

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 bombing 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 bombing, 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 yet 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 work on this convention was completed during the General Assembly's 54th Session and 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. It was followed by the second round of negotiations in the Working Group Meeting held from 12 to 23 February 2001.

7. The item entitled "International Terrorism" was placed on the agenda of the AALCO's 40th session held on 20-24 June 2001, in New Delhi, upon a reference made by the Government of India. It was felt that consideration of this item at AALCO would be useful and relevant in the context of the on-going negotiations in the Ad Hoc Committee of the United Nations on elaboration of the comprehensive international convention against international terrorism.

8. After detailed deliberations, the Secretariat was directed to monitor and report on the progress in the negotiations related to the drafting of a comprehensive international convention to combat terrorism.

9. Pursuant to the aforementioned mandate, this report primarily focuses on the work of the Ad Hoc Committee of the Sixth Committee of the United Nations relating to the on-going negotiations on the comprehensive convention against international terrorism. It also contains a brief report of the deliberations on the topic during the 57th session of the General Assembly and the work of the Counter Terrorism Committee established by the

⁴. General Assembly Resolution A/RES/52/164

⁵. General Assembly Resolution A/RES/54/109

Security Council. A brief review of the deliberations of AALCO's 41st session at Abuja, Nigeria is also attached for reference.

II. Deliberations on the Topic during the 57th Session of the General Assembly

10. The sixth committee, at its 11th meeting, on 7 October 2002 established a Working Group and elected Mr. Rohan Perera (Sri Lanka) as its Chairman. The Working Group held two meetings on 15 and 16 October 2002.

11. The Working Group discussed Article 18, which deals with the Savings Clause and exclusions from the scope of the convention. The delegations had before them two texts of the article for consideration. One of them was prepared by the coordinator at the end of the October 2001 session of the Working Group of the Sixth Committee and the other was proposed by the Member States of the Organization of the Islamic Conference. The discussion was focused on issues in paragraphs 2 and 3 of the drafts namely: (a) in paragraph 2, whether to refer to the activities of "armed forces" or of "the parties" during an armed conflict, and whether to insert the words "including in situations of foreign occupation" in that paragraph; and (b) in paragraph 3, whether to refer to excluding the activities undertaken by the military forces of a State in the exercise of their official duties by using the words "inasmuch as they are governed by other rules of international law" or the words "in conformity with international law". However no consensus was attained.

12. The Working Group discussed on the draft preamble primarily focusing on the proposals appended to the report on the "informal consultations held in January and February 2002".⁶ Some delegations, viewed that the text of the draft convention as presented by India would be adequate and others favoured discussion on proposals contained in the appendix.

13. The Working Group discussed two specific proposals regarding article 1 of the draft text. They were (a) to add a reference in paragraph 4 to the environment and endangering of natural resources; and (b) to insert the words "whose existence is legal or legitimate" after the words "after the words "facility or conveyance" ⁷ in paragraph 1. Regarding article 2, while recognizing that the draft article needed further consideration, some delegations expressed the view that the acceptability of the text for this article would depend on the final wording agreed for article 18.

14. A constructive discussion took place regarding Article 2 bis in the Working Group. Some delegations expressed the view that they considered it important to have a clear and unambiguous expression of the relationship between the comprehensive convention and the sectoral conventions included in the text of the comprehensive

⁶. A/57/37, Annex VI, Appendix

⁷. A/AC.252/2002/CRP.1/Add.1

convention. Some delegations expressed the willingness to consider appropriate formulation despite the fact that they preferred not to have any article on the relationship. However some delegations were of the view that the acceptability of the text for this article would depend on the final wording of Article 18.

15. Referring to the statements of several speakers in the Sixth Committee on the item “Measure to eliminate international terrorism” regarding the question of convening a high level conference under the auspices of the United Nations on International Terrorism, the Chairman of the Working Group invited all interested delegation to approach him with any concrete proposals they might have on the issue.

III. Discussions on the Comprehensive Convention on Terrorism at the Seventh Session of the Ad Hoc Committee

16. 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.

17. 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 session⁸ containing, inter alia, a discussion paper prepared by the Bureau on the preamble and article 1 of the draft 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; the report of the Working group of the Sixth Committee established at the fifty-seventh session of the General Assembly⁹ containing the list of written amendments and proposals submitted by delegations in connection with the elaboration of a draft comprehensive convention.

18. 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

⁸. Official Records of the General Assembly, Fifty-seventh Session, Supplement no. 37 (A/57/37)

⁹. A/C.6/57/L.9

avored 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 also 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.

19. 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.

20. 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

21. 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.¹⁰ 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.¹¹ 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:

¹⁰ . For the text of the proposals, see General Assembly Official Records, Fifty-seventh Session, Supplement No. 37 (A/57/37) Appendix.

¹¹ . Ibid. Annex I

‘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’

22. 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 underlies 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 may be understood as symptomatic of disease rather than as itself a disease, which needs a broader approach apart from the indispensable requirement of a legal regime of the draft comprehensive convention nature.

Article 1

23. The Seventh session of the ad Hoc Committee has not made any progress regarding Article 1¹² of the draft comprehensive convention. This draft article contains definitions of ‘State or government facility’, ‘military forces of a State’, ‘infrastructure 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

24. This article¹³ 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

¹². 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).

¹³. For the informal text of the Article prepared by the coordinator, see: Ibid, annex II.

clubbing of paragraphs 1 (b) and (c) and exclusion of reference to serious damage to the environment.

25. 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

26. 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.

27. 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 is not in consonance with the regime of the Vienna Convention on the Law of Treaties.¹⁴ They further observed that its 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.

28. 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.

¹⁴. 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.

(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.

29. 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

30. 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.

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.

31. 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.

32. 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 far reaching effect particularly in the context of national liberation movements as this proposal would result in exclusion of activities of these movements from the purview of the proposed convention.

33. 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.

34. 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 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.

35. 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, discussions on other provisions did not proceed as they are not much controversial and may be finalized as package.

IV. Work of the Counter Terrorism Committee (CTC)

36. The Security Council in its Meeting on 12th September 2001, unanimously adopted a resolution in which it condemned in the strongest terms the terrorist attack against the United States and called on all States to work together urgently to bring to justice, the perpetrators, organizers and sponsors of the 11th September attack.

37. The Security Council adopted another resolution (1373) on 28 September 2001 which provided for a wide-ranging comprehensive steps and strategies to combat international terrorism. Besides condemning terrorist attacks on 11 September, it reaffirmed that acts of terrorism constitute a threat to international peace and security and recognized the need to combat by all means, in accordance with the Charter of the United Nations, such threats caused by terrorist attacks.

38. The resolution also laid down a series of measures which the States are expected to take to prevent the commission of terrorist acts, assistance in connection with criminal investigations, exchange of information, co-operation through bilateral and multilateral arrangements and agreements to prevent and suppress terrorist acts and to take action against perpetrators of such acts.

39. The Security Council, in accordance with rule 28 of its provisional rules of procedure, decided to establish a Counter Terrorism Committee 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.

40. There has been an overwhelming response to the work of the Counter Terrorism Committee from States. Briefing the Security Council on the work of the CTC at the 4688th meeting, the chairman of the CTC, Jeremy Greenstock said that in 15 months CTC had received over 280 reports from 178 Member States. He further said that 13 States had not yet submitted a report to the Committee.

41. Keeping in view the requirements set by the resolution 1373 the Security Council in its resolution¹⁵ called upon the CTC to intensify its efforts to promote the implementation by Member States of all aspects of the resolution, particularly through reviewing reports submitted by States and facilitating international assistance and cooperation. It further emphasized the Member States' obligation to report to the CTC as per the timetable set by the CTC. The Council called on the 13 States who have not yet submitted a first report and on the 56 States who are late in submitting further reports to

¹⁵. Resolution 1456 (2003) adopted by the Security Council at its 4688th meeting on 20th January 2003.

do so by 31 March and accordingly requested the CTC to report regularly on progress. 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.

42. The Counter Terrorism Committee held a special meeting on 6 March 2003 with representatives of the international, regional and sub-regional bodies.¹⁶ 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 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. The United Nations initiative launching a campaign to fight against the perpetrators of this heinous crime is no doubt a long battle to eliminate the scourge of terrorism. Outside the United Nations, actions have also been taken by States at regional levels.¹⁷

3. However fighting terrorism and impending initiatives by the international community would result in certain collateral effects, particularly in the area of human

¹⁶. For the outcome of the meeting, see, S/AC.40/2003/SM.1/4

¹⁷. These are: Regional mechanism to combat terrorism was established by the Shanghai Group of China, Kazakhstan, Kyrgyzstan, Russia Federation, Tajikistan and Uzbekistan in June 2001; A Declaration and Action Plan was adopted by the Heads of State of Central, Eastern and South Eastern Europe on 6 November 2001; A Declaration was adopted by the Standing Committee of the Organization for Security and Cooperation in Europe for action to combat terrorism; the ASEAN Declaration on Joint Action to Counter Terrorism was adopted by the Heads States/Governments of the ASEAN on 5 November 2001; A Declaration was also adopted by the Eleventh SAARC Summit for their support of the Security Council Resolution 1373 (2001) in January 2002; The Commonwealth Committee on Terrorism has drawn a Plan of Action to assist Commonwealth Members in implementing Security Council Resolution 1373(2001).

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 try persons involved in violations of laws of war.¹⁸ In 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.¹⁹ Keeping in view the imminent threat to human rights, the Office of the High Commissioner for Human Rights 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 responsibly 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. Another point for consideration before the international community is the distinction between movements for liberation from foreign occupation and terrorist activities. This complex question of overlapping situations poses a major challenge for any efforts to undertaking an action in this regard. However it seems imperative for the

¹⁸. 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.

¹⁹. 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.

international community to formulate a mechanism in this regard as the right to self-determination constitutes an important principle of international law as stated in the UN Charter²⁰ and the “Friendly Relations Declaration”²¹, apart from other instruments.

7. The conclusion of an international comprehensive convention would strengthen the existing legal regime. In spite of the urgency and concern expressed by several delegations, the goal has not been reached. The resolution of outstanding issues depends much more on the political will of states. The 42nd session of AALCO would provide a timely opportunity for the AALCO Member States to discuss the outstanding issues with a view to facilitating the work of the Ad Hoc Committee with Asian African perspectives.

8. There is no clash of civilizations. There is no religion behind these activities. The dialogue on civilizations initiated under the United Nations auspices needs to focus on these emerging issues. The AALCO may follow-up these dialogues and provide some inputs for consideration.

²⁰. Article 1(2) of the UN Charter says: To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

²¹. UN General Assembly “Declaration on principles of International law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations. G.A. Res. 2625 (XXV) of 24 October 1970.

ANNEX

SUMMARY OF DISCUSSIONS AT THE 41ST SESSION OF THE AALCO

Delegates at the session categorically condemned the acts of terrorism in all its forms and manifestations regardless of its motives and reasons. They also observed that it was a threat to international peace and security.

The **Delegate of the People's Republic of China** observed that his delegation believed that the suppression of terrorism should be consistent with the principles and purposes of the Charter of the United Nations and universally recognized principles of international law. In the delegate's view, terrorism represented neither any ethnic group nor any religion and therefore they should not be lumped together.

The **Delegate of India** recalled that his country had proposed comprehensive convention at the UN. While observing that some outstanding issues remained said that article 18 had proved to be the major stumbling block in the negotiations, particularly the proposal to exclude acts of national liberation movements, especially struggles against foreign occupation. He observed that it was necessary to recognize that this was a convention against terrorism and not on national liberation. Inclusion of such provisions therefore was not helpful, as it would divert the attention from the primary objective, particularly when the States making this proposal had recognized that international humanitarian law did not permit acts of terrorism during such struggles.

The **Delegate of the Islamic Republic of Iran** observed that codification and adoption of legal instruments were undoubtedly positive steps in the right direction. However he felt that international efforts and cooperation cannot and should not be directed solely to challenging the symptoms of the problem i.e., the use of violence. They should also pursue vigorously the elimination of the root causes of the problem. Further he was of the view that the comprehensive convention should clearly distinguish terrorism from the legitimate struggle in the exercise of self-determination and independence of all peoples under foreign occupation.

The **Delegate of the Republic of Korea**, while admitting the importance and utility of individual sectoral conventions, held that the comprehensive approach was still very important to cope with international terrorism effectively. He said that his government had ratified 8 individual sectoral conventions against international terrorism and now studying the possibility in a serious way to accede to other 4 conventions against international terrorism.

The **Delegate of Thailand**, on the issue of relationship between the comprehensive convention and the existing conventions, held that wherever there was an overlap of coverage, the provision in the comprehensive convention should serve as a supplementary provision. On the definition issue Thailand recognized that the struggle of people in the exercise of the right to self-determination is legitimate under international

law. However any distinction made between people's struggle to self-determination and terrorism must ensure that terrorists would never be able to escape justice by relying on a defence that their acts were legitimate on the basis of a right to self-determination.

The **Delegate of Indonesia** explained the initiatives taken by it at the regional and domestic level.

The **Delegate of Sudan** condemned the trend of linking terrorism with any particular culture or religion as dangerous. He highlighted the importance of fighting against root causes of terrorism, like poverty and social justice. He said that liberation struggles in occupied territories should not be associated with terrorism.

The **Delegate of the United Republic of Tanzania** suggested that this session should commission the Secretariat to initiate a joint programme with the office of the Legal Counsel of UN for the ratification of conventions to combat terrorism, assist developing countries within AALCO in capacity building in combating terrorism and implementation of initiatives of the Committee established by the UN Security Council.

The **Delegate of Syria** emphasized the need to distinguish liberation struggles in occupied territories from terrorism.

The **Delegate of the Arab Republic of Egypt** cautioned that it was more than ever necessary that the United Nations should play a pivotal role in formulating procedural and legal principles to deal with terrorism. He stressed the need for AALCO to handle the subject legally rather than politically.

The **Delegate of Uganda** said that fighting terrorism should not give opportunity to some States to settle their long desired revenge on other States. She said the success in fighting terrorism must depend on equity of treatment and fairness in addressing the root causes of terrorism.

The **Government of Malaysia** submitted its written comments wherein it condemned terrorism in all its forms and manifestations and held that it was prepared to work within the framework of the United Nations in its efforts to prevent and eliminate all forms of terrorism. However, it emphasized that any efforts in this regard should not impinge upon the sovereignty and territorial integrity of States.