

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



INTERNATIONAL TERRORISM

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INTERNATIONAL TERRORISM

I. Introduction

1. Issues concerning international terrorism have been on the agenda of the General Assembly of the United Nations and various other international organizations for over three decades. During this period several instruments were adopted addressing certain specific acts of terrorism, which are also known as sectoral conventions.¹ However, the adoption of the historic Declaration on “Measures to Eliminate International Terrorism” by the General Assembly at its 49th Session on 9th December 1994² gave impetus to the active consideration of the issues involved.

2. At its 51st Session, the General Assembly adopted a supplement to its 1994 Declaration and established an Ad Hoc Committee³ with a mandate to elaborate an international convention for the suppression of terrorist bombings and another one on suppression of acts of nuclear terrorism.

¹. These conventions are: 1. Convention on Offences and Certain Other Acts Committed on Board Aircraft; signed at Tokyo on 14 September 1963 (entered into force on 4 December 1969). 2. Convention for the Suppression of Unlawful Seizure of Aircraft; signed at The Hague on 16 December 1970 (entered into force on 14 October 1971). 3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; signed at Montreal on 23 September 1971 (entered into force on 26 January 1973). 4. Convention on the Prevention and punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; adopted by the General Assembly of the United Nations on 14 December 1973; entered into force on 20 February 1977). 5. International Convention against the Taking of Hostages; adopted by the General Assembly of the United Nations on 17 December 1979 (entered into force on 3 June 1983). 6. Convention on the physical Protection of Nuclear Material; signed at Vienna on 3 march 1980 (entered into force on 8 February 1987). 7. 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; signed at Montreal on 24 February 1988 (entered into force on 6 August 1989). 8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; done at Rome on 10 March 1988 (entered into force on 1 March 1992). 9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; done at Rome on 10 March 1988 (entered into force on 1 March 1992). 10. Convention on the Marking of Plastic Explosives for the Purpose of Detection; signed at Montreal on 1 March 1991 (entered into force on 21 June 1998). 11. International Convention for the Suppression of Terrorist Bombings; adopted by the General Assembly of the United Nations on 15 December 1997 (entered into force on 23 May 2001). 12. International Convention for the Suppression of the Financing of Terrorism; adopted by the General Assembly of the United Nations on 9 December 1999 (entered into force on 10 April 2002).

². A/RES/49/60

³. A/RES/51/210

3. Following that mandate, the Ad Hoc Committee met twice during the year 1997 and completed its work on the convention on suppression of terrorist bombings, which later was adopted by the General Assembly at its 52nd Session on 15 December 1997⁴.

4. The matters concerning elaboration of an international convention for the suppression of acts of nuclear terrorism have been discussed extensively in the subsequent meetings of the Ad Hoc Committee and its Working Group. However, since no consensus could be reached on certain outstanding issues, the work on the draft convention has remained inconclusive.

5. In the meantime, at its 53rd Session, the General Assembly initiated consideration of a draft convention on suppression of financing of terrorism taking as a basis for discussion the draft text submitted by the delegation of France to the Sixth Committee. The Convention was adopted by the General Assembly on 9th December 1999⁵.

6. At that session, the General Assembly decided that the negotiations on the draft of a comprehensive convention on international terrorism based on the draft circulated by India earlier at the 51st Session in 1996, would commence in the Ad Hoc Committee at its meeting in September 2000. In addition, it would also take up the question of convening a high level conference under the auspices of the United Nations to address these issues. Pursuant to that mandate, a Working Group of the Sixth Committee in its meeting held from 25th September to 6th October 2000 considered the draft comprehensive convention on international terrorism as proposed by India. Further meetings of the Working Group were held from 12 to 23 February 2001 and 15 to 26 October 2001.

7. During the deliberation on the draft comprehensive convention, consensus has emerged on certain issues notwithstanding differences of opinion on some crucial matters. Accordingly, subsequent discussions were focused on the outstanding issues to arrive at a common understanding on these issues.

II. Discussion on the Draft Comprehensive Convention on Terrorism at the Seventh Session of the Ad Hoc Committee

8. The seventh session of the Ad Hoc Committee on terrorism was convened in accordance with the General Assembly resolution 57/27 of 19 November 2002 between 31 March and 2 April 2003 at the UN Headquarters.

9. In further continuance of its work the Ad Hoc Committee held three meetings during this session: the 27th, 28th and 29th on 31 March, 1 April and 2 April respectively. The Ad Hoc Committee had before it the report of its sixth session⁶ containing, *inter alia*, a discussion paper prepared by the Bureau on the preamble and article 1 of the draft

⁴. A/RES/52/164

⁵. A/RES/54/109

⁶. General Assembly Official Records, Fifty-seventh Session, Supplement no. 37 (A/57/37)

comprehensive convention on international terrorism; a list of proposals made during the informal consultations on the preamble and article 1 appended to the report of the Coordinator on the results of the informal consultations in the Ad Hoc Committee; the informal texts of articles 2 and 2 bis, prepared by the Coordinator; the texts of articles 3 to 17 bis and 20 to 27 prepared by the Friends of Chairman; two texts of article 18- one circulated by the Coordinator for discussion and the other proposed by the Member States of the Organization of Islamic Conference; and the report of the Working group of the Sixth Committee established at the fifty-seventh session of the General Assembly⁷ containing the list of written amendments and proposals submitted by delegations in connection with the elaboration of a draft comprehensive convention.

10. During the general discussion at the plenary meeting held on 31 March 2003, delegations reiterated their support for the work of the Committee and emphasized the responsibility of the Ad Hoc Committee as a law-making body while recognizing the work of the other bodies of the United Nations in considering various other aspects of the fight against terrorism. Some delegations were of the view that any effort to combat terrorism must take into consideration other crucial aspects such as respect for the rule of law, human rights and fundamental freedoms and international humanitarian law without which the fight against terrorism would result in arbitrary use of force. Delegations favored the adoption of uniform policy in condemning terrorist acts. An appeal was made to States to ratify the existing sectoral conventions on terrorism if they have not done so. Several delegations expressed the view that terrorism had to be defined and a distinction should also be made between it and the legitimate struggle of peoples against foreign occupation. It was felt that the root causes of terrorism and the protection of environment were also need to be addressed. Delegations have also expressed support for the work of the Security Council and its Counter Terrorism Committee.

11. Several delegations emphasized that the draft comprehensive convention should not supersede or override the existing sectoral instruments but should serve the purpose of filling the gaps in them. Delegations were further urged to make compromises to pave the way to expeditiously resolve outstanding issues, namely, the preamble and articles 1, 2, 2 bis and 18 of the draft comprehensive convention. Several of them felt the need for convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

12. The Coordinator on the draft comprehensive convention on terrorism held several rounds of informal consultations with both individuals and groups of delegations on 31 March and 1 April 2003. These consultations, intended to narrow down the existing outstanding issues, mainly focused on articles 18 and 2 bis of the draft comprehensive convention. The views of the delegations may be summarized as follows in the light of past developments in this regard including discussions on other issues.

Preamble

⁷. A/C.6/57/L.9

13. While commenting on the preamble of the draft comprehensive convention, some delegations reiterated the proposals made during the sixth session of the Ad Hoc Committee. It may be recalled that various proposals were made during the last session of the Ad Hoc Committee for their inclusion in the preamble.⁸ During the present session some delegations noted that the preamble as it was formulated might be retained without any changes as it sufficiently encompassed the objectives of the proposed convention.⁹ However, others were of the view that the underlying causes of terrorism need to be addressed to serve the overarching purpose of the convention. It is to be noted that the purpose of this proposal was to include in the framework of the convention the underlying causes of terrorism as the phenomenon of terrorism was intrinsically interlinked to other larger issues involving economic, political and social dimensions. In this regard, they observed that this purpose would be served by formulating it as contained in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. As proposed during the last session, the preambular paragraph taken from this convention reads as follows:

Recalling General Assembly resolution 40/61 of 9 December 1985, which, inter alia, 'urges all States, unilaterally and in cooperation with other States, as well as relevant United Nations organs, to contribute to the progressive elimination of causes underlying international terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation, that may give rise to international terrorism and may endanger international peace and security.

14. This proposal intends to adopt a larger framework for the elimination of terrorism as it emphasizes the significance of other crucial issues that are supposed to create a breeding ground for terrorism. This proposal also underlines that legal framework has to be complemented with initiatives in other respects as legal mechanism alone cannot eliminate this scourge. This proposal is pertinent in the context of developing countries as many of these countries are experiencing violent movements whose causes are very much rooted in the conditions as mentioned in the proposed preambular paragraph. Thus it underlines that terrorism should be considered and dealt with as symptomatic of disease rather than as a disease itself, which needs a broader approach apart from the indispensable requirement of a legal regime of the draft comprehensive convention nature.

Article 1

15. The Seventh session of the Ad Hoc Committee has not made any progress regarding Article 1¹⁰ of the draft comprehensive convention. This draft article contains definitions of 'State or government facility', 'military forces of a State', 'infrastructure

⁸. For the text of the proposals, see General Assembly Official Records, Fifty-seventh Session, Supplement No. 37 (A/57/37) Appendix.

⁹. Ibid. Annex I

¹⁰. For the text of this draft article see: Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Supplement no. 37 (A/57/37).

facility’, ‘place of public use’ and ‘public transportation system’. It may be recalled that during the sixth session of the Ad Hoc Committee some specific proposals were made in relation to ‘State or government facility’ and ‘place of public use’. Some delegations observed that their position on this article would depend on the outcome of discussions on article 18. Similarly, during the seventh session no concrete decisions were arrived at, perhaps because of the pending finalization of other articles, particularly, Article 18.

Article 2

16. This article¹¹ is an important provision as it provides the workable definition of terrorist offences. This article incorporates those offences that fall under the purview of the proposed convention. Therefore this convention, like other sectoral conventions, provides the workable definition of terrorist offences instead of defining what terrorism means. No substantive discussion took place on this article during the sixth session of the Ad Hoc Committee. During the seventh session, some delegations observed that the text as it exists might be retained as it provides a satisfactory workable definition for the purposes of the functioning of the convention. Another suggestion was made asking the clubbing of paragraphs 1 (b) and (c) and exclusion of reference to serious damage to the environment.

17. However, some delegations felt that previous proposals on this article were lying undecided waiting for the outcome of the negotiations on Article 18. Thus the discussion has not led to any concrete conclusions as this article is also linked to other articles on which decisions are yet to be made.

Article 2 bis

18. This article is intended to specify the relationship between the proposed comprehensive convention and the existing sectoral conventions. The draft text of Article 2 bis prepared by the coordinator reads as follows:

Where this Convention and a treaty dealing with a specific category of terrorist offence would be applicable in relation to the same act as between States that are parties to both treaties, the provision of the latter shall prevail.

19. This provision clearly underlines that whenever there is any overlap of proposed convention and other treaty in respect of any act, the other treaty would prevail. However some delegations were of the view that this provision was not in consonance with the regime of the Vienna Convention on the Law of Treaties.¹² They further observed that its

¹¹. For the informal text of the Article prepared by the coordinator, see: Ibid, annex II.

¹². The relevant provisions of the Vienna Convention on the Law of Treaties are:

Article 30

(1). Subject to Article 103 of the Charter of the United Nations, the rights and obligations of states parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

literal interpretation would lead to restrictive application of the Convention. Another view was expressed based on the premise that the draft comprehensive convention was intended to fill the gaps in the existing legal framework. This view argued that the draft convention was intended to create a separate and autonomous legal regime that would be applicable in parallel with various sectoral conventions. Therefore, they were of the view that any effort to include a provision on the relationship between the draft comprehensive convention and sectoral conventions should deal with situations that give rise to conflict of laws or situations that had the potential to give rise to different interpretations.

20. Some delegations felt that this article may be formulated in such a way that the sectoral conventions would apply in case of conflict with the draft comprehensive convention or the draft convention is intended to cover situations where the sectoral conventions were silent or did not deal with it specifically.

21. However, some delegations argued that there was a need to preserve the existing legal framework of sectoral conventions and in that respect Article 2 bis was intended to be a savings clause without intending to lead to a contradiction with the Vienna Convention on the Law of Treaties.

Article 18

22. This article deals with the savings clause and exclusions from the scope of the convention. The seventh session of the Ad Hoc Committee focused its discussion on the two texts prepared by the previous coordinator at the Working Group meeting of the Sixth Committee in October 2001 and the other by the Member States of the Organization of Islamic Conference (OIC). These two texts are as follows:

The text prepared by the previous coordinator.

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.
3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention
4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

(2). When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

(3). When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under Article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

The text proposed by the Member States of the Organization of Islamic Conference.

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.
 2. The activities of the parties during an armed conflict, including in situations of foreign occupation, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.
 3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are in conformity with international law, are not governed by this Convention.
 4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.
23. Delegates at the seventh session of the Ad Hoc Committee focused their discussion on paragraphs 2 and 3 of the above two texts. Some delegations felt that the reference to “armed forces” during an armed conflict in paragraph 2 of the text prepared by the coordinator was too narrow in scope, as it would exclude the activities of other participants whose activities are also covered by international humanitarian law. In their view this formulation was too restrictive as it excluded only “armed forces” from the purview of the proposed convention by including under its scope the other participants in an armed conflict.
24. On the other hand, the reference to “the parties” as included in the text proposed by the Member States of the Organization of Islamic Conference was considered to be too broad, particularly because the proposed convention was intended to be a law enforcement instrument. It may be recalled that during last session of the Ad Hoc Committee it was discussed as to whether to include ‘including in situations of foreign occupation’ in paragraph 2. These proposals in the OIC text were considered as sanctioning terrorism. It may be noted in this context that proposals of the OIC in the second paragraph would have larger effect particularly in the context of national liberation movements as this proposal would result in the exclusion of activities of these movements from the purview of the proposed convention.
25. Regarding paragraph 3, the discussion was on the exclusion of activities of military forces of a State in the exercise of their official duties. The proposal by the coordinator says the activities of military forces in exercise of official duties are excluded inasmuch as they are governed by other rules of international law. On the other hand the OIC proposal replaces it with inasmuch as they are in conformity with international law.
26. The coordinator’s proposal is liberal in the sense that if the activities of military forces are governed by other rules of international law they do not fall under the scope of the proposed convention. However, the OIC proposal intends to bring the activities of military forces under the proposed convention, as it requires that the activities of military forces should be in conformity with international law for them to be excluded from the

scope of the convention. Therefore violation of any other rule of international law by military forces would be covered under the proposed convention. Thus its scope would be much wider so far as military forces are concerned.

27. Discussion on article 18 remains to be very crucial as several delegates felt that they could arrive at a package deal. Since the decision on above-mentioned provisions remains crucial, discussion on other provisions did not proceed as they are not much controversial and may be finalized as package.

III. Deliberation on the Comprehensive Convention against Terrorism at the Sixth Committee during the 58th Session of the General Assembly (2003)

28. The sixth Committee, at its 2nd meeting on 6 October 2003 established a Working Group and elected Mr. Rohan Perera (Sri Lanka) as its chairman. The Working Group held three meetings on 6, 8 and 10 October 2003.

Article 2 bis

29. Some delegations in the Working Group felt that agreement could be reached on article 2 bis only after the outcome of the negotiations on article 18, as they are interlinked. Also, views varied on the inclusion of article 2 bis as some felt it as redundant as any conflict that might arise could be addressed within the framework of existing international law principles. However, others were of the view that it was necessary as it would help clarify the relationship between the comprehensive convention and sectoral conventions and also the conflict that could arise as a result of the principles *lex posterior derogat priori*¹³ and *lex specialis derogat generali*.¹⁴ Further discussing on the provisions some delegations felt that since the convention was intended to be a comprehensive one it should supersede other sectoral conventions. Some others favored giving precedence to sectoral conventions as contained in the present text.

Article 18

30. During the deliberation it was found that draft article 18 had a central role to play towards reaching a final solution of the draft convention package. However, differences continued to exist regarding the preference to either of the texts proposed by the previous Coordinator and the OIC. Some delegations favored paragraph 2 of the OIC proposal noting that because international humanitarian law applied to the activities of all the parties in situations of foreign occupation it was found to be logical to exclude them from the scope of the draft convention. Others, while supporting the paragraph 2 of the proposal made by the previous Coordinator, noted that its terms were more precise and clear than the broader terms used in the OIC proposal.

¹³. *Lex posterior derogat priori* means 'more recent law prevails over (abrogates, overrules, trumps) an inconsistent earlier law'.

¹⁴. *Lex specialis derogat generali* means 'specific law prevails over (abrogates, overrules, trumps) general law'.

31. While supporting paragraph 3 of the previous Coordinator's proposal some delegations suggested that the text should be perceived as a choice of law provision rather than a provision that sanctioned impunity for the military forces of a State. Other rules of international law, such as those concerning the use of force and the prohibition against genocide and torture, remained applicable. It was further felt that the wording "in conformity with international law" contained in the OIC proposal was considered restrictive and would convert any violation of international law into a terrorist act for the purposes of the convention. The delegations that were in support of OIC proposal were of the view that the activities of the military forces of a State should be carried out in accordance with the Charter of the United Nations and international law. Underlining the situations wherein same conduct was governed by different bodies of law, it was argued that the activities of the military forces that were not governed by international humanitarian law should be covered by the draft convention. It was further pointed out that the draft convention focused on individual responsibility and that it was without prejudice to State responsibility.

Additional article 2 ter

32. An additional proposal was made by Guatemala for a new article 2 ter.¹⁵ The Guatemala delegation clarified that the proposal was intended to encourage States to conclude bilateral agreements for the application of the draft convention or a sectoral convention in situations where the States concerned intended to cooperate but were not parties to the same convention. The proposed article reads as follows:

1. In any case where an offence has been committed to which both this Convention and any one of the treaties mentioned in the preamble thereof applies, the following rules shall, with respect to that offence, apply to the relations between, as the case may be:

(a) A State party to this Convention but not to that other treaty *and* a State party to that other treaty but not to this Convention, or

(b) A State party to that other treaty but not to this Convention *and* a State party to this Convention but not to that other treaty.

2. The former of the two States referred to in (a) or (b) of the preceding paragraph may notify the other in writing that, in its relations with it and in connection with the offence, it undertakes to apply, subject to reciprocity, all or certain of the substantive provisions of this Convention, if (a) applies, or of the other treaty, if (b) applies. Upon receipt by the notifying State of the acceptance of this undertaking by the State to which the notification was addressed, both States shall, in their relations with one another and with respect to the offence, be bound by all the provisions of this Convention or of the other treaty, or those specified in the notification, as the case may be.

3. Alternatively, the latter of the two States referred to in (a) or (b) of paragraph 1 above may notify the other in writing that, in its relations with it and in connection with the offence, it undertakes to apply, subject to reciprocity, all or certain of the substantive provisions of this Convention, if (a) applies, or of the other treaty, if (b) applies. Upon receipt by the notifying State of the acceptance of this undertaking by the State to which the notification was addressed, both States shall, in their relations with one another and with respect to the offence, be bound by all the provisions of this Convention or of the other treaty, or those specified in the notification as the case may be.

¹⁵.

A/C.6/58/WG.2/CRP.1

4. The acceptance of the undertaking under paragraph 1 above shall, upon its receipt by the State to which it is addressed, be immediately conveyed by it to the Secretary-General. If the notification was made by a State party to this Convention, the Secretary-General shall convey the acceptance to the other States parties thereto. If the notification was made by a State party to the other treaty, the Secretary-General shall, if it is the depositary thereof, convey the acceptance to the other States parties thereto. If the Secretary-General is not the depositary of that treaty, the Secretary-General shall convey the acceptance to the depositary thereof.

33. This provision is based on the last sentence of article 2 common to the four 1949 Geneva Conventions. It is intended to encourage States to come to a bilateral understanding whenever there is any dispute between two States regarding an offence committed which has been covered by both the comprehensive convention and any one of the sectoral conventions and one of the States is party to the former but not to the latter or vice versa.

34. As the system proposed through this article is novel it was also felt that this method could be a workable one in the practice of States. However, some delegations noted that the text was complicated and that the proposed provision seemed unnecessary and would bring uncertainty in treaty relations. It was however pointed out that more time would be required for further discussion and substantial reflection on the proposed article.

IV. Work of the Counter Terrorism Committee (CTC)

35. In the aftermath of September 11 attacks the Security Council adopted a resolution (1373) on 28 September 2001 which provided for a wide-ranging comprehensive steps and strategies to combat international terrorism. It also laid down a series of measures, which States are expected to take to prevent the commission of terrorist acts.

36. The Security Council, in accordance with this resolution, established the Counter Terrorism Committee (CTC) consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and called upon States to report to the Committee on actions taken by them as a follow-up to this resolution within 90 days and thereafter, according to a time-table to be proposed by the Committee. There has been an overwhelming response to the work of the CTC from States.¹⁶

37. Keeping in view the requirements set by the resolution 1373 the Security Council in its resolution¹⁷ called upon the CTC to intensify its efforts to promote the

¹⁶. By 5 January 2004, the Committee had received 461 reports from States and others. They include first reports from 191 Member States and 5 from others, 158 second reports from Member States and 2 from others, 100 third reports from Member States and 5 fourth reports from Member States. All States have submitted their first reports. Nevertheless, by 5 January 2004, 65 States had missed the deadlines for submission of their reports.

¹⁷. Security Council Resolution 1456 (2003) adopted at its 4688th meeting on 20th January 2003.

implementation by Member States of all aspects of the resolution, particularly through reviewing reports submitted by States and facilitating international assistance and cooperation. The resolution further reiterated that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with international law, particularly international human rights, refugee law and humanitarian law.

38. The CTC held a special meeting on 6 March 2003 with the representatives of 57 international, regional and sub-regional bodies.¹⁸ The issues discussed included global standards on counter-terrorism, role of regional and sub-regional organizations in strengthening global counter-terrorism capacity and role of international and regional organizations on assistance. The participants at the meeting agreed that their coordinated approach to the suppression of terrorism would be based on information sharing, complementarity, independent efforts and political momentum. Participants provisionally agreed upon some specific action points and the Counter Terrorism Committee also offered to take certain practical steps to assist international, regional and sub-regional organizations. It was decided that the Organization of American States would host the next meeting of this nature.

V. General Comments

1. International terrorism poses the most serious threat to international peace and security. It is unfortunate that the beginning of the 21st century witnessed new dimensions and the magnitude, which this threat has assumed. In the wake of the tragic events of 11 September 2001, the international community has demonstrated a rare unity to condemn such acts and resolve to take prompt and concerted action to deal with these problems.

2. Despite the existence of numerous sectoral conventions dealing with terrorist activities it has become imperative for the international community to conclude a comprehensive convention against terrorism to address the problem in its totality. The need for a comprehensive legal framework is much more now in the context of all encompassing nature of the terrorist activities, which, however, in no way, belittles the significance of other initiatives at the economic and political level in addressing the problem.

3. However, fighting terrorism and impending initiatives by the international community would result in certain collateral effects, particularly in the area of human rights. There already exists a comprehensive regime of human rights, which needs to be taken into consideration in this regard. It is felt that actions initiated against terrorism are sometimes in contravention of these human rights principles as it is argued in the case of presidential order issued by the President of USA establishing Military Commissions to

¹⁸. For the outcome of the meeting, see, S/AC.40/2003/SM.1/4

try persons involved in violations of laws of war.¹⁹In this regard it is significant to mention that the Proposals for “further guidance” for the submission of reports pursuant to paragraph 6 of Security Council resolution 1373 (2001) seek States to maintain human rights standards while taking action to combating terrorism.²⁰Keeping in view the imminent threat to human rights, the Office of the High Commissioner for Human Rights (OHCHR) issued a note to the chair of the Counter Terrorism Committee offering some general considerations and elucidating key principles, which can guide an analysis of counter terrorism measures from a human rights perspective.

4. It is feared that vulnerable groups like refugees and asylum seekers would be subjected to undue predicaments as it is felt that *bona-fide* asylum seekers might be victimized as a result of public prejudice and unduly restrictive legislative or administrative measures. Some times they are also subjected to isolation just because they belonged to a particular ethnic group or religion. While addressing the Security Council on 7 February 2002, UN High Commissioner for Refugees, Ruud Lubbers said, “in the current climate there is a risk that refugees and asylum seekers may become convenient scapegoats and may be unfairly victimized. We must not allow this to happen”. Thus, the responsibility before the international community is to initiate actions to protect these vulnerable groups in parallel with the fight against terrorism.

5. Similar situation also prevails in the case of migrant workers who have crossed borders in search of livelihood. Therefore onus lies on the international community to take utmost care to protect innocent civilians from the persecution by State agencies in pursuit of fighting terrorism.

6. It may be expected that the discussions at the 43rd session of AALCO may facilitate the process of resolving the outstanding issues on the draft comprehensive convention keeping in view and with due regard to the need for mechanisms to prevent the negative impacts of the proposed convention.

¹⁹. On November 13, 2001, President George W. Bush issued a military order entitled ‘Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism’ (Military Order). Pursuant to this Military Order, the United States may establish military commissions to prosecute terrorists for violations of the laws of war and other applicable laws. The order applies to non-United States citizens who are, among others, members of the Al Qaida organization. The order recognizes that it is not practicable to apply in those military commissions the principles of law and the rules of evidence generally applied in the trial of criminal cases in the United States district courts. The order lays down certain safeguards for humane treatment but otherwise authorizes the Secretary of Defense to prescribe conditions of detention and also issue orders and regulations for conduct of the proceedings of military commissions.

²⁰. These proposals are for “further Guidance” for the submission of reports pursuant to paragraph 6 of Security Council Resolution 1373 (2003) and are intended to supplement the guidance of 26 October 2001.

Annex

Working Document Submitted by India on the Draft Comprehensive Convention on International Terrorism²¹

The States Parties to this convention;

Recalling the existing international conventions relating to various aspects of the problem of international terrorism, in particular the Convention on Offences and Certain Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December, 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September, 1971; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December, 1973, the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December, 1979; the Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March, 1980; the 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, signed at Montreal on 24 February, 1988; the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March, 1988; the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March, 1988; the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March, 1991; the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December, 1997; the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December, 1999.

Recalling also General Assembly resolution 49/60 of 9 December, 1994 and the Declaration on Measures to Eliminate International Terrorism annexed thereto,

Recalling further General Assembly resolution 51/20 of 17 December, 1996 and the Declaration of supplement the 1994 declaration on measures to Eliminate International Terrorism annexed thereto,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms, which endanger or take innocent lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

Reaffirming their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize friendly relations among states and people and threaten the territorial integrity and security of States,

Recognizing that acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international cooperation and aim at the undermining of human rights, fundamental freedoms and the democratic basis of society,

Recognizing also that the financing, planning and inciting of terrorist acts are also contrary to the purposes and principles of the United Nations, and that it is the duty of the States Parties to bring to justice those who have participated in such terrorist acts,

²¹ Reproduced for reference. For the text see: A/C.6/51/6. Also visit: <http://meaindia.nic.in/>.

Convinced that the suppression of acts of international terrorism, including those which are committed or supported by States, directly or indirectly, is an essential element in the maintenance of international peace and security and the sovereignty and territorial integrity of States,

Realizing the need for a comprehensive convention on international terrorism,

Have resolved to take effective measure to prevent acts of terrorism and to ensure that perpetrators of terrorist acts do not escape prosecution and punishment by providing for their extradition or prosecution, and to that end have agreed as follows:

Article 1:

For the purpose of this Convention:

1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.
2. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility.
3. "Infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewerage, energy, fuel or communications, and banking services, telecommunications and information networks.
4. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.
5. "Public Transportation Systems" means all facilities, conveyances and instrumentalities, whether publicly or privately on, that are used in or for publicly available services for transportation of persons or cargo.

Article 2:

1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, does an Act intended to cause;
2. Death or serious bodily injury to any person; or
3. Serious damage to a State or government facility, a public transportation system, communication system or infrastructure facility with the intent to cause extensive destruction of such a place, facility or system, or where such destruction results or is likely to result in major economic loss;

When the purpose of such act, by its nature or contacts, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act.

1. Any person also commits an offense if that person attempts to commit an offense or participate as an accomplice in an offence as set forth in paragraph 1.
2. Any person also commits an offense if that person;
3. Organizes, directs or instigate others to commit an offense as set forth in paragraphs 1 or 2; or
4. aids, abets, facilitates or counsels the commission of such an offense; or
5. In any other way contributes the commission of one or more offenses referred in paragraphs 1, 2 or 3 (a) by a group of persons acting with a common purpose; such contribution shall be

intentional and either be met with the aim of furthering the general criminal activity or purpose of the group or be met in the knowledge of the intention of the group to commit the offence or offences concerned.

Article 3:

This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other state has a basis under article 6, paragraph 1, or article 6, paragraph 2, to exercise jurisdiction except that the provision of articles 10 to 22 shall, as appropriate, apply in those cases.

Article 4:

Each State Party shall adopt such measures as may be necessary;

- a. To establish as criminal offences under its domestic law. The offences set forth in article 2;
- b. To make those offences punishable by appropriate penalties which take into account the grave nature of those offences.

Article 5:

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 6:

1. Each State Party shall take such measure as may be necessary to establish its jurisdiction over the offences referred to in article 2 in the following cases:
 2. When the offence is committed in the territory in that State or on board a ship or aircraft registered in that State;
 3. When the alleged offender is a national of that State or is a person who has his or her habitual residence in its territory;
 4. When the offence is committed wholly or partially outside its territory, if the effect of the conduct or intended effects constitute or result, within its territory in the commission of an offence referred to in article 2.
-
1. A State may also establish its jurisdiction over any such offence when its committed;
 2. By a stateless person whose habitual is in that State; or
 3. With respect to a national of that State; or
 4. Against a State or government facility of that state abroad, including an embassy or other diplomatic or consular premises of that state or
 5. In an attempt to compel that state to do or abstain from doing any act; or
 6. On board a ship or aircraft which is operated by the government of that state.
-
1. Each state Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 2 in cases where the alleged offender is present in its territory and where it does not extradite such person to any of these States Parties that have established their jurisdiction in accordance with paragraphs 1 or 2
 2. When more than one State Party claims jurisdiction over the offences set forth in article 2 the relevant State Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 7:

States Parties shall take appropriate measures, before granting asylum, for the purpose of ensuring that asylum is not granted to any person in respect of whom there are reasonable grounds indicating his involvement in any offence referred to in article 2.

Article 8:

State Parties shall cooperate in the prevention of the offences set forth in article 2, particularly;

- a. By taking all practicable measures, including, if necessary, adapting their domestic legislation, to prevent and counter preparation in their respective territories for the commission, by whom so ever and in whatever manner, of those offences within or outside their territories, including;
 - i. Measures to prohibit in their territories the establishment and operation of installations and training for the commission, within or outside their territories, of offences referred to in article 2; and
 - ii. Measures to prohibit the illegal activities of the persons, groups and organizations that encourage , instigate, organize, knowingly finance or engage in the commission, within or outside their territories, offences referred to in article 2;
 - iii. By exchanging accurate and verified information in accordance with their national law, and coordinating administrative and other measures taken as appropriate to prevent the commission of offences as referred to in article 2.

Article 9:

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity committed an offence referred to in article 2. Such liability may be criminal civil or administrative.
2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.
3. Each State Party shall ensure in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 10:

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence referred to in article 2 may be present in its territory, the state party concern shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the state party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
3. Any person regarding whom the measures refer to in paragraph 2 are being taken shall be entitled to;
4. communicate without delay with the nearest appropriate representative of the state of which that person is a national or which is otherwise entitled to protect that person's right or, if that person is a stateless person the state in the territory of which that person habitually resides;

5. Be visited by a representative of that State;
6. Be informed of that person's rights under subparagraphs (a) and (b)
7. The rights referred to in paragraph 3 shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or the alleged offender is present subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.
8. The provisions of paragraphs 3 and 4 shall be without the prejudice to the right of any State Party having acclaimed to jurisdiction in accordance with article 6, paragraphs 1 (b), or 2(b), to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.
9. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 6, paragraph 1 or 2, and if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 shall promptly inform the said States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 11:

1. The State Party in whose territory the alleged offender is found shall, if it does not extradite the person, be obliged, without exception whose so ever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution through proceedings in accordance with law of the state. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that state.
2. Whenever the State party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that state to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought and that State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1.

Article 12:

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with law of the state in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 13:

1. State Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. State Parties shall carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.
3. State Parties which are not bound by a bilateral treaty or arrangement of mutual legal assistance may, at their discretion, apply the procedure set out in Annex II

Article 14:

None of the offences referred to in article 2 and the acts which constitute an offence within the scope of and as defined in one of the treaties listed in Annex I shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 15:

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 16:

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under the Convention may be transferred if the following conditions are met.
2. The person freely gives his or her informed consent, and
3. The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

1. For the purposes of this article

- a. The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred.
- b. The State to which the person is transferred shall without delay implement its obligations to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;
- c. The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;
- d. The person transferred shall receive credit for service of the sentence being served in the State from which he was transferred for the time spent in the custody of the State to which he was transferred.,

3. Unless the State party from which a person is to be transferred in accordance with this article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 17:

1. The offences referred to in article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of this Convention. States parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them
2. When a State Party which makes extradition conditional on the existence of a treaty receives a request from another State party with which it has no extradition treaty, the requested State may, at

- it option, consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. State Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences referred to in article 2 as extraditable offences between themselves, subject to the conditions provided for by the law of the requested State.
 4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between State Parties, as if they had committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 6, paragraphs 1 and 2.
 5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States parties to the extent that they are incomparable with this Convention.
 6. State Parties which, pursuant to paragraph 2 of this article, have agreed to consider this Convention as a legal basis for extradition in respect of the offences set forth in article 2 may consider utilizing the procedures set out in Annex III.

Article 18:

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international laws, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.
2. The activities of armed forces during an armed conflict, as those terms are understood under international law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, in as much as they are governed by other rules of international law, are not governed by this Convention.

Article 19:

The State party where the alleged offender is prosecuted shall, in accordance with its domestic law or applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of United Nations, who shall transmit the information to the other State Parties.

Article 20:

The states shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other states.

Article 21:

Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of United Nations, international humanitarian law and other relevant conventions;

Article 22:

Nothing in this Convention entitles a State party to undertake in the territory of another State Party the exercise of jurisdiction or performance of function which are exclusively reserved for the authorities of that other State Party by the domestic law.

Article 23:

1. Any dispute between two or more State Parties concerning the interpretations or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.
2. Each State may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1. The other State Parties shall not be bound by paragraph 1 with respect to any State party which has made such a reservation.
3. Any State which made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification of the Secretary-General of the United Nations.

Article 24:

1. This Convention is open for signature by all States from _____ to _____ at United Nations Headquarters in New York.
2. This Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open to accession by any State. The instruments of accession shall be deposited with Secretary-General of the United Nations.

Article 25:

1. This Convention shall enter into force thirty days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instruments of ratification, acceptance, approval or accession.

Article 26:

1. A State may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 27:

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

In WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at United Nations Headquarter in New York on _____ 2000.

Annex I:

Exclusion of political offence

1. Convention on offences and Certain Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963.
2. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970.
3. Convention for the suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.
4. Convention on the Prevention and Punishment of Crimes against International Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
5. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
6. Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March, 1980.
7. 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, signed at Montreal on 24 February, 1988.
8. Convention for the suppression of Unlawful Acts against the safety of Maritime Navigation, done at Rome on 10 March, 1988.
9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on Continental Shelf, done at Rome on 10 March, 1988
10. Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March, 1991.
11. International Convention for the Suppression of Terrorist bombings, adopted by the General Assembly of the United Nations on 15 December, 1997.
12. International Convention for the Suppression for the Financing Of the Terrorism, adopted by the General Assembly of the United Nations on 9 December, 1999.

Annex II

Procedure for mutual legal assistance:

1. State Parties shall afford one another pursuant to this Annex the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with article 3.
2. Mutual legal assistance to be afforded in accordance with this Annex may be requested for any of the following purposes;
3. Taking evidence or statements from persons;
4. Effecting service of judicial documents;
5. Executing searches and seizures;
6. Examining objects and sites;
7. Providing information and evidentiary items;
8. Providing originals or certified copies of relevant documents and records including bank, financial, corporate or business records;
9. Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes.
10. State Parties may afford one another any other forms of mutual legal assistance allowed by the domestic or the requested party.
11. Upon request, State Parties shall facilitate or encourage to the extent consistent with the domestic law and practice, the presence or availability of persons, including persons in custody, who consent to assist in investigation or participate in proceedings.
12. A State shall not decline to render mutual legal assistance under this annex on the ground of bank secrecy.
13. The provisions of this annex shall not affect the obligations under any other treaty, bilateral or multilateral, which governs or will govern in whole or in part mutual legal assistance in criminal matters.

14. The State Party may apply, at their discretion, paragraphs 8 to 19 of this annex to requests made pursuant to this annex if they are not otherwise bound by any treaty of mutual legal assistance. If the state parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the state parties agree to apply paragraphs 8 to 19 of this annex in lieu thereof.
 15. States Party shall designate an authority or, when necessary authorities, which shall have the responsibility the power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution. The authority or authorities designated for this purpose shall be notified to the Secretary-General of the United Nations. Transmission of requests for mutual legal assistance and any communications related their to shall be effected between the authorities designated by the State parties; this requirement shall be without prejudice to the right of a State to require that such requests and communications be addressed to it through the diplomatic channel and in urgent circumstances, where the States agree, through channels of the International Criminal Police Organization – Interpol, if possible.
 16. Requests shall be made in writing in a language acceptable to the requested State. The language or languages acceptable to each State shall be notified to the Secretary-General of United Nations. In urgent circumstances, and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.
 17. A request for mutual legal assistance shall contain
 - a. The identity of the authority making the request;
 - b. The subject matter and nature of the investigation, prosecution or proceedings, to which the request relates; and the name and the functions of the authority, conducting such investigations, prosecution or proceeding;
 - c. A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents.
 - d. A description of the assistance sought and details of any particular procedure the requesting party wishes to be followed;
 - e. Where possible, the identity, location and nationality of any person concerned;
 - f. The purpose for which the evidence, information or action is sought.
-
1. The requested state may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it facilitate such execution.
 2. A request shall be executed in accordance with the domestic law of the requested state and; to the extent not contrary to the domestic law of the requested State and where possible, in accordance with procedures specified in the request.
 3. The requesting state shall not transmit or use information or evidence furnished by the requested state for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested state.
 4. The requesting state may require that the requested state keep confidential the fact and substance of the request except to the extent necessary to execute the request. If the requested state cannot comply with the requirement of confidentiality, it shall promptly inform the requesting state.
 5. Mutual legal assistance may be refused;
 - a. If the request is not made in conformity with provisions of this annex;
 - b. If the requested state considers that execution of the request is likely to prejudice its sovereignty, security, public order or other essential interest;
 - c. If the authorities of the requested state would be prohibited by its domestic laws from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution, or proceedings under their own jurisdiction.
 - d. If it would be contrary to the legal systems of the requested state relating to mutual legal assistance for the request to be granted.
-
1. Any assistance under this annex may not be refused on the sole ground that it concerns political offence or an offence connected with a political offence or an offence inspired by political motives.

2. Reasons shall be given for any refusal of mutual legal assistance.
3. The requested state may postpone mutual legal assistance on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested state shall consult with the requesting state to determine if the assistance can still be given subject to such terms and conditions as the requested deems necessary.
4. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting state shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested state. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the states parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities and opportunity of living, has nevertheless remain voluntarily in the territory or, having left it, has returned of his or her own free will.
5. The ordinary costs of executing a request shall be borne by the requested state, unless otherwise agreed by the states concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the state parties shall consult to determine the terms and conditions under which the requests will be executed as well as the manner in which the costs shall be borne.
6. The state parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would server the purpose of give practical effect to or enhance the provisions of this annex.

Annex III:

Extradition Procedure:

1. The offences referred to article 2 shall be deemed to be included as extraditable offences in any extradition treaty existing between State Parties. The State Parties undertake to include such offences as extraditable offences in every extradition to be concluded between them
2. The State Parties that do not make extradition conditional on the existence of a treaty shall recognize the offences referred to in article 2 as extraditable offences between themselves subject to the conditions provided by the law of the requested state.
3. The offences referred to in article 2 shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the requested State Parties.
4. The State Parties may, at their discretion, apply paragraphs 5 to 18 of this Annex to requests for extradition in respect of offences referred to in article 2 if they are not bound by a treaty of extradition. If these states are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the states agree to apply paragraphs 5 to 18 of this annex in lieu thereof.
5. States Parties shall designate an authority, or when necessary, authorities, which shall have the responsibility and power to execute requests for extradition or to transmit them to the competent authorities for execution. The authority or the authorities designated for this purpose shall be notified to the Secretary-General of the United Nations. Transmission of requests for extradition and any communication related thereto shall be effected between the authorities designated by the state parties; this requirement shall be without prejudice to the right of a State to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the State Parties agree, through channels of the International Criminal Police Organization – Interpol, if possible.
6. Requests shall be made in writing in a language acceptable to the requested state. In urgent circumstances and where agreed by the state parties, requests may be made orally, but shall be confirmed in writing forthwith.
7. A request for extradition shall contain:
 - a. The identity of the authority making the request;

- b. As accurate a description as possible of the person sought, together with any other information which would help to establish the identity, location and nationality of the person concerned.
 - c. A summary of the facts of the offence for which extradition is requested; and
 - d. The text, if any, of the law defining that offence and prescribing the maximum punishment for that offence.
1. If the request relates to a person already convicted and sentenced, it shall also be accompanied by:
 - a. A certificate of the conviction and sentence; and
 - b. A statement that the person is not entitled to question the conviction and sentence and showing how much of the sentence has not been carried out.
1. If the requested state considers that the evidence produced or information supplied is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the requested state may require.
 2. A request shall be executed in accordance with domestic law of the requested state and, to the extent not contrary to the domestic law of the requested state and where possible, in accordance with the procedures specified in the request.
 3. The requesting state shall not transmit or use information or evidence furnished by the requested state for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested state.
 4. Any person who is returned to the territory of the requesting state under this Convention shall not be dealt with in the territory of the requesting state for or in respect of any offence committed before he was returned to that territory other than the offence in respect of which he was returned, any lesser offence disclosed by the facts proved for the purpose of securing his return other than an offence in relation to which an order for his return could not lawfully be made, or any other offence in respect of which the requested state may consent to his being dealt with.
 5. The provisions of paragraph 12 of this annex shall not apply to offences committed after the return of a person under this annex or matters arising in relation to such offences, or when the person having had the opportunity to leave the territory of the requesting state has not done so within sixty days of his final discharge, or has returned to that territory after having left it.
 6. If extradition of the same person, whether for the same offence or for different offences, is requested by two States Parties, or by a state and a third state with which the requested state has an extradition arrangement, the requested state shall determine to which state the person shall be extradited.
 7. When a request for extradition is granted, the requested state shall, upon request and as far as its law allows, hand over to the requesting state articles, which may serve as proof for evidence of the offence. If the article in question are liable to seizure or confiscation in the territory of the requested state, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned. This provision shall not prejudice the rights of the requested state of any person other than the persons sought. When these rights exist, the articles shall on request to be returned to the requested state without charge as soon as possible after the end of the proceedings.
 8. Reasons shall be given for any refusal of extradition.
 9. If criminal proceedings against the person sought are instituted in the territory of the requested state, or the person is lawfully detained in consequence of criminal proceedings, the decision whether or not to extradite the person may be postponed until the criminal proceedings have been completed or he or she is no longer detained.
 10. The ordinary costs of executing a request shall be borne by the requested state, unless otherwise agreed by the state parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the State Parties shall consult to determine the terms and conditions under which the requests will be executed as well as the manner in which the costs shall be borne.

11. The State Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this Annex.