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The Universal Legal Framework against Terrorism

National Workshop

24, 27 April 2009

Funa Futi, Tuvalu

*United Nations Office on Drugs and Crime
Regional Centre for East Asia and the Pacific*



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Outline

- I. *What is the Global Legal Framework against Terrorism ?*
 - ▶ Security Council Resolutions
 - ▶ 16 conventions/protocols/amendments
- II. *What are the legal obligations in the legal regime (conventions/protocols)?*
 - ▶▶ Criminalization of serious offences
 - ▶▶ International Cooperation in criminal matters & extradition



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The universal legal framework against terrorism

Security Council
resolutions 1373
and 1624

Security Council
resolutions on
Al-Qaida
and the Taliban
(1267, 1333,
1390, 1735)

Security Council
resolutions 1540
and 1673
(weapons of mass
destruction)

13 + 3 universal
instruments
against
terrorism

UNODC'S TECHNICAL ASSISTANCE



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Resolution 1373: legal status

- ▶ **Legally binding for all UN Member States**
- ▶ **Adopted on the basis of Chapter VII of the United Nations Charter**
 - Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression



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Resolution 1373: States are required to

- ▶ Prevent and suppress **financing of terrorist acts** (para. 1)
 - Criminalise the financing
 - Freeze the funds/assets/economic resources
- ▶ Criminalise terrorist acts as serious offences (para.2)
- ▶ Repress preparation and support of terrorist acts (para.2)
- ▶ Greatest measure of international cooperation in criminal matter (para.2 f)
- ▶ Deny safe haven
 - Extradite or prosecute
- ▶ Prevent forgery/fraudulent use of identity papers & travel documents



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Resolution 1373: Calls upon all States to

- Intensify the **exchange of operational information**
- Cooperate through **bilateral as well as multilateral agreements**
- **Ratify and fully implement the 13+3 universal instruments** against terrorism
- Ensure asylum-seeker not involved in terrorist acts
- Ensure no abuse of refugee status
- Ensure that claims of **political motivation** are **not** recognized as **grounds for refusing requests for the extradition**



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Counter-Terrorism Committee

- ▶ Composed of all 15 members of the Security Council
- ▶ Monitors the implementation of resolution 1373
- ▶ Received and analyses the reports from Member States
 - Greater focus on States' implementation and less on reporting
- ▶ Coordinates technical assistance
- ▶ Strengthened by the creation of the executive Directorate (CTED)
 - Security Council resolution 1535 (2004)
 - CTC country visit and CTED identifies needs for TAs
 - Technical guide to the implementation of 1373



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Resolution 1624 (2005): Incitement to Terrorism

The Security Council calls upon all States to

- **Prohibit & prevent incitement**
 - **Freedom of expression**
- **Deny safe haven**
- **Report to the CTC**



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CT & HRs

- **Security Council Resolution 1456 (2003):**
 - Measures taken to combat counter-terrorism
 - Comply & are in accordance with
 - international law on human rights
 - international law on refugee
 - humanitarian law
- **Security Council Resolution 1624 (2005)**
 - understanding & appreciation of diversity
 - Ensure the same as Res. 1456
- **GA Res. 60/288 (2006)**
 - Global CT Strategy
 - An entire section on HRs & Rule of Law



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Security Council Resolutions: Al-Qaida, Usama bin Laden/the Taliban

▶ The Sanction Committee

- Resolution 1267 (1999) on 15 October 1999
- "the Al-Qaida and Taliban Sanctions Committee"

▶ The sanctions regime

- **1333 (2000)**, 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), **1735 (2006)** and 1822 (2008)
 - All adopted under Chapter VII of the United Nations Charter
- Applicable to the individuals and entities wherever
- Consolidated List

▶ Measures required:

- **assets freeze**
- **travel ban**
- **arms embargo**



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Security Council Resolutions:
Al-Qaida, Usama bin Laden / the Taliban

The Sanctions Committee

▶ S/Res/1526(2004)

- Establish the Monitoring Team**

 - Monitoring the implementation of UN members**

▶ the Committee's guideline (paragraph 17)

▶ States' report to the Sanctions Committee

- reports from members states pursuant to paragraph 6 of resolution 1455 (2003)**



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Applicable measures to Al-Qaida and the Taliban

Security Council Resolutions:

Al-Qaida, Usama bin Laden and/or the Taliban

- All the incremental from 1267
 - 1333 (2000),
 - 1390 (2002),
 - 1455 (2003),
 - 1526 (2004),
 - 1617 (2005),
 - 1735 (2006)
 - 1822 (2008)

✓ The requirements
of resolution 1373



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Security Council resolution 1540

- ▶ Domestic controls to prevent proliferation of WMD
- ▶ No support to **non-state actors**
- ▶ A Committee reporting to the Security Council
 - 1540 Committee

**COMPARATIVE TABLE REGARDING THE UNITED NATIONS SECURITY COUNCIL COMMITTEES
ESTABLISHED PURSUANT TO RESOLUTIONS 1267(1999), 1373 (2001) and 1540 (2004)**

SECURITY COUNCIL COMMITTEE ESTABLISHED PURSUANT TO RESOLUTION 1267 (1999) CONCERNING AL-QAIDA AND THE TALIBAN AND ASSOCIATED INDIVIDUALS AND ENTITIES	SECURITY COUNCIL COMMITTEE ESTABLISHED PURSUANT TO RESOLUTION 1373 (2001) CONCERNING COUNTER-TERRORISM	SECURITY COUNCIL COMMITTEE ESTABLISHED PURSUANT TO RESOLUTION 1540 (2004)
Establishment and Mandate	Establishment and Mandate	Establishment and Mandate
<p>The Committee was established on 15 October 1999 under resolution 1267 which imposed sanctions measures on Taliban-controlled Afghanistan for its support of Usama Bin Laden and Al-Qaida. The sanctions regime has been modified and strengthened by subsequent resolutions, including resolutions 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006) and 1822 (2008). As of January 2002, the sanctions measures no longer exclusively target territory in Afghanistan but now apply to the individuals, groups, undertakings and entities designated on the Consolidated List wherever they may be located. There are about 500 names of individuals and entities on the Consolidated List against whom 3 sanctions measures (assets freeze, travel ban and arms embargo) must be applied by all States. The latest version of the Consolidated List can be found at: http://www.un.org/sc/committees/1267/consolist.shtml.</p> <p>The Committee oversees the implementation by UN Member States of the 3 sanctions measures. It considers names submitted for listing and de-listing as well as any additional information on listed individuals and entities. It also considers exemptions to the assets freeze and travel ban measures.</p>	<p>Following the adoption of resolution 1368 (2001), in the wake of the attacks of 11 September 2001, the Security Council adopted resolution 1373 (2001) which, <i>inter alia</i>, requires States to combat terrorism through a series of actions that are best carried out through the adoption of laws and regulations and the establishment of administrative structures. Resolution 1373 (2001) also called upon States to work together to prevent and suppress terrorist acts, including through increased cooperation. It also established the CTC to monitor implementation of the resolution by all States and to increase the capability of States to fight terrorism. In carrying out its mandate, the CTC liaises with international, regional and subregional organizations and devotes substantial attention to facilitating the provision of assistance to those States that require such assistance for the effective implementation of the resolution. The CTC is also mandated to maintain a dialogue with States on the implementation of resolution 1624 (2005) on prohibiting incitement to commit terrorists acts and promoting dialogue and understanding among civilizations.</p>	<p>On 28 April 2004, the Security Council unanimously adopted resolution 1540 (2004) under Chapter VII of the UN Charter. The resolution requires all states to establish domestic controls to prevent access by non-State actors to nuclear, chemical, biological weapons and their means of delivery and to take effective measures to prevent proliferation of such items and establish appropriate controls over related materials. The mandate of the Committee was extended by resolution 1673 (2006) until April 2008 and again by resolution 1810 (2008) until April 2011. While reaffirming the provisions of resolution 1540 (2004), the Council decided that the Committee shall intensify its efforts to promote full implementation of the resolution by all States and encouraged the submission of reports and additional information on such implementation and assistance requests. The Committee cooperates with international, regional and sub-regional organizations, and acts as a clearinghouse to match offers and requests for assistance to States to implement the resolution. The Committee submitted in July 2008, its second report to the Security Council on States' compliance with the resolution through the achievement of the implementation of its requirements (S/2008/493).</p>
Expert Group	Expert Group	Expert Group
<p>The 1267 Committee is assisted by a Monitoring Team of 8 experts with expertise related to activities of the Al-Qaida organization and/or the Taliban, including: counter-terrorism and related legislation; financing of terrorism and international financial transactions, including technical banking expertise; alternative remittance systems, charities, and use of couriers; border enforcement, including port security; arms embargoes and export controls; and drug trafficking.</p>	<p>The CTC was originally assisted by a group of 10 experts. Subsequently, in seeking to revitalize the CTC, the Security Council established the Counter-Terrorism Committee Executive Directorate (CTED) pursuant to resolution 1535 (2004), in order to enhance the ability of the CTC to monitor the implementation of resolution 1373 (2001) and effectively continue its capacity-building work. The mandate of CTED was extended until 31 December 2010 as per resolution 1805 (2008). CTED is headed by an Executive Director with the rank of Assistant Secretary-General. It consists of the Executive Director's office; the Assessment and Technical Assistance Office (ATAO), comprising the Head of Office and 18 experts; and the Administration and Information Office (AIO), comprising the Head of Office and support staff.</p>	<p>The 1540 Committee is assisted by a group of 8 experts in their own capacity with expertise in the various areas covered by the resolution. The experts have developed a 'matrix' to examine the status of Member States' implementation of the resolution. The filled elements of the matrix draw upon legislative and enforcement measures provided in the national reports, as complemented by official information made available in the websites of governments and international inter-governmental organizations, and through dialogue with States.</p>
Measures	Measures	Measures
<p>The 1267 Committee monitors a sanctions regime which requires all UN Member States to:</p> <ol style="list-style-type: none"> Freeze without delay, the funds and other financial assets or economic resources of the individuals and entities designated on the Consolidated List. There is no requirement to seize or confiscate/forfeit these assets, funds and resources. Prevent the entry into or the transit through their territories of the individuals designated on the Consolidated List. There is no requirement to arrest or prosecute these individuals. Prevent the direct or indirect supply, sale or transfer, from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types, including military equipment, spare parts and technical advice, assistance, or training related to military activities, to the individuals and entities on the Consolidated List. <p>All three measures are preventive in nature and are not reliant on criminal standards set out under national laws. More information can be found on the Committee's website at: http://www.un.org/sc/committees/1267/index.shtml</p>	<p>Legal, institutional and practical measures related to resolution 1373 (2001), including their related technical assistance measures, fall under the following categories:</p> <ol style="list-style-type: none"> Counter-terrorism law and practice (e.g. international counter-terrorism instruments) Financial law and practice (e.g. criminalization of the financing of terrorism, establishing an FTU, freezing of funds, etc.) Customs and border controls Police and law enforcement Immigration law and practice to prevent movement of terrorists Extradition law and practice (e.g. mutual legal assistance) Training and capacity-building for the judiciary Expert monitoring and illegal arms trafficking Civil aviation security Maritime security Transportation security Military counter-terrorism training National security <p>Website: http://www.un.org/sc/ctc/</p>	<p>Resolution 1540 (2004), in its paragraphs as numbered below, requires:</p> <ol style="list-style-type: none"> States to refrain from providing any support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical, biological weapons and their means of delivery. States to adopt and enforce appropriate effective laws and controls which prohibit non-State actors to: conduct such activities or use such weapons and their means of delivery, in particular for terrorist purposes; and attempts to engage, participate in as an accomplice, assist or finance such activities. States to take and enforce effective domestic control measures to: account for, secure, physically protect, such weapons, delivery means, and related materials (3a-b); improve border and customs controls to detect, deter, prevent and combat illicit trafficking and brokering in such items; establish export, transit, trans-shipment, and end-user controls; and enforce criminal and civil penalties (3c-d). <p>In paragraphs 9 and 10, States are called upon to promote dialogue and cooperation on non-proliferation and take cooperative action to prevent illicit trafficking of such weapons, delivery means and related materials. Website: http://www.un.org/sc/1540</p>



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16 International Treaties on Counter-Terrorism



United Nations Conventions



Instruments related to civil aviation



Maritime agreements



IAEA Conventions



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United Nations Conventions

Convention on prevention and punishment of crimes against internationally protected persons	167 States Parties
Convention against the Taking of Hostages	164 States Parties
Convention for the Suppression of Terrorist Bombing	154 States Parties
Convention against Terrorist Financing	161 States Parties
Convention for the suppression of acts of Nuclear Terrorism	32 States Parties



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Civil Aviation (ICAO)

Convention on offences and Certain other Acts committed on Board Aircraft	183 States Parties
Convention for the Suppression of the Unlawful Seizure of Aircrafts	182 States Parties
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	185 States Parties
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation	162 States Parties
Convention on the Marking of Plastic Explosives for the Purpose of Detection	137 States Parties



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Maritime Treaties (IMO)

1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	147 States Parties
+ 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime navigation	2 contracted states (Not yet in force)
1988 Protocol for the Suppression of Unlawful Acts against Fixed Platforms Located on the Continental Shelf	134 States Parties
+ 2005 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental shelf	0 (Not yet in force)



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Physical Protection of Nuclear Material (IAEA)

▶ **Convention on the Physical Protection of Nuclear Material**

+ **Amendment to the Convention on the Physical Protection of Nuclear Material**

134 States Parties

15 contracted states

(Not yet in force)



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 - ▶ 16 conventions/protocols/amendments
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Common points to the Conventions

- ▶ Establish offences
- ▶ Universal suppression
 - Jurisdiction
 - International cooperation mechanisms
 - Mutual Legal Assistance
 - Extradition
 - *aut dedere aut judicare*



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Establish the offences

What is Terrorism?

judicial perspective



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Establish the offences

Specific serious offences

judicial perspective



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Establish the offences

Some terrorist crimes:

- **Hijacking a plane**
- **Endangering safety of aircraft in flight**
- **Attacking a diplomat**
- **Taking hostage**
- **Stealing nuclear material**
- **Dangerous act at international airport**
- **Bombing a public place**
- **Hijack a ship**
- **Endangering a fixed platform on continental shelf**

Terrorist acts



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Establish the offences

Is the incrimination of terrorism necessary?

13+3 Conventions

- ▶ No need to incriminate the offence of “terrorism”
- ▶ Criminalize certain offences
 - terrorist motive
 - Aggravating criminal element



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aut dedere aut judicare

- **judicial jurisdiction**
 - **merely based on presence of the alleged offender**
 - ✓ **If not extradited to the requesting State Party**
- ✓ **Extradite or prosecute**
 - ✓ **Bring the case to prosecution process**

(More on this in next session)



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International Cooperation in Criminal Matters

▶ **Mutual Legal Assistance/Extradition**

- **Not a political offence**
- **Not a fiscal offence (FT Convention)**
- **No bank Secrecy (FT Convention)**

(More on this in later session)



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- ▶ Working closely with CTC and CTED
- ▶ Working with the **Counter-Terrorism Implementation Task Force (CTITF)**

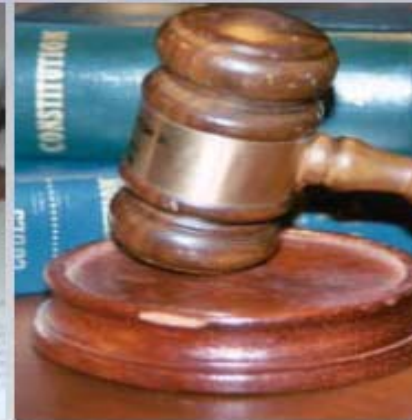


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Reaffirming that acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism.

United Nations Global Counter-Terrorism Strategy
Adopted by the General Assembly
on 8 September 2006 (resolution A/60/288)



Helping countries to

- **Become parties to the universal legal instruments against terrorism**
- **Adopt and implement legal provisions**
- **Expand counter-terrorism knowledge of criminal justice officials**
- **Reinforce international cooperation against terrorism**

The goal: Strengthen the Global Legal Regime against Terrorism



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Technical assistance



UNODC's instruments



UNODC's technical assistance



Partnerships



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UNODC's instruments



- Legislative guides
- Legislative database
- Manuals on international cooperation



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Legislative guide

- ▶ Legislative overview of the conventions
- ▶ Advice for the incorporation of international provisions into domestic law
- ▶ Examples of implementing laws
- ▶ Legislative models



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Legislative Database



- ▶ Text of penal codes and criminal procedure codes of more than 100 countries
- ▶ Domestic legislation divided into categories
- ▶ Possibility to search through keywords
- ▶ Apply for a password online:

www.unodc.org/tldb





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Manuals on international cooperation

- ▶ Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters
- ▶ The Mutual Legal Assistance Request Writer Tool



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UNODC's technical assistance: methodology

➤ **Terrorism Prevention Branch UNODC/TPB**

➤ Global Project on Strengthening the Legal Regime against Terrorism

5 steps TAs

- ✓ Examination of national legislation
- ✓ Advice on drafting and amending laws
- ✓ Agreement on a plan of action
- ✓ Assistance in the drafting of reports to the CTC
- ✓ Organizing of training workshops concerning implementing legislation
 - ✓ National
 - ✓ Regional



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**For further information:
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