

## COUNTER TERRORISM LEGAL FRAMEWORK

Lessons Learned from IDLO policy dialogues  
in collaboration with UNODC

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### Overview

With the rising intensity of terrorist attacks in the world, member states of the United Nations have increasingly expressed concern pertaining to the seriousness of the problem. While terrorism has been on the agenda of the United Nations (then League of Nations) since 1934, adherence to the 13 counter-terrorism treaties and relevant UN Security Resolutions has dramatically increased in the last five years. Never has the need for a consensus on an applicable universal legal framework been higher to counter terrorists who are able to commit an attack, flee, and evade the punishment due to the lack of legal consensus. It is of the current view that effective enforcement of counter-terrorism legislation requires global cooperation amongst all State governmental and judicial authorities. Since 1997, the United Nations Office on Drugs and Crime (UNODC) has been an instrumental facilitator in countering terrorism, transnational organized crime and drug trafficking, and in providing legal assistance to member states. With respect to terrorism and international crime, the UNODC assists foreign governments with the ratification and implementation of the existing 13 legal counter-terrorism treaties and of recent amendments adopted with regard to some of them in 2005.

In this endeavour, IDLO, an intergovernmental organization dedicated to the rule of law, utilizes its in-country network of over 40 alumni associations of lawyers with local legal expertise and logistical arrangements for the UNODC/IDLO policy dialogues. The present DLU highlights the lessons learned from the policy dialogues held to date on counter-terrorism in collaboration with the UNODC.

**'We strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security.'**

2005 World Summit Outcome  
Adopted by the United Nations  
General Assembly by  
its resolution 60/1

The Development Law Update (DLU) is published on a quarterly basis by the International Development Law Organization (IDLO).

The DLU endeavors to provide information concerning current, important lessons learned pertaining to the development field, largely based on IDLO videoconference sessions, Rome-based legal training programs and in-country legal training and technical assistance programs.

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#### ABOUT IDLO

The International Development Law Organization (IDLO) is an international inter-governmental organization dedicated to promoting the rule of law and good governance in developing countries, countries in economic transition and in those emerging from armed conflict.

By doing this, IDLO creates the basis for economic and social development and favors conditions that are conducive to improved social justice, increased trade and investment and more efficient distribution of all forms of aid. IDLO fulfils its mandate through training, technical assistance, research and publication. Since its establishment in 1983, IDLO has worked with over 17,000 legal professionals from more than 175 countries and IDLO Alumni Associations now operate in 41 countries.

IDLO current member States are: Australia, Austria, Bulgaria, Burkina Faso, Colombia, Ecuador, Egypt, France, Italy, the Netherlands, Norway, the People's Republic of China, the Philippines, Romania, Senegal, Sudan, Tunisia and the United States of America.

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## The International Legal Framework to Counter Terrorism

In facing the difficulties in counter-terrorism enforcement, member states of the United Nations have responded with a universally applicable legislative framework with the main objective to attack the root of terrorism. There are currently 13 legal instruments in the applicable counter terrorism legal framework that have been adopted by the United Nations, with a 14th treaty presently under negotiation by member states. Current negotiations for the 14th international treaty are aimed at complementing the existing counter terrorism legal framework.

The ratification and full application of the universal counter-terrorism legal framework by all States will ensure that terrorists are brought to justice. Terrorists will no longer be able to commit an act of terrorism, and evade criminal enforcement by fleeing to more lenient countries as safe havens. Yet, in order for terrorism to be counteracted, many states require assistance in incorporating the UN Resolutions and conventions into local laws and implementing this framework. To this end, UNODC-IDLO policy dialogues on Countering Terrorism address the legal aspects of counter-terrorism terrorism.

Experts from the UNODC highlighted the global legal framework against terrorism, which rests on 4 pillars:

- Security Council Resolution no. 1373 (2001), adopted on 28.9.2001, is the worldwide counter terrorism code, addressing relevant issues in a general and legally binding manner.
- Security Council Resolution 1735 (2006) deals with the issue of Al-Qaeda and the Taliban.
- Security Council Resolution 1540 (2004) on weapons of mass destruction.
- 13 International conventions and protocols against terrorism.

**The first pillar** refers to the Security Council Resolution 1373, which is legally binding for all UN Member States and was adopted on the basis of Chapter VII of the UN Charter. It is applicable without geographic or time boundaries. Resolution 1373 deals with four main clusters of issues: a) prevention and suppression of terrorist financing; b) prevention and criminalization of terrorist acts; c) international cooperation, meaning mutual legal assistance on criminal matters, and d) the creation of a counter-terrorism committee.

Paragraph 1 of Resolution no. 1373 applies to the prevention and suppression of terrorist financing, which plays a key role in counter-terrorism activities. To this end, States need to criminalize the financing of terrorism and ensure that the financial sector reports suspicious transactions, a mechanism well known in anti-money laundering activities. States also need to allow for the freezing of funds of those who commit or attempt to commit acts of terrorism. Moreover, states need to exercise oversight over two types of organizations: a) non-profit organizations that are sometimes subjected to abuse; and b) alternative remittance systems, underground banks and other financial service providers, especially if they do not know their customers, obstructing efforts to trace the source and final destination of the funds.

Paragraph 2 of Resolution 1373 refers to the legal basis for requesting and receiving mutual legal assistance. While the main thrust of counter-terrorism activities is prevention, bringing terrorists to justice is also essential, which requires effective legislation and procedures for mutual legal assistance.

A key element in improving cooperation between states and allowing for effective cross-border prosecutions to combat terrorism requires strong respect for human rights and independence of the judiciary.

**The second pillar** consists of the Security Council Resolution 1735, which obliges states to prevent designated persons and entities related to Al Qaeda and the Taliban from entering into UN member states, to freeze their funds and to supply them with weapons. Resolution 1735 is also linked to resolution 1373.

**The third pillar**, Security Council resolution 1540, obligates States to refrain from providing any form of support to non-state actors that intend or attempt to develop, acquire, manufacture, transport or use weapons of mass destruction.

**The fourth pillar** consists of four different types of international conventions to counter terrorism: UN Conventions, instruments related to civil aviation, maritime agreements, and one IAEA convention. The international community has negotiated 13 universal legal



NEPAL - Picture by Gregor\_y

**By its very nature, terrorism is an assault on the fundamental principles of law, order, human rights and peaceful settlement of disputes upon which the United Nations is established . . .**

**The United Nations has an indispensable role to play in providing the legal and organizational framework within which the international campaign against terrorism can unfold."**

Kofi Annan, Secretary-General of the United Nations

instruments related to the prevention and suppression of terrorism between 1963 and 2005 that make up the framework for international cooperation in countering terrorism. A comprehensive convention on international

terrorism is being elaborated under the auspices of the United Nations. Nonetheless, the efficacy of these treaties rests on the ratification and effective implementation globally, which was underlined by the Security Council Resolution no. 1373. Universal ratification of all the instruments remains the ultimate goal, with significant progress achieved in this regard to date.

The universal conventions and protocols against terrorism share common features, including the definition of terrorism related offences and the establishment of the principle of "aut dedere aut judicare", i.e. the obligation of States to extradite or prosecute perpetrators of these offences irrespective of the context in



Videoconference disseminated from the IDLO Rome-based Distance Learning and Research Center

which they occur. They also create international cooperation mechanisms.

Aside from the common features these global conventions do share, a universal definition of terrorism has not yet been agreed upon. Delegates from various countries have stressed the importance of defining terrorism for various reasons. For some States, defining terrorism is essential to distinguish terrorist acts from national liberation struggles; whereas for other States, defining terrorism is crucial in order to fend off foreign dominion or unnecessary interference with domestic policies. Failure to agree on a universal definition of terrorism has led the UN to address terrorism through the negotiation of separate conventions aimed at suppressing a number of acts and activities considered terrorist in nature.

The end result is a legal framework for countering terrorism that consists of 13 conventions, plus related Security Council Resolutions, which instead of defining terrorism, set forth criminal offences, which can be perpetrated irrespective of terrorist intent. In some cases, proven terrorist motivation may be considered as an aggravating circumstance.

For example, the International Convention for the Suppression of Terrorist Bombing alone is considered to cover 79% of all acts that are commonly categorized as terrorist acts.

Within this context, UNODC technical assistance applies the following 5-step methodology to determine and address areas of incompatibility between international conventions on terrorism and local national legislation

1. Examination of national legislation;
2. Advice on drafting and amending laws;
3. Agreement on a plan of action;
4. Assistance in drafting reports to the Counter Terrorism Committee; and
5. Organizing training workshops concerning new legislation.

**General concerns regarding the international legal framework on counter terrorism:**

Participants from several countries viewed the counter-terrorism legal framework as a response to international terrorist acts by Al Qaeda and the Taliban, even though the main sources of terrorism are perceived to come from domestic militant groups, and other internal sources.

Another widely held concern among participating countries was the lack of international consensus on the definition of terrorism, with international conventions and Security Council Resolutions referring to specific terrorist acts, rather than terrorism in general. This concerned all of the countries involved, as well as the apparent failure to address the roots of terrorism—indispensable to formulating an effective response.

**Deficiencies identified under national legal frameworks on counter terrorism:**

Participants to the UNODC-IDLO videoconference noted how national laws, such as one country's Money Laundering Act may be too broad—encompassing a wide array of transactions—leading to the concern that laws intended to counter the financing of terrorism will overcrowd the national system. Adequate oversight was also noted as problematic under another country's NGO legislation, potentially providing a loophole for terrorist funding by "front" organizations.

Experts revealed that oftentimes countries that have been victims of terrorism are characterized by anti-terrorism approaches that are predominantly domestic. Consequently, these countries fail to use international instruments available in a broader, more transcontinental manner, which would facilitate the apprehension of criminals who would otherwise escape prosecution.

**UNIVERSAL CONVENTIONS AGAINST TERRORISM**

- \* Convention on Offences and Certain Other Acts Committed On Board Aircraft (entered into force 12/14/69)
- \* Convention for the Suppression of Unlawful Seizure of Aircraft (entered into force on 10/14/71)
- \* 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 (09/23/71)
- \* Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (entered into force 01/26/73)
- \* Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents(entered into force 02/20/77)
- \* International Convention against the Taking of Hostages (entered into force 06/03/83)
- \* Convention on the Physical Protection of Nuclear Material (entered into force 02/08/87)
- \* Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (entered into force 03/01/92)
- \* Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (entered into force 03/01/92)
- \* Convention on the Marking of Plastic Explosives for the Purpose of Detection (entered into force 06/21/98)
- \* International Convention for the Suppression of Terrorist Bombings (entered into 05/23/01)
- \* International Convention for the Suppression of the Financing of Terrorism (entered into force 04/10/02)
- \* Conference to consider and adopt proposed amendments to the Convention on the Physical Protection of Nuclear Material (entered into 07/08/05)
- \* Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (2005)
- \* Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (2005)
- \* International Convention for the Suppression of Acts of Nuclear Terrorism (not entered into force as of March 2006)

## IDLO Distance Learning and Video Conference facilities



### Areas identified for future technical assistance to implement the counter-terrorism legal framework:

Countries requested technical assistance in drafting and/or filling the missing gaps in the law on countering terrorism within the context of the UN legal instruments.

One option may be to provide in-country workshops with drafters of criminal legislation, at the request of departments concerned, including parliaments, in order to comply with the international legal framework on countering terrorism.

Another suggestion for future assistance is the dissemination of relevant national laws and international conventions against terrorism to relevant authorities and magistrates through a handbook or bench book.

Capacity building for government personnel, specifically for investigations for newly established financial intelligence units and other departments involved in counter-terrorism initiatives was recommended. Lastly, it was generally held that capacity building, training, equipment and communication technology was essential, including proper training, technology, equipment and overall judiciary infrastructure, as well as assistance with legislative drafting.

### Conclusion

Countering terrorism requires global efforts by all member states in order to be effective. Garnering the global consensus to set forth a legal framework for countering terrorism can be viewed as a first step towards success, yet the second and more difficult step is for state members to implement these instruments into national law. To this end, the lessons learned from aforementioned sessions were intended to facilitate target countries' integration of the legal framework domestically and identify areas for future assistance.

By facilitating these counter terrorism dialogues, IDLO is honored to have contributed with the UNODC toward the achievement of pillars three and four of the UN Global Counter-Terrorism Strategy: building states' capacity to prevent and combat terrorism, while ensuring respect for human rights for all and rule of law

## UNODC-IDLO dialogues on Countering Terrorism:

- Countering Terrorism in Tanzania (November 11, 2005)
- Conventions on Countering Terrorism, Sri Lanka (March 23, 2006)
- Conventions on Countering Terrorism and Domestic Laws in Nepal (October 19, 2006)
- Conventions on Countering Terrorism, Sudan (January 25, 2007)
- Countering Terrorism in Bangladesh (March 15, 2006)
- Conventions on Countering Terrorism, Papua New Guinea (April 18, 2007)

Bangladesh



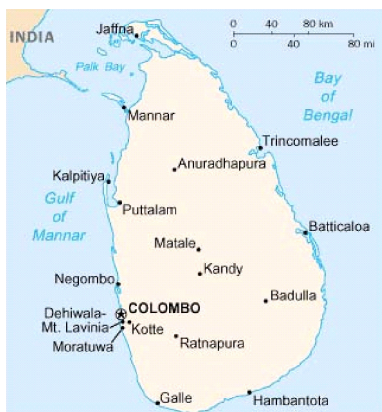
Nepal



Papua New Guinea



Sri Lanka



Sudan



Tanzania



## Endnotes

- <sup>1</sup> Mr. Walter Gehr, Project Coordinator, Terrorism Prevention Branch, UNODC; and Mr. Stefano Betti, Associate Expert with the Terrorism Prevention Branch of the UNODC.
- <sup>2</sup> ACTION WITH RESPECT TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION
- <sup>3</sup> See Extradition and Human Rights in the Context of Counter-terrorism, a background paper by the Office for Democratic Institutions and Human Rights (April 2005).
- <sup>4</sup> The resolution called on all State to become parties as soon as possible to the instruments and fully implement them and to increase cooperation in that area (See UNODC Delivering Counter-Terrorism Assistance Report March 2006).

## Upcoming Activities

### Rome-based Courses

#### Development Lawyers Course

in English: April 2 - June 9

in French: October 1 - December 7

#### Seminar on “Economic Empowerment of Women”

in French: June 18-29

in English: September 10-21

### Regional

#### Microfinance Course: Building Inclusive Financial Sectors and Support for Legal and Regulatory Frameworks

Cairo: July 1-12 (in Arabic)

Mexico City: Oct. 29 - Nov. 9 (in Spanish)

#### Public International Trade Law Course

Dakar: July 9-27 (in French)

Sydney: November 12-30 (in English)

#### Seminar on “Economic Empowerment of Women”

Cairo: Oct. 21 - Nov. 1 (in Arabic)

#### Entreprise and Investment Lawyers Course

Cairo: Nov. 11 - Dec. 13 (in Arabic)

### Policy Dialogues and Seminars

Dialogues:

#### Policy dialogues on counter terrorism legislation:

Cambodia (May)

Timor Leste (September)

Indonesia (October)

For further information visit [www.idlo.int](http://www.idlo.int)



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