International Law and Terrorism

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What important developments have occurred in multilateral international treaties between the Convention for the Prevention and Punishment of Terrorism of 1937 and the Inter-American Convention Against Terrorism of 2002? This article answers this question as well as whether these laws have been an effective legal response in combating terrorism. After differentiating between comprehensive and sectoral conventions and between universal and regional conventions, the article comparatively analyzes them based on definitions of offenses, the extent of criminalization, exceptions concerning scope of application, measures to be taken by the states parties, obligatory and optional jurisdiction, obligations of states in the sphere of legal cooperation and assistance, rights of the offender, extradition, exceptions from extradition or legal assistance, and issues not covered by the conventions. Solutions proved to be the most effective against international terrorism and discrepancies and overlaps between the conventions are discussed.

Keywords: *terrorism; treaty; criminalization*

Almost 70 years have passed since the adoption of the Convention for the Prevention and Punishment of Terrorism of 1937 (Geneva Convention of 1937)—the first international treaty against terrorism (see United Nations, 1972, pp. 1-9). In 2003, the last—up to now—international legal instrument in this field was adopted under the auspices of the Council of Europe, namely, the European Convention on the Suppression of Terrorism of 1977, as amended by its Protocol of May 15, 2003 (see also United Nations, 2004a, pp. 139-152).

These two conventions may be treated as the milestones on the road of long-lasting efforts of the international community of states to create an effective legal response to one of the most disastrous and horrifying phenomena of our times: international terrorism. The main role in this process has been played by multilateral treaties—universal and regional—although some bilateral treaties against terrorism have also been elaborated, such as the 1973 agreement between the United States and Cuba on the suppression of certain terrorist acts (see Polish Institute of International Affairs, 1973). However, the practical importance of such bilateral treaties has been rather a limited one.

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Although the Geneva Convention of 1937 (see United Nations, 1972), unfortunately, has never entered into force,[1] one cannot overestimate its importance as the first comprehensive and multilateral antiterrorist convention. Furthermore, it was accompanied by another international treaty providing for the establishment of the first international criminal court for the punishment of terrorists, a precursor of postwar international criminal tribunals. Also for the first time, the Geneva Convention of 1937 formulated a definition of *acts of terrorism*, described therein as "criminal acts directed against a State or intended to create a state of terror in the minds of particular persons, or a group of persons, or the general public" (Article 1, para. 1; see United Nations, 1972).

It is interesting that this double target—the life or health of individual persons and the vital interests or security of a state—as a main characteristic of international terrorist acts, has remained, in general, unchanged; and now, after more than half a century, it has been used as a core definition proposed in the most recent UN draft comprehensive convention on international terrorism. The said draft, originally introduced by India (see United Nations, 2000, pp. 9-24), stresses once again in its Article 2, paragraph 1, that as it concerns offenses to be covered by a future comprehensive convention, "the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act" (United Nations, 2002, p. 6).

A large number of already existing, or currently under elaboration, international treaties for the suppression of terrorism may be classified into categories, taking into account either their substantial scope or territorial extent. In consequence, we may differentiate between comprehensive and so-called sectoral conventions on one hand and universal and regional conventions on the other hand. There is, of course, a possibility of combined characteristics of particular conventions, for instance, comprehensive conventions of universal territorial extent such as the Geneva Convention of 1937 (see United Nations, 1972) or those of a regional nature such as the Inter-American Convention Against Terrorism of 2002 (adopted at Bridgetown on June 3, 2002; see United Nations, 2004a, pp. 239-250). On the other hand, so-called sectoral conventions, limited substantially to some specific categories of terrorist acts, are also either universal (the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970) or regional (the Organization of American States Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion That Are of International Significance of 1971).

It is worth noting that among universal antiterrorist conventions, there is an overwhelming majority of those of sectoral nature, whereas in the case of regional conventions, comprehensive treaties prevail.

Because there are already approximately 20 conventions, universal and regional, adopted or elaborated in the field of combating terrorism,[2] it is possible to comparatively analyze them from the point of view of their characteristics, including definitions of offenses, the extent of criminalization, exceptions as

they concern scope of application, measures to be taken by the states' parties, obligatory and optional jurisdiction, obligations of states in the sphere of legal cooperation and assistance, rights of the offender, extradition, exceptions from extradition or legal assistance, and issues not covered by the convention. These particular elements of antiterrorist treaties and spheres of their international regulation should be considered with the purpose of finding which solutions applied by the said conventions have appeared in practice to be the most effective measures against international terrorism. There is also an important question of mutual relationship between comprehensive and sectoral conventions as it concerns a possibility of their parallel implementation.

LEGAL DEFINITION OF *INTERNATIONAL TERRORISM*

As already mentioned, the first international attempt to define *acts of terrorism* was undertaken by the Geneva Convention of 1937 (see United Nations, 1972). Since then, the question of defining international terrorism remains the most difficult and unsatisfactorily solved for all engaged in the process of elaboration of antiterrorist treaties, either universal or regional.

Conventional practice shows that so-called sectoral conventions have had a relatively easier job in this field because their substantial scope of operation is limited to specific kinds and forms of terrorist activities. The first of such sectoral definitions was contained in the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970, which defines the offense of *unlawful seizure of aircraft* as committed by

> any person who on board an aircraft in flight: (a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or (b) is an accomplice of a person who performs or attempts to perform any such act. (Article 1)

All contracting states to this convention have been obliged to make the said offense "punishable by severe penalties" (Article 2).

This definition later served as a model for subsequent definitions included in other sectoral international legal instruments. In consequence, we have a series of universal sectoral definitions of *terrorist acts*, including such offenses as "unlawful acts against safety of civil aviation" (in 1971), "crimes against internationally protected persons, including diplomatic agents" (in 1973), "taking hostages" (in 1979), "theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof" (in 1979), "unlawful acts of violence at airports serving international civil aviation" (in 1988), "unlawful acts against the safety of fixed platforms located on the continental shelf" (in 1988), "terrorist bombings" (in 1997), and "financing of terrorism" (in 1999).[3]

In the case of the last definition, contained in the International Convention for the Suppression of the Financing of Terrorism of 1999, it may be said that its sectoral character has been doubled. First of all, this convention recognizes that an offense is committed if a

> person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out . . . an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex. (Article 2, para. 1)

And subsequently, in the annex accompanying the convention, one finds a list of nine universal sectoral conventions, starting with the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 and ending with the International Convention for the Suppression of Terrorist Bombings of 1997. Article 23 of the International Convention for the Suppression of the Financing of Terrorism of 1999 also provides that the said list may be extended in the future—through a relatively easier procedure—by the addition of other relevant antiterrorist treaties.

This approach, allowing one to avoid searching for a substantial and exhaustive comprehensive definition of *international terrorism*, also has been applied by other regional conventions and drafts aiming to elaborate such a comprehensive definition.[4]

There is also a specific sectoral definition of *regional nature* contained in the above-mentioned Organization of American States Convention of 1971 that deals with "acts of terrorism taking the form of crimes against persons and related extortion that are of international significance" (Article 2).

All sectoral conventions provide for the obligation of their states' parties to criminalize acts described by these treaties as offenses. It is the obligation either to "make the offence punishable by severe penalties" (e.g., the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970, Article 2) or to make these crimes "punishable by appropriate penalties which take into account the grave nature of the offences" (e.g., the International Convention for the Suppression of the Financing of Terrorism of 1999, Article 4b).

The first internationally adopted comprehensive definition of *acts of terrorism* was elaborated, as observed above, within the framework of the Geneva Convention of 1937 (see United Nations, 1972); such acts are defined as "criminal acts directed against a State or intended to create a state of terror in the minds of particular persons, or a group of persons or the general public" (Article 1, para. 2). In addition, this convention's definition is accompanied by more detailed provisions, saying that these acts would include "any willful act causing death or grievous body harm or loss of liberty" to public officials in general (Article 2, paras. 1a, 1b, 1c), "any willful act calculated to endanger the lives of members of the public" (Article 2, para. 3), "willful destruction of or damage to

public property" (Article 2, para. 2), and "manufacture, obtaining, possession or supplying of arms or ammunition, explosives or harmful substances with a view to the commission in any country whatsoever" of one of the offenses mentioned (Article 2, para. 5). This convention also covers attempts; conspiracy; incitement, if successful, to all offenses; direct public incitement to certain acts even if unsuccessful; willful participation; and assistance knowingly given.

As a result of such an approach, it has been suggested in the doctrine that a number of states were reluctant to ratify the Geneva Convention of 1937 (see United Nations, 1972) because of the breadth of its definition of *terrorism* (Dugard, 1973, p. 94). And it is a kind of paradox that since then, the international community of states has not been able to agree and adopt any universal comprehensive definition of international terrorism.

Although there were numerous attempts toward this end, together with the establishment in 1972 of the UN Ad Hoc Committee on terrorism as well as appropriate drafts presented by individual states, it was impossible—because of political differences—to reach a final consensus concerning a generally acceptable, comprehensive definition of *international terrorism* together with the conclusion of an appropriate universal comprehensive convention (Franck & Lockwood, 1974). A revival of the United Nations's efforts in this field brought to life a new body, that is, the Ad Hoc Committee on terrorism (United Nations, 1996).

In parallel with a successful elaboration of two sectoral conventions (on terrorist bombings and on the financing of terrorism), this UN Ad Hoc Committee once again has undertaken work on a comprehensive convention against terrorism, based on the draft presented by India. Although after 8 years this work has yet to be successfully finalized, there is nonetheless a high degree of understanding that the text (informal) of Article 2, prepared by the coordinator during the sixth session of the Ad Hoc Committee (United Nations, 2002), may serve as a good basis for further considerations of definition/scope problems.[5]

A description of the scope of the UN draft convention, being simultaneously a comprehensive definition of international terrorism, is actually the most developed and "all-inclusive" universal definition. As such, it will still require a lot of substantial and "cosmetic" work from a legal point of view before it will reach its final shape. But what may bring us to some optimistic conclusions is the fact that the most disputable issues are no longer within Article 2 of the draft convention but instead, have been clearly articulated and to a great extent isolated from the rest of the draft text. The effect of this isolation from the draft text is such that it is not the question of the definition of *terrorist acts* that is most problematic but rather, the question of still-not-agreed-on exceptions and exclusions from the scope of operation of the convention. Draft Article 18, dealing with the savings clause and exclusions from the scope of the convention, will, of course, require a high dose of mutual concessions before reaching a final compromise (United Nations, 2002).

This compromise will be necessary to reach an agreement on two principal disputable points. The first point concerns finding a generally acceptable legal

distinction between terrorist acts and a people's struggle for the right of self-determination. Such a distinction has been proclaimed already by some regional comprehensive conventions against terrorism, including the Arab Convention on the Suppression of Terrorism of 1998, Article 2, paragraph a (see United Nations, 2004a, pp. 158-174); the Convention of the Organization of the Islamic Conference on Combating International Terrorism of 1999, Article 2, paragraph a (see United Nations, 2004a, pp. 188-209); and the Organization of African Unity Convention on the Prevention and Combating of Terrorism of 1999, Article 3, paragraph 1 (see United Nations, 2004a, pp. 210-225). The second, mostly disputable, point is connected with a question of so-called state terrorism, which is condemned by some states and rejected generally as a concept by others. It seems, however, that two opposing formulas, presented lastly in the UN Ad Hoc Committee's Article 18 (United Nations, 2002), are in fact not so far apart from each other.

Suffering the lack of a legally binding universal comprehensive definition of *international terrorism*, we have to stress that such definitions have been elaborated by some regional conventions already. Some of them adopted an easier method, establishing their scope of application by including in their texts the list of universal sectoral conventions or offenses established in these conventions, for example, the European Convention on the Suppression of Terrorism of 1977, as amended by its Protocol of 2003, Article 1 (see also United Nations, 2004a, pp. 139-152), and the Inter-American Convention Against Terrorism of 2002, Article 2 (see United Nations, 2004a, pp. 239-250). Another group of regional conventions—the Organization of African Unity Convention on the Prevention and Combating of Terrorism of 1999, Article 1, paragraph 3 (see United Nations, 2004a, pp. 210-225) and the Treaty on Cooperation Among the States Members of the Commonwealth of Independent States in Combating Terrorism of 1999, Article 1 (see United Nations, 2004a, pp. 175-187)—tries to elaborate a substantial comprehensive definition of *terrorism* or of *terrorist acts*, describing them with subjective and objective characteristics of criminal acts. Finally, there are regional conventions of comprehensive character that try to combine the methods of defining *terrorism* applied by two previous categories: the Arab Convention on the Suppression of Terrorism of 1998, Article 1 (see United Nations, 2004a, pp. 158-174); the Convention of the Organization of the Islamic Conference on Combating International Terrorism of 1999, Article 1 (see United Nations, 2004a, pp. 188-209); the original version of the European Convention on the Suppression of Terrorism of 1977, Article 1 (United Nations, 2001, pp. 139-146); and the South Asian Association for Regional Cooperation Regional Convention on Suppression of Terrorism of 1987, Article 1 (see United Nations, 2004a, pp. 153-157). These combined definitions seem to fill up, in the best way possible, gaps and loopholes in definitions based exclusively on one of the above-mentioned backgrounds.

JURISDICTION AND EXTRADITION

As it has been correctly noted in the doctrine, states traditionally have predicated their jurisdiction to prosecute and punish criminal offenders on one or more of the following four principles: territoriality, nationality, protection/security, and universality (Franck & Lockwood, 1974, p. 82). Antiterrorist conventions, universal as well as regional, base jurisdictional obligations and rights of their states' parties on these principles, although with different extensions of their application. The earliest conventions (in the 1970s) deal exclusively with the mandatory establishment of jurisdiction over offenders by concerned states. On the other hand, antiterrorist conventions concluded in past years have developed a variety of possibilities for optionally established jurisdiction. For instance, the International Convention for the Suppression of the Financing of Terrorism of 1999 provides for the mandatory establishment of jurisdiction in three cases and for an optional one in five cases. Analogous provisions are also contained in the International Convention for the Suppression of Terrorist Bombings of 1997.

But what seems to be most important and should be considered the greatest achievement of antiterrorist treaties is the principle of universality, which appears, without any exception, in all of these conventions. It was included, for the first time, in the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970.[6] Subsequently, it has been repeated—in practice without any change—in all other universal conventions to date. The said principle is also proposed in the last United Nations (2002) draft convention on terrorism. The principle of universality and its consequent application is one of the best guarantees for effective suppression of international terrorism through the punishment of terrorists whenever and wherever they may be found, without a possibility of any safe haven for them.

Antiterrorist conventions do not provide directly for mandatory extradition of the offenders to states obliged or entitled to establish their jurisdiction over them. There were, at the very beginning of the 1970s, some attempts to introduce the obligation of extradition (e.g., to the state of registration of an aircraft), but soon they were abandoned. This does not mean, however, that the question of extradition was eliminated altogether from antiterrorist conventions. On the contrary, together with the elaboration of new conventions, provisions on extradition occur more and more often in their texts. All of them are based on the general principle *aut dedere aut punire* (either extradite or punish) or *aut dedere aut judicare* (either extradite or prosecute), giving states the choice to either extradite terrorists or establish over them their own jurisdiction.

Another important provision, which appears in many conventions in connection with extradition, is the elimination of the possibility of regarding a terrorist act "as a political offence or as an offence connected with a political offence or as an offence inspired by political motives." This necessity of removing politics from terrorist acts for purposes of jurisdiction and extradition has been stressed,

in particular, by the original European Convention on the Suppression of Terrorism of 1977, Article 1, paragraph 1 (United Nations, 2001) and its amended version in the Protocol of 2003, Article 1, paragraph 1 (see also United Nations, 2004a).

Terrorist acts shall be deemed to be included as extraditable offenses in all extradition treaties already concluded between states who are parties to antiterrorist conventions and have to be included in future extradition treaties. Antiterrorist conventions may also be considered by states, at their option, as the legal basis for extradition in respect to given terrorist offenses. Such elasticity in relation to the question of extradition allows states, from the very beginning, to use this instrument to facilitate appropriate procedures without limiting the sovereign powers of states.

In the most recently concluded antiterrorist conventions, provisions on jurisdiction and extradition are usually accompanied, as noted above, by detailed rules concerning mutual assistance in connection with investigations or criminal or extradition proceedings in respect to the offenses in question, including assistance in obtaining evidence necessary for the proceedings. Furthermore, these conventions provide for wide cooperation in the prevention of the offenses covered by the said conventions by taking all practicable measures, inter alia, adapting their domestic legislation, including coordination of administrative and other preventive measures, exchanging of information on preventive measures, and cooperating with regard to and transferring of technology, equipment, and related materials. This enlargement of obligations deriving from new antiterrorist conventions seems inevitable for their effectiveness in the struggle against developing, from a technical and organizational point of view, international terrorist activities.

DEVELOPMENT AND UPDATING OF INTERNATIONAL NORMS

Although existing multilateral conventions represent a variety of possible attitudes to the problem of eradication of international terrorism from contemporary international relations, it seems that they possess one common denominator: a growing tendency toward developing international cooperation for this purpose, using various methods and measures.

If we compare, for example, the first universal sectoral convention, which is the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970, with the International Convention for the Suppression of Terrorist Bombings of 1997, it is rather obvious that their principal rules concerning formulation of the definitions of offenses and their criminalization and the establishment of obligatory jurisdiction and extradition are to a great extent similar. There is, however, an advantage of the latter convention as it concerns additional provisions dealing with optional possibilities of establishing jurisdiction and widely developed

obligations of states parties to cooperate in the sphere of prevention of the offenses in question, as well as to guarantee appropriate rights of the offender against whom legal measures have been taken.

The elapse of time caused, in many cases, an objective necessity of reviewing, completing, or updating international antiterrorist conventions, both universal and regional.

We may recall here the Protocol on Unlawful Acts of Violence at Airports Serving International Civil Aviation of 1988 (see also United Nations, 2004a, pp. 63-67), supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation of 1971. The original 1971 convention did not provide for the criminalization and suppression of a terrorist act that "endangers or is likely to endanger safety at [the] airport" (as it is now provided by Article 2, para. 1 of the 1988 Protocol). However, it soon became obvious that such acts also require an international legal reaction and counteraction.

Similarly, in 2001, the Council of Europe, through the especially established Multidisciplinary Group on International Action Against Terrorism, undertook the consideration of a possible updating of the European Convention on the Suppression of Terrorism of 1977 (see United Nations, 2001, pp. 139-146). Despite its misleading title, this convention is, in fact, only an extension of the European Convention on Extradition of 1957 and in today's circumstances, it cannot serve as an effective measure in the fight against terrorism. The said Multidisciplinary Group has prepared a draft amending protocol to the European Convention on the Suppression of Terrorism of 1977, which significantly extends its scope and opens the convention to the nonmember states of the Council of Europe. Let us hope that this Protocol Amending the European Convention on the Suppression of Terrorism, opened for signature on May 15, 2003, in Strasbourg, France, will be ratified soon by all states' parties to the original convention (see also United Nations, 2004a, pp. 139-152).

A continuous development of international legal norms against terrorism is also of paramount importance in the face of developing methods and forms of terrorist activities. The international community should react in such cases without any delay. For this reason, it seems inevitable to accelerate work on the elaboration and final adoption of the aforementioned United Nations (2002) draft convention against terrorism, as well as of a new sectoral instrument, the Draft Convention for the Suppression of Acts of Nuclear Terrorism, initially introduced by the Russian Federation and still not finally agreed on by the UN Ad Hoc Committee (for the last text of this draft, prepared by the Bureau of the Ad Hoc Committee for discussion, see United Nations, 2004b, pp. 15-27).

OTHER TREATIES

It seems that only a concerted action of the international community of states, based on their international obligations deriving from international antiterrorist

treaties—universal and regional as well as comprehensive and sectoral—may bring satisfying results in the common struggle with international terrorism. It must be added that not only "direct" antiterrorist conventions may effectively serve this purpose but also other treaties, such as bilateral treaties concluded, among others, by Poland, on the mutual cooperation of law enforcement organs in combating various crimes, including terrorism.

A special role may also be played in this field, as recognized by the UN General Assembly,[7] by the Convention Against Transnational Organized Crime of 2000 (Palermo Convention of 2000), originally initiated in 1996 by Poland and finally concluded in Palermo, Italy. The UN General Assembly recommended that the UN Ad Hoc Committee, as it works toward developing a comprehensive convention on international terrorism, should take into consideration the provisions of the Palermo Convention of 2000 (see, specifically, para. 7 of Resolution A/RES/55/25).

These directives of the UN General Assembly clearly show that a coordinating role played by the UN Ad Hoc Committee should not be limited only to filling gaps and avoiding overlaps between already existing sectoral conventions concerning international terrorism in its various forms but instead, should also extend to achieving a harmonization between a future universal comprehensive convention on international terrorism and the newly born Palermo Convention of 2000.

Although a mutual interdependence between sectoral conventions and a comprehensive convention is something that the UN Ad Hoc Committee has already had in its "collective" mind for a rather long time, the necessity of also recognizing the links between transnational organized criminal activities, as now internationally regulated by the Palermo Convention of 2000, and acts of terrorism appears to be quite a new factor in the work of the UN Ad Hoc Committee on the comprehensive convention against international terrorism. As a result of these links, it seems that we presently may find two kinds of impacts—one direct, the other indirect—of the convention in the field of combating international terrorism.

First of all, the Palermo Convention of 2000 may be considered itself as a separate and useful legal tool within the concept of "measures to eliminate international terrorism," although it must be admitted that the convention does not list international terrorism among the four categories of offenses that are required to be criminalized by the states' parties to the convention.[8] However, it seems that the Palermo Convention, in practice, may be applicable with a great probability also to acts of international terrorism, thanks to an interesting construction of the provisions concerning its scope of application (Article 3). This scope of application goes beyond the above-mentioned four categories of offenses (see Note 8) that must be criminalized in a mandatory way.

Apart from them, the scope of application of the Palermo Convention of 2000 depends generally on the coexistence of three elements:

1. The offense is a "serious crime," which means "punishable by a maximum deprivation of liberty of at least four years or a more serious penalty" (Article 2b);
2. The offense is "transnational in nature," which means (a) it is committed in more than one state; (b) it is committed in one state, but a substantial part of its preparation, planning, direction, or control takes place in another state; (c) it is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state; or (d) it is committed in one state but has substantial effects in another state;
3. The offense "involves an organized criminal group," which is defined as a

> structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit. (Article 2a)

It is interesting and worth noting that although the Palermo Convention of 2000 gives us a detailed definition of an *organized criminal group*, it does not define, in fact, the very concept of *transnational organized crime*. But on the other hand, such an approach makes it possible to extend the application of the convention to an unlimited number of crimes, providing they fulfill all three above-mentioned conditions. Analyzing these conditions, it seems that in practice, they will be fulfilled in a majority of cases of international terrorist acts. Consequently, it will make it possible to apply this convention to such terrorist acts.

There is a principal question for which provisions of the Palermo Convention of 2000 are especially useful and that could be applied for combating international terrorism. It seems, first of all, these are the provisions that create obligations for international cooperation in combating transnational organized crime and that are widely developed by the convention. The cooperation under this convention includes not only traditional means such as extradition and mutual legal assistance but also other more specific measures, such as law enforcement cooperation and exchange of information. It includes, as well, training and technical assistance.

The Palermo Convention of 2000 and its protocols call on states' parties to adopt measures to prevent various forms of transnational organized crime. At the international level, countries will seek to prevent organized crime by exchanging information on trends in transnational organized crime and on best practices to prevent it. They will also take part in international projects aimed at preventing transnational organized crime.

Summing up, it seems that the provisions of the Palermo Convention of 2000 dealing with widely understood cooperation and prevention are of primary importance for being applied, whenever and wherever possible, to acts of terrorism as well. Equally important and applicable are some progressive obligations

introduced by the convention, such as those concerning protection of witnesses and assistance to and protection of victims.

As to the indirect impact of the Palermo Convention of 2000 in the field of the international struggle with terrorism, it may be found in the form of influence, which various norms of the convention have or should have on the content of analogous norms of the currently negotiated draft comprehensive convention against international terrorism (United Nations, 2002). In connection with this it must be noted, first of all, that both of the conventions in question have, in fact, a comprehensive character, dealing with the phenomena of transnational organized crime and international terrorism as a whole. As a result, it seems that a coordination and harmonization of appropriate provisions of these conventions should be something natural and self-explanatory.

However, there are some examples from the last sessions of the UN Ad Hoc Committee showing that draft proposals within the United Nations (2002) draft convention do not always follow solutions accepted by the Palermo Convention of 2000.

For instance, there have been strong critical voices in opposition to a proposal to include, even as an optional basis for establishing jurisdiction of a state over the act of terrorism, an offense committed wholly or partially outside its territory. This criticism has been expressed despite the fact that the Palermo Convention of 2000 already gives us a wide understanding of the offense being “transnational in nature” (Article 3, para. 2) and allows for jurisdiction over offenses committed outside the territory of a state (Article 15).

Similarly, there is still a lack of general acceptance by the UN Ad Hoc Committee of the principle of liability of legal persons (contained in the Palermo Convention of 2000, Article 10). There are numerous voices demanding the analogous Article 9 of the United Nations (2002) draft comprehensive convention on international terrorism be deleted from its text.

These and many other examples of existing and continued discrepancies could be cited. But in general, it seems that they may bring us to the conclusion that the positive and progressive achievements of the Palermo Convention of 2000 should not be forgotten in the process of elaboration of the comprehensive convention against international terrorism. It seems as well that the UN Ad Hoc Committee should be stimulated to fully exploit the possible advantages deriving from the experiences of the convention.

In addition to what has been said up to now about mutual interdependence between the Palermo Convention of 2000 and any future comprehensive convention against international terrorism, the following question needs to be answered, namely, Is it useful and necessary to multiply international treaties dealing with similar problems and solving them analogically? Repeating the same legal solutions may even be considered a waste of valuable resources. But in answering this question, it is better to look first at some earlier exercises in international law. For instance, some main principles of the UN Charter have been endlessly repeated in numerous later universal and regional treaties and

declarations. The whole system of the international law of human rights is based on continuous repetition of certain rules at the universal and regional level. No one considers such repetitions as detrimental or unnecessary. Quite the opposite—they are treated as a method of strengthening such rules and as a way of stressing their importance.

Similarly, in the case of international measures to eliminate various forms of crime, including international terrorism, we cannot repeat too often the most important and effective legal rules, expressing a joint will of the international community of states. In this case, the old academic proverb *Repetitio est mater studiorum* (repetition is the mother of learning) may also be extended to the process of the strengthening of international law.

NOTES

1. The Convention for the Prevention and Punishment of Terrorism of 1937 (see United Nations, 1972) was signed by 24 states but received ratification from only 1 state, India.

2. For full texts of these conventions and other related instruments, see *International Instruments Related to the Prevention and Suppression of International Terrorism* (United Nations, 2004a); see also Cherif Bassiouni (2001) and Elagaba (1997).

3. See the catalogue of universal antiterrorist conventions contained in the annex to the International Convention for the Suppression of the Financing of Terrorism of 1999. These conventions mention "sectoral" definitions of *terrorist acts*.

4. See, for instance, a list of 10 sectoral conventions contained in the Inter-American Convention Against Terrorism of 2002, Article 2 (see United Nations, 2004a, pp. 239-250) or the analogous list of the same treaties included in the European Convention on the Suppression of Terrorism of 1977, as amended by its Protocol of 2003, Article 1, paragraph 1 (see also United Nations, 2004a, pp. 139-152).

5. Article 2 of the Ad Hoc Committee's draft comprehensive convention on international terrorism states,

> 1. Any person commits an offence within the meaning of the Convention if that person, by any means, unlawfully and intentionally, causes: (a) Death or serious bodily injury to any person; or (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or (c) Damage to property, places, facilities or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.
> 2. Any person also commits an offence if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1 of this article.
> 3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.
> 4. Any person also commits an offence if that person: (a) Participates as an accomplice in an offence as set forth in paragraph 1, 2, or 3 of this article; or (b) Organises or directs others to commit an offence as set forth in paragraph 1, 2, or 3 of this article; or (c) Contributes to the commission of one or more offences as set forth in paragraph 1, 2, or 3 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or (ii) Be made in the knowledge of the intention of the

> group to commit an offence as set forth in paragraph 1 of this article. (United Nations, 2002, p. 6)

6. The Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 states,

> Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article [states with mandatory jurisdiction]. (Article 2, para. 4)

7. In adopting the Convention Against Transnational Organized Crime of 2000 and the two protocols supplementing it, the United Nations called on all states to

> recognize the links between transnational organized criminal activities and acts of terrorism, taking into account the relevant General Assembly resolutions, and to apply the United Nations Convention against Transnational Organized Crime in combating all forms of criminal activity, as provided therein. (see, specifically, para. 6 of Resolution A/RES/55/25)

8. These offenses include (a) participation in an organized criminal group, (b) the laundering of proceeds of crime, (c) corruption, and (d) obstruction of justice.

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