

SYMPOSIUM: "COMBATING INTERNATIONAL TERRORISM:  
THE CONTRIBUTION OF THE UNITED NATIONS"

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Panel One

International conventions and protocols related to the prevention and combating of terrorism, including the draft Comprehensive Convention against International Terrorism

*"The international instruments against terrorism: the record so far and strengthening the existing regime"*

Remarks

by

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Ladies and Gentlemen,

First of all, I would like to express my gratitude to the organizers of the Symposium for giving me this opportunity to speak on the topic “International instruments against terrorism: the record so far and strengthening the existing regime”.

The horrendous terrorist attacks of 11 September 2001 were aimed at one nation but wounded an entire world. On the day after the onslaught, the General Assembly of the United Nations, in its resolution 56/1, strongly condemned the heinous acts of terrorism, which had caused enormous loss of life, destruction and damage in the cities of New York, host city of the United Nations, and Washington, D.C., and in Pennsylvania. The Assembly also urgently called for international cooperation to prevent and eradicate acts of terrorism.

On the same day, the Security Council, in resolution 1368 (2001), identified such acts as a threat to international peace and security. The Secretary-General of the United Nations, in his address to the General Assembly on 24 September 2001, characterized these barbaric acts as a terrorist attack at all our efforts to create a true international society, based on the rule of law.<sup>1</sup> Indeed, the scourge of terrorism threatens all States, every society and each individual. As such, it is illegal and unacceptable.

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<sup>1</sup> See Press Release SG/SM/7965 of 24 September 2001.

The United Nations and its specialized agencies have long been active in the development of a wide range of international legal instruments aimed at suppressing various terrorist activities and bringing the perpetrators to justice. However, most of the instruments were introduced only after considerable incidents had already taken place in the world.

In the 1960s, 1970s, 1980s, and early 1990s, the United Nations, the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO) and the International Atomic Energy Agency (IAEA) developed the following ten “sectoral” conventions and protocols:<sup>2</sup>

- The 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft;
- The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft;
- The 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- The 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents;
- The 1979 International Convention against the Taking of Hostages;

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<sup>2</sup> The conventions and protocols mentioned in the following are all listed in a yearly report from the Secretary-General to the General Assembly. The latest report in this series appears as Report of the Secretary-General on Measures to eliminate international terrorism, A/56/160. Reference is made in particular to para. 138 and Table 1. An updated table will appear in the next report to be issued before the fifty-seventh session of the General Assembly.

- The 1979 Convention on the Physical Protection of Nuclear Material;
- The 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- The 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;
- The 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; and
- The 1991 Convention on the Markings of Plastic Explosives for the Purpose of Detection.

In view of largely unsuccessful efforts at that time to elaborate a commonly acceptable legal definition of terrorism, the instruments that I just mentioned, as a matter of general approach, prohibit specific terrorist acts that States Parties are required to make punishable under their criminal laws. The majority of those instruments foresee individual criminal responsibility of the terrorists. Furthermore, except for the 1963 Tokyo Convention and the 1991 Convention on the Markings of Plastic Explosives, the global instruments are based on the principle aut dedere, aut judicare. In other words, the contracting parties are obliged to either prosecute or extradite the perpetrators of concrete terrorist offences. These instruments also provide for cooperation among States in matters of judicial assistance and prevention of the

offences. To defeat the scourge of terrorism, it is important that all States become parties to these instruments and implement them in full.

At the regional level, efforts by States and intergovernmental organizations led to the elaboration of a number of significant regional treaties.

Thus, in 1971, the Organization of American States (OAS) adopted the OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and related Extortion that are of International Significance.

In 1977, the member States of the Council of Europe adopted the European Convention on the Suppression of Terrorism.

The member States of the South Asian Association for Regional Cooperation (SAARC) signed the SAARC Regional Convention on Suppression of Terrorism on 4 November 1987. All seven members of SAARC – Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka – are parties to this Convention.

The League of Arab States adopted the Arab Convention on the Suppression of Terrorism on 22 April 1988.

In 1999, yet three other regional instruments were concluded, namely: the Treaty on Cooperation among the States of the Commonwealth of Independent States in Combating Terrorism, the Convention of the Organization of the Islamic Conference on Combating International Terrorism and the Convention of the Organization of African Unity on the Prevention and Combating of Terrorism.

The contribution of the General Assembly of the United Nations to the elaboration of various anti-terrorism instruments is well documented. By its resolution 49/60 of 9 December 1994, the General Assembly, deeply disturbed by the world-wide persistence of acts of international terrorism, adopted a milestone Declaration on Measures to Eliminate International Terrorism.<sup>3</sup> In the operative paragraphs of the Declaration, Member States of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism, as criminal and unjustifiable, wherever and by whomsoever committed, including those which jeopardize the friendly relations among States and peoples and threaten the territorial integrity and security of States.

The 1994 Declaration characterized acts, methods and practices of terrorism as a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of

society. Moreover, it determined that criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them. The 1994 Declaration urged States that have not done so, to become parties to the international conventions and protocols relating to various aspects of international terrorism.

Two years later, in 1996, the General Assembly adopted another Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism.<sup>4</sup> In the 1996 Declaration, Member States reaffirmed the fundamental principles of the previous Declaration and proclaimed that knowingly financing, planning and inciting terrorist acts were also contrary to the purposes and principles of the United Nations.

Furthermore, the 1996 Declaration contained new provisions in relation to the regime of asylum-seekers under the 1951 Geneva Convention relating to the Status of Refugees<sup>5</sup>, the 1967 Protocol relating to the Status of Refugees<sup>6</sup> and the 1967 United Nations Declaration on Territorial Asylum.<sup>7</sup> In particular, it reaffirmed that States should take appropriate measures in conformity with the

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<sup>3</sup> See General Assembly resolution 49/60 of 9 December 1994, Annex.

<sup>4</sup> See General Assembly resolution 51/210 of 17 December 1996, Annex.

<sup>5</sup> United Nations, Treaty Series, vol.189, No. 2545.

<sup>6</sup> United Nations, Treaty Series, vol. 606, No. 8791.

<sup>7</sup> See General Assembly resolution 2312 (XXII) of 14 December 1967, Annex.

relevant provisions of national and international law, including international standards of human rights, before granting refugee status to persons seeking asylum. The purpose of this provision would be to ensure that the asylum-seeker had not participated in terrorist acts. In addition, after granting refugee status, States should take appropriate measures for the purpose of ensuring that that status is not used for the purpose of preparing or organizing terrorist acts intended to be committed against other States or their citizens.

The Declaration certainly recognized the sovereign rights of States in extradition matters. However, States were encouraged, when concluding or applying extradition agreements, not to regard as political offences, excluded from the scope of extradition agreements, offences connected with terrorism which endanger or represent a physical threat to the safety and security of persons, whatever the motives which may be invoked to justify them. Moreover, the 1996 Declaration encouraged States, even in the absence of an extradition treaty, to consider facilitating the extradition of persons suspected of having committed terrorist acts, insofar as their national laws permitted. Finally, the Supplemental Declaration emphasized the importance of taking steps to cooperate and share the expertise and information about terrorists, their movements, their support and their weapons, and to share information regarding the investigation and prosecution of terrorists acts.



In 1996, pursuant to General Assembly resolution 50/53, the Secretary-General of the United Nations submitted to the Assembly a report in relation to the implementation of the 1994 Declaration.<sup>8</sup> That report contained an analytical review of the ten universal and three regional legal instruments on international terrorism that existed at that time. The report generally concluded that the United Nations constituted the unique forum on a worldwide basis for promoting counter-terrorist activities and international cooperation in combating terrorism. The report also suggested that there was a need to elaborate new international treaties in areas not covered by the existing sectoral instruments. Possible subjects for codification in this area included terrorist bombings, terrorist fund-raising, traffic in arms, money laundering, technical cooperation in training for counter-terrorism, preventing the use of weapons of mass destruction by terrorists and the use of modern information technology for terrorist purposes.

Inspired by those ideas, the General Assembly, in its resolution 51/210, decided to establish an Ad Hoc Committee. The main task of that body, as defined by the Assembly, was to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments. The General Assembly also decided that the Ad Hoc Committee would thereafter address means of further developing a comprehensive legal framework of conventions dealing with international terrorism. To ensure the truly

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<sup>8</sup> Document A/51/ 336 and Add.1 of 6 September 1996.

representative character of the Ad Hoc Committee, the Assembly invited all States to participate in its work.

The Committee was instrumental in the elaboration of and adoption by the General Assembly of two important instruments related to the prevention and suppression of international terrorism. In 1997, the General Assembly adopted the International Convention for the Suppression of Terrorist Bombings.<sup>9</sup> In 1999, the Assembly adopted the International Convention for the Suppression of the Financing of Terrorism.<sup>10</sup>

The Convention for the Suppression of Terrorist Bombings, entered into force on 23 May 2001. Currently, 48 States are parties to this Convention.

Under Article 2 of the Convention for the Suppression of Terrorist Bombings, it is established that any person commits an offence if that person unlawfully and intentionally delivers, places, discharges or detonates 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.

However, pursuant to Article 3, the Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis to exercise jurisdiction,

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<sup>9</sup> See: General Assembly resolution 52/164 of 15 December 1997, annex.

<sup>10</sup> See: General Assembly resolution 54/109 of 9 December 1999, annex.

subject to several exceptions foreseen under other provisions of the Convention.

The Convention for the Suppression of Terrorist Bombings contains another important exclusion clause. In accordance with Article 19 (2), the activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, 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 explicitly excluded from the scope the Convention.

The 1999 Convention for the Suppression of the Financing of Terrorism not only reaffirmed certain principles incorporated in the Convention for the Suppression of Terrorist Bombings, but also provided for a legal regime prohibiting the unlawful financial activities by individuals or groups of persons which are ancillary to terrorist acts. Moreover, in accordance with Article 5 (1), States Parties to the Convention for the Suppression of the Financing of Terrorism are duty bound to establish criminal, civil or administrative liability of legal entities involved in transactions constituting offences under the Convention. They should also ensure that effective, proportionate and dissuasive criminal, civil or administrative sanctions, including monetary ones, be taken against such entities.

While re-stating the obligations of the States Parties to afford one another the greatest measure of assistance in connection with criminal investigations or extradition proceedings in respect of offences, the Convention unequivocally stipulates that States Parties “may not refuse a request for mutual legal assistance on the ground of bank secrecy”.<sup>11</sup> Among other measures, the Convention expects the States Parties to adopt elaborate procedures requiring financial institutions to take the most efficient actions for the identification of their usual and occasional customers, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity.<sup>12</sup> The States Parties should also establish and maintain channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences under the Convention.<sup>13</sup>

The Convention for the Suppression of the Financing of Terrorism entered into force less than two months ago, i.e. on 10 April 2002. Currently, 33 States are parties to this Convention.

Upon completion of the Convention for the Suppression of Terrorist Bombings, the Ad Hoc Committee commenced its consideration of an international convention for the suppression of acts of nuclear terrorism. The draft of this convention, proposed by the Russian Federation in 1998, was designed to fill the *lacunae* left by the 1979 Convention on the Physical Protection of Nuclear Material. The new convention would cover a broad range of possible targets, forms and acts of nuclear terrorism. In particular,

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<sup>11</sup> Paragraph 2, Article 12.

<sup>12</sup> Paragraph 1 (b), Article 18.

it would cover terrorist acts against nuclear power plants and any nuclear reactor, including those installed on vessels, vehicles, aircraft or space objects. The scope would also extend to threats and attempts to commit an offence, as well as participation as an accomplice.

Regrettably, negotiations to finalize the draft nuclear terrorism convention have been stalled.<sup>14</sup> This is largely due to a particular concern by some States that, under the proposed Article 4, the activities of the armed forces of a State would be excluded from the coverage of the future convention. In addition, divergent positions continue to remain on the question of extending the scope of the convention to cover acts of “State terrorism” and on the inclusion of provisions concerning the dumping of radioactive waste. Unfortunately, it was not possible to reconcile the opposing views by delegations on these three outstanding matters at the latest session of Ad Hoc Committee held in New York early this year. The Ad Hoc Committee recommended that the Sixth Committee, at the coming fifty-seventh session of the General Assembly, allocate appropriate time to continue consideration of outstanding issues.<sup>15</sup> No doubt, once finalized, the nuclear terrorism convention will become an important component in the existing framework of counter-terrorism conventions.

In 1999, the General Assembly entrusted the Ad Hoc Committee with the elaboration of a comprehensive convention on international terrorism.<sup>16</sup> However, the negotiations on this instrument started only in 2000, within

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<sup>13</sup> Paragraph 3 (a), Article 18.

<sup>14</sup> The latest draft nuclear terrorism convention prepared by the Friends of the Chairman is contained in doc. A/C.6/53/L.2

<sup>15</sup> Document A/55/37/, paragraph 20.

<sup>16</sup> See General Assembly resolution 54/110 of 9 December 1999. A text of this convention had initially been proposed by India in 1996 (doc. A/C.6/51/6).

the Working Group of the Sixth Committee at the fifty-fifth session of the General Assembly. During the latest round of discussion in the Working Group held in October 2001, important progress was achieved under the skilful chairmanship of Ambassador Rohan Perera of Sri Lanka. The meeting resulted in revised texts of almost all articles of the future convention. Among other provisions, these articles address questions of liability, extradition and custody of perpetrators of terrorist acts as well as measures of assistance in connection with criminal investigations or extradition proceedings.

However, the Working Group encountered serious difficulties in finding solutions on three important aspects: the issue of the definition of terrorism; the issue of the relationship of the comprehensive convention to existing and future counter-terrorism treaties; and the issue of differentiating between terrorism and the right of peoples to self-determination and to combat foreign occupation.

The discussions at the Ad Hoc Committee, at its session in January 2002, have shown that the finalization of the comprehensive convention essentially depends on whether the divergent positions could be reconciled on the pending key issues in article 18 of which there are now two versions to be considered in the future work.<sup>17</sup>

The Ad Hoc Committee recommended that the Sixth Committee, at the fifty-seventh session of the General Assembly, consider establishing a working group to continue the elaboration of

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<sup>17</sup> The text of this article has been included in the report of the Ad Hoc Committee: See A/57/ 37, annex IV.

the draft comprehensive convention as a matter of urgency.<sup>18</sup> It is hoped that at the forthcoming session of the General Assembly it will be possible to find an acceptable solution to these few outstanding issues.

The Ad Hoc Committee also recommended that the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations should be kept on the agenda of the Sixth Committee at the fifty-seventh session of the General Assembly.<sup>19</sup> During the meeting of the Ad Hoc Committee held last February, the delegation of Egypt informed the Committee that bilateral consultations were being conducted on the question of convening the high-level conference and that the results would be reported to the Chairman of the Committee in due course.<sup>20</sup>

Ladies and Gentlemen,

It is my strong belief that to strengthen the existing legal framework of counter-terrorism conventions, it is of paramount importance that all States should become parties to the existing instruments in this area as soon as possible. In this connection, I would like to recall the important Security Council resolution 1373 (2001) of 28 September 2001. By that resolution, acting under Chapter VII of the Charter of the United Nations, the Council

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<sup>18</sup> Document A/55/37/, paragraph 20.

<sup>19</sup> Ibid, paragraph 20.

established a series of binding measures for all States. Also, in operative paragraph 3 (b) of the resolution, the Security Council “calls upon all States ... to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999”.<sup>21</sup>

In line with this resolution, a special treaty event was held at United Nations Headquarters at the initiative of the Secretary-General in November 2001. It was devoted to multilateral treaties on terrorism deposited with the Secretary-General. The highest number of treaty actions during the event related to the International Convention for the Suppression of the Financing of Terrorism. It received 48 signatures and 8 ratifications/accessions. The International Convention for the Suppression of Terrorist Bombings received 15 ratifications/accessions. The International Convention against the Taking of Hostages received 5 ratifications/accessions, and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents received 4 ratifications/accessions.

You will also have noted that during another special Treaty event last April, ten instruments of ratification of the Rome Statute of the International Criminal Court were deposited. This meant that the threshold of 60 ratifications required for the entry into force was passed. In accordance with its Article 126, the Rome Statute will

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<sup>20</sup> Ibid, paragraph 12.

<sup>21</sup> Security Council resolution 1373 (2001) of 28 September 2001, paragraph 3 (d).



enter into force on 1 July 2002. The current level of participation in the Rome Statute is 139 signatories and 67 parties. The first standing International Criminal Court will thus become a reality. It will be an indispensable instrument in the search for justice and the ending of impunity. It will provide effective prosecution of and punishment for the most serious crimes of concern to the international community as a whole.

It should be recalled that the possibility of including specifically the crimes of terrorism within the jurisdiction of the Court was discussed during the Rome Conference in 1998. However, the Conference was unable to reach a generally acceptable definition of the crimes of terrorism. Consequently, it was recommended, in its resolution E of the Final Act, that a Review Conference envisaged under Article 103 of the Rome Statute consider this matter.<sup>22</sup>

Nevertheless, according to Article 7 of the Rome Statute, the jurisdiction of the Court encompasses crimes against humanity. The notion "crime against humanity", under Article 7, includes inter alia such acts as murder and extermination committed as part of a widespread or systematic attack directed against any civilian population, with the knowledge of the attack. Therefore, one can assume that the International Criminal Court would be competent to try the most serious acts of international terrorism as crimes against humanity. This is yet another reason for supporting the new Court and actively participating in it.

In conclusion, let me recall the Secretary-General's remarks at the Security Council meeting on 18 January 2002 about the need for all States to undertake hard steps to defeat terrorism. The Secretary-General expressed his strong belief that "they can do so only when the global struggle against terrorism is seen as necessary and legitimate by their peoples and that such universal legitimacy is something that the United Nations can do much to confer".<sup>23</sup> To this end, it is essential that the important work at the United Nations on the draft nuclear terrorism convention and the draft comprehensive convention be finalized as soon as possible to complement the legal framework of conventions aimed at combating international terrorism in all its forms and manifestations.

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<sup>22</sup> See doc. A/CONF.183/10 of 17 July 1998.

<sup>23</sup> S/PV.4453, p. 3.