

For Official use only

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



INTERNATIONAL TERRORISM

Prepared by:

**The AALCO Secretariat
E-66, Vasant Marg, Vasant Vihar
New Delhi- 110057
(INDIA)**

CONTENTS

	Page No.
I. Introduction	3
2. Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok	3-15
3. List of Anti-terrorism Instruments and their Web Addresses	16-28
4. Regional Ratification Levels of the Twelve International Legal Instruments against Terrorism	29-30

INTERNATIONAL TERRORISM

I. INTRODUCTION

1. The Secretariat Document entitled “International Terrorism” *inter alia* focused upon Salient Features of the Draft Convention Circulated by India; Discussion on the Draft Comprehensive Convention on Terrorism at the Eighth Session of the Ad Hoc Committee; Deliberation on the Comprehensive Convention against Terrorism at the Sixth Committee during the 59th Session of the General Assembly (2004); work of the Counter Terrorism Committee (CTC); and the general comments. Since the submission of the document, a new development, namely, Eleventh United Nations Congress on Crime Prevention and Criminal Justice, was held in Bangkok, from 18-25 April 2005. This addendum focuses on the Eleventh United Nations Congress on Crime Prevention and Criminal Justice. Also, a comprehensive list of anti-terrorism instruments and their web addresses and regional ratification levels of the twelve international instruments relating to terrorism are included in this addendum.

II. ELEVENTH UNITED NATIONS CONGRESS ON CRIME PREVENTION AND CRIMINAL JUSTICE, BANGKOK, 18-25 APRIL 2005

2. Eleventh United Nations Congress on Crime Prevention and Criminal Justice was held in Bangkok from 18-25 April 2005. Deliberations were held on five substantive items. One of them was “International cooperation against terrorism and links between terrorism and other criminal activities in the context of the work of the United Nations Office on Drugs and Crime”. Six workshops were also organized at the Eleventh Congress. The topic “Measures to Combat Terrorism, with reference to the Relevant International Conventions and Protocols” was discussed in one of the Workshops. The following are the excerpts from the official documents of the Congress.

1. BACKGROUND PAPER ON “MEASURES TO COMBAT TERRORISM, WITH REFERENCE TO THE RELEVANT INTERNATIONAL CONVENTIONS AND PROTOCOLS” (WORKSHOP 4)¹

A. The role of international law in the fight against terrorism

3. Terrorism is, and is intended to be, an assault on the principles of law, order, human rights and peaceful settlement of disputes. The Policy Working Group on the United Nations and Terrorism noted in its report (A/57/273-S/2002/857, annex, para. 16) that, just as terrorists seek to undermine the core principles and purposes of the United Nations, so it is through a determined effort to bolster and reassert its core principles and purposes that the United Nations can best contribute to the struggle against terrorism.

¹ (A/CONF.203/12)

4. International law is an important component of that effort. The role of international law in the fight against terrorism needs to be viewed in the context of the two main objectives of international law: securing peace and protecting human rights. Those objectives are interconnected; each has an impact on the other. Respect for basic human rights by all members of the international community is relevant to the security of the entire world. Thus, international law complements the functions of the State to ensure security for its citizens while protecting individual freedom. Human rights are a guarantee and a precondition for individual freedom. But they will only be respected in a society where the State upholds the rule of law, even under difficult circumstances.

5. Acts of terrorism seriously undermine international and national rule of law. Acts, methods and practices of terrorism are aimed at destabilizing Governments and undermining civil society. Governments, in turn, have a duty to protect their citizens from terrorist acts. The manner in which efforts to counter terrorism are conducted, however, can have a far-reaching effect on the rule of law. Throughout the regional consultations held by the High-level Panel on Threats, Challenges and Change, the Panel heard concerns from Governments and civil society organizations that the current “war on terrorism” had in some instances corroded the very values that terrorists targeted: human rights and the rule of law. Most of those who expressed such concern did not question the seriousness of the terrorist threat and acknowledged that the right to life was the most fundamental of human rights. They did, however, express fears that approaches to terror focusing wholly on military, police and intelligence measures risked undermining efforts to promote good governance and human rights, alienated large parts of the world’s population and thereby weaken the potential for collective action against terrorism (A/59/565 and Corr.1, para. 147).

6. The Policy Working Group on the United Nations and Terrorism noted that the protection and promotion of human rights under the rule of law was essential in the prevention of terrorism in its report (A/57/273-S/2002/857, annex, para. 26): “First, terrorism often thrives in environments in which human rights are violated. Terrorists may exploit human rights violations to gain support for their cause. Second, it must be understood clearly that terrorism itself is a violation of human rights. Terrorist acts that take life violate the right to life, set forth in article 6 of the International Covenant on Civil and Political Rights.² Third, it must also be understood that international law requires observance of basic human rights standards in the struggle against terrorism. The struggle against international terrorism will be further enhanced if the most serious crimes committed by terrorists are tried before the International Criminal Court and prosecuted under its Statute³ (provided that the relevant national court cannot or will not prosecute). Since the Statute covers the category of crimes against humanity, which includes murder and extermination committed as part of a widespread or systematic attack on any civilian population, certain terrorist acts might therefore be tried under the Statute.”

² General Assembly resolution 2200 A (XXI), annex.

³ Rome Statute of the International Criminal Court (United Nations, *Treaty Series*, vol. 2187, No. 38544).

7. Respecting the international legal framework, whether it is with regard to counter-terrorism action, states of emergency or any other situations affecting national security, is extremely important. In the fight against terrorism, a balanced approach is required: one that takes into account legitimate national security concerns and respect for the rule of law, as called for in several resolutions of the General Assembly and the Security Council.⁴

8. In the aftermath of the events of 11 September 2001, many States have introduced new measures, especially methods and practices in countering terrorism which some feel are not in line with the international legal framework, affecting in particular international human rights law. In his address to the Counter-Terrorism Committee on 21 October 2002, the late Sergio Vieira de Mello, United Nations High Commissioner for Human Rights at the time, expressed his conviction that “the best—the only—strategy to isolate and defeat terrorism is by respecting human rights, fostering social justice, enhancing democracy and upholding the primacy of the rule of law. We need ... to ensure that those who govern and those who are governed understand and appreciate that they must act within the law. ... While there is no contradiction at all between implementing Security Council resolution 1373 and respecting human rights, I am concerned by reports I have been receiving ... of too many States enacting anti-terrorism legislation that is too broad in scope (namely, that allows for the suppression of activities that are, in fact, legitimate), or ... seeking to fight terrorism outside the framework of the court system. In other words, I am concerned that yet one more casualty of the terrorist has been the erosion in some quarters of fundamental civil and political rights.”⁵

9. According to the findings of the Human Rights Committee, which considers the compatibility of counter-terrorism measures with States parties’ obligations under the International Covenant on Civil and Political Rights, several newly introduced measures against terrorism raise serious questions with respect to international law. Some of them stretch to the limit or even breach human rights obligations, undermining principles of international law (A/58/266, paras. 34-51).

10. In his address to the International Summit on Democracy, Terrorism and Security: a Global Strategy for Fighting Terrorism, held in Madrid in March 2005, the Secretary-General reported that, according to findings of international human rights experts, many measures which States are currently adopting to counter terrorism infringe on human rights and fundamental freedoms. Human rights law makes ample provision for counter-terrorist action, even in the most exceptional circumstances. ... Upholding human rights is not merely compatible with successful counter-terrorism strategy. It is an essential element.”⁶

⁴ For example, General Assembly resolutions 57/219, 58/187 and 59/191 and Security Council resolutions 1456 (2003) and 1566 (2004).

⁵ [http://www.unhcr.ch/hurricane/hurricane.nsf/\(Symbol\)/ctc.2002.En?OpenDocument](http://www.unhcr.ch/hurricane/hurricane.nsf/(Symbol)/ctc.2002.En?OpenDocument).

⁶ <http://www.un.org/apps/sgstats.asp?nid=1345>.

11. Effective counter-terrorism measures need to take into full consideration the framework of the rule of law and respect for human rights. Measures can be taken and certain rights can even be suspended if there is a public emergency that threatens the existence of a nation. States may invoke so-called emergency powers in the fight against terrorism, while striking a balance between individual rights, community protection and national security.⁷ In a speech delivered to the Biennial Conference of the International Commission of Jurists in Berlin in August 2004, the United Nations High Commissioner for Human Rights recalled that international human rights law made ample provision for effective counter-terrorism action. She noted that article 4 of the International Covenant on Civil and Political Rights had been crafted precisely to afford States the leeway they would need to deal with truly exceptional situations while remaining within a legal framework. In situations in which the “life of the nation” was threatened, the State might take emergency measures, provided they were limited to the extent strictly required by the exigencies of the situation, were not inconsistent with the State’s other international obligations and did not discriminate on specific grounds. She noted that certain rights were never subject to derogation (A/59/404, para. 10).⁸

12. The United Nations human rights treaty bodies and special procedures, as well as regional bodies, have highlighted certain rights that have come under pressure in the context of action against terrorism. In his report on the protection of human rights and fundamental freedoms while countering terrorism, the Secretary-General noted that those pressure points require special attention in order to ensure full respect for human rights in counter-terrorism efforts (A/58/266, para. 34). Those rights include the right to life; the right to freedom from torture and cruel, inhuman or degrading treatment or punishment; respect for the principle of legality; the right to freedom from arbitrary detention; elements of the right to fair trial, including the right to counsel; freedom of thought, conscience and religion; freedom of expression and assembly; freedom from discrimination; the right to seek and to enjoy asylum from persecution; and respect for human rights provisions applicable to emergency situations (A/59/428, para. 20).

⁷ The International Covenant on Civil and Political Rights and the Optional Protocols thereto (General Assembly resolutions 2200 A (XXI), annex, and 44/128, annex); the Universal Declaration of Human Rights (Assembly resolution 217 A (III)); the Basic Principles on the Independence of the Judiciary (*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex); the Basic Principles on the Role of Lawyers (*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex); and the Guidelines on the Role of Prosecutors (*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.26, annex).

⁸ Among the rights that cannot be suspended are the deprivation of liberty, the right to an independent and impartial tribunal, fundamental judicial guarantees, and certain rules regarding refoulement, extradition and deportation.

13. When drafting legislation and when implementing measures for the prevention and combating of terrorism, one of the great challenges is to do so without unnecessary suppression or compression of individual liberties. The following specific concerns are among the issues to be addressed by Governments when drafting and implementing legislation against terrorism:

(a) Definitions of terrorist acts and related offences, as well as of membership in a terrorist organization in substantive criminal law should be clear. That is particularly important in the context of the non-derogable principle of legality (International Covenant on Civil and Political Rights, art. 15). A vague or broad law could be misused to suppress lawful activities;

(b) The principles governing the designation of illegal organizations in domestic procedural law need to be analysed carefully;

(c) The right to a fair trial is recognized in a range of regional and international treaties⁹ and non-treaty standards.¹⁰ It applies to criminal and civil tribunals and incorporates a number of principles such as: the right to legal counsel; the right to equality of arms; the right to a public hearing; the right to appeal; and the right to be tried without undue delay. The majority of those judicial guarantees are derogable. Nonetheless, the Human Rights Committee (CCPR/C/21/Rev.1/Add.11, para. 16) has expressed the view that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected;

(d) Measures to counter terrorism might have to include the introduction of new procedures for the detention of suspected terrorists and the prosecution of terrorism-related cases. Measures permitting the detention to be based on information withheld from the accused and others allowing limits on habeas corpus or limits on access to counsel should always be taken under serious review in order to cover the overall aspect of fair-trial rights;

(e) Extradition and rendition of terrorism suspects are other areas in which the rule of law must be fully respected. Particular attention needs to be given to respecting the right to due process and the prohibition against refoulement. The treatment of evidence should always be secured in such a way that torture or illegality in such proceedings is fully avoided;

⁹ See article 14 of the International Covenant on Civil and Political Rights; article 8 of the American Convention on Human Rights; article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (United Nations, *Treaty Series*, vol. 213, No. 2889); and article 7 of the African Charter on Human and Peoples' Rights (United Nations, *Treaty Series*, vol. 1520, No. 26363).

¹⁰ See article 10 of the Universal Declaration of Human Rights, the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors.

(f) The right to property should also be protected when establishing and implementing measures against terrorist property, particularly involving the freezing and confiscation of assets. An established remedy needs to be available to those believing themselves to be wrongly and arbitrarily deprived of property;

(g) Measures and practices adopted to fight terrorism should also take into consideration asylum issues and procedures, as well as the right to protection from unlawful interference with privacy, the home and correspondence.

14. Respecting the rule of law, including human rights, is one of the fundamental duties of States in their efforts to fight terrorism within the framework of their international obligations. This, in turn, will help States to work together. International cooperation can only function effectively where all parties respect international law and where the rule of law is firmly in place.

B. Towards more effective international cooperation

15. A fundamental obstacle to international cooperation against terrorism is the absence of an effective network of national legislation and international cooperation mechanisms, which would ensure compliance with Security Council resolution 1373 (2001) of 28 September 2001. That resolution was adopted by the Council acting under Chapter VII of the Charter of the United Nations, which makes it binding on Member States. In that resolution, the Council decided that all States should: deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens; and ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting them is brought to justice and that such terrorist acts are established as serious criminal offences in domestic laws and regulations.

16. While none of the universal legal instruments contains an explicit legal definition of “international terrorism”, 10 of them contain narrowly “operational” definitions regarding certain offences.¹¹ In its report (A/59/565 and Corr.1, paras. 157-160), the High-level Panel on Threats, Challenges and Change noted that the inability of Member States to agree on a draft comprehensive convention on international terrorism, including a definition of terrorism, was preventing the United Nations from exercising its moral authority and from sending an unequivocal message that terrorism would never be an acceptable tactic, even for the most defensible of causes. It has further contributed to a piecemeal approach when dealing with terrorism and has led to a review of the current status of the existing anti-terrorism conventions in the literature, suggesting possible measures to strengthen it.¹² Despite some obvious gaps, including cyber-terrorism and

¹¹ Two conventions do not provide for the establishment of new offences. The Convention for the Suppression of Unlawful Seizure of Aircraft requires States to exercise jurisdiction over offences on board their aircraft but does not define any specific criminal offence. The Convention on the Marking of Plastic Explosives for the Purpose of Detection does not require criminalization of any specific act.

¹² See, for instance, Roberta Arnold, “The status of the existing anti-terrorism conventions”, *The ICC as a New Instrument for Repressing Terrorism* (Ardsley, New York, Transnational Publishers, 2004), pp. 7-52.

murders and assaults by hand weapons (when the weapons are not covered by the International Convention for the Suppression of Terrorist Bombings or the intended victims are not covered by the various conventions protecting aircraft and ship passengers, diplomatic agents or hostages), the adequacy of the existing legal regime is not so much a legal question as a political one. According to the Highlevel Panel on Threats, Challenges and Change, legally, virtually all forms of terrorism are prohibited by one of the 12 international counter-terrorism instruments, international customary law, the Geneva Conventions or the Rome Statute; however, there is a clear difference between that scattered list of conventions and little-known provisions of other treaties and the compelling normative framework, understood by all, that should surround the question of terrorism (A/59/565 and Corr.1, paras. 159 and 163).

C. Technical assistance for capacity-building

17. The main focus of UNODC technical cooperation in the area of strengthening the legal regime against terrorism has been the provision of legislative advisory assistance to requesting Member States. That has been done with a view to establishing a network of enabling counter-terrorism legislation in many countries. The necessary legal initiatives have included criminalization of terrorism offences, establishment of mechanisms for freezing and seizing terrorist assets and provision for various modalities of international cooperation against terrorism. During the initial period, UNODC activities have been carried out in over 100 countries, either through country-specific, direct assistance or through promotion of the universal instruments and international cooperation against terrorism by organizing sub-regional workshops. The sub-regional initiatives allowed States in the same region to learn from each other, harmonize legislative action and initiate joint efforts. Through the workshops, more than 600 lawmakers and law enforcement and other criminal justice officials have been familiarized with the requirements of the universal legal instruments against terrorism and Security Council resolution 1373 (2001). Assistance has also been provided upon request to some States in drafting their reports to the Counter-Terrorism Committee.

18. The absence of a network of national legislation and international enforcement mechanisms is considered a fundamental obstacle to international cooperation against terrorism. There are two aspects to making international cooperation in criminal matters work. One is the issue of a sufficient legislative network for international cooperation, which is supported through legislative advisory assistance and the wide dissemination of legislative tools, such as model treaties, manuals and model laws. In addition, assistance is required to support the capacity-building stage with in-depth advice provided by expert mentors strategically placed in various countries or regions. The advantages of mentorships are that hands-on training over a period of several months can be provided and, during that period, a much clearer picture can be obtained of local obstacles to enhanced international legal cooperation. That understanding can lead to more sustainable solutions developed primarily by the national authorities who must implement them. Since the Counter-Terrorism Committee will be conducting missions to identify problems involving compliance with obligations arising from Security Council

resolution 1373 (2001), mentorships might also serve as an instrument for overcoming obstacles encountered by the Committee.

19. The second issue with regard to making international cooperation in criminal matters work is often the lack of political will on the part of countries to cooperate with each other, mainly due to existing political, normative and legal differences. While the means to develop that political will are limited, there is one particular aspect that should be underlined for States requesting international cooperation and States responding to such requests: the importance of the rule of law, as well as the need for its universal application. The General Assembly, in its resolution 59/195 of 20 December 2004, emphasized the need to enhance effective international cooperation in combating terrorism in conformity with international law, including relevant State obligations under international human rights and international humanitarian law, and to strengthen the role of the United Nations in that respect. A State is more likely to extradite an accused to another State where the rule of law is firmly in place and where, for example, it has assurances that the accused will have a fair trial and the right to due process and where refoulement is prohibited.

D. Recommendations

20. Bearing in mind the capacity-building activities outlined above, the Eleventh Congress may wish to discuss and further develop the guidelines for technical assistance to combat terrorism, contained in the annex to the present document. In addition, the Eleventh Congress may wish to consider the following recommendations:

- (a) All States should be urged to become parties to the universal instruments against terrorism and to review their legislation with a view to incorporating the provisions of those instruments in order to ensure their full implementation;
- (b) The international community, including donors, should be called upon to intensify the provision of assistance to developing countries and countries with economies in transition in their efforts to become parties to and implement those instruments;
- (c) The existing regime for international cooperation in criminal matters should be reinforced to avoid legislative loopholes and eliminate safe havens, by urging Governments to establish and maintain effective mechanisms for international cooperation;
- (d) Member States should be invited to follow a balanced approach when combating terrorism, without compromising on respect for the rule of law and the protection of human rights;
- (e) The international community should continue to develop useful tools, including good practices, which could help States in their efforts to fight terrorism within the framework of their international obligations, including observance of the rule of law, respect for human rights and fundamental freedoms.

II. WORKING PAPER ON “INTERNATIONAL COOPERATION AGAINST TERRORISM AND LINKS BETWEEN TERRORISM AND OTHER CRIMINAL ACTIVITIES IN THE CONTEXT OF THE WORK OF THE UNITED NATIONS OFFICE ON DRUGS AND CRIME”¹³

21. The evocation of an organized crime-terrorism nexus is disturbing for several reasons:

(a) Close cooperation between criminal and terrorist organizations makes both kinds of organization more dangerous. To the extent that criminal and terrorist organizations share their resources, the synergies could be extensive. As one author has noted: “The growing global inter-connectivity of organized crime—with its vast resources and its ability to move money, share information, exploit and manipulate modern technology, and provide endless quantities of black market commodities— has forever changed the way terrorists do business. Terrorists have always sought leverage to penetrate international power and influence. A major change today is that otherwise small and insignificant terrorist groups can join with organized crime to exercise disproportionate leverage.”¹⁴ By pooling their resources and expertise, both groups significantly augment their capacity for harm;

(b) Their close cooperation is making organized criminal and terrorist organizations increasingly difficult for law enforcement and intelligence agencies to combat. Mutual assistance in the criminal-terrorist world increases the flexibility and resilience of both types of organization, making it much harder for States to weaken or dismantle their networks;

(c) Many terrorist and criminal organizations are transnational in scope and therefore pose diffused threats that are difficult for any one State or even small groups of States to combat. The creation of alliances between organized crime and terrorism makes these threats even more complex and significantly increases the difficulty of containing or reducing them by inflicting substantial and lasting damage.

22. There is increasing evidence to support these arguments. The High-level Panel on Threats, Challenges and Change noted that international terrorist groups preyed on weak States for sanctuary; their recruitment was aided by grievances nurtured by poverty, foreign occupation and the absence of human rights and democracy, by religious and other intolerance and by civil violence (A/59/565, para. 21). Terrorist and criminal organizations operated in the same clandestine underworld and were often located in the same geographical area often a lawless area or region where the State was weak or absent. They had similar needs in terms of false documentation, weapons and the like, and also had common interests in countering the law enforcement efforts of

¹³ (A/CONF.203/5)

¹⁴ Robert H. Kupperman, “A dangerous future”, *Harvard International Review*, vol. 17, No. 3 (summer 1995), p. 46.

Governments. Furthermore, to some degree, the kinds of resources and expertise each possessed complemented and supplemented those of the other.

23. In the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I, art. 2) an “organized criminal group” is defined as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”. The Convention defines a “structured group” as “a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure”. Organized criminal groups therefore can be understood as being quasi-Clausewitzian: criminal activity is a continuation of business by other means, that is, by criminal means. Organized criminal groups are typically pragmatic rather than ideological, more concerned about profit than principle or politics. While they can have a political dimension, sometimes creating “a political-criminal nexus”, their political activities are intended to protect their illegal activities.¹⁵ Similarly, although they can be ruthless, violence is used selectively to eliminate rivals (for example, in gang wars), to remove threats (for example, by killing law enforcement personnel or judges) or to remove obstacles (for example, by killing intractable businessmen resisting infiltration by organized criminal groups) to their successful pursuit of profit. Criminal violence of this kind rarely involves the indiscriminate use of violence against innocent civilians. Consequently, such killings can rarely be understood as constituting terrorism,¹⁶ except in those cases where they are aimed at intimidating a population or compelling a Government to do or to abstain from doing something, as was the case in the terror campaigns initiated by the Medellin drug trafficking organization in Colombia and by the Mafia in Italy in the late 1980s and early 1990s.

24. In its report (A/57/273-S/2002/857, annex, para. 13), the Policy Working Group on the United Nations and Terrorism noted that terrorism is a criminal act, but it is more

¹⁵ Roy Godson, “Special focus: the international fight against money laundering”, *Trends in Organized Crime*, vol. 4, No. 4 (1999), pp.1-7.

¹⁶ There is no internationally agreed upon definition of terrorism. However, in its resolution 1566 (2004) of 8 October 2004, the Security Council recalled that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constituted offences within the scope of and as defined in the international conventions and protocols relating to terrorism, were under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature. The High-level Panel on Threats, Challenges and Change has also proposed a description along those lines, characterizing terrorism as “any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act” (A/59/565, para. 164 (a)).

than mere criminality; terrorism is, in most cases, essentially a political act. Terrorist groups can be understood as criminal organizations with a political or ideological objective and the readiness to use violence to achieve it. Violence is not simply instrumental, nor is it merely a tactic for terrorist organizations; instead, it is their defining characteristic, giving such groups their sense of identity and differentiating them from political activists. Any activities they engage in are generally intended to facilitate the campaigns of focused or indiscriminate killings designed to obtain their political, ideological or other objectives (see E/CN.15/1996/7). Even though terrorist groups are resorting increasingly to organized criminal activities, those activities are intended to promote their cause. For organized criminal groups, profit and control of specific criminal markets are the ultimate objectives; for terrorist organizations, money earned through crime or indeed any other channel is simply a means to an end.

25. In its report, the High-level Panel on Threats, Challenges and Change noted that the terrorist attacks of 11 September 2001 on New York and Washington, D.C., had revealed that States, as well as collective security institutions, had failed to keep pace with changes in the nature of threats (A/59/565, para. 16).

26. Like many contemporary security threats, transnational organized crime and terrorism are influenced by the continuously evolving environments in which they are found. The fact that terrorist groups and organized criminal groups interact has meant that each group learns from the other. One observer has suggested that terrorist groups have learned how to launder money and smuggle illicit commodities more efficiently, while criminal groups have learned how to safeguard their operations by imitating terrorists' cell-based structures.¹⁷ Both organized crime and terrorism should not be regarded as fixed phenomena; they are in a state of flux, and the characteristics of the groups, their motivations and operational tactics change over time.¹⁸

27. A combination of political and economic motivations in a group that is prepared to use sustained terror tactics poses a complex threat to national and international security. The radicalization of at least some members of an organized criminal group and the development of intimate working relationships between criminals and terrorists of the kind evident in the Madrid bombings is particularly disturbing, especially if it becomes more common. The terrorist of the future could be less ideological, more likely to harbour ethnic grievances and harder to distinguish from other criminals.¹⁹ The High-level Panel on Threats, Challenges and Change has noted that "we have yet to fully understand the impact of these changes, but they herald a fundamentally different security climate—one whose unique opportunities for cooperation are matched by an unprecedented scope for destruction" (A/59/565, para. 16).

¹⁷ Tamara Makarenko, "Countering the terror-crime nexus", *Jane's Intelligence Review*, 1 April 2002.

¹⁸ Tamara Makarenko, "A model of terrorist criminal relations", *Jane's Intelligence Review*, 1 August 2003.

¹⁹ Walter Laqueur, "Postmodern terrorism", *Foreign Affairs*, September/October 1996.

28. Understanding how groups manipulate their criminal and political nature in various circumstances by identifying the group's strengths and weaknesses will help decision makers at all levels to react appropriately.²⁰ This is particularly important at the policy-making level, where an improved understanding of the criminalterrorism relationship will lead to the formation of an integrated strategy. Effective coordination is a central component to such a strategy, aimed at synchronizing under a unifying concept, various organizational efforts, be it at the national or the international level.

29. Bearing this in mind and taking into account the recommendations of its regional preparatory meetings, the Eleventh Congress may wish to consider the recommendations set out below.

30. Member States should consider:

(a) Ratifying the relevant universal instruments against terrorism, drugs, organized crime and corruption and reviewing their legislation with a view to implementing those instruments, through their national legislation, in practice;

(b) Promoting an integrated national security policy that follows a balanced approach between responding to legitimate national security concerns, such as terrorism and organized crime, and respect for the rule of law;

(c) Reinforcing inter-agency coordination and information exchange on, inter alia, terrorism and organized crime, including through dedicated inter-agency coordination mechanisms;

(d) Strengthening the capacity of border control, law enforcement and intelligence agencies to effectively address transnational threats, such as terrorism and organized crime;

(e) Making efforts to harmonize relevant counter-terrorism and organized crime legislation;

(f) Making efforts to enhance inter-State coordination and cooperation and exchange information.

31. Regional organizations could:

(a) Serve as a forum for regional security policy development;

(b) Assist in devising reinforced mechanisms for cooperation and assistance in countering terrorism and organized crime.

32. The United Nations should:

²⁰ Tamara Makarenko, "Countering the terror-crime nexus", *Jane's Intelligence Review*, 1 April 2002; and Tamara Makarenko, "A model of terrorist criminal relations", *Jane's Intelligence Review*, 1 August 2003.

- (a) Continue to promote the ratification and implementation of the relevant universal instruments against terrorism, drugs, organized crime and corruption and assist developing countries and countries with economies in transition in their efforts to become parties to and implement these instruments;
- (b) Continue to develop a reinforced regime for international cooperation in criminal matters in order to avoid legislative loopholes and restrict safe havens by providing technical cooperation to developing countries and countries with economies in transition, including through developing and implementing assistance tools, such as model laws and training manuals on international cooperation;
- (c) Continue its work on the links between organized crime and terrorism, with a view in particular to intensifying technical assistance delivery, building on an understanding of the crime-terrorism nexus;
- (d) Develop and implement training curricula on the legal regime against terrorism and other forms of organized criminal activity, including good practices in enhancing the rule of law in the context of countering terrorism and other forms of crime;
- (e) Include in its peacekeeping and post-conflict programmes, measures against terrorism and organized crime in the context of establishing a functioning criminal justice system, with due respect for the rule of law;
- (f) Continue to work with regional and other international entities to develop joint work programmes to support developing countries and countries with economies in transition in their efforts to counter transnational organized crime and international terrorism.