L., *Foreign Fighters: An Overview of Responses in Eleven Countries*, (Centre for Security Studies, Zurich, 2014).

⁵ See UN Global Counter-Terrorism Strategy, Available at: <http://www.un.org/en/terrorism/strategy-counter-terrorism.shtml> accessed 1st Dec. 2014.

tactics. Fourth, the centre should coordinate various security agencies. Fifth, the centre should develop and update early warning methods to anticipate all possible terrorist events. Sixth, the centre should conduct an ongoing study of the state of public opinion and the internal and external conditions and the changes that might occur. Seventh, the centre should educate and inform the citizens of the facts of terrorist events and the actions required to counter them.

As for counterterrorism laws, although the available Penal Code and its subsequent amendments have to some extent been effective in countering the threats of terrorism, a comprehensive counterterrorism law should still be enacted for the many reasons stated in chapter four.⁶ In addition, the existing broad laws, especially within the state security law, must be amended to respect both the rule of law and human rights. In fact, new laws against terrorism should recognise the important need to identify acts of terrorism clearly and in line with the rule of law and respectful of human rights. Therefore, having a comprehensive counterterrorism law is necessary to enable the government of Kuwait to define the scope of terrorism, to comply with international obligations on terrorism, and to limit the broad scope/vague terms of the current Kuwaiti laws.

As for combating the financing of terrorism, enacting Law No. 106 of 2013 was the turning point in the counterterrorism development of the country. Therefore, the government of Kuwait needs to address and overcome some of the remaining deficiencies outlined in chapter five⁷ and to proceed with the implementation of the requirements of Law No. 106 of 2013. Finally, Kuwait needs to ensure and support the effective operation of the KFIU, especially with regard to its operational functions and autonomy.

⁶ See chapter four, section 4.4.

⁷ See chapter five, section 5.4.

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UK

- Explosive Substances Act 1883
- Terrorism Act 2000

Central Bank of Kuwait Instructions

- Circular to local banks on taking internal actions for implementing the rules of Law No. 35 of the year 2002 and its explanatory memorandum.
- Instructions No. (2/BS/92/2002) of combating money laundering operations and terror financing transactions.
- Guidelines of suspicious transactions.
- Circular concerning the establishment of the Kuwait Financial Intelligence Unit headed by the Governor of the Central Bank of Kuwait.
- Circular requiring banks to verify the identity of the persons who make deposit transactions in customers accounts with banks.
- Central Bank of Kuwait Instruction No. (2/ES/95/2003) for exchange companies.
- Instructions No. (2/IBS/103/2003) to Islamic Banks concerning the combat of money Laundering and terror financing transactions.
- Circular No. (2/BS, IBS/165/2004) on commencing the operation of the online system for daily transmission of cash transactions data.
- Circular dated 19/10/2004 regarding the unification of the form of replying to Central Bank's circulars concerning the freezing of the assets and funds of some entities and individuals.

- Central Bank of Kuwait Instruction No. (2/IS-IIS/180/2005) For all local investment companies on combating money laundering and terrorist financing operations.
- Circular No. (2/BS, IBS/188/2006) concerning the amendment of Item (10) of the Central Bank of Kuwait instructions No. (2/BS/92/2002) issued to all local bank on combating money laundering and terror financing transactions.
- Circular No. (2/BS, IBS/240/2009) concerning the procedures to be adopted when a customer applies for leasing, or renewing the contract of safe deposit boxes.
- Circular No. (2/BS, IBS, IS, IIS/242/2009) on the manner of dealing with political persons non-resident in Kuwait, and who represent risks in the area of AML/CFT.
- Circular No. (2/BS, IBS/300/2010) regarding the amendment of certain clauses of the instructions No. (2/BS/92/2002) regarding AML/CFT.
- Instructions No. (2/BS/IBS/308/2013) issued by the Central Bank of Kuwait in respect of AML & CFT.

Ministerial Orders

- Ministerial Order Concerning subjugation of the Currency Exchange Companies to the Control of the Central Bank of Kuwait (Issued 19 March 1984).
- Ministerial Order Concerning subjugation of the Investment Companies to the Control of the Central Bank of Kuwait (Issued January 1987).

Conventions & Protocols

- 1944 Convention on International Civil Aviation (Chicago Convention).
- 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft (Tokyo Convention).
- 1966 International Covenant on Civil and Political Rights (ICCPR).
- 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention).

- 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Sabotage Convention or Montreal Convention).
- 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.
- 1979 Convention on the Physical Protection of Nuclear Material (Nuclear Materials Convention).
- 1979 International Convention against the Taking of Hostages (Hostages Convention).
- 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.
- 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (The Rome Convention).
- 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.
- 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.
- 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection.
- 1997 International Convention for the Suppression of Terrorist Bombings.
- 1998 The Arab Convention on the Suppression of Terrorism.
- 1999 International Convention for the Suppression of the Financing of Terrorism.
- 2002 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)
- 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.
- 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.

2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol).

United Nations Resolutions

United Nations Security Council Resolution 1267 (1999)

United Nations Security Council Resolution 1333 (2000)

United Nations Security Council Resolution 1368 (2001)

United Nations Security Council Resolution 1373 (2001)

United Nations Security Council Resolution 1455 (2003)

United Nations Security Council Resolution 1456 (2003)

United Nations Security Council Resolution 1566 (2004)

United Nations Security Council Resolution 1624 (2005)

United Nations Security Council Resolution 1904 (2009)

United Nations Security Council Resolution 1988 (2011)

United Nations Security Council Resolution 1989 (2011)

United Nations Security Council Resolution 2178 (2014)

United Nations General Assembly Resolution 51/210 (1996)

United Nations General Assembly Resolution 53/108 (1998)

United Nations General Assembly Resolution 54/109 (1999)

United Nations General Assembly Resolution 56/160 (2001)

Appendices

Appendix A: Interview Schedules

1. Interview with government officials from representative ministries and law enforcement officials that deal with terrorism

Please note that this interview will be divided into sections.

Firstly, I will start by asking you questions about your background and experiences and work relating to terrorism.

Section One: Professional Questions.

1. What are the main tasks of your organisation in combating terrorism?
2. What is your position? And how long have you been in your position?
3. What are the tasks you encounter or come across in your work in relation to terrorism? And how often are they?
4. Did you get any training relating to your work on terrorism that you are doing now?

Now I would like to ask you a number of questions about how you see the development of terrorism in Kuwait since its independence.

Section Two: Terrorism in Kuwait.

5. What do you think are the major threats from terrorism currently facing Kuwait? Were they different in the past?
6. In your opinion, does it matter that there is not any definition about terrorism in the Kuwaiti laws?
7. In your experience, what is the position of Kuwait in regard to the regional definitions on terrorism, i.e. The Arab Convention for the Suppression of Terrorism in 1998 & The Convention of the Cooperation Council for the Arab States of the Gulf on Combating Terrorism in 2004?

Next I would like to ask you questions about how your organisation is involved in the processes of countering terrorism in Kuwait.

Section Three: Countering Terrorism.

8. What is your department contributing in combating terrorism? And what is it specifically involved in? Can you give examples?
9. Since when has your department been established?
10. How have counterterrorism laws/measures developed in your department and how have they changed over the time?
11. What is your department's present agenda in countering terrorism?
12. What do you think your department has achieved?
13. What was successful in your efforts to combat terrorism? And what was not? Can you give examples?
14. What are the most important ministerial decrees that have been issued by your ministry to counter the threat of terrorism in Kuwait? And why have such decrees been issued? And how effective are they in countering terrorism?
15. Has your department implemented any international and regional conventions on combating terrorism? And what have you implemented?
16. Were there any obstacles in implementing such international initiatives? If yes, what were they? And how have you overcome them?
17. What was successful in these conventions in terms of your efforts to combat terrorism? And what was not? Can you give examples?
18. What, in your opinion, are the further developments needed to the Kuwaiti counterterrorism strategies, especially with regard to your department?

The next section will be about the criminal laws that articulated in order to response to terrorism.

Section Four: The Kuwaiti Criminal Law related to Terrorism.

19. What are the criminal laws, if any, that specifically relate to your work against terrorism?
20. How effective are they in helping your department to counteract terrorism? And do they achieve what they are meant to achieve?
21. What more, if anything, do you think is needed to further develop the current criminal laws?

22. What do you think about having a comprehensive counterterrorism law in Kuwait?
23. What changes do you suggest might be needed in the current criminal laws in order to counterterrorism efficiently?
24. To what extent has Kuwaiti criminal law implemented international laws or laws from Western jurisdictions? Why were you influenced to pass these international laws or Western style laws?
25. From your point of view, why has the government of Kuwait not yet ratified some of the international conventions on terrorism?
26. What is the general policy on ratification/implementation of international conventions?
27. Do the current criminal laws related to terrorism comply with the Kuwaiti constitutional law and with the human rights treaties and conventions that Kuwait has signed and ratified? Can you give examples?
28. Is there any future prospect for passing more criminal counterterrorism laws in the government's agenda?

Now we will move on to look at the national/regional/international cooperation to combat terrorism.

Section Five: Cooperation.

29. How do you cooperate with other departments which are concerned in combating terrorism? Which are these? And how is this conducted and regulated?
30. To what extent are they cooperative/helpful with your department?
31. Are there any joint committees? If there are, how many times do you meet in a year? What are the topics that you are discussing or have discussed?
32. Are there any regional or international cooperation mechanisms related to your department? Or is it only concerned about the national threats?
33. Are there any bilateral cooperation treaties with Arab/Western country related to counterterrorism, for example with (Saudi or USA)?

34. In your experience, how has the Gulf Cooperation Council (GCC), as a regional organisation, been successful in providing an effective multilateral response to countering terrorism? And what it has achieved so far?
35. How far does the GCC ensure the protection of fundamental liberties and human rights in the region?
36. To what extent has the GCC, and especially the State of Kuwait, been effective in strengthening their security from any potential terrorist activities?
37. Which is the most important body in helping Kuwait to counter the national and international terrorism – is it national, regional or international?

Conclusion:

38. How do you see the future agenda of your department in combating terrorism?
39. Is there anything that you would like to add, which you think we have not covered?
40. Are there any sources of information you recommend me to look at that related to my research topic?

Many thanks for your participation.

2. Interview with representative from Financial Institutions

This interview will be divided into three sections.

The first section will be about a number of questions which applicable for both the Regulators and the Implementers.

Section One:

(a) General Questions:

1. What are the main tasks of your department in combating financing terrorism?
2. What is your position? And how long have you been in your position?
3. What are the tasks you encounter or come across in your work in relation to financing terrorism? And how often are they?
4. Did you get any training relating to your work on combating AML/CFT that you are doing now?

(b) Threats of Financing Terrorism.

5. From your point of view, what are the major threats facing Kuwait in relation to financing terrorism?
6. In your understanding, why Kuwait has been used or involved in financing terrorism?
7. What are the sources of financing terrorism in Kuwait? And how have the terrorists used them?
8. What are the current sources of financing terrorism? And how have they been used in Kuwait?
9. In the absence of a clear definition of what is labelled as terrorist financing and given that Kuwait has not yet ratified the International Convention for the Suppression of the Financing of Terrorism, how does your department define financing terrorism? What can be seen as financing terrorism? Can you give examples?
10. From your point of view, what are the future sources of financing terrorism? And how dangerous are they to Kuwait?

The second section will be about questions which will be only asked in the regulators' interviews.

Section Two:

(a) Countering Financing Terrorism.

11. How has your department regulated the banking system and the money service businesses in order to combat financing terrorism?
12. What do you think about the current laws in force on countering financing terrorism? And how do they comply with international standards? Are they effective? Are they fair?
13. Do you think the current AML Law has achieved what it meant to be achieved on combating terrorist financing or not? Can you give me examples?
14. How do you identify and freeze terrorist assets?
15. Why do you think that Kuwait has not ratified the International Convention for the Suppression of the Financing of Terrorism?
16. What did your department do to meet the normative requirements set by the United Nations Terrorism Finance Convention and the special recommendations of the Financial Action Task Force (FATF)?
17. How has your department responded to the possibilities of terrorism financing through the informal money transfer system, the *Hawala* system of money remittances? What has worked, and what has not?
18. What are the measures that have been set by your department to regulate/supervise Islamic charitable (*Zakat*) and humanitarian organisations? And how successful are they? Are they fair?
19. From your point of view, how effective is the National Committee for Combating Money Laundering and the Financing of Terrorism on combating financing terrorism?
20. How successful is the Financial Investigation Unit (FIU) in countering financing terrorism? Are there any deficiencies? What are they? And how can they be eliminated?

21. Are there any other departments that are relevant to this work?

(b) Cooperation.

22. What are the other national departments that you collaborate with in fighting against financing terrorism in Kuwait? How does your department cooperate with them? What do you think about them, are they cooperative?

23. What do you think about the degree of cooperation between your department and the implementers (banks, Charities, Money transfer businesses ...etc)?

24. Are there any international cooperation/collaboration on combating AML/CFT with your department? How successful are they?

25. Are there any obstacles affecting national/international cooperation? Why? And what do you think is needed to tackle such obstacles?

26. What is the role of the GCC cooperation with regard to combating financing terrorism? Is it helpful? And does it help Kuwait and your department to combat financing terrorism?

27. Considering the international concern about combating financing terrorism, in your experience were there any regional or international pressures on Kuwait to deal with terrorism supporters in Kuwait? Can you give some examples?

28. What do you think about the recent Mutual Evaluations provided by the FATF on Kuwait? Do you think they are fair or not?

29. What do you think about the US Department of State assessment on Kuwait's response to financing terrorism?

30. What do you think about the recent assessment report on Kuwait's AML and CFT provided by the International Monetary Fund?

31. How has your department responded to the abovementioned assessments? And what have been done in your department in order to comply with the recommendations?

32. Are there any other assessments that I have not looked at and you think are important? Are there any internal assessments, whether to the regulators or to the implementers?

The third section will be about questions which will be only asked in the implementers' interviews.

Section Three:

(a) Countering Financing Terrorism & Cooperation.

33. How has your department implemented the laws, regulations and policies of the regulating bodies in Kuwait in order to combat the financing of terrorism?
34. What do you think about the current laws in force for countering financing terrorism? Do they comply with international standards? Are they effective in countering the financing of terrorism in Kuwait? Do they restrict the right of the citizen or are they fair?
35. From your point of view, how appropriate are the current laws in countering the financing of terrorism to the Kuwaiti cultures and constitutional values?
36. In your experience, which laws/decrees were helpful on combating terrorist financing? And which were not? Can you provide me with examples?
37. In your point of view, how successful has your department been in deterring the possibilities of terrorism financing through the informal money transfer system, the *Hawala* system of money remittances? What has been worked, and what has not?
38. How successful do you think are the current regulations and laws on regulating the Islamic charitable (*Zakat*) and humanitarian organisations?
39. How do you ensure that the money donated to the charities are not diverting to terrorist? What are the measurements implemented in order to ensure that the money collected is sent to the right people?
40. How do you see the effectiveness of your department in implementing laws related to combating financing terrorism?

41. In which way do you cooperate with the following government departments:

And how useful are they:

- The National Committee for Combating Money Laundry and the Financing of Terrorism;
- The Financial Investigation Unit (FIU);
- The Central Bank of Kuwait.

42. What do you think about the degree of cooperation between your company and the regulators bodies?

Conclusion:

43. Is there any future plan for passing more AML/CFT laws?

44. What is the future agenda of your department in combating financing terrorism?

45. Is there anything that you would like to add, which you think we have not covered?

Many thanks for your participation.

3. Interview with Judges and Prosecutors

This interview will be divided into sections.

First I will ask you questions about the nature of your work and your experiences, and about terrorism in Kuwait.

Section One:

(a) General Questions.

1. What are the tasks you come across in your work in relation to terrorism? And how often have you dealt with terrorism cases? Are they frequent or rare?
2. What is your position? And how long have you been in your position?
3. Is terrorism considered as a normal/general crime in Kuwait or is it considered as a special crime? Are there any special rules, procedures and resources whilst dealing with terrorism?

(b) Terrorism in Kuwait.

4. What do you think are the major threats from terrorism currently facing Kuwait?
5. What type of terrorist cases have you dealt with? And what had the suspect done (support, incite, commit ...etc)?
6. In your opinion why there is not any definition of terrorism in the Kuwaiti laws?
7. How do you classify a crime as terrorism-related? Do you have any official guidance on this?
8. In your experience, what is the position of Kuwait in regard to the regional definitions on terrorism (the GCC Convention + The Arab Convention)?

Now I would like to ask you questions about how the court/the prosecution services involved in combating terrorism.

Section Two: Countering Terrorism.

9. In Kuwait, there is neither a comprehensive counterterrorism law nor laws that explicitly refer to terrorism? Therefore, how has the current criminal law been interpreted and applied to terrorism?
10. How do you recognise or label a case as a terrorism case?

11. What sort of criminal offences would you expect to encounter in terrorism cases?
12. What sort of procedures and resources have you applied and used in terrorism cases?
13. How successful is the Kuwaiti penal legislation in confronting the crimes of terrorism?
14. How efficient are the criminal process laws in helping the court/the prosecution service to prosecute terrorist suspect? And do they achieve what they are meant to achieve?
15. Do you think that the current laws are adequately criminalising terrorist financing?
16. How are the court/the prosecution service involved in identifying and freezing terrorist assets?
17. What, in your opinion, are the further developments needed to the Kuwaiti criminal laws with regard to criminalising terrorism and its financing?
18. Kuwait has ratified some of the international/regional conventions against terrorism? Have you dealt with a terrorist suspect according these conventions? Can you give examples?
19. Are there any obstacles in implementing such international initiatives? If yes, what are they? And how can they be overcome?
20. Why do you think that Kuwait still has not ratified/implemented the International Convention for the Suppression of the Financing of Terrorism?
21. Have the Court of Cassation issued any judicial principles related to terrorism? What are they? And did they help to fill the gaps in the current legislation?
22. From your point of view what is the impact of counterterrorism on human rights in Kuwait? In other words, what is the impact of the national laws and the implemented conventions related to terrorism on the constitutional values protected by the constitution of Kuwait?
23. Overall, do you think the judicial system in Kuwait is effectively responsive to terrorism? If yes or no, how and why?

In the next section I would like to ask you some questions regarding the national/regional/international judicial cooperation in the matters of terrorism crimes.

Section Four: Cooperation.

24. How do you cooperate with other government departments which are concerned with combating terrorism? In what ways? And how is this currently regulated?
25. To what extent are the government department's cooperative/helpful with your department?
26. Is there any regional or international cooperation in judicial matters, criminal investigation, information exchange ...etc? How helpful are they?
27. Have you dealt with matters of extradition/rendition? What is the basis of such cooperation? And can you give examples where Kuwait done so?

Conclusion:

28. What is the future agenda of your department on combating terrorism?
29. Is there anything that you would like to add, which you think we have not covered?

Many thanks for your participation.

4. Interview with Academics, Lawyers and Humanitarian

Please note that this interview will be divided into sections.

Firstly, I will start by asking you questions about your background and experiences and work relating to terrorism.

Section One: General Questions:

1. What is your position? And how long have you been in your position?
2. What are the tasks you encounter or come across in your work in relation to terrorism and/or terrorism financing? And how often are they?

Now I would like to ask you a number of questions about how you see the development of terrorism and counterterrorism in Kuwait since its independence.

Section Two:

(a) Terrorism in Kuwait:

3. What do you think are the major threats from terrorism currently facing Kuwait? Were they different in the past?
4. What type of terrorist cases have you dealt with? And what had the suspect done (support, incite, commit ...etc)?
5. In your opinion, does it matter that there is not any definition about terrorism in the Kuwaiti laws?
6. In your opinion why there is not any definition of terrorism in the Kuwaiti laws?
7. In your experience, what is the position of Kuwait in regard to the regional definitions on terrorism (the GCC Convention + The Arab Convention)?

(b) Countering Terrorism:

8. In Kuwait, there is neither a comprehensive counterterrorism law nor laws that explicitly refer to terrorism? Therefore, how has the current criminal law been interpreted and applied to terrorism?
9. What sort of criminal offences would you expect to encounter in terrorism cases?
10. How successful is the Kuwaiti penal legislation in confronting the crimes of terrorism?
11. What, in your opinion, are the further developments needed to the Kuwaiti criminal laws with regard to criminalising terrorism and its financing?

12. From your point of view what is the impact of counterterrorism on human rights in Kuwait? In other words, what is the impact of the national laws and the implemented conventions related to terrorism on the constitutional values protected by the constitution of Kuwait?
13. What was successful in the government efforts to combat terrorism? And what was not? Can you give examples?
14. What are the most important ministerial decrees that have been issued related to counter the threat of terrorism in Kuwait? And why have such decrees been issued? And how effective are they in countering terrorism?
15. What are the international and regional conventions that Kuwait has implemented till today?
16. Since Kuwait has ratified some of the international/regional conventions against terrorism? Have you dealt with a terrorist suspect according these conventions? Can you give examples?
17. Were there any obstacles in implementing such international initiatives? If yes, what were they?
18. What, in your opinion, are the further developments needed to the Kuwaiti counterterrorism strategies?
19. What do you think about having a comprehensive counterterrorism law in Kuwait?
20. What changes do you suggest might be needed in the current criminal laws in order to counterterrorism efficiently?
21. From your point of view, why has the government of Kuwait not yet ratified some of the international conventions on terrorism?
22. What is the general policy on ratification/implementation of international conventions?
23. Do the current criminal laws related to terrorism comply with the Kuwaiti constitutional law and with the human rights treaties and conventions that Kuwait has signed and ratified? Can you give examples?
24. Is there any future prospect for passing more criminal counterterrorism laws in the government's agenda?

Next I would like to ask you a number of questions related to threats of the Financing of Terrorism and how Kuwait has counter it.

Section Three:

(a) Threats of Financing Terrorism:

25. From your point of view, what are the major threats facing Kuwait in relation to financing terrorism?
26. In your understanding, why Kuwait has been used or involved in financing terrorism?
27. What are the sources of financing terrorism in Kuwait? And how have the terrorists used them?
28. What are the current sources of financing terrorism? And how have they been used in Kuwait?
29. In the absence of a clear definition of what is labelled as terrorist financing and given that Kuwait has not yet ratified the International Convention for the Suppression of the Financing of Terrorism, how does Kuwait define financing terrorism? What can be seen as financing terrorism? Can you give examples?

(b) Countering the Financing of Terrorism:

30. What do you think about the current laws in force for countering financing terrorism? Do they comply with international standards? Are they effective in countering the financing of terrorism in Kuwait? Do they restrict the right of the citizen or are they fair?
31. Do you think the current AML Law has achieved what it meant to be achieved on combating terrorist financing or not? Can you give me examples?
32. Do you think that the current laws are adequately criminalising terrorist financing?
33. From your point of view, how appropriate are the current laws in countering the financing of terrorism to the Kuwaiti cultures and constitutional values?
34. In your experience, which laws/decrees were helpful on combating terrorist financing? And which were not? Can you provide me with examples?
35. In your point of view, how successful has Kuwait been in deterring the possibilities of terrorism financing through the informal money transfer system, the *Hawala* system of money remittances? What has been worked, and what has not?

36. How successful do you think are the current regulations and laws on regulating the Islamic charitable (*Zakat*) and humanitarian organisations?
37. Why do you think that Kuwait still has not ratified/implemented the International Convention for the Suppression of the Financing of Terrorism?
38. Is there any future plan for passing more AML/CFT laws?

Now we will move on to look at the regional/international cooperation to combat terrorism.

Section Four: Cooperation:

39. Considering the international concern about combating terrorism and the financing of terrorism, in your experience were there any regional or international pressures on Kuwait to deal with terrorists or terrorism supporters in Kuwait? Can you give some examples?
40. In your experience, how has the Gulf Cooperation Council (GCC), as a regional organisation, been successful in providing an effective multilateral response to countering terrorism? And what it has achieved so far?
41. How far does the GCC ensure the protection of fundamental liberties and human rights in the region?
42. To what extent has the GCC, and especially the State of Kuwait, been effective in strengthening their security from any potential terrorist activities?

Conclusion:

43. How do you see the future agenda of the Kuwaiti government in combating terrorism?
44. Is there anything that you would like to add, which you think we have not covered?
45. Are there any sources of information you recommend me to look at that related to my research topic?

Many thanks for your participation.



Terrorism and the Law of Kuwait:

The local responses to universal threats and international demands

PhD Research Project Sponsored by Kuwait University

Ref: Invitation for an interview as expert for a PhD research project on terrorism and the law of Kuwait.

Dear NAME,

My name is Bader Alrajhi, and I am a PhD research student at the University of Leeds, United Kingdom. I am also sponsored by, and work as a lecturer at, the Kuwait University (please see the attached letter). For the purpose of this research, I am presently acting under the remit of the University of Leeds and its Law School.

You are being invited to take part in my research project on ‘Terrorism and the Law of Kuwait’. Before you decide whether to participate, please let me explain why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with me if you wish. Ask me if there is anything that is not clear or if you would like more information. Feel free to take time to decide whether or not you wish to take part in this study.

I am inviting you for an interview of at about one hour, which will take place in your work place or another place that can be arranged at your request.

We will talk about your views, opinions and work around the topic of my research. You are invited as one of the experts in this area. Your experience is invaluable for the project.

My research will investigate how the State of Kuwait, as a Gulf nation with limited geo-political influence and very much dependent upon the protection of others, is subjected to international influences and seeks to interpret, modulate and

apply international expectations on combating terrorism within its own jurisdiction. This research will focus on the conflict of international and local influences toward the overall responses to terrorism in Kuwait since its independence in 1961.

My thesis will analyse the government's overall policies and strategies against terrorism. This thesis will look into the legal framework, and it will also look into Kuwait's banking system and financial services in relation to financing terrorism. Finally it will investigate how effective Kuwait is in implementing and accommodating the regional and international conventions on terrorism.

I invite experts like you to answer questions related to my research topic. It is hoped that, with your participation, this research will contribute to a better understanding of how the State of Kuwait has responded to terrorism within its own jurisdiction. The interview will be recorded, and you are free to withdraw at any time without giving reasons.

It is important to ensure the confidentiality of our conversation and your privacy. All of the information you give in the interview will be kept strictly confidential. The interview will be transcribed, and your identity will be fully protected in the transcribed material. I will take the following steps in order to protect your identity from being identified in any materials, reports or publications.

1. Your contact details will be destroyed once I have completed the interview.
2. All recorded materials and transcripts will be stored on an encrypted external hard disc. Additionally, they will be saved in the University computer system, which is password protected and can only be accessed by me.
3. No names will be used in any written text, including the transcript. . Furthermore, all names will be changed to protect your identity.
4. Your consent form will be stored separately from the audio recording and transcription of the interview; thus, ensuring no connection between them.
5. Brief quotes from the interview might be used in my final research thesis. All quotes will be fully anonymised.

Please take your time to make your decision. If you have any further questions, please do not hesitate to ask. My contact details are below:

Bader A. J. Kh. J. Alrajhi

Lecturer in Law

School of Law,

Department of Criminal Law,

Kuwait University,

P. O. Box 5476 Safat.

Researcher email: lbajk@leeds.ac.uk

Appendix C: Consent Letter



UNIVERSITY OF LEEDS

Consent to take part in a project on Terrorism and the Law of Kuwait: The local responses to universal threats and international demands

	Add your initials next to the statements you agree with
I confirm that I have read and understand the information sheet dated XX/XX/2012 explaining the above research project and I have had the opportunity to ask questions about the project.	
I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason and without there being any negative consequences. In addition, should I not wish to answer any particular question or questions, I am free to decline.	
I give permission for Bader Alrajhi to have access to my anonymised responses. I understand that my name will not be linked with the research materials, and I will not be identified or identifiable in the report or reports that result from the research. I understand that my responses will be kept strictly confidential. I accept and understand the measures to be used to help protect my identity.	
I understand that the interviewer has requested that the interview is recorded. I am free to grant or remove my permission for this at any time prior to and during the interview.	
I agree for the data collected from me to be used in relevant future research and publication.	
I understand that I am not required to reveal any personal wrongdoing that violate the law or might cause harm.	
I agree to take part in the above research project.	

Name of participant	
Participant's signature	
Date	
Name of lead researcher	Bader A. J. Kh. J. Alrajhi

Signature	
Date*	

*To be signed and dated in the presence of the participant.

Once this has been signed by all parties the participant should receive a copy of the signed and dated participant consent form, the letter/ pre-written script/ information sheet and any other written information provided to the participants. A copy of the signed and dated consent form should be kept with the project's main documents which must be kept in a secure location.

Appendix D: Ethics Committee Approval

Performance, Governance and Operations
Research & Innovation Service
Charles Thackrah Building
101 Clarendon Road
Leeds LS2 9LJ Tel: 0113 343 4873
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UNIVERSITY OF LEEDS

Bader A. J. Kh. J. Alrajhi
PhD Research Student,
School of Law,
University of Leeds
Leeds, LS2 9JT

AREA Faculty Research Ethics Committee University of Leeds

9 August 2012

Dear Bader A. J. Kh. J. Alrajhi

Title of study: Terrorism and the Law of Kuwait: The local responses to universal threats and international demands
Ethics reference: AREA 11-194

I am pleased to inform you that the above research application has been reviewed by the ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee and following receipt of your response to the Committee's initial comments, I can confirm a favourable ethical opinion as of the date of this letter. The following documentation was considered:

<i>Document</i>	<i>Version</i>	<i>Date</i>
AREA 11-194 Committee Provisional response 5 August 2012.docx	1	07/08/12
AREA 11-194 Ethical_Review_Form final 9 July 2012.docx	1	09/07/12
AREA 11-194 Information Sheet comments susanne 8 July 2012.docx	1	09/07/12
AREA 11-194 Participant consent_form final 8 July 2012.docx	1	09/07/12

Please notify the committee if you intend to make any amendments to the original research as submitted at date of this approval, including changes to recruitment methodology. All changes must receive ethical approval prior to implementation. The amendment form is available at www.leeds.ac.uk/ethics.

Please note: You are expected to keep a record of all your approved documentation, as well as documents such as sample consent forms, and other documents relating to the study. This should be kept in your study file, which should be readily available for audit purposes. You will be given a two week notice period if your project is to be audited.

Yours sincerely

Jennifer Blaikie
Senior Research Ethics Administrator
Research & Innovation Service
On behalf of Prof Anthea Hucklesby
Chair, [AREA Faculty Research Ethics Committee](#)

CC: Student's supervisor(s)

Appendix E: Law No. (106) of 2013 Regarding Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) & Its Explanatory Memorandum

Law No. (106) of 2013¹

Regarding Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)

Definitions

(Article 1)

In implementing the provisions of this law, the following words and phrases will have the meanings assigned:

Monies: Any kind of assets or properties, whether money or securities and trade, movable or immovable, tangible or intangible, and all related resources acquired by any mean. As well as all legal documents and instruments in all forms including electronic, digital, banking facilities, cheques, money orders, stocks, bonds, trade bills, and letters of indemnity, whether they exist inside or outside of Kuwait.

Person: The natural, legal individual.

Transaction: Any purchase, sale, loan, mortgage, donation, funding, transfer of funds, receipt of funds, deposition of funds, withdrawal of funds, transfer of funds via bank draft, or any similar actions, using any currency, whether cash, cheques, money orders, stocks, bonds, or any other financial instruments, or the use of treasuries or any other form of safe deposition, or any other action related to monies that is determined by the executive regulations.

Financial Institution: Any person who exercises a trading business or exercises one or more of the following activities and operations for a client or on behalf of a client as follows:

¹ This law passed by the Government of Kuwait in (Arabic Version), and translated by the Author of this thesis.

- A. Accepting deposits and other reimbursable monies from the public, including private banks.
- B. Loaning.
- C. Financial Leasing.
- D. Cash or Value Transfer Services.
- E. Issuing and controlling means of payments (such as credit cards, discount cards, travellers cheques, financial leasing, money orders, bank drafts, and electronic money).
- F. Financial Bonds and Liabilities.
- G. Trading with:
 - 1. Instruments of the cash market including cheques, trade bills, certificates of deposition.
 - 2. Foreign currency.
 - 3. Instruments of exchange rates index and interest rates, and financial indices.
 - 4. Securities that are exchangeable and financial derivatives.
 - 5. Future contracts of basic commodities.
- H. Transactions of the Foreign Sector.
- I. Participation in the issuing of securities and providing financial services in regards to these securities.
- J. Management of personal and group portfolio.
- K. Protection and management of liquidated cash or securities on behalf of other individuals.
- L. Contracting life insurance contracts and other types of insurance related to investments as an insurer or as a mediator in the contract.
- M. Investment, management, employing of monies on behalf of other individuals.

- N. Any activities or other transactions that are determined by the executive regulations of this law.

Designated Non-Financial Businesses and Professions (DNFBPs), includes the followings:

- A. Real estate brokers.
- B. Individual institutions and companies working in the gold, precious stones, and precious metal industries, when they use cash transactions as determined by the executive regulations of this law.
- C. Lawyers, independent legal professionals, and independent accountants, when they arrange, execute, or make transactions on behalf of clients with respect to any of the following activities:
1. Purchase or sales of real estate.
 2. Management of the client's monies including the client's securities, bank accounts, or other properties.
 3. Establishing, operating, or managing a cooperate body or legal arrangements and the related underwriting.
 4. Selling or Purchasing of companies.
- D. Service providers for companies and trust funds, when they arrange or make transactions on behalf of a client with respect to the following activities:
1. Acting as an Agent for setting up a cooperate body.
 2. Acting or arranging for another person to be a director, secretary, or partner in a company, or in a similar capacity in respect to cooperate bodies.
 3. Provision of registration office, headquarters, work office, mailing address, or managerial mailing address for a cooperate body or a legal arrangement.
 4. Acting or arranging for another person to act as a trustee for trust funds or to perform a similar action on behalf of a legal arrangement.
 5. Acting or arranging for another person to act as a nominal contributor.

- E. Any other activity or profession that is mentioned in the executive regulations of this law.

Business Relations: Any business, professional, or trade relations that are related to professional activities of a financial institution or DNFBPs, where these relations are expected to be continuous.

Account: Any facilitation or arrangement that may allow a financial institution to accept deposits, or cash, or exchangeable instruments, or that may allow operations of withdrawal or transaction, or the payment of cheque values or the withdrawal of money orders of a financial institution or another person, or obtaining cheques, money orders, bank transfer, travellers cheques, electronic money on behalf of someone, or providing facilitations or arrangements to rent of treasuries_ or any other form of safe deposition.

Client: Any person who does one of the following businesses with a financial institution or DNFBP:

- A. Any person who arranges, opens, or executes a transaction, a business relation, or a business account.
- B. Any person or any participating person who signs a transaction, a business relation, or a business account.
- C. Any person who allocates or transfers an account, rights, or any liabilities in accordance to the terms of a particular transaction.
- D. Any person who is allowed to make a transaction, or control a business relation or a business account.
- E. Any person who attempts to do any of the procedures mentioned above.

Beneficiary Owner: Any natural person who owns or controls, wholly, directly or indirectly, the transactions of a client or of a person on which behalf the transactions are made. As well as have an actual whole control over a corporate body or a legal arrangement.

The Unit: The Kuwaiti Unit of Financial Investigations.

Supervisory Authorities: These authorities are responsible for ensuring the compliance of financial institutions and the DNFBPs with the provisions of this

law. These bodies include the Central Bank of Kuwait, Capital Markets Authority, Ministry of Commerce, and Ministry of Industry or any other body that is determined by the executive regulations of this law.

Competent Authorities: All public authorities in Kuwait that are assigned with the responsibility to combat money laundering and terrorism financing, including the Unit, the Supervisory Authorities, the General Administration of Customs, and the Ministry of Internal Affairs.

Freezing: is the temporary reservation of monies from its obtainer, and prohibition of its transfer, exchange, use, move, or physical transfer, based on a decision issued by the General Attorney, or any public lawyer that he assigns.

Confiscation: Seizing monies and reserving it temporary by the Public Attorney office or any other entity based on the decision issued by the General Attorney or any public lawyers that he assigns.

Legal Arrangements: Trust funds or any other similar arrangements.

Politically-Exposed Person (PEP): A natural person who is entrusted or appointed to perform prominent public functions in Kuwait or foreign countries or to hold high executive positions in international organisations with his family members, where the executive regulations determine the individuals who are included in this definition without prejudice with the provisions of laws.

Money Laundering: Any act of the actions mentioned in Article no. (2) of this law.

Terrorism Financing: Any act of the actions mentioned in Article no. (3) of this law.

Predicate Offense: Any act that is considered a crime in accordance to the laws of the State of Kuwait. It also includes actions that are committed outside of Kuwait where these actions are considered a crime in accordance to the laws of the country where the actions were committed and in accordance to the laws of the State of Kuwait.

Crime Proceeds: Any monies that originate or are acquired – directly or indirectly – as a result of a predicate offense, where these monies include profits, interests,

revenues, or any other returns, whether these monies remained as they are, or were transferred fully or partially into other monies.

Instruments: Anything that is used or was supposed to be used in any form, wholly or partially, in committing crimes of money laundering, terrorism financing, or in committing a predicate offense.

Terrorist Act: Any of the following actions or the attempt to commit these actions in the State of Kuwait as follows:

- A. If the action's purpose was to cause the death or to inflict serious physical injuries to a civilian, or to any other person who is not participating in hostile actions if an armed conflict arouse, and when the natural purpose of the action or its context was to spread panic among people or to force the government or an international organisation to perform a particular act or to prevent it from doing an act.
- B. If the action is considered a crime in accordance to the definitions that are mentioned in international agreements or protocols as follows:
 1. The Convention for the Suppression of Unlawful Seizure of Aircraft (1970), approved with decree of law no. (19) Of 1979.
 2. The Convention for the Suppression of Unlawful Acts Committed against the Safety of Civil Aviation (1975), approved with decree of law no. (62) of 1979.
 3. The Convention on the Prevention and Punishment of Crimes Committed against Internationally Protected Persons, including Diplomatic Agents (1973), approved with decree of law no. (72) of 1988.
 4. The International Convention against the Taking of Hostages (1971), approved with decree of law no. (73) of 1988.
 5. The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, approved with decree of law no. (71) of 1988, and the Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988), approved by decree of law no. (6) of 1994.

6. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), approved by the law no. (15) of 2003.
7. The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988), approved by law no. (16) of 2003.
8. The International Convention on the Physical Protection of Nuclear Material (1980), approved by law no. (12) of 2004.
9. International Convention for the Suppression of Terrorist Bombings (1977), approved by law no. (27) of 2001.
10. Any other international conventions, or other international protocols that are in regards to terrorism or its financing that was ratified by the State of Kuwait and were published in the official newspaper.

Terrorist: Any natural person, whether inside or outside of Kuwait, who does the following actions:

- A. Who performs a terrorist act in accordance to the provision of this law, directly or indirectly.
- B. Who participates in a terrorist act.
- C. Who arranges a terrorist act or guides others to conduct the act.
- D. Who intentionally contributes to a terrorist act that is performed by one person or by a group of persons who are guided by a common purpose, where the contribution is with the purpose to expand the terrorist act and with knowledge of the intention of the person or the group of persons in committing the terrorist act.

Terrorist Organisation: A group of terrorists, whether residing in or outside of Kuwait, who perform any of the actions that are mentioned in the previous definition.

Bearer Negotiable Instrument: Monetary instruments that are document in bearer form such as travellers cheques, negotiable instruments that include cheques, promissory notes, and money orders that are either in bearer form, endorsed without restrictions made out to a fictitious payee or otherwise in such a form that title can

pass upon delivery, and incomplete instruments signed, but with the payee's name omitted.

Electronic Transfer: Monetary transactions that are made by a financial institution using electronic means on behalf of the transfer order requestor, where this is used to deliver an amount of money for a beneficiary in another financial institution, without regard to whether the requestor and the beneficiary are the same person or not.

Fictitious Bank: A bank that is registered or licensed in a particular country or a particular region without having any physical existence in that country or the region, and that does not belong to any financial group that follows regulations and efficient bank inspection procedures.

Bearer Negotiable Instrument: Monetary instruments that are document in bearer form such as travellers cheques, negotiable instruments that include cheques, promissory notes, and money orders that are either in bearer form, endorsed without restrictions made out to a fictitious payee or otherwise in such a form that title can pass upon delivery, and incomplete instruments signed, but with the payee's name omitted.

Section One

Crimes and Precautionary Measures

Chapter One

Money Laundering and Terrorism Financing Crimes

(Article 2)

A person is considered an offender in a crime of money laundering, if the person was knowledgeable that the money is resultant of a crime, and if he intentionally committed the following:

- A. Transferred, moved, replaced the monies with the purpose of concealing or disguising the unlawful source of these monies, or assisted any person who

was involved in the predicate offense that resulted into obtaining these monies to escape the legal punishments of his actions.

B. Concealing or disguising the true nature of the monies, their origin, place, manner of disposition, movement, possession, or the rights that are associated with these monies.

C. Obtaining these monies, their possession, or their operation.

The cooperate body is considered responsible for any crime that is mentioned in the provisions of this article if the crime was committed under its name or for its account.

The penalty of the person who committed the predicate offense should not intercept penalisation of other crimes of money laundering that he might have committed.

Whenever it is proven that the monies obtained is crime proceeds, there is no need to convict the person with the predicate offense.

(Article 3)

A person is considered an offender in a crime of terrorism financing, if the person willingly and unlawfully provided or attempted to provide or collect monies, directly or indirectly, with the purpose to use it in committing a terrorist act, or with knowledge that it will fully or partially be used for such act, or for the benefit of a terrorist organisation or a terrorist.

Actions mentioned in the previous paragraph are considered crimes of terrorism financing even if the terrorist act was not committed, or even if the monies were not actually used for the execution or the attempt to execute the terrorist act, or if the monies were linked to a specific terrorist act regardless of the country where the terrorist act attempt occurred.

Chapter Two

Precautionary Measures

(Article 4)

Financial Institutions and DNFBPs must evaluate the risks of money laundering and terrorism financing that may be related to their own businesses through the development of new products and techniques. It also should keep records of evaluation of risks and information that is related to these evaluations in written documentations, and should update these documents periodically, and provide them for supervisory authorities upon their request.

Financial institutions and DNFBPs must apply strict measures to achieve due diligence when risks of money laundering and terrorism financing activities appear to be on the rise. It is also permissible for financial institutions and DNFBPs to apply moderate measures to achieve due diligence when risks of money laundering and terrorism financing activities appear to be low.

It is not permissible to apply the moderate measures whenever there is a suspicion of money laundering and terrorism financing operations.

(Article 5)

Financial institutions are prohibited from opening an account for an anonymous person or persons using fictitious names, and are not allowed to keep such accounts open.

Financial institutions and DNFBPs must take into consideration the results of the evaluation of risks in accordance to the provisions mentioned in the previous article, and must take the following due diligence measures:

- A. Identify and verify the identity of the client and the beneficiary owner using reliable and independent documents, data, or information.
- B. Understand the purpose and the nature of the business relationship. Moreover, it is permissible to request additional information in regards to that.
- C. Continuous follow-up of everything related to the business relationship, and the examination of any transactions that are performed in order to ensure its compliance with the information of the client, his trade activities, the nature of the risks he takes, and the source of monies when necessary.

D. Identify the structure of ownership and control of the client.

The financial institutions and DNFBPs must execute the due diligence procedures that are determined in the second paragraph of the previous article as follows:

- A. Before opening an account and during the time the account is opened, or before and during having a business relationship with the client.
- B. Before performing transactions on behalf of a client who is not in a business relationship with the financial institution, where the transaction exceeds the limits that are determined by the executive regulations, whether a single transaction or multiple serial transactions that seem linked to each other.
- C. Before performing any electronic, domestic or international, transfer on behalf of a client.
- D. Upon suspicion of money laundering or terrorism financing operations.
- E. Upon suspicion of the validity or the adequacy of the identification information of the client that were previously obtained. It is permissible for the supervisory authorities to determine the conditions under which it is permissible for the financial institutions and the DNFBPs to delay the verification of the identity of the client or the beneficiary owner until after the business relationship is established.

Financial institutions and DNFBPs can refrain from opening an account, start a business relationship, execute a transaction, or terminate a business relationship if provisions of the second paragraph of this article were not followed. Also, they can consider informing the unit in accordance to provisions of article (12) of this law.

Furthermore, Financial institutions and DNFBPs imply specific measures that are enough to face the risks of money laundering and terrorism financing if an account was opened, or a business relationships was established, or a transaction was executed with a client who is not present in person for purposes of identification and verification of identify.

Financial institutions and DNFBPs can establish appropriate systems to manage the risks and to determine whether the client or the beneficiary owner is a politically exposed person.

If it showed that the individual is politically exposed person, then the institution would apply additional measures – besides those mentioned in the second paragraph of this articles – where the executive regulations determines these measures.

Financial institutions and DNFBPs apply strict due diligence measures for all complex and major unusual transactions, and the unusual transactions that do not have purposes or obvious legal economic aims. Therefore, they examine the background of these transactions and their purposes, and record all the information that is related to the transactions and the identities of all the participating parties, where these records are stored in accordance to the provisions of article (11) of this law. This information remains accessible for the competent authorities upon their request to access it.

Furthermore financial institutions and DNFBPs must apply the strict due diligence measures in business relationships and transactions made by individuals or financial institutions from countries that are considered high risk in accordance to article no. (4).

The existing accounts and the current clients who are in a business relationship at the time of the start date of this law are subject to measures of due diligence in accordance to the provisions of this article within a appropriate period and depending on the physical conditions and the degree of risks in accordance to specifications of the supervisory authorities.

The financial institutions and DNFBPs must perform a periodical evaluation to ensure the validity of the data, information, and documents that were obtained, and must update them.

It is permissible for financial institutions and the DNFBPs to obtain assistance of other organisations in order to perform some of the elements of the due diligence operations in accordance to specifications of the executive regulations.

(Article 6)

The provisions of articles (4), (5) and (11) of this law are applied on agents and real estate brokers only if they participated in transactions related to purchasing or selling a real estate on behalf of their clients.

(Article 7)

In addition to the implementation of regular measures to achieve due diligence in accordance to article no. (5), the executive regulations determine the measures that are ought to be implemented by the financial institutions before starting a banking relationship with a foreign correspondent bank or before starting other similar relationships.

(Article 8)

It is not permissible to license a fictitious bank or to allow this bank to perform any actions inside of Kuwait. Financial institutions are prohibited from starting or continuing working through correspondent relationships or through business relationships with fictitious banks or a correspondent financial institution in a foreign country that allows the use of accounts for a fictitious bank.

(Article 9)

Financial institutions that perform electronic transfer activities must obtain information regarding the transfer order requestor and the receiver during the transaction procedures. They also must ensure that these information are stored with the transfer order or with any related correspondents of serial payments. It is prohibited for the financial institution that issues the electronic transfer to execute the transfer if this information was lacking.

(Article 10)

Financial institutions and DNFBPs must adhere to the following rules:

- A. Establishing policies, procedures, systems, and internal controls, including proper arrangements to control compliance and adequate screening measures that ensure use of high standards when hiring employees.
- B. Implementing a continuous program that trains employees to ensure their familiarity with anti-money laundering and anti-terrorism financing requirements, and their familiarity with new developments, common methods, techniques, and trends in the field of money laundering and terrorism financing, and familiarity with requirements for due diligence and requirements for the reporting of any suspicious transactions.
- C. Establishing independent internal auditing tasks to ensure compliance with policies, procedures, systems, internal controls, and to ensure its efficiency and its compliance with the provisions of this law.
- D. Developing mechanisms for exchange of available information and maintaining its confidentiality within the financial institution and its domestic and external subsidiaries and affiliates in accordance to article (4) and (5).
- E. Appointing a supervisor at a senior management level to be responsible for the implementation of the provisions of this law.

When possible, the provisions mentioned in this article can be applied on all domestic and external subsidiaries and affiliates of the institution.

(Article 11)

The financial institutions and the DNFBPs must store the following records and information, where these records and information can be viewed by the competent:

- A. Copies of all records that were obtained through the due diligence operations for the investigation of transactions in accordance to provisions of article no. (5). These will include documents that proof the identity of the actual clients and the accounting files, and correspondents of work for at least five years after the termination of the business relationship or the date of the execution of the transaction in accordance to section (B) of the third paragraph of article no. (5).

- B. All records of domestic and international transactions, whether executed or attempted to be executed, within at least the last five years after the execution of the transaction or the attempt to execute it. These records must be detailed in order to allow re-representation of the steps of each transaction separately.
- C. Copies of all sent reports in accordance to the provisions of article no. (12) and any documents that are associated with them for at least five years after the date of the submission of the report to the unit.
- D. Risk evaluations in accordance to article no. (4) and any prescribed information for five years of the date of the procedure or its updating.

It is permissible for competent authorities to request under specific circumstances to extend the storage of records for a term that is longer than the terms mentioned in this article.

Chapter Three

Requirements for Reporting of Suspicious Operations

(Article 12)

Financial institutions and DNFBPs must report to the unit without delay any transactions or any attempt to carry a transaction regardless of its value if there is suspicion or enough evidence of suspicion indicating that the monies in these transactions may be obtained from or linked to a crime, or may be used in money laundering and terrorism financing.

Lawyers, other law professionals, and independent accountants are not obligated to report transactions in accordance to the previous paragraph if the information in regards to these transactions were subject to professional confidentiality conditions.

(Article 13)

Financial institutions and DNFBPs, their directors, and their employees are prohibited from notifying clients or others regarding reports that were performed in

accordance to the previous article, or any information that is related to the unit, or anything that is related to the investigation of money laundering or financing of terrorism. This does not preclude disclosure or communication between the directors of financial institutions or the DNFBPs' employees and users on one hand, and lawyers, competent authorities, and the General Attorney office on the other.

It is prohibited to issue a criminal, civil, disciplinary, or administrative law suit against financial institutions, the DNFBPs, their directors, or employers due to violation of the reporting of information that are imposed according to contracts or other laws, if the organisation issued the report or any other information to the unit with good faith in accordance to article no. (12).

The financial institutions and the DNFBPs must present information and documents to the competent authorities, upon their request, and are not allowed to jeopardise professional confidentiality unless with lawyers, law professionals, and independent accountants in accordance to the second paragraph of the article no. (12)

Second Section: Competent Authorities

Chapter One: Supervisory Authorities Competence

(Article 14)

Supervisory authorities are responsible for regulating, monitoring, and supervising the compliance of financial institutions and DNFBPs with the terms mentioned in the law and its executive regulations along with the related ministerial decisions and instructions. These supervisory authorities have the following authority and duties:

1. Collecting information and data from financial institutions and DNFBPs, and conducting field tests procedures, where the supervisory authorities can ask for assistance from others to achieve these duties.
2. Obligating financial institutions and DNFBPs to provide information, and to obtain copies of documents regardless of its storage forms and any documents outside of its premises.

3. Applying measures and imposing penalties over financial institutions and DNFBPs for failing to comply with the provisions of this law, and reporting this failure to the unit.
4. Issuing ministerial decisions and instructions to assist financial institutions and DNFBPs to implement its obligations.
5. Cooperating and exchanging of information with the competent authorities or the competent foreign agencies to combat money laundering and terrorism financing.
6. Ensuring that external subsidiaries and companies that are affiliated with financial institutions and DNFBPs rely on and execute measures that comply with this law within the capacity of the permitted domestic laws of the host country.
7. Reporting information or transactions that may be related to money laundering, terrorism financing, or predicate offense to the unit as fast as possible.
8. Developing and applying efficient and appropriate procedures, and standards related to attain experience and integrity of the executive board of directors, the supervisory directors, or the directors of the financial institutions.
9. Developing and applying standards for ownership or for control of the major shares of the financial institutions and the DNFBPs including the beneficiary owners of these shares, or developing standards in regards to direct or indirect participation in managing, deposition, or operation of these shares.
10. Retention of statistics of the measures that are taken and the imposed penalties that are determined by the supervisory authorities.
11. Determining the kind and the extent of the measures that should be taken by the financial institutions and the DNFBPs in accordance to article no. (10) depending on the degree of risk for money laundering and terrorism financing, and depending on the size of the business.

(Article 15)

In case of a proven violation committed by a financial institution, the DNFBPs, any of the members of the executive boards of directors, members of the executive management, supervisory directors, or the directors against the provisions that are mentioned in this law, its executive regulations, and ministerial decisions and instructions, the supervisory authorities is allowed to impose one or more measures or penalties as follows:

1. Issuing a written warning of the violation.
2. Issuing an order that requires compliance to specified procedures.
3. Issuing an order to present organised reports in regards to the measures that are taken to resolve the particular violation.
4. Imposing monetary penalty for the financial institution upon its violation, where this penalty should not be more than five thousand Dinars per each violation.
5. Prohibiting the person who committed the violation from working in the related department for a term that is determined by the supervisory authorities.
6. Restricting the authorities of the executive board of directors, members of the executive management, the supervisory directors, the directors, or the controlling owners, where this will include appointing a temporary supervisor.
7. Isolating or requesting the removal of the executive board of directors, members of the executive management, supervisory directors, or directors, or requesting to hire new members or directors.
8. Suspending the activity, the work, or the profession, or restricting it and prohibiting it from being practiced.
9. Suspending the license.
10. Withdrawal of license.

It is permissible for the executive regulations to include any other measures.

Chapter Two

Kuwait Financial Intelligence Unit

(Article 16)

The “Kuwait Financial Intelligence Unit” is formed with legal independent presence, and acts responsible for receiving, requesting, analysing, and sending information that is suspected to be obtained from a crime, or monies that may be linked or related to, or has been used in money laundering or terrorism financing in accordance to the provisions of this law.

The Council of Ministers will issue a resolution to determine its subordination, duties and resources based on the proposal of the Minister of Finance.

Personnel of the Financial Investigation Unit are not allowed to reveal any available information or data concerning their work nature whether during or after their employment term. It is prohibited to use this information unless for purposes mentioned in this law.

(Article 17)

The unit determines the countries that are considered high risk, and determines the measures that should be followed when dealing with these countries, where the supervisory authorities take responsibility to ensure the compliance of the financial institutions and the DNFBPs with implying these measures.

(Article 18)

In relation to the information that the unit has already obtained, the unit has the validity to request any additional information that are necessary for the unit to perform its functions from any person who is required to report information in accordance to article no. (12), where the requested information would be presented within a term that is specified by the unit in a form that is determined by the executive regulations of this law.

The unit determines its right in obtaining any information from the competent authorities and the state systems that it deems necessary in order to perform its functions, where this information may be related to reports and previous information that the unit has received.

(Article 19)

If reasonable evidence was provided in regards to suspicions of monies obtained from a crime, or monies that are linked or related to a crime, or monies that may be used in money laundering operations or terrorism financing, then the unit can notify the General Attorney office. Additionally, the unit must provide information that is related to the suspicion to the competent authorities.

The unit would also notify the specified supervisory authorities in case of any violation committed by any of the financial institutions or the DNFBPs, or any employee against the requirements mentioned in this law.

The unit is allowed to provide its information to any foreign entity, whether voluntarily or if requested based on reciprocity agreements or agreements of exchange of information that are based on cooperation arrangements between the unit and the other entity.

Chapter Three

Transfer of Currency and Bearer Negotiable Instruments across Borders

(Article 20)

Any person who enters or departs the State of Kuwait with the possession of currencies or bearer negotiable instruments, or any person who arranges the transfer these items into the State of Kuwait or out of it through a person, mail service, shipping services, or by using any other means, must report to customs authorities when asked about the value of these currencies or bearer negotiable instruments. The unit can view this information whenever it requests.

The customs authorities are allowed to request information from the carriers regarding the source of the currency or bearer negotiable instrument, and the purposes of its use. Also, it is allowed for these authorities to seize some or all of the amount of currencies or the bearer negotiable instruments under one of these two situations:

- A. If there is sufficient evidence of suspicions indicating that these monies are proceeds of a crime, or that they are monies or instruments that are related to, linked to, or will be used to make money laundering operations or to finance terrorism.
- B. In case that the carrier refused to report or provide the requested information, or if the report and the information were wrongful.

A decision issued by the Minister of Finance in regards to rules and procedures related to this article.

Section Three

General Provisions

(Article 21)

The General Attorney office alone is responsible for investigation and disposition, and prosecution of crimes mentioned in this law, whereas the criminal court specialises jurisdiction of these crimes.

(Article 22)

Without prejudice to the rights of others with good faith, the General Attorney or public lawyers that he assigns are allowed to order monies and instrument freezing according to the first paragraph of article no. (40) or to confiscate them, only if sufficient evidence provided that these items are related to crimes of money laundering, or terrorism financing, or predicate offenses.

The General Attorney office may manage and dispose the monies as it deems it appropriate.

Any beneficiary may complain to the competent court within one month of the issuance of the order. The court must rule in this complaint as fast as possible by either rejecting the complaint, or by cancelling the order or modifying it, and reporting the necessary liabilities if needed. It is not allowed to complain for the second time until after three months pass from the date of the ruling of the first complaint.

The General Attorney or public lawyers that he assigns can reverse or modify the order in accordance to his own considerations.

(Article 23)

The General Attorney office exchanges international cooperation requisitions with the competent foreign authorities in regards to penalties of crimes of money laundering, predicate offenses, or crimes of terrorism financing, where these requisitions are with respect to assistance, judicial delegation, and extradition of accused and sentenced individuals. As well as requisitions regarding allocating, tracking, freezing, reservation, or confiscating of monies. All this must be performed in accordance to the rules that are determined in bilateral or multilateral agreements ratified by the State of Kuwait or in accordance to reciprocity.

(Article 24)

The executive regulations determine the rules that allow the competent authorities that are responsible for cooperation and national coordination to develop and imply policies and activities to combat money laundering, terrorism financing, and financing weapons of mass destruction proliferation.

(Article 25)

The Council of Ministers, in accordance to proposals of the Minister of External Affairs, issues the necessary decisions to execute the decision of the Security

Council of the United Nations pursuant of the seventh chapter of the United Nations Charter that is related to terrorism, terrorism financing, and financing weapon of mass destruction proliferation.

(Article 26)

Any contract or action is considered nullified if the contributing parties or one of them was knowledgeable of or believed that the purpose of the contract or the agreement was to obstruct the procedures of confiscation mentioned in article no. (40) of this law, without prejudice of others rights of good faith.

Section Four

Penalties

(Article 27)

Without prejudice to other stronger penalties stipulated by criminal law or other law, the crimes will have the penalty determined per each crime as mentioned in this law.

(Article 28)

A person is penalised with imprisonment for a term that is no less than ten years and a fine that is no less than half the value of monies of the crime and no more than the full value for whoever commits a money laundering crime as mentioned in article no. (2) of this law, and if the person was knowledgeable that these monies and instruments were proceeds of a crime.

In all cases, the seized monies, and instruments will be confiscated.

(Article 29)

A person is penalised with imprisonment for a term that is no more than fifteen years and a fine that is no less than the value of the monies of the crime and no

more than double the value, where all the monies and instruments seized will be confiscated, for any person who commits crimes of terrorism financing mentioned in article (3) of this law.

(Article 30)

Penalties mentioned in articles (28) and (29) of this law are increased in severity to imprisonment for a term that is no more than twenty years, and the fine is doubled, under the following circumstances:

- A. The crime was committed through an organised criminal group or terrorist group.
- B. The criminal exploits his authority, position, or powers.
- C. The crime was committed through a club, public welfare association, and charities.
- D. The perpetrator was convicted with a previous crime.

(Article 31)

The court can exempt the criminal from the penalties mentioned in articles (28) and (29), if the criminal initiates in providing the police or the General Attorney office or the competent court with information that could not be obtained otherwise, where this information would assist in the following:

- F. Preventing a money laundering or terrorism financing crime.
- G. Enabling authorities to capture the other crime offenders or to prosecute them.
- H. Enabling authorities to obtain evidence.
- I. Preventing or minimising the consequences of the crime.
- J. Depriving terrorist groups or criminal groups of any monies that the accused offender does not have a right in or cannot control.

(Article 32)

Without prejudice to the criminal liability of the natural person, any cooperate body which performs money laundering or terrorism financing crime is penalised with a fine that is no less than fifty thousand Dinars and no more than one million Dinars, or with the equivalence of the value of the monies used in the crime, whichever is greater.

It is permissible to penalise the cooperate body by banning it permanently or temporary for a term that is no less than five years from conducting particular trade activities directly or indirectly, or through closure of its offices that were used in committing the crime permanently or temporary, or by liquidating its business, or by assigning a judicial administrator for management of its monies, where the sentence would be published in the official newspaper.

(Article 33)

Financial institutions and DNFBPs, or any of the executive board of directors, members of the executive management, supervisory directors, or directories are penalised with a fine that is no less than five thousand Dinars and no more than five hundred thousand Dinars for each violation or for any intentional breach or gross negligence of the provisions of articles (5) or (9) or (10) or (11) of this law.

(Article 34)

A person is penalised with imprisonment for a term that is no less than three years and fine that is no less than five thousand Dinars and no more than five hundred thousand Dinars, or with one of these two penalties, for whoever establishes or attempts to establish a fictitious bank in the State of Kuwait in violation with the first paragraph of article no. (8), or for whoever starts a business relationship with this bank in violation of the second paragraph of article no. (8) intentionally or in gross negligence. The penalty would be a fine that is no less than five thousand Dinars and no more than one million Dinars if a cooperate body committed this violation.

(Article 35)

A person is penalised with imprisonment for a term that is no more than three years and a fine that is no less than five thousand Dinars and no more than five hundred thousand Dinars, or with one of the two penalties for whoever intentionally or in gross negligence commits the following:

- A. Violation of the provisions of article no. (12) by presenting wrongful reports, data, or information, or by concealing facts that should be reported.
- B. Whoever reports information to others in violation of the first paragraph of this article. If a cooperate body does any of the violations mentioned in the two previous section, it would be penalised with a fine that is no less than five thousand Dinars and no more than one million Dinars.

(Article 36)

A person is penalised with imprisonment for a term that is no more than three years and a fine that is no less than one thousand Dinars and no more than ten thousand Dinars, or one of these two penalties, and a discharge from his position for whoever violates the provisions of the third paragraph of article no. (16).

(Article 37)

A person is penalised with imprisonment for a term that is no more than a year and a fine that is no less than half the value of the monies of the crime and no more than its full value, or by one of these two penalties for whoever violates the provisions of article no. (20) or gives a false report about a currency or bearer negotiable instruments, or whoever intentionally or in gross negligence conceals facts that should be reported. The penalty would be a fine that is no less than the equivalence of the monies of the crime and no more than its double if a cooperate body committed this violation.

(Article 38)

Without prejudice of the penalties mentioned in this unit, the court is allowed to prevent the offender of any crime, permanently or temporary, from practicing any job, profession, or activity that gives him the opportunity to commit this crime.

(Article 39)

It is not permitted to imply penalties in accordance to the provisions of this law without implementing penalties and measures that are imposed by the supervisory authorities over financial institutions and DNFBPs in accordance to the provisions of article no. (15).

(Article 40)

Without prejudice to provisions of articles (28 and 29) of this law, and without prejudice to others rights of good faith, in the event of convicting a person with one of the other crimes mentioned in this law, the court must order the confiscation of the following monies and instruments:

- A. Crime proceeds, including monies mixed with these proceeds or resultant of it, or replaced by it.
- B. Income and other benefits that are resultant of the proceeds of the crime.
- C. Monies that are subjects of the crime.

The court is allowed to sentence with the equivalence of the value of the monies and the instruments mentioned in section (A), (B), and (C), which cannot be located or is not available due o confiscation.

It is not permissible to confiscate the monies mentioned in the first paragraph if it is proven that its owner is of good faith and that he obtained these monies in return to an appropriate price, or in return to services that match its value, or based on any other legal reasons, without his knowledge of that its source is not legal.

The death of the offender does not affect the order to confiscate the monies and the instruments in accordance to provisions of the first article.

(Article 41)

Unless the law states otherwise, the confiscated monies are moved to the public treasury, where these monies would continue to hold any rights that were legally determined for persons with good faith.

Section Five

Final Provisions

(Article 42)

At the completion of the term, the criminal case or the convicted sentence of the crimes mentioned in this law does not lapse. It is not permissible to apply the provisions of article (81) and (82) of the Penal Code in regards to these crimes.

(Article 43)

The Minister of Finance issues the executive regulations of this law within six month of the date of its publication.

(Article 44)

The indicated law no. 35 of 2002 will be void. Resolutions that are currently practiced will remain valid until issuing the rules of implementation of this law.

(Article 45)

The Prime Minister of the Council of Ministers and the Ministers must implement this law depending on their respective ministries, where implementation starts after the date of its publication in the official newspaper.

Prince of Kuwait

Sabah Al-Ahmad Al-Jaber Al-Sabah

Issued in Seif Palace on: 28 Jumada II 1434 AH

On May 8th of 2013

Explanatory Memorandum²

Of Law No. (106) of 2013

In Regard to Combating Money Laundering and Terrorism Financing

Law no. (35) of 2002 in regards to combating operations of money laundering was issued. This law succeeded in becoming the cornerstone law in combating these operations and in reducing the great proliferation of such crimes.

In light of the new developments that are witnessed in the world, and the rise of new features that are controlled by the movement of capitalism in different regions, in addition to publications of the United Nations on agreements to combat organised crime and to combat corruption in order to reduce the number of crimes that are related to money laundering and terrorism financing, and all the developments that occurred following these crimes on institutional level, personal level, and organisational level. Thus, to keep pace with these developments, it was necessary to develop comprehensive legislation to adjudicate crimes of money laundering and terrorism financing, especially that law number (35) of 2002 that is indicated earlier did not include any criminalisation of crimes of terrorism financing. Therefore, considerations of the international and the domestic developments that bear these crimes were taken, as well as measures to avoid any deficiencies that were unravelled as a result of the actual execution of the current legislations.

Therefore, to achieve this purpose, the attached law was issued with the aim to put these agreements into affect and achieve the desired goals, and to eliminate the

² This Explanatory Memorandum issued by the Government of Kuwait in (Arabic Version), and translated by the Author of this thesis.

types of crimes that harm national economy and its roots, thus article (1) of the indicated law included definitions of words and phrases that are mentioned in the law.

The law was divided into a number of sections; each section included a number of chapters as follows:

Section One:

This section included the crime and the precautionary measures. The first chapter included crimes of money laundering and financing of terrorism. Article (2) considered a person a criminal in the crime of money laundering if the person was knowledgeable that the monies were proceeds of the crime, and has intentionally performed one of the actions mentioned in this article, which is consistent and in accordance to articles (5 and 6) of the United Nations Convention in Combating Transnational Organised Crime, where this was ratified under law no. (5) of 2006. Thus, it became part of the legislations of the State of Kuwait. Furthermore, the second chapter included precautionary measures, where the legislator pointed out to the executive regulations, which will determine the measures that are required by the financial institutions before starting banking relationships with corresponding external banks or other similar business relationships, in addition to regular measures mentioned in the article no. (5) of the law.

Meanwhile, the third chapter included requirements for reporting suspicious operations, where the legislator required financial institutions and DNFBPs to provide information and documents to the competent authorities upon their request, and prohibited these authorities from jeopardising professional confidentiality unless under the rules of article no. (12/2) of the law.

Section Two:

This section regulated the competent authorities and determined their specialties, where it was divided into three chapters as follows:

Chapter One: Supervisory Authorities Competencies

Chapter Two: Kuwaiti Financial Investigations Unit

Chapter Three: Reporting Requirements of Suspicious Operations

The law in the second chapter has made the Kuwaiti Financial Investigation Unit a legal independent personality by considering it responsible for receiving, requesting, analysing, and transfer of information that are in regards to suspected crime proceeds or monies that are linked to, related to, or may be used in money laundering and terrorism financing operations. Moreover, a decision must be issued by the Council of Ministers based on the proposal of the Minister of Finance on forming the unit and determining its subordinations, regulating its functions and resources. The unit specifies the countries that are considered high risk, and can investigate the compliance of the financial institutions and the DNFBPs with the provisions of this law. Furthermore, the third chapter has regulated the process of currency and bearer negotiable instruments transfer across borders, where the law pointed out in this chapter the role of the Minister of Finance issuing the necessary decisions regarding rules and procedures that are related to this chapter.

Section Three:

This section included general provisions, where it stated that the General Attorney office is responsible alone for investigating, disposing, and prosecuting crimes that are mentioned in this law, while the criminal court is responsible for jurisdiction of these crimes. This section also regulated international cooperation between the General Attorney office and the competent foreign entities in regards to penalties of crimes in the field of money laundering and terrorism financing.

Section Four:

This section determined the penalties that are used when crimes of money laundering and terrorism financing are committed.

Section Five:

This section regulated the final provisions, where it stated that prosecution cannot be lapsed in any of the crimes mentioned in this law, neither the sentenced penalty after the end of the term. It also stated that it is not permissible to apply the provisions of articles (81 and 82) of the Penal Code in regards to these crimes. Furthermore, it pointed out the role of the Minister of Finance in issuing the executive regulations of the law during six month of the publication of the law. Moreover, it cancelled law no. (35) of 2002 with continuation of work with valid decisions that do oppose this law until the executive regulations are issued.