

## The United Nations' Efforts at Combating International Terrorism

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The United Nations ('UN') and its specialized agencies have for several decades been active in developing a wide range of international legal instruments to suppress terrorist activities and bring the perpetrators to justice. However, terrorist acts continue to take place regularly globally, taking a high toll of innocent lives. Although several international and regional conventions on the subject have been adopted, the legal regime still needs to be completed, since some means of terrorist attacks, such as those used in Nice in 2016 (driving a truck through a crowd), are not directly covered under any of the existing conventions.

### 1. The League of Nations

The assassination of King Alexander I of Yugoslavia and the French Foreign Minister, Louis Barthou, in 1934, led to the adoption by the League of Nations of two important conventions in 1937: the Convention on the Prevention and Punishment of Terrorism,<sup>1</sup> and the Convention for the Creation of an International Criminal Court.<sup>2</sup> Although they never entered into force, the former instrument is significant in that it defined 'terrorism' – something which remains controversial to this day – as "[a]ll criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public". This formulation could be viewed as a precursor to the formulations found in more recent instruments.

It is also significant that it was possible at the time to adopt an accompanying Convention for the establishment of an International Criminal Court with jurisdiction to try terrorist crimes. This stands in stark contrast to the lack of agreement to include terrorist crimes among the "most serious crimes of concern to the international community as a whole" within the jurisdiction of the International Criminal Court at the 1998 Rome Conference.

These factors are important in placing the current initiatives on countering terrorism in a proper historical perspective.

### 2. The UN General Assembly

Efforts at the UN in the 1970s to adopt a comprehensive treaty banning terrorism could not reach any conclusion as they got bogged down in the debate about the underlying causes of terrorism and efforts to distinguish acts undertaken in the 'struggle for national liberation'. In September 1972, the UN Secretary-General ('UNSG') requested the General Assembly ('UNGA') to

include in its 1972 session an additional agenda item,<sup>3</sup> having in mind the increasing incidence of acts of violence directed at national leaders, diplomatic envoys, international passengers and other innocent civilians, which had created an ubiquitous climate of fear. The UNGA adopted the item (with an amended title) and referred it to the Sixth Committee.<sup>4</sup>

A study prepared by the Secretariat concluded that the origins and underlying causes of terrorism were complex and varied, but that many of them lay in international political or social situations which the UN was founded to improve. Following consultations, the Chairman of the Sixth Committee reported that in his view the most difficult question remained that of definition: all Members were in principle prepared to condemn international terrorism, but it appeared impossible to do this without identifying the phenomenon more precisely, and while there was no objection to the idea that the UN should continue to deal with the problem of international terrorism by pursuing an investigation of its causes and of appropriate counter-measures, opinion differed on the precise course to be followed and whether the two aspects of the problem – causes and measures – could be separated.

The UNGA decided to establish an *Ad Hoc* Committee on International Terrorism consisting of 35 members to consider the subject matter urgently and submit observations, including concrete proposals for an effective solution to the problem. This Committee considered a Draft Convention on the subject, but its work remained inconclusive.

### 3. The Sectoral Conventions

Nevertheless, beginning in the 1960s, international efforts by the UN and its specialized agencies – in particular the International Civil Aviation Organization, the International Maritime Organi-

<sup>3</sup> UNSG, "Request for the inclusion of an additional item in the agenda of the twenty-seventh session: Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives or jeopardize fundamental freedoms", 8 September 1972, UN doc. A/8791.

<sup>4</sup> UNGA, "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes", 18 December 1972, UN doc. A/RES/3034 (XXVII) (<http://www.legal-tools.org/doc/d407af>).

<sup>1</sup> See <http://www.legal-tools.org/doc/502186/>.

<sup>2</sup> See <http://www.legal-tools.org/doc/809de8/>.

zation, and the International Atomic Energy Agency – led to the development of ten conventions and protocols which are referred to as the ‘sectoral conventions and protocols’, dealing with specific acts or offences in their special area or field of application.<sup>5</sup>

Due to the futile efforts to elaborate a common legal definition of terrorism, these instruments generally prohibited specific terrorist acts that States Parties were required to criminalise under their national laws, without however using the terms ‘terrorist’ or ‘terrorism’, thereby avoiding or side-stepping the problem of definition. Further, most of the instruments (as well as amendments or additions thereto) were introduced only after a number of incidents in the world, and could be considered as a response to plug the legal gaps they exposed.

The majority of those instruments provide for individual criminal responsibility of the terrorists. Furthermore, except for the 1963 Tokyo Convention<sup>6</sup> and the 1991 Convention on the Marking of Plastic Explosives,<sup>7</sup> the contracting parties are obliged to either prosecute or extradite the perpetrators of concrete terrorist offences, though political offence was not precluded as a ground for non-extradition. Further, these instruments also provide for co-operation among States in matters of judicial assistance and prevention of the specified offences.

#### 4. Regional Conventions

Efforts by States at the regional level also resulted in a number of regional conventions to prevent and punish acts of terrorism, such as those by the Organization of American States, the Council of Europe, the South Asian Association for Regional Cooperation, the League of Arab States, the Commonwealth of Independent States, the Organisation of the Islamic Conference, and the Organisation of African Unity. It may be noted that all these regional conventions expressly referred to acts of ‘terrorism’, or the prevention, suppression or combatting of ‘terrorism’. Some of the conventions, in defining terrorism, included elements which had given rise to serious differences in the UNGA. Further, these definitions are cited by members of those regional groups in support of their positions in the discussions on the Draft Comprehensive Convention (below).

#### 5. The 1994 and 1996 Declarations on Measures to Eliminate International Terrorism

UNGA resolution 49/60 of 9 December 1994<sup>8</sup> adopted an important Declaration on Measures to Eliminate International Terrorism, through which UN Member States “solemnly reaffirm[ed] their unequivocal condemnation of all acts, methods and practices of terrorism, as criminal and unjustifiable [...] which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international co-operation, and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society”.<sup>9</sup> Most importantly, it determined that “[c]riminal 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”.<sup>10</sup>

This Declaration was reinforced in 1996, when the UNGA adopted a Supplemental Declaration<sup>11</sup> which reaffirmed the fundamental principles of the former and proclaimed that knowingly financing, planning and inciting terrorist acts were also contrary to the purposes and principles of the UN. In particular, it “reaffirm[ed] that States should take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status to persons seeking asylum, in order to ensure that the asylum-seeker had not participated in terrorist acts”<sup>12</sup> and also that States should take appropriate measures for the purpose of ensuring that refugee status, if granted, “is not used for the purpose of preparing or organizing terrorist acts intended to be committed against other States or their citizens”.<sup>13</sup> Finally, it “emphasize[d] the importance of taking steps to co-operate 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 terrorist acts”.<sup>14</sup>

#### 6. Recent Conventions Adopted by the General Assembly

UNGA resolution 51/210 (1996) established an *Ad Hoc* Committee 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, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism.<sup>15</sup>

During the next decade, Member States completed work on three more counter-terrorism instruments covering specific types of terrorist activities: the 1997 International Convention for the Suppression of Terrorist Bombings,<sup>16</sup> the 1999 International

<sup>5</sup> See the 1963 Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (<http://www.legal-tools.org/doc/97e04a/>); 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (<http://www.legal-tools.org/doc/42b7df/>); 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (<http://www.legal-tools.org/doc/c6856a/>), with 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (<http://www.legal-tools.org/doc/bca29e/>); 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents (<http://www.legal-tools.org/doc/514b57/>); 1979 International Convention against the Taking of Hostages (<http://www.legal-tools.org/doc/34c06d/>); 1979 Convention on the Physical Protection of Nuclear Material (<http://www.legal-tools.org/doc/a67d69/>); 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (<http://www.legal-tools.org/doc/7d6ae4/>); 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (<http://www.legal-tools.org/doc/25ba8c/>); and 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection (<http://www.legal-tools.org/doc/126466/>).

<sup>6</sup> See <http://www.legal-tools.org/doc/97e04a/>.

<sup>7</sup> See <http://www.legal-tools.org/doc/126466/>.

<sup>8</sup> See <http://www.legal-tools.org/doc/32083e/>.

<sup>9</sup> *Ibid.*, paras. 1–2.

<sup>10</sup> *Ibid.*, para. 3.

<sup>11</sup> UNGA, “Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism”, annexed to UNGA, “Measures to eliminate international terrorism”, 17 December 1996, UN doc. A/RES/51/210 (<http://www.legal-tools.org/doc/c8397d/>).

<sup>12</sup> *Ibid.*, para. 3.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, para. 8.

<sup>15</sup> See *supra* note 11.

<sup>16</sup> See <http://www.legal-tools.org/doc/dda995/>. It creates a regime of uni-

Convention for the Suppression of the Financing of Terrorism,<sup>17</sup> and the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism.<sup>18</sup> Unlike the earlier Conventions, these ‘new generation conventions’ expressly characterise the offences as ‘non-political’, and neither a request for extradition nor one for rendering mutual assistance could be refused solely on such ground.

## 7. The 9/11 Attacks in the United States

The horrendous terrorist attacks of 11 September 2001 killed more than 3,000 people, the highest toll of innocent lives of many different nationalities in any single terrorist attack. UNGA resolution 56/1 of 12 September 2001<sup>19</sup> strongly condemned the heinous acts of terrorism, which had caused tragic loss of life and destruction in New York, Washington, DC, and Pennsylvania, and urgently called for international co-operation to prevent and eradicate acts of terrorism.

These attacks also led to moves to modify earlier global conventions, as the use of hijacked aircraft for carrying out a further terrorist attack had not been contemplated earlier. These new instruments include the 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,<sup>20</sup> 2005 Amendments to the Convention on the Physical Protection of Nuclear Material,<sup>21</sup> 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation,<sup>22</sup> and the 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft.<sup>23</sup>

## 8. India’s Proposal for a Comprehensive Convention

In the forty-ninth session of the UNGA (1996), India proposed the adoption of a comprehensive legal instrument to deal with terrorist acts and also submitted a draft for this purpose. In its letter to the UNSG, it stated:

3. [...] India strongly believes that terrorism poses the most dangerous threat to human rights, democracy, development and maintenance of international peace and security. The existing international legal instruments deal with the menace of terrorism in a piecemeal manner on a sectoral basis in specific areas concerning civil aviation, hijacking, maritime navigation, hostage taking, internationally protected persons, etc. What is necessary is to replicate these elements in an umbrella convention, which will be a comprehensive, binding international legal instrument establishing universal jurisdiction over and criminality of terrorist activities and offenders.

4. The need for an international convention to prevent and combat terrorism arises from cross-border support to terrorist activities. Increase in the speed of communications has added to the complexity of the problem. Often acts of terrorism are planned in one country and executed in another. The accomplices or perpetrators of terrorist violence seek refuge in countries other than the State where the act is committed. The consequence of

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versal jurisdiction over the conduct it includes.

<sup>17</sup> See <http://www.legal-tools.org/doc/fc3fee/>. It requires parties to take steps to prevent and counteract the financing of terrorists, whether direct or indirect, including through groups ostensibly claiming to have charitable, social or cultural goals. Bank secrecy is no longer adequate justification for refusing to co-operate.

<sup>18</sup> See <http://www.legal-tools.org/doc/5891b5/>.

<sup>19</sup> See <http://www.legal-tools.org/doc/b6f347/>.

<sup>20</sup> See <http://www.legal-tools.org/doc/eafb04-1/>.

<sup>21</sup> See <http://www.legal-tools.org/doc/777cf6/>.

<sup>22</sup> See <http://www.legal-tools.org/doc/3150bc/>.

<sup>23</sup> See <http://www.legal-tools.org/doc/1715ac/>.

terrorist actions spills across international borders. Often terrorist movements are inspired by transnational organizations and fundamentalist ideologies. They sometimes have State backing. Preventing or countering such actions therefore goes beyond the purview of municipal law and needs and international convention.

[...]

7. India would propose that a comprehensive international convention against terrorism should also give effect to the principle of “prosecute or extradite”. This is already included in the resolution on “Measures to eliminate international terrorism”. It must be implemented in practice.<sup>24</sup>

The importance of the threat posed by international terrorism, the need for international co-operation to combat it, as well as the urgency to begin work on the Comprehensive Convention were further emphasized by Prime Minister Vajpayee in his address during the General Debate of the UNGA in September 1998:

Terrorism is one threat that affects us all equally. Terrorism takes a daily toll around the world. It is the most vicious among international crimes, and the most pervasive, pernicious and ruthless threat to the lives of men and women in open societies, and to international peace and security. [...] In short, terrorism has gone global and it can only be defeated by organized international action. [...] Let us make up our minds once and for all: terrorism is a crime against humanity. Unilateral steps can hardly stand scrutiny in an open society, let alone in the eyes of the international community. It should be the primary task of all open and pluralist societies to develop collective means for tackling this menace. [...] We earnestly recommend that the 1999 conference launch the process of negotiations on an international convention to provide for collective action against States and organisations which aid or abet terrorism.<sup>25</sup>

UNGA resolution 55/158 adopted on 12 December 2000<sup>26</sup> mandated the *Ad Hoc* Committee to begin work on drafting a Comprehensive Convention on International Terrorism (‘CCIT’), both to include terrorist crimes not covered under existing conventions (such as serious attacks on the environment and a serious and credible threat to commit a terrorist act) and to adopt enhanced measures of co-operation and assistance between States. Unlike the sectoral conventions, it does not limit the means by which a terrorist act may be carried out. It also seeks to impose an obligation on States Parties to ensure that refugee status is not accorded to a person in respect of whom there are serious reasons for considering that he or she has committed a terrorist offence.

### 8.1. How the CCIT Defines ‘Terrorism’

The negotiations on the Draft CCIT have brought to light the much-debated definitional issue. Whereas the draft text proposed by the sponsor State, India, contained an operational definition (covering specific criminal acts – such as unlawfully and intentionally causing death or serious bodily injury to any person, or serious damage to public or private property – when committed with terrorist intent, that is, with the purpose of intimidating a population or to compel a government or an international organization to do or abstain from doing any act), the negotiations – in

<sup>24</sup> UNSG, “Measures to Eliminate International Terrorism: Report of the Secretary-General”, 25 July 1994 [India’s reply: 27 June 1994], UN doc. A/49/257, pp. 12–13 (<http://www.legal-tools.org/doc/0e3018/>).

<sup>25</sup> UNGA, Fifty-third Session, 13<sup>th</sup> Plenary Meeting, 24 September 1998, UN doc. A/53/PV.13, p. 17.

<sup>26</sup> UNGA, “Measures to eliminate international terrorism”, 12 December 2000, UN doc. A/RES/55/158 (<http://www.legal-tools.org/doc/d7c1f9/>).

itiated in 2001, both in the *Ad Hoc* Committee and in a Working Group of the Sixth Committee – have been confronted by two divergent trends amongst different political and regional groups.

One group, the Organization of the Islamic Conference, favours a definition of the generic term ‘terrorism’, and has sought to draw a clear distinction between acts of terrorism and those acts committed in the course of an armed struggle in the exercise of the right of peoples to self-determination, in particular by peoples under foreign occupation, colonial or alien domination.

This approach is not acceptable to others – mainly Western-European states – that favour an operational or criminal law definition, and stress the fact that the Draft CCIT is a law-enforcement instrument, dealing with individual criminal responsibility, and that it is not the proper instrument by which to address broader political issues such as self-determination.

Related to these two broad, divergent approaches are a range of complex issues, such as the question of addressing the aspect of ‘State terrorism’ in a convention meant to be ‘comprehensive’ in character, a concern expressed by members of the Non-Aligned Movement and particularly those in Latin America. This concern is contrasted with the position of other States – most notably the US and the United Kingdom – that there should be a ‘carve out’ from the scope of the convention in respect of acts of military forces of a State in peace time, which would instead be subject to national military laws. These issues, in turn, have given rise to concerns that the Draft CCIT should not grant impunity for the military forces of a State.

In the light of these, the challenge for the negotiators was to shift the focus away from the definitional issue and to the concerns regarding the scope of application of the CCIT. The drafters attempted to do this by clearly delineating the CCIT regime from those applicable in specific situations, including armed conflicts.

Accordingly, negotiations subsequently proceeded on the basis of a ‘compromise package’, presented by the Co-ordinator of the CCIT drafting process and later adopted as a Bureau proposal,<sup>27</sup> which tries to meet these concerns by carving out the scope of application of the CCIT from other specific legal regimes, and to avoid the politically sensitive attempt to distinguish between acts of terrorism and acts committed during an armed struggle for national liberation.

## 8.2. Elements of the Compromise Package and its Underlying Rationale

Given this underlying rationale of the compromise package for the CCIT to operate alongside other specific legal regimes, it therefore seeks to preserve the integrity of such other laws and to guarantee that the CCIT does not override or interfere in them.

A core element of the Co-ordinator’s Proposal is the carve-out in respect of international humanitarian law (‘IHL’) appli-

cable to armed conflicts. The essence of paragraphs 2 and 5, read together, is to make explicit that acts committed by ‘armed forces’ (both State and non-State) in armed conflicts would be governed by IHL as the *lex specialis*, and not by the CCIT. In other words, the CCIT would not be criminalizing what is not prohibited under IHL.

In addressing the concerns that the CCIT should not criminalize acts of military forces of States in peace time, the Proposal stipulates in paragraph 3 that activities undertaken by the military forces of a State are not governed by the CCIT, inasmuch as they are governed by other rules of international law (such as those relating to State responsibility, the use of force, and human rights).

Similarly, as regards the issue of ‘State terrorism’, the approach of the Proposal is that other fields of law continue to apply. In particular, such laws would include the UN Charter, IHL, international criminal law (such as the crime of aggression or crimes against humanity), and the law relating to State responsibility for internationally wrongful acts, which would adequately cover the obligations of States where acts of violence are committed by States or their agents. It is thus believed unnecessary to also extend individual criminal liability for terrorism to State actors.

Further, in order to allay possible concerns of impunity arising from the exclusionary elements, the Proposal makes clear in the preamble and in paragraph 4 that the exclusion of certain acts from the scope of application of the CCIT will not lead to impunity in respect of such acts, if those acts are unlawful and punishable under other applicable rules of international law.

## 9. Conclusion

Consensus still eludes the negotiation process on the CCIT, with countries not willing to show flexibility or willingness to compromise on what are mainly political positions. Countries need to recognise that the scourge of terrorism affects all peoples and all countries, from which nobody is immune. Only through solidarity and co-operation can the global community send a clear and unambiguous signal to terrorists of its firm determination to work together to combat and eradicate this menace. It is of great importance to secure an agreement on and adoption of the draft comprehensive convention as soon as possible, thereby completing the legal framework of conventions aimed at combating international terrorism in all its forms and manifestations.

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