

## **INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS**

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The International Convention for the Suppression of Terrorist Bombings was adopted without a vote by the United Nations General Assembly in New York on 15 December 1997 (resolution 52/164). It entered into force on 23 May 2001 and, as at 31 October 2008, had 161 States parties. The purpose of this instrument is to facilitate legal proceedings against perpetrators or alleged perpetrators of terrorist bombings by imposing an obligation on the States parties to prosecute such persons or extradite them to another State with jurisdiction to try them. It also imposes an obligation on States parties to adopt measures to prevent the preparation of such bombings in their territory.

### **Background**

Beginning in the early 1990s, the United Nations General Assembly undertook to play a leading role in efforts to counter terrorism. The 1994 adoption of the Declaration on Measures to Eliminate International Terrorism, contained in the annex to resolution 49/60 of 9 December 1994, and, more importantly, the adoption, two years later, of resolution 51/210 underscore the General Assembly's commitment in this regard. The latter, in particular, demonstrates the General Assembly's desire to give fresh impetus to the formulation of treaty obligations aimed at countering terrorism. Resolution 51/210 established an Ad Hoc Committee to elaborate two draft conventions for the suppression of terrorist bombings and nuclear terrorism, respectively. This led, less than a year later, to the adoption of the International Convention for the Suppression of Terrorist Bombings. A series of bombings in 1995 and 1996 in different parts of the world prompted States to begin the drafting, in the context of the G7, of a multilateral instrument that would suppress such acts more effectively — acts which, as stated in the seventh paragraph of the preamble to the Convention, were becoming “increasingly widespread”. Up until that time, bombings had not been qualified as terrorist acts in any of the “sectoral” conventions adopted to suppress different acts that might be linked to terrorist activities, such as hostage-taking, hijacking or acts against the safety of air or maritime navigation. The broad consensus among States concerning the need to suppress such acts and the modalities of the international action that needed to be taken made it possible to adopt the International Convention for the Suppression of Terrorist Bombings unusually quickly.

## **Main provisions**

The 1997 Convention criminalizes the act of intentionally delivering, placing, discharging or detonating “an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility, with the intent to cause death or serious bodily injury or to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss” (art. 2, para. 1). It also penalizes any attempt to commit or organize such acts; participate as an accomplice; or intentionally contribute to the commission of the said acts (art. 2, paras. 2 and 3). The Convention provides that the States parties shall adopt such measures as may be necessary to establish these acts as criminal offences under their domestic law and to make them punishable by appropriate penalties “which take into account their grave nature” (art. 4) and that, under no circumstances, are such acts justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature (art. 5). It further provides that the States parties shall take such measures as may be necessary to establish their jurisdiction over the criminalized acts. As with many other modern international criminal law instruments, the bases for jurisdiction are extremely broad. They include territorial jurisdiction, which also extends to acts committed on board a vessel or aircraft registered to the State party or against a State or government facility of that State party abroad; active and passive personality jurisdiction; and universal jurisdiction, where the alleged offender is present in the State party’s territory (art. 6). A State party may also establish its jurisdiction when an offence which is criminalized under the Convention is committed in an attempt to compel that State to do or abstain from doing any act (art. 6, para. 2 (d)). The Convention sets out all the possible bases but a State party may choose to establish its jurisdiction on one basis only, on several bases or on all bases (art. 6, para. 3). The State party in the territory of which the alleged offender is present may either submit the case to its competent authorities for the purpose of prosecution or extradite the offender to another State party that has established its jurisdiction in respect of the acts in question, in accordance with the Convention (art. 8). Articles 9 and 10 contain several provisions aimed at facilitating extradition and mutual legal assistance between States parties. The offences set forth in the Convention are regarded, for the purposes of extradition or mutual legal assistance, as non-political offences; requests for extradition or assistance thus may not be refused on the ground that the offence in question is political (art. 11). This does not mean, however, that a State may not refuse a request for extradition or mutual legal assistance if it has substantial grounds for believing that the request “was made for the purpose of prosecuting or punishing a person on account of that person’s race, religion, nationality, ethnic origin or political opinion” (art. 12). In the interest of protecting the fundamental rights of the individual, the Convention also provides that any person who is taken into custody or regarding whom proceedings are carried out pursuant to the Convention “shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights” (art. 14).

Although the 1997 Convention deals mainly with the suppression of terrorist bombings, it also imposes an obligation on States parties to take different measures to prevent the commission of such acts (art. 15).

There are several provisions in the Convention that specify its scope of application. This is the case, *ratione materiae*, with the definitions contained in article 1, which define the concept of “facility”, “place”, “public transportation system” and “explosive device”. Similarly, article 5 helps to clarify the meaning of “terrorist” attack when it refers to “criminal acts within the scope of this Convention, *in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons*”. This reference helps elucidate the meaning of “terrorism”, a concept which, in universal legal instruments, is often nebulous. However, in qualifying “terrorist act” by referring to “terror”, the definition remains a circular one — a pitfall that has often been criticized. It should be noted that the scope of the Convention is limited to offences with a foreign element and that it does not apply to purely national situations (art. 3). Compared with the majority of previous “sectoral” conventions, the 1997 Convention breaks new ground by providing that “the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention” (art. 19, para. 2).

States parties expressed different views regarding this provision during the drafting process or at the time of becoming a signatory. Some took the position that “armed forces” should be broadly interpreted to include police forces and civilians who direct or organize the official activities of a State’s military forces as well as civilians who act in support of those activities, if they are under the command and control of the military forces — an interpretation which would limit the scope of the Convention. Other States parties undertook, in their statements or reservations, to limit the application of article 19 to cases where the armed forces, in the exercise of their duties, do not violate the rules and principles of international law. In the view of some of those States parties, such a clause would legitimize “State terrorism” (*ibid.*). The inclusion of a similar provision in more recent counter-terrorism related legal instruments or drafts has sparked spirited debate and has been one of the main sources of contention during discussions on the drafting of a general counter-terrorism convention. Although such a clause would not, in any way, legitimize acts by a State’s armed forces that would otherwise be deemed illegal, it clearly gives rise to reservations. It enables the perpetrators of acts covered by its scope of application to avoid being accused of “terrorism” and reduces the possibility of bringing criminal charges against them. In any case, the inclusion of such a clause in certain international legal instruments would inevitably relativize States’ declarations concerning their determination to fight against terrorism in all its forms.

## **Implementation**

Several dozen States parties to the 1997 Convention have taken the appropriate measures, under their domestic law, to establish their jurisdiction over the offences covered under this instrument. The implementation of the Convention does not appear to have raised any particular difficulties to date.

## **Related Materials**

### ***A. Documents***

General Assembly resolution 49/60 of 9 December 1994 (Declaration on Measures to Eliminate International Terrorism).

General Assembly resolution 52/210 of 17 December 1996 (Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism).

### ***B. Doctrine***

Witten, S. "The International Convention for the Suppression of Terrorist Bombing". *American Journal of International Law*, Vol. 92, No. 4, 1998, page 774.

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