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**VIOLENT EXTREMISM AND TERRORISM (LEGAL ASPECTS)**

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**(Deliberated)**

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# VIOLENT EXTREMISM AND TERRORISM (LEGAL ASPECTS)

## I. Introduction

### A. Background

1. The item entitled “International Terrorism” was placed on the agenda of the AALCO’s Fortieth Session held in New Delhi from 20-24 June 2001, upon a reference made by the Government of India. It was felt that consideration of this item at AALCO would be useful and relevant in the context of the on-going negotiations in the Ad Hoc Committee of the United Nations on elaboration of the Comprehensive Convention on International Terrorism. It is pertinent to recall that during the Forty-First Annual Session of AALCO held in Abuja, Nigeria in 2002, a comprehensive Special Meeting on “Human Rights and Combating Terrorism” was organized by AALCO with the assistance of Office of the High Commissioner for Human Rights (OHCHR). The successive sessions directed the Secretariat to monitor and report on the progress in the Ad Hoc Committee of negotiations related to the drafting of a comprehensive international convention to combat terrorism; and requested the Secretariat to carry out, an in-depth study on this topic. The Centre for Research and Training (CRT) has published “A Preliminary Study on the Concept of International Terrorism” in the 2006. The recent escalations in acts of violent extremism committed by non-state actors are closely intertwined with transnational terrorism. It is in furtherance of this realization that the Member States agreed to deliberate on the legal implications of violent extremism and its manifestations in the Fifty-Third Annual Session held in Tehran in 2014. This brief gives emphasis on legal tools available in international law to combat violent extremism with an aim to aid Member States in deliberating on the adoption of a set of guidelines to address this menace.

2. Extremism is a complex phenomenon, although its complexity is often hard to see. Most simply, it can be defined as activities (beliefs, attitudes, feelings, actions, strategies) of a character far removed from the ordinary. In conflict settings, it manifests as a severe form of conflict engagement.<sup>1</sup> The term “violent extremism” broadly refers to advocating, engaging in, preparing, or otherwise supporting ideologically motivated or justified violence to further social, economic and political objectives. Violent extremism is, in many ways, closely associated with terrorism perpetrated by non-state actors. The world bears witness to the newest form of their atrocities eschewing borders and authority; propagating indiscriminate violence; finding refuge and support in fragile states, in vulnerable communities and among the disenfranchised. Violent extremism, in its most grotesque forms, dovetails with inhuman and barbaric cruelty and intolerance and blatantly disregards human rights of civilian populations. Chilling accounts of brutality from Iraq, Syria and its neighboring regions,

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<sup>1</sup> Peter Coleman & Andrea Bartoli, *Addressing Extremism*, available online at [http://www.tc.columbia.edu/i/a/document/9386\\_WhitePaper\\_2\\_Extremism\\_030809.pdf](http://www.tc.columbia.edu/i/a/document/9386_WhitePaper_2_Extremism_030809.pdf) (Last accessed 23 January 2015)

Peshawar in Pakistan and Nigeria are the most recent instances. Abductions, enslavement of minority populations, arbitrary executions, cold-blooded massacres and acts of terrorism committed with impunity in a state of anarchy are antithesis to the much cherished ideals and values of modern civilizations. These acts patently violate fundamental tenets of international law.

3. While terrorism is unquestionably part and parcel of violent extremism, violent extremism is an overarching term that encompasses categorical espousal of ideological fanaticism by non-state groups accompanied by widespread propaganda aimed at radicalization and recruitment and habitual recourse to slaughter and savagery brazenly breaching norms of international humanitarian and criminal laws. In its recent manifestations in internal conflicts in the Middle East and Africa and its expansion to the rest of the world, political dogma merges with territorial ambitions in pursuance of establishing a realm to uninterruptedly practice their ultra extremist interpretation of faith and religion amounting to their misuse. As rightly pointed out by Dr. Mehdi Danesh-Yezdi, Deputy Minister of Foreign Affairs of the Islamic Republic of Iran and President of the Fifty-Third Annual Session of AALCO on the occasion of his visit to the AALCO Headquarters on 3 February 2015, these groups persistently resorted to the same tactics of terror violence, as those employed by groups and individuals traditionally recognized as ‘terrorists’, against civilian populations in furtherance of their political ends.<sup>2</sup> While this would certainly help in bringing within their ambit a few crimes defined in “sectoral” conventions on terrorism, they leave out a large number of brutal crimes routine to these violent extremist groups. This necessitates a through deliberation and amalgamation of existing international legal provisions in order to form a definitive legal framework to comprehensively address this menace.

4. The international community was quick to take cognizance of the escalation of acts of violent extremism and deliberations on how to effectively deal with this menace is in progress in various forums. In the United Nations General Assembly, the Islamic Republic of Iran introduced the issue for deliberation which resulted in the unanimous adoption of the UNGA Resolution A/RES/68/127 (20 February 2014) titled “A World Against Violent Extremism”. The Resolution strongly condemns violent extremism in all its forms and manifestations, as well as sectarian violence and recognizes the need for a comprehensive approach to countering violent extremism and addressing the conditions conducive to its spread.

5. The United Nations has been addressing various aspects of this scourge since then. The most important one among them is UNSC Resolution 2178 (24 September 2014) which was cosponsored by more than 100 nations from among the General Assembly’s membership.<sup>3</sup> The Resolution stresses on the importance of addressing the threat posed by foreign terrorist fighters and improving international cooperation for the prevention of travel by terrorists by

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<sup>2</sup> Statement by H. E. Mr. Mehdi Danesh-Yazdi, Deputy Minister of Foreign Affairs of the Islamic Republic of Iran and President of the Fifty-Third Annual Session of AALCO on the Occasion of his Visit to the AALCO Headquarters, *New Challenges in International Law and the Role of AALCO in Enhancing Asian-African Solidarity*, New Delhi, India, 9 February 2015, available online at <http://www.aalco.int/Statement-AALCO-Mr%20Danesh-9%20Feb%2015.pdf> (Last accessed 10 February 2015)

<sup>3</sup> UN Security Council, S/RES/2178, 24 September 2014

sharing information and best practices. A detailed analysis of this resolution is provided in the next part of this brief.

## **B. Deliberations at the Fifty-Third Annual Session, 2014**

6. It is in this context that the agenda item “Violent Extremism and Terrorism (Legal Aspects) was proposed for discussion by the Islamic Republic of Iran, the host government of the Fifty-third Annual Session, 2014. The topic was accordingly included and a Half Day Special Meeting on the topic was held on 17 September 2014. The meeting saw participation of three experts in the subject. Ms. Yukiko Harimoto, Deputy Secretary General, made the introductory remarks. Dr. Rohan Perera, Chairman of the UN Ad-Hoc Committee on Measures to Eliminate International Terrorism, Chairman of EPG/AALCO and Former Member of the International Law Commission pointed out that, from an international criminal law perspective, violent extremism involved a range of crimes categorized as grave crimes under international law including bombing of public buildings and infrastructure, hostage taking and arbitrary executions. Dr. Nasrin Mosafa, Professor, Tehran University stressed that the fight against violent extremism and terrorism is a fight for an international rule of law. She stated that there was an urgent need to cooperate with other states at the regional level. Mr. Khoder El Tari, Legal Adviser, ICRC mentioned the importance of international humanitarian law in addressing acts of violent extremism.

7. Following the presentations of the experts, statements were made by the following Member States—Islamic Republic of Iran, People’s Republic of China, Qatar, Arab Republic of Egypt, Nigeria, Democratic People’s Republic of Korea, Japan and Senegal. The delegate of the Islamic Republic of Iran pointed out the relevance of customary and treaty laws as tools for effective cooperation in prevention, prosecution and punishment of acts of violent extremism. The People’s Republic of China stressed on the need of international measures to be in conformity with the UN Charter and international law in general and the importance of a comprehensive approach to address this menace. The delegate of Qatar mentioned the multipronged efforts of his government to address this scourge including poverty reduction, legislative measures, promotion of interfaith dialogue and participation in the working of international forums for combating terrorism and violent extremism. The delegate of India pointed out that definitional clarity is a prerequisite to combat violent extremism effectively. The delegate of Arab Republic of Egypt emphasized on the importance of categorically rejecting any attempt to link the terrorists operations and violence with any region, culture, nationality, ethnicity or civilization. The delegate of Nigeria highlighted the need of proactive legislation and focus on common interests and concerns to effectively thwart terrorism and violent extremism. The delegate of Democratic People’s Republic of Korea held the view that sovereignty of independent states should not be violated under the pretext of combating terrorism. The delegate of Japan drew attention to the significance of Comprehensive Convention on International Terrorism which is still being negotiated. The delegate of Indonesia stressed on the importance of “soft-power” approach and technological measures to address the issue. The delegate of Senegal highlighted various regional instruments and mechanisms available in Africa which includes the Dakar Declaration on Terrorism among others.

8. The Resolution adopted pursuant to the deliberations reaffirmed that violent extremism constitutes a serious concern to all Member States and recognized the need for a collective response. It (1) encouraged Member States to consider ratifying/acceding to the relevant conventions on terrorism; (2) urged for action at national, bilateral and international levels to fight impunity against acts of violent extremism; and (3) directed the Secretariat to coordinate holding inter-sessional experts meeting from AALCO Member States which could lead to drafting Asian-African guidelines in order to strengthen cooperation against violent extremism and its manifestations.

### ***C. Issues for focused deliberation at the Fifty-Fourth Annual Session of AALCO***

- I. Consideration of adoption of “Asian-African Guidelines on Violent Extremism and Terrorism” in order to strengthen intergovernmental cooperation against acts of violent extremism and its manifestations***
- II. The present international legal tools to address the menace of violent extremism, focusing on “sectoral” conventions on terrorism, international humanitarian law and international criminal law.***
- III. Feasibility of an inter-regional legal mechanism to address the spread of violent extremism; and***
- IV. The independent nature of violent extremism disassociated with any particular religion, culture, nationality, race, civilization or ethnic group***

## **II. Deliberations at the United Nations and Regional Organizations**

9. As mentioned above, the first resolution specifically addressing violent extremism was proposed by the Islamic Republic of Iran in the United Nations General Assembly. It was titled “A World against Violence and Violence Extremism” (document A/68/L.31) by which the General Assembly urged all Member States to unite against violent extremism in all its forms and manifestations. The United Nations General Assembly overwhelmingly voted to adopt a resolution proposed by Iran that calls on all the countries in the world to denounce violence and extremism. The Iranian text of the “World Against Violence And Extremism” (WAVE), whose 11 co-sponsors included Syria and Cuba, was approved “by consensus”, with no member state calling for a recorded vote.<sup>4</sup> The Resolution condemns “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence,” and countries are reminded of their obligation to refrain from “the threat or use of force against the territorial integrity or political independence of any state.” It also urges member nations to take “appropriate measures to strengthen universal peace and to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character.” In addition, it encourages “respect for human rights and for fundamental freedoms for all without distinction of any kind such as to race, color, sex,

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<sup>4</sup> UNGA Resolution A/RES/68/127 (20 February 2014)

language, religion, political or other opinions, national or social origin, property, birth, or other status.”

10. Later in August 2014, through the unanimous adoption of Resolution 2178 (2014), under the binding Chapter VII of the United Nations Charter, the Security Council condemned in the strongest terms what it called “gross, systematic and widespread abuse” of human rights by the Islamic State in Iraq and the Levant (ISIL, also known as ISIS) and Al-Nusra Front. In an annex to the text, it named the individuals subject to the travel restrictions, asset freezes and other measures targeted at Al-Qaida affiliates. It called on Member States to take national measures to prevent fighters from travelling from their soil to join the groups, reiterating obligations under previous counter-terrorism resolutions to prevent the movement of terrorists, as well as their supply with arms or financial support. It expressed readiness to consider putting on the sanctions list those who facilitated the recruitment and travel of foreign fighters. Through the resolution, the Council demanded that ISIL, Al-Nusra Front and all other entities associated with Al-Qaida cease all violence and terrorist acts, and immediately disarm and disband. Recalling that their attacks against civilians on the basis of ethnic or religious identity might constitute crimes against humanity, it stressed the need to bring those perpetrators, including foreign fighters, to justice. The Council directed the sanctions monitoring team to report on the continuing threat posed by ISIL and the Front, and their sources of arms, funding, recruitment and demographics, and to present recommendations within 90 days to further address the threat.

11. A recent UN report illustrates how the Islamic State in Iraq and the Levant (ISIL), as a splinter group of al-Qaida, is shaped by the contemporary conflict environment and uses its considerable resources and sophisticated communications technologies to attract international support and recruits from far and wide.<sup>5</sup> This is not a threat any country or region can address alone and demands collective response. One key element of this collective response was the unanimous adoption of Security Council Resolution 2178, cosponsored by more than 100 states from among the General Assembly’s membership. Thirteen years after the attacks of 9/11 and the subsequent adoption of Security Council Resolution 1373, the United Nations is confronting an international call for a response to new iterations of a violent, transnational, non-state group that has the declared aim of fomenting regional instability and threatens international peace and security.<sup>6</sup>

12. Introduced by the United States during its Security Council presidency in September, Resolution 2178 comprises four broad sections. The first section focuses on the obligation of all states to address the threat posed by foreign terrorist fighters (FTFs) through the implementation of effective border controls, the issuance of travel documents, and the exchange of operational information concerning actions or movements of terrorists or terrorist networks. The second section emphasizes the importance of improving

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<sup>5</sup> UN Security Council, “Letter Dated 27 October 2014 From the Chair of the Security Council Committee Pursuant to Resolutions 1267 (1999) and 1989 (2011) Concerning Al-Qaida and Associated Individuals and Entities Addressed to the President of the Security Council,” S/2014/770, 29 October 2014.

<sup>6</sup> Naureen Chowdhury Fink, *Countering Terrorism and Violent Extremism*, GLOBAL CENTER ON COOPERATIVE SECURITY, November 2014.

international cooperation for the prevention of travel by terrorists or terrorist networks by sharing information and best practices, assisting with criminal investigations and proceedings, and building capacity among member states. The third section highlights the importance of community engagement and countering violent extremism while the fourth section discusses the role of the United Nations in addressing the foreign fighter threat through the use of the al-Qaida sanctions list when applicable and UN counterterrorism bodies such as Counter-Terrorism Committee Executive Directorate (CTED). In accordance with the resolution, CTED will support the Counter-Terrorism Committee by identifying gaps in Member States' implementation efforts, gathering good practices, and facilitating the delivery of technical assistance to States in need.

13. On 19 January 2015, a Security Council Presidential Statement demanded that the terrorist group “immediately and unequivocally” cease all hostilities, and without condition, release all hostages, including the 276 girls abducted in April 2014. Expressing deep concern that Boko Haram’s actions were undermining peace and stability in West and Central Africa, the Council welcomed plans for a regional meeting in Niamey, Niger, next week to discuss a collective response to threats posed by the terrorists. The Council urged Lake Chad Basin Commission member States and Benin to undertake further planning towards a sustainable, viable and effective Multinational Joint Task Force and to identify means of deployment, especially in the areas of intelligence sharing and operations. More recently, on 12 February 2015, the Security Council unanimously adopted UNSC Resolution 2199 (2015) underlining the obligations of Member States to take steps to prevent terrorist groups in Iraq and Syria from benefiting from trade in oil, antiquities and hostages, and from receiving donations.

14. In its decision Assembly/AU/Dec.536(XXIII) on the Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa, the 23rd Ordinary Session of the Assembly of the African Union, held in Malabo, Equatorial Guinea, from 26 to 27 June 2014, expressed deep concern over the continued terrorism threat in Africa, particularly in the Sahelo-Saharan region, the Horn of Africa, including Somalia, Kenya and Djibouti, the Central African region with the attacks carried out by the Lord’s Resistance Army (LRA), as well as the atrocities perpetuated by Boko Haram in Nigeria. The Assembly welcomed the on-going AU’s efforts to address the scourge of terrorism, notably through the cooperative mechanisms being implemented by the African Centre for the Study and Research on Terrorism (ACSRT), the Nouakchott Process on the Enhancement of Security Cooperation and the Operationalization of the African Peace and Security Architecture (APSA) in the Sahelo-Saharan region, the Regional Cooperation Initiative for the Elimination of the Lord’s Resistance Army (RCI-LRA) and the AU Mission in Somalia (AMISOM).

15. Significantly, the multilateral counterterrorism landscape in 2015 has evolved considerably over the past 14 years. New international actors have emerged and sought to play active roles in shaping regional and international norms and counterterrorism engagement. Notably, the Global Counterterrorism Forum (GCTF), an informal body of 29 countries and the European Union, has emerged as an active platform for the development of nonbinding good practices memoranda and for the delivery of capacity-building



assistance. Under its aegis, three institutions have emerged to address specific aspects of counterterrorism. In Abu Dhabi, Hedayah was established to focus on Countering Violent Extremism (CVE) research, training, and dialogue; in Malta, the International Institute for Justice and the Rule of Law (IIJ) was established to focus on criminal justice aspects of counterterrorism and CVE activities; and the Global Community Engagement and Resilience Fund (GCERF) was recently launched to facilitate support for grassroots community and civil society organizations working to build resilience against violent extremism. Regional and sub-regional organizations such as the European Union, Intergovernmental Authority on Development, and Economic Community of West African States (ECOWAS) have sought to enhance engagement on these issues and support member state and partner initiatives. Coordination among such stakeholders at headquarters and in the field is critical to ensuring complementarity among their projects and responsiveness to local and national needs and capacity gaps in their activities.

### **III. Application of Rules of Customary International Law and Treaty Laws to Acts of Violent Extremism**

16. The existing framework of international law is equipped with several tools to adequately address several aspects of violent extremism and its manifestations. A cursory analysis of treaty and customary law is provided hereunder.

#### **A. State responsibility for supporting or harbouring non-state actors engaging in acts of violent extremism and terrorism**

17. National governments incur for the actions of non-State entities, significantly terrorist organizations, to which they bear a nexus, territorial, financial, or other. In international law, the concept of imputability or attribution develops upon the universally accepted legal premise that a principal bears responsibility for the acts of its agent in its capacity as such. This concept seeks to determine how a national government may confer the responsibility for the performance of certain functions upon non-State actors, for such delegation is not often visible or admitted by the former. It is in recognition of this fact that the concept of an agent de facto was developed.

18. This concept of attribution is comprehensively dealt with by the International Court of Justice (ICJ) in the 1986 Nicaragua case.<sup>7</sup> The ICJ therein gave the test for establishing state responsibility, a standard which was popularly called "effective control test" from then on. The court opined that in order to find a State legally responsible for the activities of a non-state actor, it would have to prove that the state had "effective control" of the operations in the course of which the alleged violations were committed.

19. The International Law Commission (ILC) Draft Articles on State Responsibility adopted in 2001 reiterates *Nicaragua* test. According to Article 1 of the Draft, "every

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<sup>7</sup> Military and Paramilitary Activities (Nicaragua v. U.S.), 1986 I.C.J. 14 (June 27).

internationally wrongful act of a State entails the international responsibility of that State." Under the ILC framework, an act is wrongful if it amounts to a breach of a host-state's international obligations, whether derived from a treaty law, customary law, general principles of international law or *jus cogens*. This principle, now codified in Article 2 of the Draft Articles has received widespread support in international jurisprudence.<sup>8</sup> In tandem, these provisions operate on the premise that if a state has violated a primary rule of international law, whether through an act or omission, the secondary rules of state responsibility contained in Draft Articles will apply. As regards the attribution of responsibility for the acts of private actors, Article 8 reads: "The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct."

20. Member States may note that post 9/11 attacks on the United States, many commentators have suggested that the threshold for attribution has been lowered substantially taking into consideration various aspects of collective response to those attacks. Recall that the United States argued that the attacks constituted an "armed attack" within the meaning of the self defense provision of the U.N. Charter. In addition, the United States asserted the right to act in self defense against Afghanistan because the Taliban regime had supported and harbored leaders of the al Qaeda terrorist network. In short, the United States sought to attribute to Afghanistan the hostile acts of a non-state actor--namely, al Qaeda. The United States, however, did not attempt to establish that al Qaeda acted on behalf of the Taliban, or that the Taliban played any direct role in (or had any direct knowledge of) the planning or execution of the attacks. Instead, the United States arguably sought to impute al Qaeda's conduct to Afghanistan simply because the Taliban had harbored and supported the group—irrespective of whether the state exercised "effective control" (or "overall control") over the group. Although this line of argument is not new for the United States, the claim enjoyed much broader international support in the wake of 9/11 attacks. The U.N. Security Council, NATO, and the OAS expressly or tacitly endorsed the United States position. Further, acquiescence of most of the UN members to this line of argument also points towards a paradigm shift in the rule. Moreover, many distinguished commentators have expressed some measure of support for this claim of emerging "harbouring" or "supporting" rule.<sup>9</sup>

21. Despite strong scholarly support for a relaxed rule of attribution, its status as part of customary law is far from convincing. The ICJ has so far refused to acknowledge the existence of a more lenient test of attribution despite these developments in State practice.<sup>10</sup> However, it can be safely concluded that "effective" control by a State over a non-state actor

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<sup>8</sup> JAMES CRAWFORD, INTERNATIONAL LAW COMMISSION'S DRAFT ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT AND COMMENTARIES 74 (2002).

<sup>9</sup> See Edith Brown Weiss, *Invoking State Responsibility in the Twenty First Century*, 96 AM. J. INT'L L 798 (2002).

<sup>10</sup> See *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, 2005 I.C.J. 116 (Dec. 19); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina, v. Serb. & Mont.)*, 2007 I.C.J. 91 (Feb. 26).

engaged in acts of violent extremism and terrorism make that State responsible for such acts as its customary status is acknowledged by the ILC.

## **B. International Humanitarian and Criminal Laws**

22. International Humanitarian Law (IHL) applies to all the signatory States of the Geneva Conventions of 1949 and their Additional Protocols of 1977 but it also binds non-state actors: private citizens, armed groups, national liberation movements, and international organizations. It has been established that since IHL provides rights and special protections to private citizens in conflict, it also confers obligations, as demonstrated by the Nuremberg trials, international tribunals, or recent ICC decision to sentence Congolese warlord Thomas Lubanga to 14 years for using child soldiers and forcing them to commit atrocities. Several instruments also create IHL obligations on part of non-government armed or rebel groups – Common Article 3 of the Geneva Conventions, the Second Additional Protocol of 1977, and Article 8 paragraph 2 of the Statute of the International Criminal Court, whereas the First Additional Protocol applies to national liberation movements.

23. Common Article 3 of the Geneva Conventions, in particular, lays down the some of the most significant rules that have a direct bearing on the conduct of non-state actors engaging in violent extremism during internal armed conflicts. It reads thus:

*In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*

- (1) *Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat ' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.*

*To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;(b) taking of hostages;(c) outrages upon personal dignity, in particular humiliating and degrading treatment;(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*

- (2) *The wounded and sick shall be collected and cared for.*

24. Further, many acts associated with violent extremism, including enslavement, torture and extermination, squarely qualify as “crimes against humanity” (article 7) or “war crimes” (article 8) under the Rome Statute of the International Criminal Court. Article 25 of the Statute establishes the rule of individual criminal responsibility for commission, aid or abetment of the aforementioned crimes. Article 27 categorically stipulates that the statute shall apply equally to all persons without any distinction based on official capacity.

Additionally, article 28 lays down the criminal responsibility of the commander for acts committed by forces under his or her effective command and control.

25. Furthermore, the “sectoral” conventions on terrorism, predominantly the “new generation” conventions among them, cover some of the crimes which can be categorized as acts of violent extremism.<sup>11</sup> The sectoral conventions follow, more or less, an identical pattern. They oblige Member States to: criminalize certain acts which may be qualified as acts of terrorism, in their domestic criminal law; establish the principle of *aut dedere aut iudicare* with regard to the offence in question; and encourage mutual co-operation in varying degrees according to the needs of the respective convention. The 1997 Bombings Convention creates a regime of universal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in, into, or against various defined public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place. The convention thus not only deals with conventional explosives, but also applies to attacks with chemical materials; biological agents; toxins; radiation; and radioactive material. The 1999 Financing Convention requires Member States to criminalize terrorist financing, which is constituted by ‘directly or indirectly, unlawfully and willfully, providing or collecting funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part’, to carry out an offence described in any one of the existing counter-terrorist treaties.

26. Additionally, many regional instruments on terrorism including 1998 Arab Convention on the Suppression of Terrorism, 1999 Organization of African Union Convention on the Prevention and Combating of Terrorism, 1999 Convention of the Organization of Islamic Conference on Combating International Terrorism, ASEAN Convention on Counter-Terrorism and Lome Declaration of African Union on Unconstitutional Changes to Governments address provide legal responses to various aspects of violent extremism.

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<sup>11</sup> These conventions are: 1. Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 (entered into force on 4 December 1969). 2. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970 (entered into force on 14 October 1971). 3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 (entered into force on 26 January 1973). 4. Convention on the Prevention and punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973; entered into force on 20 February 1977). 5. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 (entered into force on 3 June 1983). 6. Convention on the physical Protection of Nuclear Material; signed at Vienna on 3 march 1980 (entered into force on 8 February 1987). 7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988 (entered into force on 6 August 1989). 8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, signed at Rome on 10 March 1988 (entered into force on 1 March 1992). 9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, signed at Rome on 10 March 1988 (entered into force on 1 March 1992). 10. Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 (entered into force on 21 June 1998). 11. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997 (entered into force on 23 May 2001). 12. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999 (entered into force on 10 April 2002). 13. International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the UN General Assembly on 13 April 2005

#### **IV. Comments and Observations of the AALCO Secretariat**

28. The Secretariat strongly believes that countering violent extremism and its various manifestations requires a multi-faceted and multi-pronged approach, as various factors can drive violent extremism. The prerequisite of an effective, results-oriented policy is to comprehend the complexity of violent extremism; this requires a joint effort at the local, national, regional, and international levels. Most violent extremist groups have their own cultural, psychological, and structural characteristics, which play an important role in the process of radicalization. That is, the context in which terrorism emerges involves a complex mix of historical, political, ethnic, cultural, religious, social-economic, and various other factors and, as such, presents multiple and evolving challenges to governments.

29. The Legal Committee of the United Nations' General Assembly has not yet reached agreement among its 193 Member States as to what exactly the term 'terrorism' should cover in international criminal law. Just like terrorism, the term "violent extremism" does not have an accepted definition in international law. However, there appears to be a broad consensus that certain horrendous crimes that are not directly addressed by laws pertaining to terrorism can be brought under this head. Also, engaging with "violent extremism" provides the international community a fresh opportunity to focus on countering propaganda (not just their violence) by the extremist groups which is hitherto not seriously discussed in international legal forums dealing with terrorism.

30. In this regard, the Secretariat recommends a "soft law approach" hinging on commitment towards multi-pronged cooperation at national and regional levels directed at vulnerable youth susceptible to falling prey to radicalization and eventual resort to violence. Since radical groups are engaging in recruitment campaign using communication tools in the realm of media and internet, a legal mechanism aimed at effective cooperation between national governments to counter widespread communication campaigns by these groups is an imperative.

31. A comprehensive set of guidelines for the Member States of AALCO ought to address not only the acts of violent extremism but also its aiding and abetting through direct or indirect mentoring or support and its transnational propagation. It is certain that the adoption of this document will immensely contribute to the progressive development of international law related to violent extremism and terrorism. The Secretariat proposes that the following aspects may be adequately dealt with in such a document:

- The unique nature of acts of violence perpetrated by violent extremist groups that necessitate a multipronged legal approach and collective response to mitigate and eventually eliminate the menace.
- Its disassociation with any religion, nationality, civilization or ethnic groups.
- The existing framework of international law, customary and contractual, that aid in effectively addressing acts of violent extremism and support to them.
- A comprehensive framework for cooperation to check the spread of violent extremism focusing on countering the propaganda by these groups through print and visual media and internet aimed to radicalize and recruit.

- Reinforcement of regional cooperation to strengthen legal mechanisms addressing crimes perpetrated by violent extremist groups. Special focus to be given to information sharing and bilateral/multilateral cooperation to formalize a “prosecute or extradite” regime for such crimes.

## V. ANNEX

SECRETARIAT'S DRAFT  
AALCO/RES/DFT/54/S 9  
17 APRIL 2015

### RESOLUTION ON “AALCO GUIDING PRINCIPLES TO COMBAT VIOLENT EXTREMISM AND TERRORISM” (*Deliberated*)

*The Asian-African Legal Consultative Organization at its Fifty-Fourth Session,*

**Having considered** the Secretariat Document No. AALCO/54/BEIJING/2015/SD/S9 prepared by AALCO Secretariat,

**Recalling** its resolution on “Violent Extremism and Terrorism (Legal Aspects)” at the Fifty-Third Annual Session, 2014,

**Also recalling** the importance of international law and its instruments in combating violent extremism and its manifestations,

**Also recalling** UN General Assembly Resolution—“A World against Violent Extremism” (A/RES/68/127) adopted by the General Assembly on 18 December 2013,

**Taking note of** UN Security Council Resolution 2178 (2014) on the cross-border movement of foreign terrorist fighters and UN Security Council Resolution 2199 (2015) on obligations to prevent financing of terrorists groups,

**Gravely concerned** about the brutality of acts perpetrated by extremist groups on combatants and non-combatants including women and children,

**Noting with concern** escalation in attacks on nationals of the Member States threatening their security and well-being and adversely affecting peace and stability in Asia and Africa,

**Recognizing** the complex and volatile nature of the phenomenon and its high potential for universal propagation if not addressed comprehensively,

**Reiterating** that no cause, religious, political, ideological or otherwise, can be invoked to justify the brutal crimes habitually practiced by these groups,

**Condemning** the heinous crimes perpetrated by extremists groups such as Islamic State and the Al-Nusra in Iraq, Syria and neighbouring regions and Boko Haram and Al Shabaab in Africa,

**Realizing** that deliberations on this topic provides a fresh opportunity for the Member States to counter propaganda and radicalization campaigns by extremist groups to propagate and practice violent extremism,

**Bearing in mind** the intrinsic relationship between violent extremism and acts of terrorism, crimes against humanity and war crimes,

**Recognizing** the need for a comprehensive set of guidelines to effectively tackle this threat, lay down the following:

1. Member States emphasize that neither can violent extremism be lawfully associated with any religion, nationality, culture, ethnicity, race or civilization nor can it justify any kind of violence, discrimination, stigmatization or persecution against members of any sect, region, religion, ethnicity or nationality using the pretext of any religion or ideology.
2. Member States reaffirm the primacy of the principle of sovereignty and territorial integrity and political independence of States under international law.
3. Member States reaffirm their commitments under international humanitarian law, international criminal law, human rights law and “sectoral” conventions on terrorism in prevention, suppression, investigation and prosecution of crimes perpetrated by extremist groups.
4. Member States shall prevent groups and individuals engaged in acts of violent extremism and terrorism from harbouring or finding safe havens in their territories.
5. Member States shall prevent the recruiting, organizing, transporting or equipping of individuals who travel to a State for the purpose of the perpetration, planning of, or participation in acts of violent extremism and terrorism.
6. Member States shall enact legislations and/or regulations to prevent and prosecute crimes associated with violent extremism, to suppress financing and money laundering aimed at supporting extremist groups and to prosecute individuals or groups aiding or abetting acts of violent extremism in any other manner.
7. Member States shall consider strengthening bilateral and regional cooperation to effectuate legal mechanisms to counter propaganda and recruitment drives of extremist groups.



8. Member States shall strive to evolve bilateral and multilateral legal framework to enhance joint investigations into crimes perpetrated by extremist groups.
9. Member States shall strive to strengthen cooperation to facilitate intelligence sharing by establishing bilateral and regional mechanisms to prevent the spread of extremist groups.
10. Member State shall hold criminally responsible any individual associated or affiliated to extremist groups for ordering, soliciting or inducing any crime which in fact occurs or is attempted.
11. Member States shall strive to establish a robust “prosecute or extradite” regime for heinous crimes committed by extremist groups in their respective jurisdictions.
12. Member States shall jointly work to expedite the negotiations and conclusion of the Draft Comprehensive Convention on International Terrorism aimed at its prompt adoption.
13. Member States shall enhance cooperation with relevant international bodies to build synergies in pursuance of combating violent extremism and its manifestations and enhance their efforts to implement their obligations under “sectoral” conventions on terrorism.

**Urges** the Secretary General of AALCO to report the outcome of this Annual Session to relevant international and regional organizations dealing with this subject,

**Decides** to place the item on the Provisional Agenda of the Fifty-Fifth Annual Session.