

**XI. VERBATIM RECORD OF THE HALF-DAY SPECIAL MEETING ON
“INTERNATIONAL TERRORISM”
HELD ON THURSDAY, 21 JUNE 2012 AT 9.30 AM**

His Excellency Mr. U Thiha Han, Vice-President of the Fifty-First Annual Session in the Chair.

Vice-President: Good morning everyone. Today we begin the day's proceedings with the Special Meeting on International terrorism and I invite Dr. Soleimani, for his introductory remarks.

Dr. Hassan Soleimani, Deputy Secretary-General: Mr. Vice-President, Hon'ble Ministers, Attornies-General, Excellencies, Dr. Rohan Perera, the Chairman of the UN Ad Hoc Committee on International Terrorism, Delegates, Ladies and Gentlemen. Today's Special Meeting is on a very important subject "International Terrorism" The Report prepared by the AALCO Secretariat is contained in Document AALCO/51/ABUJA/2012/SD/S 7.

Before I present some views on the theme of the special meeting, I would like to formally thank Dr. Rohan Perera for readily agreeing to cooperate with us and agreeing to give us an insight into the progress in the work of the Ad Hoc Committee on International Terrorism. I welcome all the panelists who are here with us today.

Considering that this is a serious issue that needs to be thoroughly debated upon in order to find a solution, it was deemed appropriate to conduct this Half Day Special meeting in conjunction to the Fifty First Annual Session. This proposal was made by the Attorney General and the Minister of Justice of the Federal Republic of Nigeria. The issues that would be discussed in the course of this Special Meeting would focus on three issues: (i) Challenges before the Ad Hoc Committee on International terrorism; (ii) International legal cooperation in criminal matters against terrorism; and (iii) countering financing of international terrorism.

The concept of International Terrorism was included on the agenda of AALCO's Fortieth Session held in New Delhi in June 2001, upon a reference made by the Government of India. It was held that consideration of this item at AALCO would turn out to be useful and relevant in the context of the ongoing negotiations in the AD Hoc Committee on elaboration of the Comprehensive Convention on International Terrorism.

It may be recalled that during the Forty First Annual Session of AALCO held in Abuja, Nigeria 2002, a special meeting was organized on Human Rights and combating Terrorism by AALCO with the help and assistance of the Office of the High Commissioner for Human Rights (OHCHR). As a result the successive sessions directed the Secretariat to monitor and report on the progress in the Ad Hoc Committee on negotiations relating to the comprehensive international convention to combat terrorism.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, although the term *terrorism* doesn't have a universally accepted definition as such it is always understood as acts of violence by the extremist forces (terrorists or insurgents), in an attempt to create fear in the society and to further their goals. That is to say it is understood as the systematic use of terror, especially as a means of coercion against the ordinary and innocent civilians. Over the last few decades the Asian and the African continents have experienced a number of terrorist attacks and threats.

Stressing on this issue, UN Secretary-General H.E. Ban Ki Moon on the 3rd of June 2012 called on Member States to join hands and stand united against global terrorism and help in combating terror outfits. Mr. Ban also highlighted 4 key areas that the nations need to work on for tackling terrors, that is:

- a) Tackling conditions favorable to the spread of terrorism,
- b) prevention of terrorism,
- c) strengthening up the States capacity to counter terrorism; and
- d) promotion of inter community engagements.

He further claimed that (suppression) control of terror funds happens to be the most critical area of operation where internationally accepted guidelines need to be effectively sanctioned and implemented to further the goals of the UN. And at the strategic level he pointed out that one needs to understand and counter the appeal of terrorism which meant building a culture of dialogue processes, spreading of education and inter-community engagements.

Mr. Vice-President, the entire discussion in the Ad Hoc Committee at its 48th meeting on the 15th of April last year (2011) was focused on the definition of terrorism, without which certain areas of law seems to be lacking and has not resulted in effective implementation to combat terror.

The statements made by the delegations during the meeting and the previous meetings drew attention to particular incidents of terror attacks regardless of their motivations and it was held that measures to be adopted to counter terrorism must be in conformity with the UN Charter, International Law, Human Rights Law, Humanitarian Law and Refugee law.

Realizing that terrorism was a multi challenging phenomenon, the need for a comprehensive counter terrorism strategies, was proposed. The delegations also drew attention to the recommendations of the Twelfth United Nations on Crime Prevention and Criminal Justice Conference that was held at Salvador, Brazil 2010. While some delegations also highlighted the need for assistance to States towards capacity building and sharing of information that would help in combating terror, some other delegations expressed their deepest concern over the interrelationship between (i) illegal trade in arms and drugs, (ii) human trafficking and money laundering and (iii) also challenges raised by the menace of suicide bombings. With such expressions and voicing out of multiple

concerns, there appears to be a growing consensus on the need for a universally accepted definition of *Terrorism*.

The definition must include under its ambit the various rules and principles of international law that safeguards human rights and dignity as well as fundamental freedoms. The framing of such a definition would only be possible with the experts from all the concerned fields as well as the Member States.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, a special meeting of the Counter Terrorism Committee (CTC) commemorating the adoption of the Security Council Resolution 1373 (2001) and establishment of the committee took place on 18th September 2011 at New York.

In furtherance to the request of the Security Council in its resolution 1963 (2010) the Executive Directorate of the CTC made a careful analysis on a study updating the 2009 survey on the strengths and weaknesses of the Member States in the implementation of the Resolution 1624 (2005). The report provided recommendations for practical ways to implement the resolution with regard to the thematic area in each region. The report **notified that positive developments** were evident with the growth in the number of states showcasing the following efforts, namely:

- (i) their increased commitment to international cooperation by signing and ratifying the international instruments,
- (ii) criminalizing acts of terrorism in their domestic legislation,
- (iii) adopting measures to cut terror funding,
- (iv) preventive border security measures,
- (v) The use of modern Communication and Information and Technology for (enrolment) or recruitment and transfer of funds and organization across international borders was noted with alarm.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, the Committee also noted the close and compatible relationship between terrorism and transnational organized crime, including trafficking of illegal drugs, money laundering, illegal arms trafficking and resolved to monitor and assist, to ensure the full implementation of resolution 1373 (2001), with the support of CTED, as well as to continue to focus on means to address the identified gaps and loopholes in the implementation of the resolution, in cooperation with international, regional and sub-regional organizations, by strengthening its role in providing technical assistance, aimed at providing full implementation of the resolution.

As Criminals find it easier to take advantage of the differences in legal systems in different countries and also make use of the concern for sovereignty of most states and often the fact that certain countries are unable to overcome their differences in order to work together.

The international community has developed a series of mechanisms for international co-operation in criminal matters concerned in particular with extradition laws, mutual legal assistance, transfer of criminal proceedings, transfer of convicted persons, recognition of

decisions of foreign criminal jurisdictions and legislations, the freezing the assets of terrorist outfits. Therefore, at this stage co-operation among Member States in criminal matters is necessary particularly in relation to combat and halt terror crimes.

At the 66th session of the General Assembly of the UN, resolutions that would impact the formation of a legal regime to combat terrorism was adopted. At this session, the General Assembly had also considered the report of the Secretary General on measures to eliminate international terrorism.

Mr. Vice-President, Excellencies, Ladies and Gentlemen, I hope I have been able to highlight briefly the points on which we need to focus our attention in this meeting. Now I invite the Chairman of the Ad Hoc Committee, Dr. Rohan Perera to give his thoughts on the ongoing work in the Ad Hoc Committee on International Terrorism. I thank you all for a patient hearing.

Vice-President: Thank you Dr. Soleimani, and now as Dr. Soleimani has just said I would like to invite Dr. Rohan Perera, Chairman of the UN Ad Hoc Committee on Measures to Eliminate International Terrorism to make his presentation.

Dr. Rohan Perera, Chairman of the UN Ad Hoc Committee on Measures to Eliminate International Terrorism: I would like to begin my presentation on how the issue of terrorism was dealt with, first by the League of Nations predecessor of the the United Nations. It began with the response to the terrorist attack on the then French Minister of Foreign Affairs, in Yugoslavia in 1934 and some more attacks elsewhere. It is very interesting to see the type of issues then and issues that confront us today. These targets at the high level personalities lead to the adoption of the Resolution of the Council of the League of Nations in December 1934. I quote, “It is the duty of every State neither to encourage nor tolerate on its territory any terrorist activity with a political purpose and every State shall use all its power to prevent and repress acts of this nature and to lend its assistance to Governments that request it”. Even the principle of non-use of one’s territory for this purpose to perpetrate hostile or terrorist act. Thus, there were many instruments on anti-terrorism including the landmark Declaration of the United Nations on the Principles of International Law on Friendly Relations and Cooperation among States. These events led to the outcome of two Conventions in the League of Nations, first is the “Convention for the Prevention and Punishment of Terrorism¹” and accompanying that Convention was a “Convention for the Creation of an International Criminal Court²” in 1937. Although these never entered into force it set the backdrop for the work undertaken later, perhaps in a different context.

The significance of the Convention for the Prevention and Punishment of Terrorism was that it contained a definition of the term “terrorism”, and I quote

¹ Convention for the Prevention and Punishment of Terrorism, 19 League of Nations OJ 23 (1938) League of Nations Doc. C. 546(I). M. 383(I). 1937.V (1938) (16 November, 1937)

² Convention for the Creation of an International Criminal Court, League of Nations OJ Spec. Supp. No. 156 (1936), LN Doc. C.547(I).M.384(I). 1937. V (1938)

“All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public”.

When we come to the more recent times we find that all the instruments containing the definition of terrorism go back to the League of Nations Convention. By way of observation it is also interesting to note that the League of Nations Convention in the International Criminal Court and terrorist crimes within the jurisdiction of the proposed Court. It is interesting to note that it has not found place in the Rome Statute of the International Criminal Court. With that background I now come to the “Current Initiatives in the United Nations – The definitional Issue and the Sectoral Approach”.

The current initiatives being undertaken in the United Nations have been at two levels. Firstly, the norm creating role of the General Assembly, Specialised Agencies and its Ad-Hoc bodies, such as the Ad-Hoc Committee on Measures to Eliminate International Terrorism, through which specific Conventions are adopted, and secondly, the measures adopted by way of enforcement action by the Security Council, under Chapter VII of the Charter of the United Nations. The latter, treating international terrorism as a threat to international peace and security, was resorted to increasingly, particularly after the events of 9/11 in the United States, where urgent action became a necessity. The thrust of my presentation would be on the first aspect, the norm creating process in the UN Ad-Hoc Committee on Terrorism, given my close association with this process, as Chairperson of the Committee. I will, of course, make some concluding observations on the mutually supportive nature of the norm creating process in the General Assembly and the enforcement measures adopted by the Security Council.

When the agenda Item Measures to Eliminate International Terrorism was inscribed on the UN Agenda, in the early seventies, consequent to a West European initiative, in the aftermath of the “Munich Massacre”, it was immediately confronted with the “definitional issue”. At the core of the problem was the demarcation between “terrorists” and “freedom fighters”, exercising the right of self-determination in the context of situations of foreign occupation and alien domination”. The dilemma confronting the United Nations initiatives was aptly captured by the statement, “*one man’s freedom fighter is another man’s terrorist*”.

Faced with this dilemma, the United Nations adopted what has now come to be known as the “Sectoral Approach”, criminalizing specific criminal acts, irrespective of motive, and containing a criminal law or operational definition of such acts. The series of Convention adopted based on the “Sectoral Approach”, cover unlawful acts against aircraft³, safety of maritime navigation, hostage taking⁴, etc. to the more recent, suppression of terrorist bombings⁵, terrorist financing⁶, and finally the suppression of acts of nuclear terrorism⁷.

³ Convention for the Suppression of Unlawful Seizure of Aircraft, 860 UNTS 105, entry into force October 14, 1971; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 974 UNTS 178, entry into force January 26, 1973

⁴ International Convention Against the Taking of Hostages, 1316 UNTS 205, entry into force June 3, 1983

⁵ International Convention on the Suppression of Terrorist Bombings, 2149 UNTS 256, entry into force May 23, 2001

These Conventions had a common architecture. They obliged State parties to criminalize under their domestic laws, the specific acts covered under the Conventions; to establish their jurisdiction over these acts, going beyond the traditional grounds of territoriality and nationality, and the fundamental obligation to “*Extradite or Prosecute*” (*aut dedere aut judicare*) an offender, the underlying rationale being that no terrorist offender should find safe haven in the territory of any State. The “*Extradite or Prosecute*” regime was complimented by wide ranging provisions on Mutual Legal Assistance and facilitating extradition, particularly in the recent Convention on Terrorist Bombings, Terrorist Financing and Nuclear Terrorism by treating the offences covered under these Conventions, as “non-political offences”, for the purposes of extradition and Mutual Legal Assistance, given the heinous nature of these crimes.

Thus, a corpus of international legislation was constructed over the recent by the United Nations, adopting a pragmatic approach designed to enhance practical co-operation among States, in combating terrorism, avoiding the divisive issue of defining the generic term “Terrorism”. Thus, these Conventions adopted by the UN are the practical framework for combating terrorism. With this background, now I will proceed to the next part of my presentation the “Rationale for a Comprehensive Convention on Terrorism”.

The UNGA mandated the Ad-Hoc Committee to elaborate a “Comprehensive Convention on International Terrorism” as a means of further developing a comprehensive legal framework of Conventions dealing with international terrorism. The objective of the Convention is to provide comprehensive coverage to terrorist crimes not covered under existing Conventions and to adopt enhanced measures of co-operation and assistance between States. The offences sought to be covered include, in addition to causing death or serious bodily injury to any person and serious danger to public or private property, offences such as serious attacks on the environment, a serious and credible threat to commit a terrorist act, as an offence in itself, and an obligation on State parties to ensure that “refugee status” is not accorded to a person, if there are serious reasons for considering that such a person has committed a “terrorist offence”, which are all elements not covered in existing Sectoral Conventions. New areas in which draft convention was developing, it was felt it would be a useful tool to combat terrorism.

Now I would like to dwell on the “Definitional Issue” and the current status of negotiations and issues holding up the definition. Negotiations on a Draft Comprehensive Convention on Terrorism brought to surface the much debated question of defining the term “Terrorism”. The Draft Text⁸ proposed by the sponsor State India, contained an operational definition of the term terrorism as found in the Sectoral Conventions. The operational definition covered specific criminal acts, such as unlawful and intentional causing of death or serious bodily injury to any person, serious damage to public or

⁶ International Convention on the Suppression of Financing of Terrorism, 2178 UNTS 197, entry into force April 10, 2002

⁷ International Convention for the Suppression of Acts of Nuclear Terrorism, 2445 UNTS 89, entry into force July 7, 2007

⁸ A/C.6/51/6

private property, when these acts are committed with a terrorist intent, i.e., with the purpose of intimidating a population or to compel a government or an international organization, to do or abstain from doing any act.

The Delegations of the Organization of Islamic Conference (OIC) on the other hand, opted for a generic definition of the term, and sought in their proposal, to have a clear distinction between acts of terrorism and those acts committed in the course of an armed struggle in the exercise of the right of self-determination. This approach was opposed by the European States, who favoured an operational definition on the basis that, the Comprehensive Convention, which is a law enforcement instrument involving individual criminal responsibility, was not the instrument for addressing such issue.

In the light of these divergent approaches, to the Comprehensive Convention, the challenges before the negotiators and for the Committee was to shift the focus of the negotiations, away from the definitional issue and to address the concerns that have arisen, in the context of the scope of application of the Convention and to clearly demarcate the field of application of the Convention and to distinguish it from the different legal regimes that are applicable in cases of armed conflict.

Thus, the negotiators are now proceeding on the basis of a compromise package presented by the Co-ordinator, to meet these concerns, through what has come to be known as a “Choice of Law” provision which carves out the scope of application of the Convention, rather than going down the politically sensitive path of attempting to draw a distinction between acts of terrorism and those committed during an armed struggle for national liberation.

The key elements of the Compromise Package are as follows:

- Activities of “armed forces” during an armed conflict, (the term covers both State and non-State forces in conflict situations) as those terms are understood under International Humanitarian Law, which are governed by that law, are not governed by the Convention;
- 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 the Convention. This provision seeks to address concerns of Western States that official activities of State military forces, outside the context of an “armed conflict”, should not be governed by the Convention, as Other Rules of International Law, viz Principle of State Responsibility would apply in such situations. (Choice of law provision).

Thus, the basic approach and rationale of the “compromise package” is the recognition of the fact that the Comprehensive Convention, is not “Comprehensive” in the absolute sense of the term, but that it would operate alongside other applicable legal regimes, in given situations, and seeks to preserve the integrity of such other laws. Thus, for instance, an element of the package specifically provides that “This Convention is without prejudice to the Rules of International Law, applicable in armed conflict, in particular

those rules applicable to acts lawful under International Humanitarian Law”. The essence of this provision is that the Convention would not criminalise, what is not prohibited under IHL.

In order to allay possible concerns of impunity, the “Compromise Package” also stipulates that the exclusion of certain acts, which may be materially incriminating, from the scope of application of the Convention, will not lead to impunity, in respect of such acts, if they are unlawful under other rules of applicable International Law and would be punishable under such laws.

Therefore, the negotiations, are now proceeding on the basis of an approach, of addressing the different concerns of delegations, through “carve outs”, of specific legal regimes, by carefully delineating the scope of application of the Convention, rather than attempting to exclude specific acts from the generic definition of terrorism.

The prolonged nature of these negotiations, while giving cause for concern that it sends out a negative signal from the United Nations in enhancing international cooperation to combat terrorism, nevertheless is understandable, given the backdrop of sensitive political issues involved, particularly the situation of occupied territories in the Middle East.

However, the fact that all delegations are now prepared to negotiate on the basis of the approach in the Coordinator’s Text, recognizing however, that all proposals remain on the table, until there is an acceptable outcome in respect of their concerns, is a positive, that need to be underlined.

As mentioned at the commencement of this presentation, it is also important to bear in mind that in the context of United Nations’ efforts to address the need for international efforts to enhance co-operation in combating terrorism, there is an all important role of the Security Council, by way of Enforcement Measures in terms of Chapter VII of the Charter. These address measures required by way of immediate action by Member States, in given situations, in contrast to the slower norm creating process. Yet, it needs to be emphasized that the Basic Approach now is the Compromise Approach and it emphasizes the fact that the Convention would be open alongside other legal regimes. The Comprehensive Convention is also an instrument of law enforcement, it would be accompanied by a draft resolution and it continues to be negotiated. It does not have a generic definition rather it takes into account concerns of different groups. Once adopted it will go alongside other legal regimes and will help States under general international law.

I once again thank you for giving me this opportunity.

Vice-President: Thank you Dr. Rohan Perera, for that most enlightening and lucid presentation. I now invite Mr. Peter Terkaa Akper SAN, Senior Special Assistant to the Attorney-General of the federation and Minister of Justice, Federal Republic of Nigeria,

to make his presentation on “Legal Response to Terrorism in Nigeria: Issues and Challenges”.

Mr. Peter Terkaa Akper SAN, Senior Special Assistant to the Attorney-General of the Federation and Minister of Justice, Federal Republic of Nigeria: I am honoured to have been invited by the Attorney General of the Federation and Minister of Justice, **Mr. Mohammed Bello Adoke, SAN, CFR** to deliver this paper at the 51st Annual Session of the Asian-African Legal Consultative Organisation (AALCO). Although I was invited to speak on “Terrorism in Nigeria”, for want of special knowledge on the subject matter, I have taken the liberty of amending the topic to read “**Legal Response to Terrorism in Nigeria: Issues and Challenges.**” I have approached the subject with due humility, conscious that the subject matter is relatively novel to us in Nigeria and that our legal response can reasonably be adjudged to be at its infant stage, when compared to other jurisdictions like South Africa and the United Kingdom.⁹

Until, recently terrorism or the threat of terrorism was a negligible phenomenon in Nigeria. President Goodluck Ebele Jonathan, GCFR recently reiterated this position in his Democracy Day Address where he stated that “... *terrorism, a new menace, is totally alien to our way of life and culture; it has reared its head and is posing serious challenge*”¹⁰ The first major incident of what can be described as an act of terrorism was the aircraft hijacking which occurred on Monday 25th October 1993 when in the heat of June 12 election annulment in 1993, four Nigerians hijacked a Nigeria Airways, Airbus A310 and diverted it to the Republic of Niger.¹¹ Adewale Adeoye describing the hijack and its apparent strangeness in the Nigerian environment at the time of its occurrence stated as follows:

“...they did not only seize the plane, they also held in awe all the bewildered passengers, some of who were business people or top government officials flying to Abuja, the seat of power.... The boys cited the need to enthrone democracy and actualise the annulled June 12 election as the reason for **what appeared a desperate action, quite strange to their social milieu**”(**emphasis mine**)¹²

It is reported that in the course of the aftermath of the agitations for the actualization of June 12 election in 1993, the country witnessed several bombing incidents targeted

⁹ See Nigeria’s principal legislation on terrorism the Terrorism (Prevention) Act came into force on 3rd June 2011, while the United Kingdom’s core legislation, the Terrorism Act, was enacted in 2000.

¹⁰ See Democracy Day Address by His Excellency, Dr. Goodluck Ebele Jonathan, GCFR Tuesday, 29th May 2012.

¹¹ See Adewale Adeoye- The Nation Newspaper on “ The June 12 Nigeria Airways Plane Hijack: The Untold Story <http://maxsiollum.wordpress.com/2009/06/22/the-june-12-plan-hijack-the-untold-story/07/06/2012> for a detail story on the hijack which was mainly to further the political interest of the 4 -young person’s calling themselves the Movement for the Advancement of Democracy (MAD) that were involved in the hijack.

¹² Adewale Adeoye, Deputy Director, The Nation Newspaper interviewed Richard Ogunderu one of the hijackers of the Nigeria Airways Airbus A310 , sixteen years after the encounter. In The June 12Nigeria Airways plane Hijack: The Untold Story. Ibid.

mainly at military convoys, although the exit of the military in the body politics of the country and the advent of democracy in 1999 put a lull to these activities and agitations.¹³ The spate of bombings in the country however started on 1st October 2010 when terrorist struck near the eagle square where the independence activities were taking place in Abuja. Since then, other bombing incidents were recorded in Jos, Bayelsa and Lagos.

The Boko Haram sect has also added another dimension to the bombings as they routinely attack Police stations, churches and Schools. But, the most profound of their terrorist activities was the UN House bombings in Abuja which attracted international condemnation. This, coupled with the Mutallab's attempted bombing of Delta Airline in December 2009, brought Nigeria to the global discourse on international terrorism. Although, acts of terrorism have been on the increase in the country, Nigeria did not have a comprehensive legislation on terrorism before June, 2011. This is despite the fact that Nigeria had ratified more than ten out of the 16 United Nations Terrorism Conventions.

Government's counter terrorism strategy is to confront all those threatening the nation's collective peace and security and bring the perpetrators to Justice. To give effect to this strategy, government responded to the menace of terrorism by taking steps to enact the Anti-terrorism legislation which had been in the force for about 5 years.¹⁴ The collective resolve of the government came to fruition with the enactment by the National Assembly of the Terrorism (Prevention) Act, 2011. This paper examines the legal regime that has been put in place to combat terrorism in Nigeria, the extent to which it complies with global standards and offer suitable recommendations where necessary to address growing terrorism threats in Nigeria.

2. Overview of the Terrorism (Prevention) Act, 2011

The objectives of the Terrorism (Prevention) Act 2011 (TPA 2011) are “to provide for the prevention, prohibition and combating of acts of terrorism, the financing of terrorism in Nigeria and for the effective implementation of the Convention on the Prevention and Combating of terrorism and the Convention on the Suppression of the Financing or Terrorism”.¹⁵ TPA is divided into eight major parts. These include:

- (i) provision of acts of terrorism and related offences;
- (ii) prohibition of terrorist funding and seizure of terrorist property;
- (iii) provision of cooperation to other countries through mutual legal assistance and seizure of terrorist assets;

¹³ See Onwuka Nzeshi “ 5 Years on, Anti-terrorism Bill 5 Years on, Anti –terrorism Bill, <http://w.w.Thisdaylive.com/articles/5-years-on-anti-terrorism-bill-5-years> 07/06/12

¹⁴ Unsuccessful attempts were made by President Olusegun Obasanjo, GCFR and President Umaru Musa Yar Adua GCFR in 2006 and 2007, respectively

¹⁵ See Explanatory Memorandum to TPA 2011

- (iv) provision of cooperation to other countries through extradition of suspects linked to terrorism;
- (v) investigative powers;
- (vi) prosecution
- (vii) power to register or refuse registration of charities, and
- (viii) miscellaneous powers.

2.1 Terrorist Offences

The Terrorism (Prevention) Act, 2011 (TPA 2011) creates a number of terrorism offences which range from attempted acts of terrorism to actual commission, assistance and facilitation of the activities of persons engaged in terrorism. Section 1 of TPA 2011¹⁶ provides that:

- (1) A person who knowingly –
 - (a) does, attempts or threatens to do an act preparatory to or in furtherance of an act of terrorism;
 - (b) commits to do anything that is reasonably necessary to promote an act of terrorism, or
 - (c) assists or facilitates the activities of persons engaged in an act of terrorism, commits an offence under this Act.¹⁷

2.2 Definition of terrorism

The 2011 Act provides a definition of ‘terrorism’ as an act which is deliberately done with malice, aforethought and which:

- (a) may seriously harm or damage a country or an international organisation;
- (b) is intended or can reasonably be regarded as having been intended to-
 - (i) unduly compel a government or international organisation to perform or abstain from performing an act;
 - (ii) seriously intimidate a population;

¹⁶ The Terrorism (Prevention) Act, 2011 was passed by the National Assembly on 1st June 2011 and assented to by President Goodluck Ebele Jonathan, GCFR on 3rd June 2011.

¹⁷ See section 1(1) (a) (b) (c) TPA 2011

- (iii) seriously destabilize or destroy the fundamental political, constitutional, economic, or social structures of a country or an international organisation, or
- (iv) otherwise, influence such government or international organisation by intimidation or coercion.¹⁸

2.3 Terrorist acts

The definition of terrorism also sets out a list of terrorist acts and includes acts which involves or causes, as the case may be-

- (i) an attack upon a person's life which may cause serious bodily harm or death;
- (ii) Kidnapping of a person;
- (iii) destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
- (iv) the seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purposes in paragraph (b)(iv) of this subsection;
- (v) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into and development of biological and chemical weapons without lawful authority;
- (vi) the release of dangerous substance or causing of fire, explosions or floods, the effect of which is to endanger human life;
- (vii) Interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life.¹⁹

It is instructive to note that the scope of TPA 2011 extends to acts or omissions in or outside Nigeria which constitutes an offence within the scope of a counter terrorism protocols and conventions duly ratified by Nigeria.²⁰ However, demonstrations or stoppage of work are excluded where such acts are not intended to result in any harm referred to in subsection (2) (b)(I), (ii) or (iv) of the Act.²¹

It is clear from the definition that the TPA takes cognisance of all groups, individuals, and states as well as factors that engender terrorism such as political reasons, which may

¹⁸ See section 1(2) (a) (b) (i)-(iv) TPA 2011

¹⁹ See section 1(2) (c) (i) -(vii) TPA 2011

²⁰ Section 1(2) (d) TPL 2011

²¹ Section 1(3) TLA 2011

manifest in form of liberation movements, resistance to foreign occupation, and attempts by countries to influence the decisions or policies of another country, or trying to force its policies on other countries through intimidation or coercive means. The description of terrorism under TPA also conforms with Nigeria's obligation under the various United Nations Terrorism Conventions.

2.4 Proscribed Organisation

The TPA 2011 empowers the government to proscribe any organisation that engages, participates, collaborates, promotes, encourages, exhorts, and sets up or pursues acts of terrorism. The Attorney General, National Security Adviser or the Inspector General of Police may with the approval of the President apply to a judge in chambers to declare any entity to be a proscribed organisation and the notice would be published in an official gazette.²²

2.5 Terrorist Meetings

The TPA 2011 also criminalises terrorist meetings and punishes those who arrange, manage, or assist in these endeavours, provide logistics, equipment or facilities or attends meeting in support of a proscribed organisation with a maximum term of imprisonment of 10 years.²³ Similarly, those who knowingly solicit or render support²⁴ for an act of terrorism or proscribed organisation or an internationally suspected terrorist group are liable on conviction to a maximum of 20 years imprisonment.²⁵ Equally significant is the provision that where death results from any of the terrorist acts, the penalty shall be death sentence.²⁶

2.6 Harbouring of Terrorist

The TPA 2011 also creates the offence of harbouring of terrorists and punishes any person who knowingly harbours or conceals a person who has committed a terrorist act or has been convicted of terrorism or against whom a warrant of arrest or imprisonment for such an act has been issued. The TPA 2011 has proscribed a maximum term of 10 years imprisonment for any person convicted for the offence.²⁷

2.7 Provision of Training for Terrorist

²² See section 2 (1) (a) –(c) TPL 2011

²³ See section 3 (a)-(c) TPL 2011

²⁴ “Support “ includes incitement to commit a terrorist act; offer of material assistance, weapons, training, transportation, false documentation or identification; offer or provision of moral assistance including invitation to adhere to a proscribed organisation and provision of , or making available , such financial or other related services as may be proscribed in this Act. See section 4 (3) (a)-(d) TPA 2011.

²⁵ See section 4 (1) (a) (b) TPA 2011

²⁶ See section 4 (2) TPA 2011

²⁷ See section 5 TPA 2011

The TPA 2011 criminalises the training of terrorists and punishes any person who knowingly agrees to provide training or instruction in the making or use of explosive device or other lethal device or in carrying out a terrorist act with a maximum term of 10 years imprisonment.²⁸

2.8 Failure to disclose Information about acts of Terrorism

The TPA 2011 makes the non disclosure of information about acts of terrorism an offence and punishes those found guilty of the offence with a maximum term of 10 years imprisonment.²⁹ It is important to note that TPA excludes professional confidential information between a legal practitioner and his client especially where the disclosure is in connection with the provision of legal advice or in contemplation of a legal proceeding.³⁰

2.9 Obstruction of Terrorism Investigation

The offence of obstruction of terrorism investigation is also created by TPA 2011. The offence includes disclosures likely to prejudice terrorist investigation and interference with material which is likely to be relevant to terrorist investigation. The law punishes such offences with a maximum term of 10 years imprisonment.³¹ Confidential communication between a legal practitioner and his client made in connection with the provision of legal advice and for purposes of contemplated legal proceedings are however excluded.³²

2.10 International terrorism

In recognition of the effect of international terrorism, the TPA has empowered the President on the recommendation of the National Security Adviser or the Inspector General of Police to declare a person to be a suspected international terrorist. The person so declared must be involved or has been involved in the commission, preparation or instigation of acts of international terrorism, is a member of, or belongs to or has links to an international terrorist group, or recognised as such under the Act or listed as a person involved in terrorist acts in any resolution of the United Nation’s Security Council, or any instrument of the African Union and the Economic Community of West African States (ECOWAS).³³

A significant provision in the TPA 2011 is the power given to the President to withdraw the citizenship of any person declared to be an international terrorist or has links to

²⁸ Section 6 (a) (b) TPA 2011

²⁹ Section 7 (a) (b) TPA 2011

³⁰ Section 7 (3) (4) TPA 2011

³¹ See section 8 (1) (a) –(b) TPA 2011

³² See section 8 (2) (3) TPA 2011

³³ See section 9 (1) (2) TPA 2011. The Act defines “acts of international terrorism” to mean an act of terrorism involving; a non citizen, a person possessing dual citizenship or a groups or individuals whose terrorist activities are foreign based or directed by the countries or groups outside Nigeria or whose activities transcend national boundaries.

international terrorist groups.³⁴ The President is similarly empowered to declare a group to be an international terrorist group. Where that happens, the Attorney General may by regulations provide for the freezing of his or its funds, financial assets or other economic resources including proceeds derived from property, owned or controlled directly or indirectly by him or it, by persons acting on his behalf or at his or its direction.³⁵

In addition, the Attorney General of the Federation is empowered to make regulations for the prevention of entry into, or transit in Nigeria of a person declared to be an international terrorist or an organisation. He can also prohibit the direct or indirect supply, sale and transfer of arms, weapons, ammunitions, military vehicles and equipment, paramilitary equipment, spare parts and related material, technical advice, assistance or training related to military activities. The contravention of the regulations so made by the Attorney General of the Federation attracts a maximum of five years imprisonment.³⁶

2.11 Suppression of Financing of international terrorism

To ensure that terrorist do not access funds for their criminal enterprise, the TPA criminalises the direct or indirect provision or collection of funds with the intention or knowledge that they may be used, in full or in part to commit breaches of specified laws or to do any other act intended to cause death or serious bodily injury to a civilian or any other person not taking active part in the hostilities in a situation or armed conflict, when the purpose of such act, by its nature or context, is to intimidate a group of people or to compel a government or an international organisation to do or abstain from doing any act. The contravention of the law is punishable by a maximum term of imprisonment of 10 years.³⁷ It is however important to note that for an act to constitute an offence under this provision, it is not necessary to prove that the funds were actually used to commit the offence in question.³⁸

2.12 Hostage Taking

The TPA 2011 also criminalises hostage taking by providing that a person who knowingly seizes, detains or attempts to seize or detain; or threatens to kill, injure or continue to detain another person in order to compel a third party to do, abstain from doing any act or gives an explicit or implicit condition for the release of the hostage, commits an offence under the Act and shall on conviction be liable to imprisonment for a maximum term of 10 years.³⁹

3. Terrorist Funds and Property

³⁴ See section 9 (3) TPA 2011. The power to withdraw citizenship is however limited to those who acquired citizenship other than by birth.

³⁵ Section 9 (4) (5) (6) TPA 2011

³⁶ Section 9 (6) TPA 2011

³⁷ Section 10 (1) TPA 2011

³⁸ See section 10 (2) 2011

³⁹ Section 11 (1) TPA 2011. A “third party “ under this provision means a State, an international governmental organisation, a natural or legal person or a group of persons.

Part II of TPA contains provisions relating to terrorist funds and property. Combating of terrorist financing is a critical component of the war against terror. Experience has shown that in most jurisdictions, the financing of terrorism is given special attention in order to ensure that access to such funds is prohibited. Under the TPA 2011 elaborate provisions have been made for seizure of terrorist cash;⁴⁰ the prohibition of terrorist funding;⁴¹ obligation to report suspicious transaction relating to terrorism;⁴² dealings in terrorist property;⁴³ attachment of property⁴⁴ and property tracking.⁴⁵

The law empowers the National Security Adviser and Inspector General of Police to seize any cash where he has reasonable grounds to suspect that the cash is tended to be used for the purposes of terrorism, belongs to or is held on trust for, a proscribed organisation or represents property obtained through acts terrorism. Furthermore, those who fund terrorism are liable to conviction to a maximum of 10 years imprisonment.

Similarly, those who fail to report suspicious transactions commit an offence and are liable on conviction to a minimum of fine of N 5, 000,000,00 or a term of imprisonment not exceeding five years. Where the obligation to report is breached and in circumstances which cannot be adjudged to be deliberate, the Financial Intelligence Unit shall impose such administrative sanctions as it may deem necessary. The law further provides that where an institution is in persistent breach of its reporting obligations, such institution shall on conviction, be liable to a minimum fine of N5,000,000.00 or imprisonment for a maximum term of five years for the principal officers of the institution or defaulting officer.

The State Security Service is empowered to apply to a Judge in chambers for a provisional order to attach all the monies or other property belonging to or held on behalf of a suspect. The court is empowered to make the order whether or not the suspect has been charged to court.

4. Mutual Assistance and Extradition

In view of the transnational nature and dimension that terrorism has assumed, Part III of the TPA 2011 contains provisions relating to mutual assistance and extradition. As part of Nigeria's international obligations and to further international cooperation with other countries in the investigation and prosecution of criminal matters, the TPA empowers the Attorney General as the constituted Central Authority in Nigeria to respond to requests for assistance from other countries in relation to the investigation, prosecution and extradition of persons suspected of having committed any of the offences in the TPA.

⁴⁰ Section 12 (1)-(7) TPA 2011

⁴¹ Section 13 TPA 2011

⁴² Section 14 (1)-(6) TPA 2011

⁴³ Section 15 (1) –(7) TPA 2011

⁴⁴ Section 16(1) TPA 2011

⁴⁵ Section 17 (1) TPA 2011

In the same vein, Nigeria, through the office of the Attorney General may also seek assistance from other countries on matters related to the provision of evidence or the restraint or forfeiture of terrorist property in that other country. Offences listed in this Act are all deemed extraditable offences and anybody suspected of having committed the offence of terrorism can be extradited to a country requesting his appearance in accordance with the Extradition Act.⁴⁶

5. Information Sharing

Part IV of TPA 2011 contains provisions for information sharing and Mutual Assistance on criminal matters. Under the law, the Attorney General, the National Security Adviser or the Inspector General of Police may on the request made by an appropriate authority of a foreign state, disclose to that authority, any information in his possession or in the possession of any other government department or agency relating to any terrorist acts or terrorism.⁴⁷ The provision of the requested information is however subject to its non prohibition by national law and the satisfaction of the condition that it will not prejudice national security or public safety.⁴⁸

6. Investigation

What is generally considered to be of fundamental importance to the investigation of terrorist activities are powers to enter, search, seize, and retain any relevant material belonging to suspected terrorists and to detain persons suspected of having committed such offences. Part V of TPA 2011 is dedicated to terrorism investigation and contains provisions for the issuance of warrants by the court on the application of the National Security Adviser or Inspector General of Police to enter premises, search and seize any relevant material found therein.⁴⁹ The law also contemplates instances where in the case of verifiable urgency; delay may be prejudicial to the maintenance of public safety and order. In such instances, the NSA or IGP may proceed to seal up the premises while a search warrant is sought.⁵⁰

The law also empowers the NSA or IGP to carry out a wide range of enforcement measures upon the grant of a warrant by the court. These include the power to: enter and search premises, search any person or vehicle found on the premises, stop, board and search any vessel, aircraft or vehicle; seize, remove and detain anything, arrest, search and detain any person. The exercise of these powers is subject to the satisfaction that there are reasonable grounds or evidence that an offence has been committed or the likelihood of the commission of an offence.⁵¹

⁴⁶ See Sections 19, 20, 21 and 22 of TPA 2011

⁴⁷ See section 23 (1) TPA 2011

⁴⁸ Section 23 (1) (d) TPA 2011

⁴⁹ Section 24(1) TPA 2011

⁵⁰ Section 25(1) TPA 2011

⁵¹ See section 25(1) (a) –(e) TPA 2011

To enhance intelligence gathering, the AGF, NSA or IGP are empowered by law to give such directions as appear to him to be necessary to a communications service provider for the purposes of prevention or detection of offences or the prosecution of offenders under the Act.⁵² The communication service provider may be required to retain communication as may be directed by these State officials.⁵³

The TPA 2011 also provides that a detention order may be issued in respect of a conveyance by an authorised officer where in his opinion, he believes that a threat has been made to commit an act of violence against a conveyance or against any person or property on board the conveyance; or the conveyance is used for an act of illegality or intended to commit an offence under the Act.⁵⁴ Where the detention order is made and the operator of the conveyance fails to comply with such order, the authorised person may enter or authorise any person to enter the conveyance, and arrange for a person or thing to be removed from the conveyance.⁵⁵

Where the operator of the conveyance objects to the detention order, a judge in chambers may on the advice of the AGF, confirm, vary or cancel the detention order.⁵⁶ The law punishes any failure to comply with the detention order with a maximum fine of N 1,000,000.00 or imprisonment for a maximum term of five years.⁵⁷ The TPA 2011 empowers the NSA or IGP or a delegated officer, not below the rank of Chief Superintendent of Police or its equivalent to direct that the person arrested for terrorism offences be detained in custody for a period not exceeding 24 hours from his arrest, without having access to any person other than his Medical Doctor and legal counsel of the detaining agency.⁵⁸ The TPA 2011 also provides for custody of records and video recording in respect of the person detained for terrorism offences and that such records or recordings may be used in evidence.⁵⁹

7. Prosecution

The object of the criminal process is to apprehend terrorists or suspected terrorists for the purposes of prosecuting and punishing them. Part VI of TPA 2011 contains provisions relating to the prosecution of terrorists. The AGF who is invested with constitutional power over public prosecutions is empowered to delegate his prosecutorial powers under the Constitution⁶⁰ to any agency charged with the responsibility of terrorist investigation to institute criminal proceedings against any person in respect of offences created by the

⁵² Section 26(1) TPA 2011

⁵³ Section 26(3) TPA 2011. A ‘communications service provider’ under this section means a person who provides postal information or communication services, including telecommunications service, while ‘Data’ means any information, generated, sent, received, or stored, that can be retrieved by electronic, magnetic, optical or any similar means. See section 26(4) TPA 2011

⁵⁴ See section 27 (1) TPA 2011.

⁵⁵ Section 27 (2) (3) TPA 2011

⁵⁶ Section 27(4) TPA 2011

⁵⁷ Section 27 (7) (a) (b) TPA 2011

⁵⁸ Section 28(1) TPA 2011

⁵⁹ Section 29(1) (2) (3) TPA 2011

⁶⁰ See section 174 of the Constitution of the Federal Republic of Nigeria, 1999

Act.⁶¹ The law also enjoins law enforcement agencies to collaborate and cooperate with the investigating agency in the investigation and prosecution of any offence relating to terrorism.⁶² Although, inter-agency cooperation is not a matter that should ordinarily be legislated as it remains within the realm of national coordination and strategy, the provision enables the country to meet with the international requirements under the Financial Action Task Force (FATF) Recommendation 36.

Witness Protection

The imperative of witness protection schemes to successful criminal prosecution has been taken due cognisance by the TPA 2011. The law empowers the court upon a motion by or on behalf of the prosecuting agency, to protect a witness in any proceedings before it. The court can also act suo motu where it is satisfied that the life of the witness is in danger and may take such measures as it deems fit to keep the identity and address of the witness secret.⁶³

Jurisdiction

The jurisdiction to try terrorism offences is vested in the Federal High Court (FHC). The FHC will assume jurisdiction to hear such matters when: (a) the victim is a citizen of Nigeria or has a link with Nigeria or is dealing with and on behalf of the federal government; (b) the alleged offender is in Nigeria; or (c) the alleged offender is in Nigeria and Nigeria does not extradite him.⁶⁴ The court is empowered to impose a wide range of sentences as specified in the Act.⁶⁵ In addition to any penalty imposed under the Act, the Court is empowered to order the forfeiture of funds or properties belonging, used or intended to be used for the terrorist act. It should however be noted that where death occurs as a result of terrorist acts, the law imposes a mandatory sentence of life imprisonment.⁶⁶

8. Charities

To stem the funding of terrorist activities and organisations, Part VII of the TPA provides for the refusal of application for registration and the revocation of Charities linked to terrorist groups.⁶⁷ This is in apparent recognition that Charity Organizations may become vulnerable to those who want to disguise their identity, in furtherance of a terrorist objective. In compliance with FATF Recommendations 8 and in accordance with best practices, Nigeria has provided for measures to permit the Corporate Affairs Commission⁶⁸ responsible for the registration of corporate bodies and charities to: (i) review existing certificates and new applications by a Charity and to reject or approve the

⁶¹ Section 30 (1) TPA 2011

⁶² See section 30(2) TPA 2011

⁶³ Section 31(1) TPA 2011

⁶⁴ See section 32 (1) (2) TPA 2011

⁶⁵ See section 33(1) (a) - (e) TPA 2011 for details of the penalties that can be imposed by the Court.

⁶⁶ See section 33(1) (e) TPA 2011

⁶⁷ Section 35 (1) TPA 2011

⁶⁸ Established by the Companies and Allied Matters Act, 1990

request for registration based on intelligence provided by security, criminal or intelligence reports where there are likelihood that the applicant is making or is likely to make resources available to a terrorist group.⁶⁹ Where an application is rejected or certificate is revoked, the applicant could appeal to the court within 60 days from the time the certificate was issued and the court shall, based on the evidence before it, determine whether the certificate was properly revoked or refused or that revocation is not reasonable. In either case, the judge shall order the registration or continued registration of the Charity.⁷⁰

9. Miscellaneous

Part VII contains miscellaneous provisions which include the power to demand information from operators of aircraft, or master of vessel departing from Nigeria or those departing from other point but are registered in Nigeria, and are subject to regulations issued by the Nigerian Attorney General. Such information would be related to persons on board, expected to be on board the aircraft or vessel. With regard to immigration matters, the Minister of Interior is empowered to refuse to grant an endorsement to other authorities to permit a person to enter Nigeria where it is reasonably suspected that the person has been, is, or will be involved in a terrorist act. Similarly, the Minister of Internal Affairs may having regard to the interests of national security and public safety, refuse the application of any person applying for status of a refugee, if he has reasonable grounds to believe that the applicant has committed a terrorist act or is involved in the commission of a terrorist act.⁷¹

10. Human Rights Guarantees.

One of the issues that has confronted the development of counter-terrorism legislation is the need to ensure that people are not haunted and marked as terrorists on the basis of their belief, political association, religious belief, sex or social affiliations. In this regard, the United Nations has developed the UN Counter-terrorism strategy⁷² that encourages countries to provide protection within the laws for those suspected of being involved in terrorist activities. These concerns have also been expressed by human rights activists and were very topical in the negotiation of the African Union Convention for the Prevention and Combating of Terrorism, 2002 otherwise known as the “Algiers Convention” and during the negotiation of the Nigerian TPA.

Accordingly, the Nigerian law has made commendable efforts to imbibe these international standards and has provided for the following exclusion clauses and human rights protection measures:

⁶⁹ See section 35(1) TPA 2011

⁷⁰ See section 35 (5) (6) (7) (8) TPA 2011

⁷¹ See sections 36, 37 and 38 TPA 2011

⁷² The UN Counter Terrorism Strategy was released in 2006 to assist countries in formulating their national counter –terrorism strategies.

(i) provision of exclusion of circumstances that indicate that an action undertaken by certain persons is a protest, demonstration, or stoppage of work. Such actions should not come within the definition of terrorism if such act was never intended to lead to that outcome.⁷³ This provision seeks to protect in particular constitutional guarantees related to freedom of expression, movement and association as well as rights of workers to express opinions different from their employers as long as no physical harm, economic loss or any criminal act is intended. This provision also partly resolves the controversy surrounding the enactment of the terrorism law and how it may be used to curtail the observance of existing human rights obligations.⁷⁴

(ii) There is recourse to judicial arm of government where the rights of individuals and persons are involved. For instance, warrants must be issued by a Judge in Chambers before searches, arrests and detentions can be embarked upon by relevant law enforcement agencies. This is to ensure that the rights and liberties of persons are not unduly abridged without reasonable cause. This is in addition to the remedy of judicial review that is available against any of the coercive measures provided by the law.

11. Appraisal of the Terrorism (Prevention) Act, 2011

We have already alluded to the relative infancy of the TPA and the counterterrorism measures contained in it. It may therefore be unrealistic to objectively assess its efficacy in combating the menace of terrorism in Nigeria. The Act is barely one year in existence and many of the accompanying regulations to give effect to the Act are just being gazetted. The Attorney General recently issued the Terrorism Prevention (Freezing of International Terrorists Funds and Other Related Measures) Regulations, 2011 in relation to freezing and forfeiture measures as well as prosecution measures for terrorist groups provided under Section 9 on international terrorists in accordance with FATF Special Recommendation 3 and the United Nations Security Council Resolutions 1269 (1999) and Resolution 1373 (2001).⁷⁵

It is obvious that a lot of work needs to be done in terms of providing the requisite policy and regulatory frameworks and advice to support various measures in the law and to assist the implementing institutions and the financial and non-financial institutions that are required to submit suspicious transaction reports to the Nigerian Financial Intelligence Unit. There is also the need for financial regulatory institutions to understand the TPA and to develop further guidance for its sector.

The office of the Attorney General of the Federation is working on additional regulations that will underpin the various aspects of the TPA related to Charities, Immigration, Aviation, prosecution guidelines, investigation guidelines and the development of proscription list which will be forwarded to the banks on a monthly basis. The effective implementation of this law calls for a pragmatic and proactive approach and the

⁷³ See section 1(3) TPA 2011

⁷⁴ See J. Ford "African Counter- Terrorism Legal Frameworks: A Decade after 2001" Institute for Security Studies, Brooklyn Square, Pretoria, 2011.

⁷⁵ Made pursuant to sections 9 (6) and 39 TPA 2011 and gazetted on 30th September 2011

development of a national strategy to ensure that each agency, financial sector regulators, reporting entities, prosecution and investigation officials understand their remits and are able to secure convictions in a manner that respects and guarantees constitutional rights.

A proactive strategy that responds to the need for community based organisations (CBOs) to be actors in the prevention of terrorist activities in our communities, towns and cities needs to be developed to make the terrorism prevention efforts effective. Also central to the terrorism prevention efforts is the need for a comprehensive witness protection programme that will encourage voluntary provision of intelligence and information needed to combat terrorism.

Equally important is the need for proper coordination of our counter terrorism efforts. The TPA appears to have placed heavy responsibilities on the NSA, IGP and the Attorney General of the Federation with respect to the administration of the Act. This means that these state officials must work closely and cooperatively to prevent duplication of efforts that may militate against effective implementation of the Act. Given the large number of institutions (financial and non- financial) whose inputs are required for the proper implementation of the Act, the need for a properly coordinated counter-terrorism strategy cannot be overemphasised. It is important for all relevant institutions to understand the strategy and collectively align their efforts to ensure success.

It is however important to observe that despite the commendable efforts made to adopt internationally recommended standards and practices in the TPA 2011, the TPA still falls short of FATF standards and the United Nations Convention on the Suppression of Terrorism in some critical areas. This calls for a comprehensive review of the TPA to bring it in conformity with international standards set by FATF and the UN Convention on the Suppression of Terrorism. For instance, the provisions of the TPA have been adjudged to be grossly inadequate to combat terrorism in line with international best practices. Furthermore, some of the provisions of the TPA do not align with or are in direct conflict with provisions of earlier legislations such as the Economic and Financial crimes Commission (Establishment) Act, 2004 and the National security Agencies Act, 2004.

To cure these defects, the Federal Ministry of Justice embarked on the drafting of a new Bill known as “ A Bill for an Act to Repeal the Terrorism (Prevention) Act, 2011 and Re-enact the Terrorism (Prohibition) Act, 2012. During the review period, comments were received from relevant Nigerian Agencies involved in the implementation of TPA 2011 and other international agencies such as the United Nations Office of Drugs and Crime (UNODC), the United States Department of Justice and the United Kingdom High Commission, the UK Home Office and FATF Secretariat.

The new Bill takes on board most of the provisions of TPA 2011 and further improve on some of the provisions on the TPA. The highlights of the new Bill include:

- (i) the empowering of the ONSA and State Security Service to serve as the lead agency and central coordinating agency in the investigation and intelligence gathering on terrorism;
- (ii) the prescription of life imprisonment for all acts of terrorism;
- (iii) the number of terrorist offences have been increased from 13 in TPA to 26 under the new Bill to include all offences prescribed by international conventions;
- (iv) the obligation on the part of airlines, commercial carriers and tour operators and travel agents not to aid and abet, facilitate and promote terrorist activities and obligation to notify its clients accordingly;
- (v) re-affirmation of the Attorney General's power to institute and undertake criminal proceedings against any person in respect of the offences committed under the Act or any law relating to acts of terrorism;
- (vi) the re-affirmation of the Jurisdiction of the Federal High Court to try terrorism offences and power to refuse any application for stay of proceedings in respect of any criminal matter brought under the Act until judgment is delivered, and
- (v) the provision for the establishment of Victims Trust Fund to be managed by a Trust Fund Board.

12. Conclusion

Nigeria's experience with terrorism is relatively new. The legal regime that has been put in place to tackle terrorism in Nigeria is also new and undergoing review to bring it in conformity with internationally recommended standards and practices. Despite some of the identified shortcomings, we have shown that Nigeria has made commendable efforts to domesticate international standards relating to the strengthening of counter-terrorism strategies. However, its implementation has not been long enough for its efficacy to be tested. But, until the review process is completed and enacted into law, the extant legal regime on terrorism is the TPA 2011. It is therefore important for institutions and agencies charged with the implementation of the law to rise up to the challenge of implementing the legislation.

Finally, it should be appreciated that the task of combating domestic and international terrorism in Nigeria should not be left to Nigeria alone. It must be the collective responsibility of all. It is in this connection that Nigeria will benefit from knowledge sharing and the rich experiences of other Asian and African countries in the global fight against terrorism.

Vice-President: I thank Mr. Peter Akper for his very extensive presentation sharing the experience of his country with all the Member States of AALCO. Before we proceed

with discussions and invite speakers for their statements, we will have a short break and resume at 11.30 AM.

Vice-President: Ladies and gentlemen, now I invite the Delegate of the People's Republic of China to make their statement.

The Delegate of the **People's Republic of China:** Mr. Vice-President, and Distinguished Delegates, the year 2011 witnessed a series of major events in the international campaign against terrorism. Terrorist activities resurged across the world with new dimensions, for example, Internet and social media become new vehicles for organizing and committing terrorist activities; terrorist activities are more commonplace and multi-centered, and are carried out on smallest scales and with sophisticated technologies. What's more, cross-border strike and the use of force against terrorism attract more attention and concern of the international community.

Mr. Vice-President, the Chinese Government has consistently opposed and resolutely fought against terrorism in all its forms and manifestations. We believe that the fight against terrorism should be carried out in strict accordance with the purposes and principles of the Charter of the United Nations and other recognized norms of international law. In this regard, state sovereignty should be respected and double standards must be abandoned. Counter-terrorism requires strengthened international cooperation. The Chinese Government supports the UN in continuing to play a leading and coordinating role in this area. Furthermore, we suggest that further studies be carried out on international rules relating to the use of force in combating terrorism, so as to ensure that counter-terrorism efforts are made in conformity with international law.

Mr. Vice-President, China has always worked to improve the counter-terrorism legal framework at the national level. In October 2011, the Standing Committee of National People's Congress of China adopted the Decision on Issues Related to the Strengthening of Counter-terrorism Work. It is the first specialized anti-terrorism legislation of China, providing a legal basis for China's participation in international cooperation against terrorism. China has joined various anti-terrorism conventions of the UN. The most recent event was that on 8th November 2010, China ratified the International Convention for the Suppression of Acts of Nuclear Terrorism. China has also taken comprehensive measures to implement its obligations including improving domestic legislation.

Mr. Vice-President, China firmly supports and actively participates in international cooperation to respond to the challenges posed by terrorism. For example, China has been constructively participating in the elaboration of a comprehensive counter-terrorism convention within UN framework and will remain committed to this endeavor. China has also been actively involved in the discussions under the Global Counter-Terrorism Forum.

At the regional level, China attaches great importance to the Shanghai Cooperation Organization and other regional efforts in advancing pragmatic cooperation against terrorism. At the summit of Shanghai Cooperation Organization held in Beijing, China

early this month, heads of Member States agreed to strengthen cooperation against terrorism, and passed Resolution on the Cooperative Programme on Fighting Terrorism, Separatism and Extremism for 2013-2015.

Bilaterally, China has signed anti-terrorism agreements with Pakistan, Kazakhstan, Kyrgyzstan and others respectively, and held relevant consultations with countries such as Japan, India, Russia and the Republic of Korea.

Mr. Vice-President, the Chinese Delegation would like to reaffirm that China will continue to enhance cooperation with Asian and African countries in fighting terrorism and jointly safeguard international peace and security. Thank you, Mr. Vice-President.

Vice-President: I thank the delegate of China and now call upon the delegate of Myanmar to make their statement.

The delegate of the Union of Myanmar: Mr. Vice- President, Distinguish Guests, Ladies and Gentlemen, it is indeed an honour and a privilege for me to be here. First of all, I would like to express on behalf the Myanmar Delegation to this Conference our sincere thanks to the President of the Fifty-First Annual Session and the Organizing Committee for the warm reception extended to us. We congratulate you on your election to the chair and we are confident that under your able leadership this Conference will reach great height of success. We are very grateful to the host country for its efforts in making all possible favourable conditions for the success of our Conference.

Mr. Vice-President, Terrorism is not concern of a nation but for all nations. We feel that the crime of Terrorism is one of the most serious challenges facing the international community today, and we firmly believe that who perpetrate organize and sponsor terrorist acts must be brought to justice and duly punished.

Mr. Vice-President, International Terrorism constitutes a threat to international peace and security. We believe in the inherent right of individual or collective self-defense as recognized by the Charter of the United Nations. We are also deeply concerned by the increase, in various region of the world, of acts of terrorism motivated by the intolerance and extremism. Recently, we all are facing with horrific event of terrorist attacks everywhere in the world.

It is our sincere desire to cooperate with States, both regionally and on global basis, to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions through all lawful means.

Mr. Vice-President, It is clear that terrorism is a global challenge that the fight against it requires concerted regionally and globally action. In this juncture, we wish to share with you the law development of Myanmar in the area of effective measures of combating terrorism, Myanmar is not immune to terrorism and has political will to combat terrorism. We are committed against terrorism in all its forms and manifestations. International conventions relating to prevention and suppression of international terrorism Myanmar

has acceded or ratified 12 conventions. At the same time, we already have nine domestic laws on the subject and they are either in the nature of laws or special laws as our legal system signifies them. To adopt domestic legal effect to these conventions, our legislative draftsmen are now drafting a General Anti-Terrorism Law.

Myanmar has reported to the Counter terrorism Committee (CTC) pursuant to paragraph 6 of Resolution 1373(2001) of 28 September, 2001. It is our sincere desire to cooperate with CTC for the interests of international community and our citizens.

Regionally, within the framework of ASEAN, Myanmar has participated and cooperated on a number of issues to counter terrorism. Myanmar is a signatory to ASEAN Counter-Terrorism Treaty in 2009.

Mr. Vice-President, I would like to share, that will further galvanize one of our efforts to effectively fight terrorism was Myanmar acceded to the United Nations Convention against Transnational Organized Crime and its Two Protocol on 30th March 2004. The domestic law for TIP has been promulgated as the Anti- Trafficking in Persons Law on 13th September 2005. On the other hand, terrorism is taking part in the area of Financial Crimes. The Control of Money Laundering Law was promulgated in 2002 and it is enforced with its rules. This law has been drafted in accordance with international standards and Financial Action Task Force (FATF) 40 Recommendations and 8 Special Recommendations.

Domestically, another milestone in the area of combating transnational organized crime is the promulgation of the Mutual Leal Assistance in Criminal Matters Law on 28th April, 2004. The law was drafted in line with the international conventions and regional agreements to facilitate combating crimes of transnational nature.

Mr. Vice-President, Myanmar's commitment to combat terrorism and other transnational crimes is evident. We are determined to cooperate with the international community to combat these crimes. We sincerely believe that the present conference will positively contribute in harmonizing global solidarity in combating these heinous crimes.

Mr. Vice-President, in conclusion, we are well aware of the fact that combating terrorism is a complex and complicated issue involving a number of factors. Terrorism and other transnational crimes in its present form and stage are the crimes that the international community has to counter with all its might. We hopefully believe that combating these unscrupulous crimes of both national and international nature will be successful. Thank you

Vice-President: I thank the delegate of Myanmar for her statement and now call upon the delegate of Sri Lanka for their statement.

The Delegate of the Democratic Socialist Republic of Sri Lanka: Thank you Mr. Vice-President. Terrorism is a subject of considerable concern. It has consequences both legal and political. We in Sri Lanka have faced terrorism for decades and are more sensitive to the problem, perhaps more than anyone else. Persons with broken limbs, widowed women and orphaned children bring back memories of the most lamentable era in the

history of our nation. We therefore, feel committed and would extend our whole hearted support to all endeavours of the international community in combating terrorism.

Even though differences may arise on how we should proceed to overcome this problem which not only endangers our lives but those of our children, the international community should stand united so that international rules are evolved which hopefully we could subscribe to successfully encounter international terrorism. Sri Lanka has from the outset lent its unstinted support to the international community on measures to eliminate international terrorism and played a constructive role in obtaining consensus on the measures taken by the United Nations. The United Nations Ad Hoc Committee on Measures to Eliminate International Terrorism has played a vital role since its inception in 1997, in the formulation of a legal framework for combating different manifestations of terrorism. The output in the form of producing an International Convention for the Suppression of Terrorism; and International Convention on the Suppression of the Financing of International Terrorism; and International Convention on Nuclear Terrorism constitute important landmarks in the fight against international terrorism. Sri Lanka has been actively involved in this regard in many United Nations fora and has been the Chair of the UN Ad-Hoc Committee on Measures to Eliminate International Terrorism. We have listened carefully this morning to the statement made by the Chair of the Ad-Hoc Committee Dr. Rohan Perera, on the current status of the Ad-hoc Committee. This was an important initiative taken by the Government of India, the founder member of AALCO and Sri Lanka has consistently emphasized on the need to reach a consensus in these negotiations which have taken almost ten years to reach a conclusion. This is an important legal instrument which seeks to bridge the existing gaps in the Convention regime. In its definition it includes offences such as terrorist act conducted against environment and certain other acts. The compromise proposal made by the Co-ordinator in 2007 referred to by the Chairman in his statement provided the current status. The other issues and regimes which applied to armed conflicts gave rise to certain political considerations by some States. Failing to conclude this convention would send a signal that the United Nations has failed in the vital task of providing a comprehensive legal framework to address the questions of international terrorism. Thus, Sri Lanka would continue to make every effort at the next United Nations General Assembly Session to bring the negotiations on the Draft Comprehensive Convention on Terrorism to a conclusion.

At the international level Sri Lanka has signed 11 international conventions to counter terrorism. Sri Lanka will be taking steps to sign the 1979 Convention on the Physical Protection of Nuclear Material; and the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. With regard to our domestic legal framework we are currently engaged in the finalization of a series of measures which would effectively fulfill the requirements of international conventions on international terrorism. The reason why Sri Lanka has undertaken several important legislations in order to give effect in its domestic territory alone is to abide by international conventions to which Sri Lanka is a party. Many measures are being taken to abide by the Convention on the Physical Protection of Nuclear Material, will give effect to the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism. The strengthening of national legislative frameworks will enhance the

capacity of States to deal with the terrorist groups, constitutes an essential prerequisite to the successful implementation of the international corroborative efforts aimed at curtailing international terrorism. Sri Lanka is ready to adopt all necessary frameworks by way of enabling national legislation. Past experiences have shown that the enactment of enabling legislations in Sri Lanka even though have been time consuming, has helped reach the desired results. All endeavours are being made to have enabling legislations enacted for international conventions on counter terrorism. Investigation and Prosecution for offences involving terrorism has faced us with numerous difficulties. Thus, establishing an international network based on international cooperation is one of the important prerequisites of our times. I would suggest that the international community should strive hard to evolve some such strategies.

Extradition and mutual legal assistance are some of the most important weapons in the armory of States in the fight against international terrorism. However, extradition and mutual legal assistance are possible only on the basis of bilateral treaties and in the case of Commonwealth countries of which Sri Lanka is also a part. We have however, taken steps to render assistance on reciprocal basis whenever requests are made outside without bilateral dispute. Counter terrorism methods would involve measures to freeze assets would be made possible by effective international cooperation in the area. This needs to be reviewed and restructured with a view to enhance international cooperation. We have over a long period faced difficulties that the prosecution system has faced due to the absence of a strong international network in this field.

Past experience has shown that those involved with the acts of international terrorism derive sources from beyond national borders. Inability to penetrate into the cadres of such activity beyond national borders without the network of established cooperation of agencies can be identified as a major hurdle in the sphere of international terrorists. The delay to prosecute the offenders is sometimes equated with violation of the rights of the accused persons. Expeditious disposal of cases would help in combating terrorist activity without compromising with the other factors on the agenda of the law enforcement agencies. International cooperation in these areas would undoubtedly help in accelerating such measures.

Mr. Vice-President I would like to conclude by expressing the fullest cooperation of Sri Lanka towards the successful accomplishment of all the UN initiatives towards combating international terrorism in all its forms and manifestations.

Vice-President: Thank you. Now I request the delegate of Indonesia for the statement.

The Delegate of the Republic of Indonesia: Mr. Vice-President, Distinguished delegates, Indonesia consistently condemns all forms of terrorism in whatever motivation and manifestation. This leads to the strong commitment to enhance international cooperation in order to prevent and eradicate terrorism, at a multilateral and regional level, as well as bilateral level. These commitments has been implemented through capacity enhancement, law enforcement, improvement of legislation/legal framework, information and various experience exchange, sending experts and providing expert advice, and other technical cooperation.

Mr. Vice-President, Distinguished delegates, allow us to share a few of important points on how to further strengthening the efforts at fighting terrorism. First, Indonesia believes that regional and national measures should be in concert with global efforts.

At multilateral level, Indonesia is ever mindful of the significance to cooperate under the UN framework and to continuously support the UN to play key role in eradicating international terrorism subject to international laws. In this regard, the establishment of a Comprehensive Convention on International Terrorism is significant as well. Meanwhile, Indonesia will positively continue to utilize and enhance the cooperation under the framework of the UN Global Counter-Terrorism Strategy (UNGCTS). The Strategy focus on the four key areas of action consisting of tackling the conditions conducive to the spread of terrorism, preventing and combating terrorism, building States' capacity to counter terrorism, and ensuring respect for human rights against the backdrop of the fight against terrorism.

Indonesia views that it is necessary to give attention to the implementation of UNGCTS, taking into mind that UNGCTS is a joint agreement of all member countries of the UN and includes the commitment of all countries to combat terrorism effectively. In the framework of implementing global strategy, the Indonesian Government has supported various efforts to enhance understanding of UNGCTS, including through the implementation of several activities, in regional and multilateral level.

In line to these efforts, at regional level, Indonesia has adopted an ASEAN Convention on Counter-terrorism to strengthen cooperation and capacity building among ASEAN member countries in the fight against terrorism. As in national level, Indonesia has enacted a national Law on Counter Terrorism. In strengthening the efforts to prevent and eradicate the acts of terrorism, Indonesia has established the National Anti-Terrorism Agency. Subsequently, the critical need to suppress the financing of terrorism has also led to the establishing of national Law on Preventing and Combating Money Laundering, and Law on the Electronic Information and Transaction. Indonesia also holds a high commitment to cooperate with *Financial Action Task Force* (FATF) in implementing the FATF standards, particularly the *40+9 Recommendations*.

Second, Indonesia views that it is necessary for us to have broad and long-term strategies that make use of soft power, and to address the root causes or condition conducive to terrorism.

Indonesia believes that prevention and eradication steps should also be implemented by soft power approaches. Such steps has also been implemented through various initiatives to push interfaith dialogue which aims to build an understanding and harmonious relation between religious communities and regional beliefs of various countries. In this regard, we need to build a culture of dialogue, spreading education and promoting inter-community engagements, which aim to overcome terrorism, radicalism and extremism.

Indonesia would like to underline the importance of putting de-radicalization program to the forefront of counter terrorism strategy. Activities such as promoting network among the moderates, disrupting radical networks, fostering mosques and pesantrens/madrassas, directing extrimists to leave their violent tactics behind and pursue their objectives

through democratic process, may do significant impacts to pursue the de-radicalization program. Contribution of the media, with its power to influence larger audience will also certainly be very significant.

It is also necessary to overcome the conditions conducive to the spreading of terrorism, such as prolonged conflicts, defects in the rule of law, violation of human rights, the lack of good governments and discrimination on ethnicity, nation and religion. Indonesia also firmly agrees that terrorism cannot and must not be associated with any particular religion, culture, nationality, race civilization or ethnic group and that those attributions should not be used for the adoption of measures to counter terrorism.

Third, efforts to eradicate terrorism must be in conformity with democratic principles.

All measures against terrorism must be consistent with the rule of law and a deep and abiding respect for human rights. They must be in accordance with international law, including the Charter of the United Nations. Effective law enforcement measure is an essential component of the fight against terrorism. We must deter, frustrate and put out of commission every terrorist cell and operative that we discover, while fully respecting human rights. In this regard, our National Law on Counter Terrorism provides the protection to the rights of the victims and the accused ones. I thank you.

Vice-President: I thank the delegate of Indonesia for that statement and now call upon the delegate of the Islamic Republic of Iran to express their views on the topic.

The Delegate of the Islamic Republic of Iran: In the name of God, the Compassionate, the Merciful at the outset, I would like to thank the Secretariat of the AALCO for preparing the informative report on “International Terrorism”, as contained in document AALCO/51/ ABUJA/2012/SD/S 7. My delegation has found the report as a useful and instructive document.

Mr. Vice President, International terrorism is a challenge to international peace and security; it threatens all nations and countries in the world, regardless of geography, status or power.

Despite all efforts made at various fronts, we are far from uprooting this menace and the threat of terrorism continues to affect our societies.

Unfortunately terrorism has long been manipulated by some as a political leverage against others; they have not hesitated to sit and work with terrorists whenever they saw it as beneficial to their narrowly defined geopolitical interests. Such sinister functionalist approach toward terrorism which is, almost inevitably, ensued by double standards in dealing with terrorist groups or terrorist acts, gives room for terrorist groups to take hold and survive. Terrorism could not be overcome without addressing also State terrorism which has caused catastrophic consequences to many nations of the world.

Mr. Vice President, my country has long been a target of terrorism, and we fully understand the untold consequences of acts of terrorism for the victims and for the society at large. Our scientists have fallen victim to acts of terrorism directly ordered

from outside in line with the vicious campaign to deprive Iran of its legal and legitimate right to use nuclear energy for peaceful purposes.

We firmly believe that resorting to indiscriminate violence and acts of terrorism, whether by terrorist groups or by State military forces, and killing and injuring civilians and generating terror and intimidation among the public are criminal acts which could not be justified in any manner.

Fighting terrorism requires the concentered and concerted efforts and political will of all nations in international community. All countries should organize their efforts under the auspices of the United Nations and in conformity with the United Nations Charter and international law avoiding double standards and selectivity.

Mr. Vice President, before concluding, my delegation would like to underline that the appalling cruelty of terrorist's acts should not divert our attention from the bitter fact that terrorism could not be eradicated unless its root causes or the conditions conducive to its spread are identified and removed.

My delegation is of the view that a consensual definition of terrorism should strengthen international cooperation against terrorism and end subject-to-abuse ambiguities concerning this term. Such definition has to make a clear distinction between heinous acts of terrorism and legitimate struggle of peoples under foreign occupation for restoring their fundamental right of self determination. Thank you Mr. Vice President.

Vice-President: I thank the representative of Iran and now call upon the distinguished delegate of India to make the statement.

The **Delegate of India:** Mr. Vice-President India continues to believe that terrorism in all its forms and manifestations irrespective of its motivations is a criminal and punishable act. It cannot be condoned or accepted as legitimate in any situation. Justifications on diplomatic, political, social, philosophical or any other grounds are untenable. The 1994 Declaration is most categorical in this respect and provides that "no considerations of political, philosophical, racial, ethnical, religious or any other nature could justify criminal acts in creating to promote a state of terror in the public". This principle is also reiterated in several other conventions and UN General Assembly Resolutions which condemn terrorism in all its forms and manifestations, which signals the resolve of the international community that it will no longer tolerate the actions of the sponsors of terrorism or those who give them shelter. India has established a comprehensive legal framework on counter terrorism. The 13 UN anti terrorism conventions relating to specific terrorist activities remain the fundamental tools in the fight against terrorism. India is party to all these 13 international instruments. India is also taking measures of becoming a member of the financial action task force under FATF and will cooperate and share information on money laundering and terrorist financing with other members of FATF.

Mr. Vice-President we hope that the UN Instruments on terrorism and other important developments in the past years which included institutionalization of the CITEP and other efforts of States and organizations to address the acts of terrorist acts we hope that the next efforts would be more focused and give an opportunity to States as well as UN agencies to highlight and share the experiences so that ways and means can be found for addressing the difficulties so as to ensure that the synergies evident in the document are essential for effective implementation. With regard to the Comprehensive Convention against International Terrorism, Mr. Vice-President, we appreciate the efforts of the Chairman of the Working Group in trying to forge a consensus on the 2007 proposal. We sincerely hope that in a spirit of mutual accommodation and flexibility Member States would respond constructively and help in the early conclusion of the Comprehensive Convention, So that the mandate of completing the framework of conventions aimed at combating international terrorism can be brought to a successful close. With regard to the background note on the framework convention, I need not take much time as the Chair of the Working Group has already given an in depth picture of the status of the negotiations as members recall since October 2000, the Ad-hoc Committee has been considering the Ad-hoc Convention Against International terrorism proposed by India, which had been proposed as an umbrella Convention which will deal with the terrorist acts, committed by any means as against the present sectoral conventions which have dealt with specific offences only as regards their means of commissions for example, terrorist bombings or the subjects of the acts that is civilians or attacks against diplomats.

Mr. Vice-President as was mentioned by the Chairman of the working group the substantive provisions of the draft convention have been already discussed, however, further progress on the convention has been stalled by the insistence of some members for excluding “State terrorism” from the scope of the convention for peoples effected by foreign occupation. In respect of excluding persons from the armed forces of states, which are subject to other rules of international law, we are happy to note that this year there was more active and substantive participation from states as far as the process of FTFA and the move on urgency, the facilitator also had formal contacts with delegations during the inter-sessional period and reported that the 2007 proposal was still under active consideration. We appreciate that and in our view the new proposals put forward seem to address the issues of impunity as well as delimitation of this convention and the international human rights law. We are of the view that these issues are already clearly addressed under draft article 18. Mr. Vice-President we continue to believe that killing of innocent civilians cannot be justified for any cause therefore, a legitimate cause for the national struggle for liberation have to be permitted within the parameters of the IHL. These principles must be respected in all circumstances as it does not legitimize the use of force for anybody for whatever reason or whatever way. Mr. Vice-President we appreciate the efforts of the Chairman on trying to forge a consensus on the proposal and shall continue to support the 2007 proposal and continue to reiterate the need for the early conclusion of the comprehensive convention. I thank you Mr. Vice-President.

Vice-President: I thank the delegate of India for her statement and now I give the floor to the Attorney-General of Uganda for the statement.

The **Delegate of Uganda:** I thank the panelists for their presentations and also to those who responded. I have listened carefully to this discussion and wish to state that in Uganda we take terrorists as cowardice, we take them to be dedicated devils and would like to give the example of what happened in Uganda on 11 July 2010 when these terrorists attacked groups of young people who were watching the final match of the world cup match, over 70 people died in that attack and several others were injured. It was a reprehensible act. So Mr. Chairman I support for instance the position taken by Sri Lankan delegation that we should emphasize as many bilateral arrangements as possible. For instance in extraditing suspects we need to actually promote advocacy of bilateral agreements in that area, which I think will be useful. Talking about another challenge, I don't know what it is in other jurisdictions but in our own jurisdiction, in our Constitution there is a provision that provides for a "48 hour rule" with a condition that you have to produce a suspect in Court and charge the suspect. In cases of terrorism Mr. Chairman, there are challenges involved for complying with that requirement the "48 hour rule". Prof. Perera here in his very well made presentation and in view of his experience would tell us about other jurisdictions. But certainly complying with the 48 hour rule in cases of terrorism is a very complex matter.

Another challenge that is always faced is domesticating the ICC statute as was our experience in Uganda, because the Rome Statute does not have death penalty and we have death penalty in Uganda. But the Supreme Court had given a ruling that we should not have compulsory death penalties in our rules. But I think the earlier we discuss the issue of death penalty and come close to the issue of deterrent. Thank you Mr. Chairman.

Vice-President: Thank you the representative of Uganda for that statement. Prof. Perera has told me that he does not yet wish to make a statement. So now I request the delegate of Japan to make his statement.

The **Delegate of Japan:** Mr. Vice-President, Japan considers that the international community continues to face the threat of terrorism which manifests itself in recent years in varied forms including the so-called home grown terrorists or incidents of terror staged by individuals such as the one which happened in a Nordic country.

Therefore, today, more strongly than before, international cooperation is called for to share information on terrorists, to make rules and standards on counter-terrorism measures, to assist capacity-building on anti-terrorist measures and also to look into the root causes of terrorism. Having in mind such needs, Japan has been making efforts on three pillars: (1) to strengthen national counter-terrorism measures, (2) to promote further a wide-range of international cooperation, (3) to assist the developing countries to improve capacity to cope with terrorism.

To prevent and eradicate terrorist activities, it is vital to enhance international legal framework to deal effectively with international terrorism.

Japan attaches great importance to Comprehensive Convention on International Terrorism and sincerely hopes that the Convention would be finalized by way of

overcoming remaining difficulties as it could complement enormously the existing international conventions in combating terrorism.

Mr. Vice-President, It is one of the most important pillars of preventing and eradicating international terrorism to discontinue and prevent the financial inflow to terrorist networks.

Thus, Japan has been actively participating in the international efforts for that end through various G8, UN, FATF (Financial Action Task Force), APG (Asia-Pacific Group on Money Laundering) frameworks to build cooperative networks including developing countries. Thank you.

Vice-President: Thank you the delegate of Japan. Now I call upon the delegate of Republic of Korea to make the statement.

The **Delegate of the Republic of Korea:** Republic of Korea has ratified or acceded to 12 terrorism-related international conventions and also signed the Convention for Suppression of Acts of Nuclear Terrorism in 2005.

Republic of Korea has been faithfully implementing all the relevant Resolutions of the United Nations Security Council on terrorism including, inter alia, Resolution 66/50 on "Measures to prevent terrorists from acquiring Weapons of Mass Destruction" and the United Nations Global Counter Terrorism Strategy. The ROK is also closely cooperating with the Counter-Terrorism Committee in implementing UNSC Resolution 1373.

In this regard, the Government of the Republic of Korea strongly supports the adoption of the Draft Comprehensive Convention on International Terrorism to eradicate the terrorism which threatens international peace and security.

Given that 2005 World Summit at the United Nations condemned the terrorism in all its forms and manifestations, my delegations hope that the draft Comprehensive Convention could be adopted at the earliest on the basis of constructive cooperation.

Vice-President: Thank you. Now the next speaker on the list is the delegate of Malaysia.

The **Delegate of Malaysia:** Mr. Vice-President, Malaysia notes that the issues for focused deliberation revolve around the unresolved issues at the United Nations relating to its agenda item entitled "measures to eliminate terrorism" particularly on the draft Comprehensive Convention on International Terrorism (draft CCIT). In this regard, Malaysia's position pertaining to these issues has been sufficiently during the Sixth Committee and the Ad-Hoc Committee meetings at the United Nations and Malaysia does not wish to elaborate the position in this meeting.

Despite the current stalemate situation regarding the draft CCIT, this does not mean that States should halt their efforts to combat terrorism. With respect areas which are not covered by the existing sectoral international instruments on terrorism, Malaysia is of the

view that State still has the sovereign right to cover the grey areas by means of its own domestic legal framework. Additionally, other international legal instruments particularly the International Humanitarian Law and Human Rights Law are relevant to ensure accountability of certain acts of terrorism.

Mr. Vice-President, in fighting terrorism, it is imperative that States engage in international cooperation, be it bilateral, multilateral or regional. The cooperation will ensure that States are able to render help to one another in times of need and most importantly, keep abreast with the ever evolving facets of terrorism through information exchanges. It is with this in mind, the ASEAN countries had negotiated and deliberated on a Treaty on Mutual Legal Assistance in Criminal Matters among like-minded ASEAN Member Countries (ASEAN MLAT). The ASEAN MLAT is a beneficial tool in fighting transnational crimes, including terrorism. In this regard, Malaysia is of view that similar legal instrument may be valuable for the Asian-African countries. Referring to 49th AALCO Annual Session Resolution AALCO/RES/49/S8, Malaysia notes that the AALCO Member States have already decided to constitute an open-ended Committee of Experts to conduct study on ways and means to enhance mutual legal assistance in criminal matters among Member States for their further consideration. Malaysia looks forward for the constitution of the open-ended Committee of Experts deliberations with the end-result of an AALCO Mutual Legal Assistance Treaty in Criminal Matters.

Malaysia also notes that the report by the Executive Directorate of the Counter-Terrorism Committee (CTED) highlighted the issue that some States, particularly in Asia, are yet to enact legislations concerning criminalization of terrorist financing. Malaysia wishes to highlight that the main legal framework in Malaysia dealing with this matter is Chapter VIA of the Penal Code and the Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

My delegation had listened to the recent Statement by the Honorable Attorney-General of Uganda, particularly regarding the difficulties faced due to the so-called “48-hours rule”. We had noted the difficulties posed by such restrictions as mentioned by the Honorable AG of Uganda in dealing with terrorists cases in our research when we transformed our legislation dealing with terrorists act recently. Acknowledging the grave risks to internal security and public order presented by threat of terrorism, sabotage and espionage still persists, to replace the Internal Security Act 1960, the Security Offence (Special Measures) Act 2012 was drafted. The process under the Act provides the balance between the responsibility of the State to ensure peace and security with the rights of the accused person to fair trial and due process of law. Careful consideration based on international norms and standard in relation to the period of detention and the total autonomy of the executive to allow detention without trial has been addressed in the Bill. Therefore, currently the detention under the Act only relates to investigation. Malaysia also wishes to highlight that the period of 30 days detention for purposes of investigation is subject to a sunset clause, where this provision will be revisited every 5 years. A Special Review Committee, chaired by the former Chief Justice and with members including the Attorney General, the Inspector General of Police, Chairman of the Malaysian Human Rights Commission, had also been established for purposes of

reviewing the implementation of the law every six month. Again, Malaysia wishes to reiterate that the new law only allows detention for purposes of investigation and not detention without trial. Thank you.

Vice-President: I thank the delegate of Malaysia and now call upon the delegate of Kuwait to make the statement.

The **Delegate of the State of Kuwait**⁷⁶: Mr. Vice-President, undoubtedly international terrorism is one of the greatest evils that the international community is facing today. Every day we receive news of unfortunate killings of innocent people in different parts of the world. It is therefore important that we all should cooperate with each other not only for eradicating terrorism but also for reducing the effects of the tragedy. Kuwait has reiterated its position in many UN Meetings that there should be a universal strategy for fighting this menace, specifically, a clear definition of terrorism. It had also been reiterated that terrorism should not be linked to any particular nationality. Besides this it was important that all countries should united fight against the factors that gave rise to terrorism. He cited the example of the Arab League which had taken a lead for such a strategy by adopting “**The Arab Convention for the Suppression of Terrorism, adopted by the Council of Arab Ministers of the Interior and the Council of Arab Ministers of Justice, in Cairo, April 1998**” and that definition had also been tabled subsequently at the UNGA. The delegate also mentioned that Kuwait was currently in the process of formulating a special law on the subject, which would be comprehensive in all aspects, including money laundering, drug trafficking and confiscation of such proceeds, however till such time as it was formulated, there was currently a national law in Kuwait by virtue of which terrorists could be punished. He mentioned that recently a meeting of Arab States had been convened at the International Centre in London to discuss the problem of terrorism, the factors leading to it and the suppression of terrorism. The delegate added that an important factor to be considered was the importance of confiscation of charities that were aimed at providing humanitarian relief, but in fact were being used for terrorist aims. He said that Kuwait was one of the many countries that provided charities for humanitarian purposes to many countries and felt that it was important to devise methods whereby this money could not be misused.

Vice-President: I thank the distinguished delegate of Kuwait and now call upon the distinguished delegate of Palestine for the statement.

The **delegate of State of Palestine**⁷⁷: Mr. Vice-President, international terrorism is an enemy of humanity which needs to be condemned by one and all, therefore international cooperation is a must to curb this menace. The most dangerous aspect of this crime is the killing of innocent civilians and this is more so in the case of state sponsored terrorism which is being committed by Israel against innocent Palestinians since 1967. Killing innocent civilians through use of tanks, and aerial attacks has been going on for a fairly long time now. As a result of these attacks scores of people are severely injured and these

⁷⁶ Statement delivered in Arabic. Unofficial translation from interpreter’s version.

⁷⁷ Statement delivered in Arabic. Unofficial translation from interpreter’s version.

attacks have a very negative impact on the farm lands as well. All these activities fall within the purview of State sponsored terrorism. We urge AALCO to raise its voice to punish Israel for the criminal acts committed against Palestinians. We also demand that a neutral international force be deployed to protect the Palestinians from state sponsored terrorism. At this stage we think it is very important to be able to distinguish between resistance and terrorism. Thank you.

Vice-President: I thank the delegate of Palestine and now call upon the distinguished delegate of Iraq for his statement.

The delegate of the Republic of Iraq⁷⁸: Mr. Vice-President, no doubt terrorism constitutes a great danger for protecting people as it tends to end peace and security. My Government joins the international community in its efforts towards finding a solution to international terrorism particularly the efforts made by the Arab league in 2011. This Convention included a definition of the term terrorism and was endorsed by many states. We propose that the Asian-African legal Consultative Organization (AALCO) could also prepare a convention on terrorism. This convention could be based on the existing UN Conventions as well as the Arab League convention, this we feel could facilitate in combating terrorism.

Vice-President: I thank the delegate of Iraq and now call upon the distinguished delegate of Saudi Arabia for his statement.

The delegate of the Kingdom of Saudi Arabia⁷⁹: Mr. Vice-President, we would like to reaffirm what we had said in our general statement that soon Saudi Arabia would have a new legislation for combating terrorism, which at present is in its final stage. As and when the same is finalized we will inform AALCO Member States about the same.

Vice-President: I thank the delegate of Saudi Arabia for his statement. Now I call upon the Observer from the ICRC for his statement.

The Observer Delegation of ICRC: Thank you, Mr. Vice-President, Excellencies, Distinguished Delegates, Ladies and gentlemen, the ICRC recognizes that states have a right and duty to suppress and prevent acts of terrorism, and that they may take appropriate measures to deal with threats or acts of terrorism against their populations.

The ICRC is concerned, however, that certain measures taken by states and international organizations aimed at suppressing or preventing terrorism have the potential to impede or restrict humanitarian action by means of provisions prohibiting, under threat of criminal and other sanctions, the provisions of “support” or “services to” groups or individuals designated as “terrorist”. The relevant anti-terrorism financing legislation/resolutions that have been adopted at both the national and international level do not exempt exclusively humanitarian action from the scope of their prohibitions, and

⁷⁸ Statement delivered in Arabic. Unofficial translation from interpreter’s version.

⁷⁹ Statement delivered in Arabic. Unofficial translation from interpreter’s version.

thus may have a stifling effect on humanitarian operations. Organizations working in the field cannot be expected to fulfill their humanitarian mandate if criminal or other sanctions may potentially be threatened or carried out against their staff.

At the policy level, the situation may be summarized as follows: on the one hand, states favour humanitarian action on behalf of persons affected by armed conflicts and other situations of violence by supporting domestic aid programmes and related multilateral initiatives, and expect the ICRC and other impartial organizations to carry out humanitarian action for persons in need. On the other hand, certain anti-terrorist financing measures that states and international organizations have endorsed in the fight against terrorism may have the effect of penalizing, and thus stifling humanitarian action. It would thus appear that states and international organizations should attempt to harmonize their humanitarian and anti-terrorist policies and obligations, which are not contradictory, in order to properly achieve the desired aim in both realms.

The criminalization of humanitarian action may also be said to run counter to neutrality and impartiality, which are two Fundamental Principles of the International Red Cross and Red Crescent Movement. The ICRC and other components of the Movement could not be, or be seen to be neutral if they were obliged, as result of anti-terrorism measures criminalizing engagement with non-state armed groups, to carry out their activities for the benefit only of persons on one side of an armed conflict. Similarly, impartiality could not be sustained if, for example, medical services to the wounded or sick could not be provided to persons who belong to or are under the control of a non-state armed group because of prohibitions on “support” or “services” to terrorism.

Finally, the potential criminalization of humanitarian engagement with organized armed groups designated as “terrorist” organizations may be said to reflect a non-acceptance of the notion of neutral, independent and impartial humanitarian action (NIIHA). This specific approach is at the heart of ICRC’s identity and one which the ICRC promotes and adheres to in its operational work in the field. The basic premise is that the ICRC works to assist and protect all persons affected by armed conflict or other situations of violence who may need its services, regardless of political or other affiliation. It does so as an independent humanitarian organization that autonomously determines to whom, where and when it will provide such services.

By way of sum-up, the following two points could be reiterated:

- Measures adopted by governments, whether internationally and nationally, aimed at criminally repressing acts of terrorism should be crafted so as not to impede humanitarian action. In particular, legislation creating criminal offences of “material support”, services and assistance to or association with persons or entities involved in terrorism should exclude from the ambit of such offences activities that are exclusively humanitarian and impartial in character and are conducted without adverse distinction.
- In respect of the ICRC in particular, it should be recognized that humanitarian engagement of non-state armed groups is a task foreseen and expected from the

ICRC under Common Article 3 to the Geneva Conventions, which allows the ICRC to offer its services to the parties to non-international armed conflicts (NIAC's), criminalization of humanitarian action would thus run counter to the letter and spirit of the Geneva Conventions, i.e. broad language prohibiting "services" or "support" to terrorism could make it impossible for the ICRC to fulfill its conventional (and statutory) mandate in contexts in which armed groups party to non-international armed conflicts are designated as "terrorist organizations".

Thank you, Mr. Vice-President.

Vice-President: Thank you. Distinguished delegates we now come to an end on this special meeting. The Fourth General Meeting will consider "Recent Developments in the International Criminal Court". May I now invite the Secretary-General to deliver the opening remarks.

The Meeting was thereafter adjourned.