The Universal Legal Framework against Terrorism

National Workshop
24, 27 April 2009
Funa Futi, Tuvalu
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
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
The universal legal framework against terrorism

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UNODC’S TECHNICAL ASSISTANCE
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
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
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
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)
  - CTC country visit and CTED identifies needs for TAs
  - Technical guide to the implementation of 1373
The Security Council calls upon all States to

- Prohibit & prevent incitement
  - Freedom of expression
- Deny safe haven
- Report to the CTC
- Measures taken to combat counter-terrorism
  - Comply & are in accordance with
    - international law on human rights
    - international law on refugee
    - humanitarian law

- 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
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
The Sanction Committee

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

The sanctions regime

  - 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
The Sanctions Committee

  - 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)
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
The universal legal framework against terrorism

Security Council resolutions 1373 and 1624

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

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

UNODC's technical assistance

13 + 3 universal instruments against terrorism
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

## Security Council Committee Established Pursuant to Resolution 1267 (1999) Concerning Al-Qaeda and the Taliban and Associated Individuals and Entities

<table>
<thead>
<tr>
<th>Establishment and Mandate</th>
<th>Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Committee was established on 15 October 1999 under resolution 1267 which imposed sanctions on Talibam-controlled Afghanistan for its support of Osama bin Laden and Al-Qaeda. The sanctions regime has been modified and strengthened by subsequent resolutions, including 1333 (2000), 1390 (2002), 1455 (2003), 1256 (2004), 1617 (2005), 1735 (2008) and 1822 (2008). As of January 2002, the sanction measures no longer exclusively target territory in Afghanistan but now apply to the individuals, groups, undertakings, and entities identified on the Consolidated List.</td>
<td>Legal, institutional and practical measures related to resolution 1267, including the related technical assistance measures, fall under the mandate of the Committee. Legal aspects to focus on include: 1. Counter-terrorism law and practice (e.g., international counter-terrorism instruments). 2. Financial law and practice (e.g., criminalization of the financing of terrorism, establishing an EUU, freezing of funds, etc.). 3. Customs and border controls. 4. Police and law enforcement. 5. Immigration law and practice to prevent movement of terrorists. 6. Extrajudicial law and practice (e.g., mutual legal assistance). 7. Training and capacity-building for the judiciary. 8. Expert monitoring and illegal arms trafficking. 9. Civil aviation security. 10. Maritime security. 11. Transportation security. 12. Military counter-terrorism training. 13. National security.</td>
</tr>
</tbody>
</table>

## Security Council Committee Established Pursuant to Resolution 1373 (2001) Concerning Counter-Terrorism

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<td>Following the adoption of resolution 1540 (2004), in its paragraphs as numbered below, requires: 1. States to refrain from providing any support to non-State actors that intend, with the intent to develop, acquire, purchase, transport, transfer or use nuclear, chemical, biological weapons and their means of delivery; and 2. States to adopt and enforce appropriate effective laws and controls to ensure that the use of such weapons is prevented. In particular, for terrorist purposes and attempts to engage, participate in as an accomplice, assist or finance such activities. 3. States to take and enforce effective domestic control measures to account for, secure, physically protect, and deliver means and related materials to non-State actors to protect such weapons, delivery means and related materials (a-b). Improve border and customs controls to detect, deter, prevent and combat illicit trafficking and brokering in such items; establish export, transit, transshipment, and end-user controls; and enhanced force criminal and civil penalties on the Consolidated List. 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.</td>
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The universal legal framework against terrorism

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UNODC’S TECHNICAL ASSISTANCE

13 + 3 universal instruments against terrorism
16 International Treaties on COunter-Terrorism

United Nations Conventions

Instruments related to civil aviation

Maritime agreements

IAEA Conventions
<table>
<thead>
<tr>
<th>Convention</th>
<th>States Parties</th>
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<tr>
<td>Convention on prevention and punishment of crimes against internationally protected persons</td>
<td>167 States Parties</td>
</tr>
<tr>
<td>Convention against the Taking of Hostages</td>
<td>164 States Parties</td>
</tr>
<tr>
<td>Convention for the Suppression of Terrorist Bombing</td>
<td>154 States Parties</td>
</tr>
<tr>
<td>Convention against Terrorist Financing</td>
<td>161 States Parties</td>
</tr>
<tr>
<td>Convention for the suppression of acts of Nuclear Terrorism</td>
<td>32 States Parties</td>
</tr>
<tr>
<td>Convention on offences and Certain other Acts committed on Board Aircraft</td>
<td>183 States Parties</td>
</tr>
<tr>
<td>Convention for the Suppression of the Unlawful Seizure of Aircrafts</td>
<td>182 States Parties</td>
</tr>
<tr>
<td>Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation</td>
<td>185 States Parties</td>
</tr>
<tr>
<td>Convention on the Marking of Plastic Explosives for the Purpose of Detection</td>
<td>137 States Parties</td>
</tr>
<tr>
<td>Treaty</td>
<td>States Parties</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
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<tr>
<td>+ 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime navigation</td>
<td>2 contracted states (Not yet in force)</td>
</tr>
<tr>
<td>+ 2005 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental shelf</td>
<td>0 (Not yet in force)</td>
</tr>
<tr>
<td>Convention on the Physical Protection of Nuclear Material</td>
<td>134 States Parties</td>
</tr>
<tr>
<td>----------------------------------------------------------</td>
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</tr>
<tr>
<td>Amendment to the Convention on the Physical Protection of Nuclear Material</td>
<td>15 contracted states</td>
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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
What is Terrorism?

Establish the offences

judicial perspective
Specific serious offences

judicial perspective

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
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
• 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)
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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13 + 3 universal instruments against terrorism

UNODC’S TECHNICAL ASSISTANCE
Working closely with CTC and CTED

Working with the Counter-Terrorism Implementation Task Force (CTITF)
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
Technical assistance

UNODC’s instruments

UNODC’s technical assistance

Partnerships
UNODC’s instruments

- Legislative guides
- Legislative database
- Manuals on international cooperation
Legislative guide

- Legislative overview of the conventions
- Advice for the incorporation of international provisions into domestic law
- Examples of implementing laws
- Legislative models
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](http://www.unodc.org/tldb)
Manuals on international cooperation

- Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters
- The Mutual Legal Assistance Request Writer Tool
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
For further information: www.unodc.org

UNODC Regional Centre for East Asia and the Pacific

United Nations Buidling, 3rd floor, Block B

Rajdamnern Nok Avenue, Bangkok 10200, Thailand

Tel: +66-2-288-2098 / 1158

Web: http://www.unodc.un.or.th