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## VISITING EXPERTS' PAPERS

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### THE ROLE OF THE UNITED NATIONS AND UNITED NATIONS OFFICE ON DRUGS AND CRIME IN THE FACILITATION, ACCESSION AND IMPLEMENTATION OF THE 13 UNIVERSAL LEGAL INSTRUMENTS AGAINST TERRORISM

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#### I. GLOBAL THREAT

On 10 March 2005, at the International Summit on Democracy, Terrorism and Security, that was organized in the memory of the tragic events of 3/11 (as the terrorist attack that happened on 11 March 2004 is often referred to) in Madrid, UN Secretary-General Mr. Annan highlighted once again that

*... terrorism is a threat to all states and to all peoples, which can strike anytime, anywhere. It is a direct attack on the core values the United Nations stands for: the rule of law; the protection of civilians; mutual respect between people of different faiths and cultures; and peaceful resolution of conflict... the United Nations must be at the forefront in fighting against it, and first of all in proclaiming, loud and clear, that terrorism can never be accepted or justified, in any cause whatsoever.<sup>1</sup>*

And indeed, recent developments clearly show that terrorism has become indiscriminate<sup>2</sup> and global in nature. Therefore, it is natural that, as *the only truly global organization with the goals and means of preserving peace and security*, the UN is expected to be at the forefront of the global action against terrorism. However, due to the sensitive nature of the phenomenon under scrutiny, many countries have taken steps to fight terrorism either through regional forums, bilateral arrangements and/or through their national agencies. Despite these options, it has to be highlighted again and again that as the only global organization, UN has a unique comparative advantage - its multilateral tools that are crucial and indispensable to fight terrorism. It cannot be overstated that *a global threat requires a global response*. And indeed as it will be seen later on, the UN has several important functions that it is fit to do better than anyone else.

#### Table 1: Role of the UN in the Fight against Terrorism:

- Establishing a universal legal framework against terrorism (international conventions and protocols, General assembly and Security Council resolutions including those adopted under Chapter VII);
- Reinforcing international co-operation in criminal matters against terrorism (universal legal instruments at work);
- Fostering international co-ordination against terrorism (Counter Terrorism Committee, Al-Qaida/Taliban Committee, 1540 Committee, 6<sup>th</sup> Committee of GA);
- Strengthening the capacity of Member States to comply with their international obligations (Terrorism Prevention Branch of the United Nations Office on Drugs and Crime and several other UN agencies).

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<sup>1</sup> Kofi Annan. Keynote address to the Closing Plenary of the International Summit on Democracy, Terrorism and Security. Accessible at: <http://english.safe-democracy.org/keynotes/a-global-strategy-for-fighting-terrorism.html>.

<sup>2</sup> If before terrorists targeted heads of States and governments and other VIPs, nowadays, ordinary civilians are targeted to produce an atmosphere of fear and panic among the population. If before members of a terrorist group usually came from one country, today a national of one country can recruit members of his terrorist organization in another, train them in a third, receive funds from a fourth, carry out an attack in a fifth and seek safe haven in a sixth.

## II. THE UNITED NATIONS OFFICE ON DRUGS AND CRIME AND ITS TERRORISM PREVENTION BRANCH

### A. The Branch

The United Nations Office on Drugs and Crime, a specialized office that belongs to the Secretariat of the UN, is stationed in Vienna and carries out the work of the Secretariat on drugs, crime and terrorism. The General Assembly as well as Economic and Social Council (ECOSOC) and its Commissions on Narcotic Drugs (CND) and on Crime Prevention and Criminal Justice (CCPCJ) provide the relevant mandate to the office in the respective fields. The draft resolutions of the Crime Commission are either adopted by the commission (rarely) or brought to the ECOSOC, which adopts them or approves those resolutions for adoption by the General Assembly. In recent years, in addition to its two original areas of work – drugs and crime, the UNODC has developed a third pillar of its work - delivering legislative technical assistance on counter-terrorism. It is done through its Terrorism Prevention Branch of the Division for Treaty Affairs (TPB).

The TPB also became an important executing partner for the UN Security Council Counter-Terrorism Committee (CTC) to implement a criminal justice response to international terrorism. More in particular, it focuses on the promotion of the ratification and implementation of the thirteen Conventions and Protocols against terrorism, which were adopted by the international community between 1963 and 2005.<sup>3</sup> The technical assistance programme, which functions on a request only principle, covers basically the following tasks:

#### **Table 2: Main Activities of the Terrorism Prevention Branch of UNODC**

- Promote the ratification and implementation of anti-terrorist conventions and protocols
- Explain requirements and benefits of these international instruments
- Analyze national legislation related to countering terrorism, advise on what is needed to implement conventions and protocols
- Provide sample laws from other countries or model laws
- Assist in legislative drafting of anti-terrorist legislation when national resources or experience is limited
- Train criminal justice and law enforcement officials in the implementation of new laws and international criminal justice cooperation, including extradition and mutual legal assistance
- Organize national and (sub-) regional workshops, usually in cooperation with a requesting government or other international and regional organizations

Source: UN Office on Drugs and Crime. Terrorism Prevention Branch. Delivering Counter-Terrorism Assistance. Vienna, TPB, April 2005, p.3.

The strengthening of the international legal regime against international terrorism is the main objective of TPB. It is done so through the conventions and protocols in order for States which are parties to these legal instruments to possess common definitions of certain terrorist offences and so they can exercise jurisdiction over the offences so defined. By creating extraterritorial jurisdiction (especially in the case of aircraft and ships) and by being obliged to either bring the terrorists to trial at home or extradite them to a requesting other State, a legal regime is created which leaves no sanctuary to terrorists once all States have become parties to all of these treaties – provided they have the capacity to monitor the whereabouts and movements of suspected terrorists. We are still some distance from having a seamless international regime, despite a notable increase in ratifications of the instruments in recent years<sup>4</sup> (Table 3):

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<sup>3</sup> See its website: [www.unodc.org/terrorism.html](http://www.unodc.org/terrorism.html) – For more information on the thirteen conventions, see: [www.un.org/Depts/dhl/resources/terrorism/index.html](http://www.un.org/Depts/dhl/resources/terrorism/index.html).

<sup>4</sup> The thirteenth instrument, International Convention for the Suppression of Acts of Nuclear Terrorism, was opened for signatures at the UN World Summit on 14 September 2005 in New York. So far, there are only two ratifications.

**Table 3: Number of Member States, which are Parties to the Twelve Universal Anti-Terrorism Conventions and Protocols.**

	Mid-2000	June 2006
1. Tokyo Convention (1963)	169	182
2. Hague Convention (1970)	171	182
3. Montreal Convention (1971)	174	185
4. Int. Protected Persons Convention (1973)	102	162
5. Hostage Convention (1979)	89	153
6. Nuclear Material Convention (1979)	64	117
6a. Amendment to the Nuclear Material Convention (1980)	—	3
7. Airports Protocol (1988)	99	158
8. Maritime Navigation Convention (1988)	39	135
8a. Protocol to the Maritime Nuclear Material Convention (2005)	n/a	0
9. Fixed Platform Protocol (1988)	35	124
9a. Protocol to the Fixed Platform Protocol (2005)	n/a	0
10. Plastic Explosives Convention (1991)	56	125
11. Terrorist Bombing Convention (1997)	8	146
12. Terrorist Financing Convention (1999)	0	153
13. Nuclear Terrorism Convention (2005)	n/a	2

Source: Data from UN Office of Legal Affairs; updates by Terrorism Prevention Branch (20/05/2005).

Once all States are parties, the challenge is full implementation, followed by flawless international judicial cooperation.

### **B. The Mandate**

In the context of the UN's efforts to prevent and combat terrorism, since 2002 the United Nations Office on Drugs and Crime (UNODC) has set up an expanded programme of work on technical assistance to counter terrorism that is based on mandates approved by the UN Commission on Crime Prevention and Criminal Justice and adopted by the General Assembly.

This mandate, carried out by TPB focuses on the *provision of assistance to countries, upon request, for ratifying and implementing the universal legal instruments against terrorism*. Since 2002, the General Assembly, the Economic and Social Council and the Commission on Crime Prevention and Criminal Justice have reiterated the mandates of TPB. For example, upon the recommendation of the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council, the General Assembly, in December 2004, adopted resolution 59/153, entitled "Strengthening international cooperation and technical assistance in promoting the implementation of the universal conventions and protocols related to terrorism within the framework of the activities of the United Nations Office on Drugs and Crime". In that resolution, the Assembly requested the TPB "to intensify its efforts to provide technical assistance in preventing and combating terrorism, including training judicial and prosecutorial personnel, where appropriate, in the proper implementation of the universal anti-terrorism instruments".

Particular characteristics of the UNODC are its experience in promoting and facilitating international cooperation in criminal matters, especially extradition and mutual legal assistance; its operational capacities and field presence; its programmatic synergy of efforts for dealing with drug control, transnational organized crime, money-laundering and corruption.

The Eleventh Congress on Crime Prevention and Criminal Justice, held in Bangkok from 18 to 25 April 2005, further acknowledged the importance of the technical assistance to the UN Member States and in its

outcome document “Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice” commonly known as the Bangkok Declaration.

**Table 4: Extract from the Bangkok Declaration:**

We call upon States that have not yet done so to become parties to and implement the universal instruments against terrorism. In order to enhance the capacity of States to become parties to and implement those instruments and to comply with the relevant Security Council resolutions against terrorism, we express our support for the continuing efforts of the United Nations Office on Drugs and Crime, within its mandate and in coordination with the Counter-Terrorism Committee and the Counter-Terrorism Executive Directorate of the Security Council, to assist States in their efforts to ratify and implement those instruments, through the provision of technical assistance upon request. This might include assistance to criminal justice systems to facilitate the effective implementation of those instruments.

The latest mandate TPB got from the GA 6<sup>th</sup> Committee in January 2006 when the Committee, in its resolution A/RES/60/43, requested the TPB/UNODC “to continue its efforts to enhance, through its mandate, the capabilities of the United Nations in the prevention of terrorism, and recognizes, in the context of Security Council resolution 1372(2001), its role in assisting States in becoming parties to and implementing the relevant international conventions and protocols relating to terrorism, including the International Convention on Suppressing of Acts of Nuclear Terrorism, and in strengthening international cooperation in criminal matters related to terrorism, including through national capacity building”.

**C. Cooperation with other UN Bodies**

The technical assistance activities of the Terrorism Prevention Branch are undertaken in full compliance with the decisions and policy guidance of the Security Council’s Counter-Terrorism Committee and in close coordination with the work of the Counter-Terrorism Committee Executive Directorate (CTED). There is full complementarity between the normative, policy and monitoring functions of the CTC/CTED and the technical assistance provision/delivery functions of UNODC. In its communications with those countries requiring assistance for reviewing anti-terrorism legislation, CTC makes specific reference to the specialized assistance available from UNODC, which delivers legislative and advisory services, drawing on its specialized substantive expertise.

The Branch also works in close coordination with the United Nations Office of Legal Affairs (OLA), the Department for Political Affairs and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in order to insure compliance with the relevant parts of their work.

**D. Strategy**

The objective of the technical assistance activities of the Terrorism Prevention Branch is to strengthen the legal regime against terrorism. It means providing legal advice to countries on becoming parties to the universal legal instruments against terrorism, by assisting countries incorporate these provisions into their national penal codes, by providing training to criminal justice officials on the new laws and by assisting countries in strengthening national institutions dealing with terrorism. When requested, assistance is also given for preparing the country reports to the Security Council’s Counter Terrorism Committee.

**E. Legal Advisory Services to Countries on Becoming Parties to the UN Conventions and Protocols**

In order to perform its task of encouraging the adoption and implementation of the universal agreements, the Terrorism Prevention Branch has to support the countries to continue their efforts to assume these international obligations.

It is therefore the responsibility of the TPB to indicate to the Member States the added value of the universal conventions and protocols; and the arguments are the following:

- the conventions *establish a definition of a particular type of terrorist activity* and require that the States Parties *criminalize that conduct according to the definition* agreed upon in the convention or protocol
- they contribute to *establish widespread legal recognition of the defined terrorist offences*. This is essential to *fulfill the requirement of dual criminality, which is a basic principle of international*

*cooperation* and may be jeopardized if a legal system defines an offence in a way that is not punishable in other countries.

- There are other aspects of international cooperation in criminal matters related to terrorism in particular for the investigative and prosecution phase that depend upon the existence of applicable agreements. Many countries cannot use compulsory process, such as a search warrant or an order to secure bank records, to assist a foreign police or prosecutorial office except pursuant to legal authority based on applicable bilateral, multi-lateral or universal agreement. Consequently, it is clear that *international cooperation in criminal matters, particularly extradition, mutual legal assistance and law enforcement cooperation, is a prerequisite for countering terrorism effectively.*

Another facet of the added value of the universal conventions and protocols is the obligation to establish jurisdiction to sue a suspected offender and to refer the offender for prosecution if he or she is found in the State and extradition is refused under the provisions of an applicable convention. This dominant principle, known juridically as *aut dedere aut judicare*, was embodied in all of the criminal conventions and subsequently made mandatory by Security Council Resolution 1373 which force countries to bring to justice the perpetrator of the terrorist acts, so that there will be no place where an accused terrorist is safe from extradition or prosecution.

By doing so, the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime is able to fulfill its advocacy role for promoting the universal conventions and protocols against terrorism.

Harmonization of national laws is easiest when laws refer to new crimes for which only a few nations already have national laws. Money-laundering, for instance, was not, until quite recently, a crime in many jurisdictions. A country is usually not willing to extradite a person – especially when he or she is a citizen – to another country if the offence for which that person is sought is only a crime in the requesting country and not at home. Dual criminality in the existence of laws against an offence in both requesting and hosting country of a criminal is necessary to make extradition possible.

Criminalizing certain harmful acts in all jurisdictions is therefore important if one wants to create a seamless international legal regime against harmful activity such as the financing of terrorism. However, when crimes are planned in one country but executed in another, the planning and preparation for a crime must also be subject to common international standards. The latest terrorist conventions on bombing and the suppression of the financing of terrorism also criminalize, next to planning and preparation, participation in a criminal association that has as its goal the preparation and execution of such acts. Also included is the knowing of financial support for the commission of terrorist acts. The newer conventions also extend the jurisdiction beyond the territory where the offence occurs, taking the nationality of the perpetrator or the victims into account in the decision to prosecute someone accused of terrorist acts.<sup>5</sup> The goal behind these 13 universal legal instruments against terrorism is simple and I mentioned it before but it is worth reiterating it: to create an overarching international legal regime in which there are “no safe havens for terrorists”.

#### **F. Providing Legal Advice to Countries on Incorporating the Conventions and Protocols in their Legal System**

The task does not end with the ratification of the conventions and protocols. An important part of the work of the *UNODC/TPB* is to assist countries in incorporating their dispositions into their own legal system. To do this, the Terrorism Prevention Branch analyzes national legislation related to counter-terrorism and examines the periodic reports of the countries to the Counter Terrorism Committee of the Security Council. It informs the relevant agencies of any discrepancies between their existing statutory scheme or proposed legislation and the requirements of the relevant conventions, protocols and Security Council resolutions, as well as identifies legislative needs together with relevant national authorities.

The creation of an offence of terrorist financing can be used as an example of the approach followed by the UNODC/TPB when providing advice on the implementation of the universal conventions and protocols.

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<sup>5</sup> Idem, p. 6.

The most common difficulty with respect to establishing a crime of financing of terrorism results from a belief that the general offence of participation in a crime can be used to punish terrorist financing without the need to create a separate offence or to amend those definitions in the general part of the code. Very often, countries say that they do not need a new or amended law to cover the financing of terrorism because they will simply punish it as a form of participation in the resulting terrorist bombing, murder or other violent offence or attempt, as supplemented by their anti-money laundering laws.

However, while administrative anti-money laundering structures and methods can contribute as useful information for the fight against terrorism, the financing of terrorism will almost never constitute an offence under a money laundering law which was not drafted or amended to specifically address the provision or collection of funds for the purposes of terrorism. Obviously, money-laundering statutes almost always require proof that the funds laundered are the proceeds of crime. Funds for terrorist financing may derive from ordinary crime, such as fraud offences, but more commonly they come from legitimate sources.

Another element to point out is that criminalizing the financing of terrorism only as a form of participation in the principal offences requires that the main offence be completed or attempted. Such a limited definition does not satisfy the Financing Convention, and does not enable the preventive strategy of investigating, prosecuting and punishing terrorist preparations before actual violence occurs.

### **G. Field Presence**

Special efforts have been made to achieve increased field level presence and input, through assigning regional and sub-regional experts. This has already been done for North Africa and the Middle East, South and Central America, the Commonwealth of Independent States (CIS), Central Asia, South-East Asia and the Pacific. These experts provide specialized national and sub-regional input and perspectives and facilitate effective follow-up to the activities of the Branch. An important parallel objective of this initiative is to build-up sub-regional expertise on counter-terrorism issues. This field presence is necessary to insure proper practical expertise and experience as well as relevant follow-up to the advisory services provided.

### **H. Operational Partnerships**

Efforts have also been made to maximize impact through operational partnerships and complementarity of efforts. In this regard, technical assistance activities are undertaken in close partnership and cooperation with numerous international, regional and sub-regional organizations. These include, but are not limited to, the United Nations High Commissioner for Refugees (UNHCR), Organization of American States (OAS), the Organization for Security and Cooperation in Europe (OSCE), the Commonwealth Secretariat, the International Monetary Fund, the African Union (AU), the International Organization of la Francophonie, the North Atlantic Treaty Organization (NATO), the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), the League of Arab States, Interpol, the International Civil Aviation Organization (ICAO), the Counter-Terrorism Working Group of the European Union (COTER), the Financial Action Task Force (FATF) and the Counter Terrorism Action Group (CTAG) of the G-8.

### **I. The Global Project on “Strengthening the Legal Regime against Terrorism”**

In order to realize the activities, a global project on “Strengthening the Legal Regime against Terrorism” provides the overall framework for delivering technical assistance to countries. It functions as an on-going ‘rolling’ project, with global, sub-regional and national components and activities. It is regularly revised and up-dated, to determine continued relevance of all elements, discontinue those components which are no longer essential and to integrate new initiatives in response to new requirements.

*Through the project, assistance was provided to 112 countries between October 2002 and March 2005. Of those 112 countries, more than 60 received direct assistance and the others received indirect assistance through sub-regional and regional activities. Over 600 national officials have been trained on the ratification and implementation requirements. They were familiarized with the provisions of the 12 universal legal instruments against terrorism and the requirements of Security Council resolution 1373 (2001).*

*During the period October 2002 to December 2004 the Branch achieved a project implementation rate of close to 100 per cent in relation to funds made available, thus meeting the Branch’s goal of utilization of*

provided funds within a period of 12 months.<sup>6</sup> This was accomplished through advance planning and initiation of project activities in anticipation of receipt of pledged voluntary contributions.

The scope of assistance provided through this project has been broadening, in terms of its geographical reach, the numbers of countries receiving assistance, and the substantive content of the assistance provided. In the future, increased attention will be given to implementation assistance, as more countries ratify the universal instruments.

#### **J. Perspectives**

As the universal legal instruments against terrorism will be achieving a universal level of ratification, new project activities will be given priority:

- *Legislative drafting assistance* to incorporate universal provisions into national legislation
- *Strengthening institutional judicial structures necessary for anti-terrorism cooperation*
- *Providing on-line technical assistance on extradition and mutual legal assistance requests*
- *Providing support for establishing international cooperation mechanisms* through mentorship, both to speed the process and achieve compliance with international standards
- *Training national criminal justice officials*, on the basis of the universal legal instruments and in accordance with criminal justice standards

Moreover, continued attention will be given to follow-up measures. The Branch will also undertake evaluations and impact assessment of its technical assistance.

After this overview of the role of UNODC/TPB, we can now proceed to other UN bodies involved in the fight against terrorism.

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<sup>6</sup> The 2005 activities are currently under review and evaluation.