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Committee II  
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## **CRIME CONGRESS COMMITTEE II DISCUSSES STRENGTHS, WEAKNESSES OF INTERNATIONAL LEGAL REGIME TO COUNTER TERRORISM**

### **Binding Obligation to Cooperate in Information Sharing, Extradition a Plus, But Inability to Find Definition of Terrorism Constrains System**

During a workshop this afternoon, Committee II of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice heard from a panel of four experts on various aspects of the strengths and weaknesses of the international legal regime against terrorism.

One of the panellists, Joel Sollier, Expert from the Counter-Terrorism Committee of the Security Council, said in his opening statement that, prior to 11 September 2001, existing legal instruments regarding terrorism were quite complete. The General Assembly had already adopted a series of important resolutions on the matter; there were decisions of the Security Council and also two verdicts from the International Court of Justice. The 12 universal anti-terrorism conventions were in place, as were a number of regional conventions. One was struck by the density and completeness of the legal regime against terrorism, but also by the total lack of application.

He said Security Council resolution 1373 (2001) was a historic document that obliged States to apply a list of principles in their fight against terrorism. There was also a follow-up mechanism for implementation of the resolution -- the Counter-Terrorism Committee and the Executive Directorate. International anti-terrorism law had, thus, been translated into specific recommendations.

As to the strengths of the system, he said the Security Council had created obligations that went a long way towards harmonizing and universalizing anti-terrorist law. It made binding the obligation to cooperate in providing information and facilitating extradition. Another strength was that, today, the existing anti-terrorist conventions were virtually universal. Technical standards had been developed for the fighting against terrorism. New domestic legislation had also been adopted by a great number of States. International anti-terrorism laws had become living law on the ground in many countries. One of the weaknesses, however, was the inability to find a definition of terrorism, something that constrained the system.

Pornchai Danvivathana, Director of the Legal Affairs Division, Ministry of Foreign Affairs of Thailand, said terrorism was creeping towards the realm of transnational organized crime. Because terrorism was a dynamic rather than static phenomenon, international cooperation was

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\* 5<sup>th</sup> and 6<sup>th</sup> Meetings were not covered.

crucial. It was vital to adopt a common understanding at the inter- and intraregional levels so that internationally recognized principles could be transposed into national legislation. The wider involvement of civil society and education institutions should also be encouraged.

Terrorism should become an exception to the rule concerning political offences [the principle by which a country could refuse to extradite someone on the grounds that it thought that the act committed was of a political nature]. He said it was important to observe the principle of “extradite or prosecute”. No haven must be left for the perpetrators of terrorism to hide. Technical assistance concerning the development of relevant legislation should also be extended to parliamentarians.

Alejandro W. Slokar, Undersecretary for Criminal Policy, Ministry of Justice and Human Rights of Argentina, said Latin America had experienced two types of terrorism. On the one hand, State-based violence had affected nearly two thirds of Latin Americans in the last decade. The failure of State structures and the political framework had led to impunity, eroding the trust of the people in governments and society as a whole. In that sense, terrorism was a direct attack on human rights and the rule of law. Democracy and human rights must be the foundation of the response of States to terrorism, and greater discussion of the various responses was needed. The Inter-American Convention against terrorism had become an important part of the cooperative framework within the Organization of American States. It called, among other things, on States to ensure full respect for the rule of law, and fundamental freedoms and human rights.

Gioacchino Polimeni, Director, United Nations Interregional Crime and Justice Research Institute, Turin, Italy, said that, for a legal regime of international anti-terrorism instruments to be effective, it should be universally applicable. More than one delegation had recognized that the fight against terrorism was a long-term one. The legal regime should be conceived as a toolkit, and every effort should be made for universal ratification of the 12 conventions.

The strengths of the international legal regime against terrorism consisted in the absolute obligation of States to provide each other with the greatest possible measure of assistance, he said. However, that obligation was not accompanied by a detailed regime in the 13 instruments. The absence of detailed normative schemes of legal assistance did not help and left room for discrepancies.

In the ensuing discussion after the opening statements of the panellists, many speakers emphasized the need to respect human rights, as well the need to make the system of legal instruments truly universal. Speakers also underlined the importance of promoting international mutual legal assistance, of harmonizing laws, and of overcoming obstacles that arose in areas of extradition and mutual legal assistance and which could undermine the work against terrorism. Some speakers had stressed that there existed no links between terrorism and religion, calling making such links counterproductive in the fight against terrorism.

The representatives of Algeria, Brazil, Syria, Argentina, Spain and Nigeria participated in the discussion, as did the representatives of the Council of Europe, the International Institute of Higher Studies in Criminal Sciences and the International Centre for Criminal Law Reform and Criminal Justice Policy. An individual expert, the clinical psychologist Danieli Yael, also addressed the Committee.

The Committee's Chairman, Isskandar Gathas of Egypt, made opening remarks. Jean-Paul Laborde, Chief, Terrorism Prevention Branch of the United Nations Office on Drugs and Crime introduced the document before the Committee.

### Background

Committee II of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice held a workshop this afternoon on measures to combat terrorism, with reference to the relevant international conventions and protocols.

This afternoon's panellists are: Pornchai Danvivathana, Director of Legal Affairs Division, Ministry of Foreign Affairs, Thailand, who will address bilateral and multilateral international cooperation issues in South-East Asia; Fioacchino Polimenit, Director, United Nations Interregional Crime and Justice Research Institute, Italy, speaking on selected issues of international cooperation in criminal matters as they relate to terrorism; Alejandro W. Slokar, Undersecretary for Criminal Policy, Ministry of Justice and Human Rights, Argentina, speaking on Organization of American States (OAS) conventions against terrorism and their relationship with the universal legal instruments; and Joel Sollier, Expert of the Counter-Terrorism Committee of the Security Council, who will focus on the importance of strengthening criminal justice systems and the role and the work of the Committee.

The Committee had before it a background paper that reviews the role of international law and international cooperation in the fight against terrorism (document A/CONF.203/12). It presents an assessment of technical assistance for capacity-building, with particular emphasis on measures to enhance international cooperation and the importance of the rule of law in fighting terrorism.

Four regional preparatory meetings were held, which had various recommendations for discussion at the workshop, including: appropriate ways to enhance cooperation in the investigation and prosecution of terrorist crimes; promoting compliance with relevant international conventions and protocols against terrorism while seeking ways to safeguard human rights; ways to safeguard due process of law; ways and means of strengthening the capacity of the judiciary, prosecution and the police to counter terrorist organizations and activities, including various types of technical assistance; and an examination of "best practices".

The background paper contains an annex with guidelines for technical assistance to combat terrorism. The paper states that the Congress may wish to further develop those guidelines. It further recommends that all States should be urged to become parties to the universal instruments against terrorism and implement them. The international community, including donors, should be called upon to intensify assistance to developing countries and countries with economies in transition in their efforts to become parties to and implement those instruments.

The background paper also recommends that 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. 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. The international community should continue to develop useful tools, including good practices, which could help States in their efforts to fight terrorism.

#### Introductory Remarks

The Committee's Chairman, ISSKANDAR GATTHAS (Egypt) said in introductory remarks that the crime of terrorism had assumed a very prominent role at the Congress. Most recently, the negotiations on a new convention on terrorism, the International Convention against Nuclear Terrorism, had been concluded, and the Convention would be opened for signature in the near future. Hopefully, there would soon be a comprehensive convention against international terrorism.

He said the international legal regime was made up of a patchwork of sectoral conventions, four of them concluded directly under the auspices of the United Nations. Together, those sectoral conventions already covered most, if not all, of the manifestations of international terrorism. One of the principal components of the international legal regime against terrorism was the Counter-Terrorism Committee established by Security Council resolution 1373 (2001) along with an Executive Directorate that monitored its implementation. The Committee had been established under Chapter VII of the United Nations Charter, which meant that compliance with resolution 1373 was mandatory for all Member States.

In September 2001, only two States were parties to all 12 conventions on terrorism, but since then, there had been a strong increase in the ratification rates, he said. That number was now up to more than 80 Member States -- partly due to the untiring work of the Terrorism Prevention Branch in Vienna.

Not only were ratifications needed, also domestic legislation must be brought in line with the principles of the rule of law, he said. Criminal justice should not be led away from its principal goal: enforcement. Judges and lawyers needed to be trained in using new anti-terrorist legislation in an effective but responsible way. All that needed to be done in close cooperation with the Counter-Terrorism Committee and its Executive Director.

GIOVANNI PASQUA, Research Director, International Institute of Higher Studies in Criminal Sciences, briefly took the floor to explain that body's activities in the field of terrorism.

JEAN-PAUL LABORDE, Chief, Terrorism Prevention Branch of the United Nations Office on Drugs and Crime, introduced the working paper before the Committee. As the late Sergio Vieira de Mello said, the best and only strategy to defeat terrorism was by respecting human rights and the primacy of the rule of law, he added.

#### Panel Discussion

PORNCHAI DANVIVATHANA, Director of Legal Affairs Division, Ministry of Foreign Affairs of Thailand, said terrorism was creeping towards the realm of transnational organized crime. Because terrorism was a dynamic rather than static phenomenon, international cooperation was crucial. Describing activities in South-East Asia, he noted that the Association of South-East Asian Nations (ASEAN) had several declarations on terrorism. The Association sought to enhance

cooperation with non-ASEAN members as well. Realizing the need to produce something in written form, ASEAN officials had agreed to explore an extradition treaty. It had also agreed to initiate a modal treaty on mutual legal assistance.

Regarding bilateral measures, he said Thailand had concluded extradition treaties with 14 countries, five with ASEAN members, four with other Asian States and five with Europe and the United States. It had also concluded 10 bilateral treaties on mutual legal assistance in criminal matters. Thailand had implemented all of the conventions to which it was a party. Thailand had limited human resources, however, particularly regarding experts in extradition law and mutual legal assistance. Another concern was the divergence between common and civil law approaches. The proliferation of agreements also needed to be addressed.

He said it was vital to adopt a common understanding at the inter- and intraregional levels so that internationally recognized principles could be transposed into national legislation. The wider involvement of civil society and education institutions should also be encouraged. Terrorism should become an exception to political offence. In other words, it was important to observe the principle of “extradite or prosecute”. No haven must be left for the perpetrators of terrorism to hide. Technical assistance should also be extended to parliamentarians.

JOEL SOLLIER, Expert from the Counter-Terrorism Committee, said the terrorist acts of 11 September had profoundly changed the context of international arrangements and had caused changes in the role that could be played by international organizations. International law had also undergone a major revolution. Prior to 11 September, existing legal instruments regarding terrorism were quite complete. The General Assembly had already adopted a series of important resolutions and declarations that, among other things, prohibited States from protecting terrorist groups on their territory, and obliged them to extradite terrorists and to refuse asylum to terrorists. There were also decisions of the Security Council in that regard, as well as two verdicts from the International Court of Justice. The 12 universal anti-terrorism conventions were also in place, as were a number of regional conventions. One was struck by the density and completeness of the legal regime, but also by the total lack of application.

All of that changed after 11 September, he said. The rising status of the Security Council, which almost became an international legislator, was a major event. It took fundamental decisions, such as resolution 1368, adopted on 12 September 2001, that qualified acts of terrorism as an attempt to undermine international peace and security. The Council was, thus, authorized to invoke Chapter VII of the Charter, which obliged Member States to comply with its decisions.

He said resolution 1373 (2001) was a historic resolution that obliged States to apply a list of principles in their fight against terrorism. There was also a follow-up mechanism for implementation of the resolution: the Counter-Terrorism Committee and the Executive Directorate. The Committee was to monitor the implementation by Member States of the provisions of resolution 1373. It had involved a number of specialized organizations, as well as regional organizations that would develop new standards in their areas of expertise. Thus, anti-terrorism law had been translated into specific recommendations concerning technical and financial matters. Regional organizations had developed their own texts.

As to the strengths of the system, he said the Security Council had created obligations that went a long way towards harmonizing and universalizing anti-terrorist law. The matter of double incrimination was resolved by referring to certain types of terrorist acts, such as financing of terrorism. It made binding the obligation to cooperate in providing information and facilitating extradition.

Another strength was that, today, the existing anti-terrorist conventions were virtually universal, he continued. Technical standards had been developed in the fighting of terrorism. International terrorism laws no longer confined themselves to principles but imposed measures for specific issues. New domestic legislation had also been adopted by a great number of States. International anti-terrorism laws had become living law on the ground in countries.

As to constraints and weaknesses, he said one weakness was the inability to find a definition of terrorism, something that constrained the system. The Council referred to acts of terrorism. When it imposed binding principles, it could not use any vague definition. A uniform and coherent definition was necessary. As all resolutions were of a political nature, there were technical imperfections. There were also difficulties in applying certain obligations.

He said sometimes actions were undertaken that undermined human rights. That was not inherent to international anti-terrorism law, but anti-terrorism action was sometimes used as an excuse for repressing the rights of citizens.

ALEJANDRO W. SLOKAR, Undersecretary for Criminal Policy, Ministry of Justice and Human Rights of Argentina, said terrorism was a very complex phenomenon. Those who carried out terrorist acts belonged to a wide variety of organizations, including military or security forces carrying out State terrorism. Terrorism was no longer limited by borders. Given its complexity, regulatory and legal tools of States must be seen as only partial answers to the problem. National legal and trial systems had been designed for actions only within State borders. Ignoring human rights or suspending the rule of law was not the answer.

Latin America had experienced two types of terrorism, he said. On the one hand, State-based violence had affected nearly two thirds of Latin Americans in the last decade. The failure of State structures and the political framework had led to impunity, eroding the trust of the people in governments and society as a whole. In that sense, terrorism was a direct attack on human rights and the rule of law. States continued to face ongoing difficulties in responding to terrorist attacks. Democracy and human rights must be the foundation of the response of States to terrorism, and greater discussion of the various responses was needed.

In the last quarter of the twentieth century, Argentina had experienced great political upheaval, having experienced State terrorism in the 1980s, he said. Even during the democratic times of the 1990s, Argentina had experienced two brutal attacks against its Jewish community. In both cases, impunity had reigned. Impunity weakened the State, eroding the legal framework of society. The current Government rejected all forms of impunity. The Inter-American Convention against terrorism had become an important part of the cooperative framework within the Organization of American States. The events of 11 September had prompted the need for nations to work together. The Inter American Convention called on States to ensure full respect for the rule

of law, fundamental freedoms and human rights. States parties had committed themselves to combating terrorist financing.

GIOACCHINO POLIMENI, Director, United Nations Interregional Crime and Justice Research Institute, Turin, Italy, said that, for a legal regime of international anti-terrorism instruments to be effective, it should be universally applicable. More than one delegation had recognized that the fight against terrorism was a long-term one. The legal regime should be conceived as a toolkit, and every effort should be made for universal ratification of the 12 conventions.

Whether the norms of international law covered the whole range of terrorist activities was a question he said he could answer in the positive. The Council resolutions were very comprehensive, as were the conventions themselves. For instance, the International Convention for the Suppression of Terrorist Bombings had very broad criminalization provisions. Such provisions were supplemented by the new Convention on Nuclear Terrorism. Provisions obliged parties to consider as offences participation in terrorist activities at a lower level, for instance involvement in financing of terrorist activities. Criminalization of offences was an essential legal basis for international cooperation, he pointed out.

Under the current system, States could not refuse extradition any more on the sole ground that the act was political, he said. Although the 13 instruments did not provide for a complete set of extradition measures, regional and subregional instruments could complete the regime of extraditions.

The strengths of the legal regime were manifested in the absolute obligation of States to provide each other with the greatest possible measure of assistance, he said. However, that obligation was not accompanied by a detailed regime in the 13 instruments. Whether the lack of details was a weakness he would leave for the delegates to answer. However, the absence of detailed normative schemes of legal assistance did not help and left room for discrepancies. All possible effort should be made for States to consider available best practices and adopt laws in that regard.

Summarizing the panel, Mr. GATTAS, Committee Chairperson, agreed with the need for full respect for the rule of law and the defence of human rights in the fight against terrorism. Democratic countries must not ignore or violate the standards and values of society in the name of combating terrorism. That point had been reflected by all four panellists.

The sources of terrorism also needed to be identified since, at times, certain frustrations led to terrorism, he said. In that regard, the Chairman of the Security Council Counter-Terrorism Committee had said it was necessary to attack the root causes of terrorism. Egypt had also been affected by terrorism, he said, adding that, after 11 September, terrorism was seen as an international threat. Recognizing the threat, the Security Council had become a kind of quasi-legislator in the area of terrorism, although resolution 1373 had both strengths and weaknesses. States requesting extradition were often disappointed.

### Statement

NABIL HATTALI (Algeria) said that ratification of the international conventions against terrorism was very diverse. Some had been ratified more than others. Therefore, the 12 instruments could not be truly called universal, as they were not universally ratified and accepted. The difference in the number of ratifications was a real problem, because there was a need to recognize that terrorists would always try to act where they would not be pursued, in other words, in countries that had not ratified some of the conventions. The Congress should recommend that ratification of the conventions and protocols should be promoted in order to make them truly universal.

Also, the international legislative regime against terrorism was characterized by diversity and fragmentation. The enormous mass of international instruments made it difficult to analyse the situation. He recommended that the Congress work towards greater synergy between all the international, regional and other instruments. Effective international cooperation could not be conceived without promoting the total of initiatives that facilitated the work, such as seizure of assets, extradition, pulling together efforts of prosecution and security services, and mutual legal assistance, among other things. International cooperation against terrorism was still weak. Strengthening and consolidation were required.

He said the coordination of work among States and various international organizations working in the field of terrorism should become a priority. It should also be ensured that all States that had ratified the conventions had the resources to implement them. Finally, he said that Islam should not be blamed for terrorism and that all incitements to hate or contempt should be condemned. He hoped that the international community would rapidly reach agreement on the definition of terrorism and reach a global convention against terrorism.

DAMASIO DE JESUS (Brazil) explained that he had been a professor of law in Brazil for many years. Recently, he had had trouble in applying the traditional principles of criminal law to new forms of crime such as terrorism. Traditional concepts simply did not apply to a globalized world as globalization and the desire of States to maintain sovereignty just did not mesh at times. When he returned to Brazil, he would urge his colleagues to give more thought to the issue of terrorism. Terrorism did not affect a person or a country -- it affected humanity as a whole and was one of the most potentially important issues facing the world today.

ABBOUD AL-SARRAJ (Syria) said his country had ratified the Convention on the Suppression of Financing of Terrorism a few days ago. That was the ninth convention of the 12 that Syria had ratified to date. His country cooperated fully with the United Nations anti-terrorism bodies, and was a beneficiary of technical assistance programmes, but he felt a global convention against terrorism was not a miracle cure. Political will was needed to truly cooperate in implementing the instruments. He underlined the need for civil society to become involved in the fight against terrorism, as it could only exist in secrecy. Law enforcement bodies would not be able to eradicate it without the assistance of citizens.

He appealed to the international community for increased technical assistance. Also, the world needed clear-cut principles and standards, as his region felt targeted by those who wanted to identify terrorism with certain regions or religions. Groups committing terrorist acts existed in



various communities and had various religions, but they never represented a community or a religion. His country was working against those groups even before the United Nations had taken up the matter. The United Nations should take a very clear position in that regard.

EUGENIO CURIA (Argentina) raised the issue of prevention. Legitimate self-defence might not be a clear concept to use in the context of preventing terrorist acts, as certain legal concepts had been evolving in recent years. The Security Council used to take actions against States, but recently, it had acted against physical persons or legal entities. That could be a slippery road to follow. The whole question of personal freedoms and human rights needed to be carefully balanced.

RAFAEL A. BENITEZ, Council of Europe, concurred with Algeria's representative regarding the complexity of the anti-terrorism regime. That complexity was even more complicated by the fact that there was no true system to ascertain the level of commitment by various parties, he said as various parties to conventions had made a number of reservations. Over the last two years, the Council of Europe had reviewed the reservations with a view to starting a dialogue with the Parties who had made a reservation, asking them to withdraw them.

The political exception clause in mutual legal assistance and extradition matters still constituted an obstacle to international cooperation, he said. The Amending Protocol to the European Convention on the Suppression of Terrorism had addressed that matter. In the past, States could refuse to extradite on the grounds of political exception without any explanation. Now, a "duly motivated explanation" was necessary. He pointed out that there was now a possibility to refuse extradition or mutual legal assistance on the grounds that human or fundamental rights were at stake.

CARMEN BUJAN (Spain) stressed the need to scrupulously respect human rights, and most States attempted to deal with terrorism while respecting human rights. One could not talk about a balance or trade-off between freedom and security. Respect for human rights was a duty, not a trade-off. States had certain legal powers and duties, especially the duty to protect their citizens. Human rights and terrorism must be seen as an integrated subject.

ADEDOKUN ADEYEMI (Nigeria), on behalf of the African Union, said terrorism must not be treated as merely an enforcement issue. The African common position demanded that members address the root causes of terrorism. Terrorism was not acceptable under any circumstances. At the same time, Nigeria wanted to see the combat of terrorism within the framework of the rule of law and the enforcement of due process. African leaders had suggested measurable time-bound targets for reducing terrorism.

ZHAO BINGZHI of the International Centre for Criminal Law Reform and Criminal Justice Policy said China had adopted legal measures to combat terrorism. China had acceded to the international convention on terrorist explosions, had adopted the convention on terrorist financing, and had also aligned its domestic legislation with international legislation.

DANIELI YAEL, clinical psychologist, said that what seemed to unite all counter-terrorism conventions was the almost total neglect of any reflection of the victims of terrorism. The United Nations had a few stellar achievements regarding victims. Security Council resolution 1566

recognized victims' needs. She urged members to include in legislation measures for victims of terrorism.

Reacting to comments from delegates, Mr. SOLLIER said, with particular reference to the comments of the representative of Algeria, that the least ratified convention was the one on off-shore oil rigs, which had 106 States parties. However, some conventions were more essential than others. The Convention for the Suppression of Terrorist Bombings covered around 80 per cent of all terrorist acts committed around the world, and that had been ratified by 134 States. The dynamic was also interesting. The Convention for the Suppression of Terrorist Bombings and the Convention on the Financing of Terrorism, which had less than a dozen parties four years ago, now had close to 100. In some way the conventions were universal, because they were negotiated in an organization where most of the States were represented.

He emphasized that the system of conventions allowed States to have a common language, but agreed that once a convention was ratified, work just began. Today, it was still not known how the conventions were applied. That would be demonstrated by reality in terms of mutual legal assistance, extradition and so forth.

The Committee Chairman, Mr. GATTHAS, summarizing the afternoon's discussion, said that many speakers had emphasized the need to respect human rights, as well as the need to make the system of legal instruments truly universal. Speakers had also emphasized the importance of promoting international mutual legal assistance, of harmonizing laws, and of overcoming obstacles that arose in areas of extradition and mutual legal assistance, which could undermine the work against terrorism. Some speakers had stressed that there existed no links between terrorism and religion.

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