

DECLARATION ON MEASURES TO ELIMINATE INTERNATIONAL TERRORISM, 1994, AND THE 1996 SUPPLEMENTARY DECLARATION THERETO

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Declaration on Measures to Eliminate International Terrorism (1994)

Historical Context

The treatment of the subject of measures to eliminate international terrorism in the United Nations spanning the 1970s was characterised by a definitional debate of the term “terrorism”, some arguing that a precise definition of the term, clearly distinguishing it from acts committed in the course of national liberation struggles, was essential in order to delimit accurately the different elements that were involved in the concept. It was further contended that law-enforcement measures to eliminate international terrorism could not be undertaken without a study of its underlying causes. Others, however, argued that a prior definition of terrorism was neither realistic nor desirable, given the divergent political perceptions that existed on the issue and that the study of the underlying causes should not delay the urgent need for international cooperation in the adoption of legal measures to combat and eliminate terrorism.

Notwithstanding the definitional debate and the ensuing dichotomous approach to the question, it is noteworthy that the international community adopted what is now referred to as the “sectoral approach” in devising legal norms to address the problem of combating terrorism. The sectoral approach, which was pragmatic in nature, was characterised by the adoption of a series of specific conventions, each dealing with a defined crime, involving the use of indiscriminate violence, which was most likely to be committed by terrorists and which imposed upon the State parties the obligation to extradite or prosecute the offender.

Following the early conventions to combat aerial hijacking, specific conventions were adopted to deal with new and different forms and manifestations of terrorism, such as the phenomenon of hostage taking, unlawful acts against airports and civil aviation facilities and unlawful acts against the safety of maritime navigation.

The sectoral approach was directed towards a preclusion of options available to a terrorist offender through the establishment of the widest possible network of treaty obligations, which obliged States to extradite or prosecute terrorist offenders without exception.

Significant Developments in the Negotiating History and Summary of Key Provisions

The 1990s witnessed a rapid expansion of the spread of acts of terrorism in many regions of the world. The growing and dangerous links between terrorist groups and other

criminal groups engaged in organized transnational crime, such as drug trafficking, human smuggling, unlawful arms trade, money laundering and the smuggling of nuclear and other potentially dangerous material had begun to manifest themselves, and demanded a concerted response by way of heightened international cooperation.

New issues, such as the involvement of States, either directly or indirectly, through the use of their territories for the perpetration of terrorist acts against other States, financing of acts of terrorism, abuse of the status of asylum and refugee status for the perpetration of terrorist acts against other States, called for the urgent attention of the international community. The question of concluding a new generation of sectoral conventions was yet to acquire broad acceptance among Member States. Against this backdrop, the preferred option was to negotiate and adopt a comprehensive Declaration of Principles addressing these key aspects of the problem. Accordingly, the Declaration on Measures to Eliminate International Terrorism (hereinafter referred to as the Declaration) was adopted by General Assembly resolution 49/60 of 9 December 1994.

The preamble to the Declaration, in paragraph 8, reflects the concerns expressed during the deliberations on the need to address the problem of combating terrorism in a comprehensive manner.

“Convinced also that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is an essential element for the maintenance of international peace and security,”

Part II of the Declaration further elaborates the aspect of the involvement of State actors in acts of terrorism, which became a contentious issue in the negotiation of the more recent conventions. Thus basing itself on the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States, the principle of non-use of the territory of one State for the perpetration of terrorist acts against another was incorporated.

“States, guided by the purposes and principles of the Charter of the United Nations and other relevant rules of international law, must refrain from organizing, instigating, assisting or participating in terrorist acts in territories of other States, or from acquiescing in or encouraging activities within their territories directed towards the commission of such acts;” (paragraph 4)

An aspect related to the concept of non-use of territory for the perpetration of terrorist acts against another State, is the question of possible abuse of asylum or refugee status for such purposes. Thus, paragraph 5 (f) requires that States should take appropriate measures before granting asylum for the purpose of ensuring that the asylum seeker has not engaged in terrorist activities and, after granting asylum, for the purpose of ensuring that refugee status is not used in a manner contrary to the provisions set out in subparagraph (a), relating to the non-use of territory for terrorist purposes.

The negotiation of this provision involved a delicate balancing of contending principles, i.e., on the one hand, the need to preserve the sanctity of the status of territorial asylum and refugee status as recognized in general international law, in particular the applicable international conventions, and, on the other hand, the need to prevent an abuse of such status for the perpetration of terrorist activities in another State. Thus, paragraph 5

of the Declaration, in urging States to take “effective and resolute measures,” *inter alia*, in respect of abuse of refugee status, makes it clear that such measures should be “in accordance with the relevant provisions of international law and international standards of human rights.”

This compromise, worked out in relation to the Declaration, resurfaced in the context of the 1996 Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism (1996 Supplement) and of other legal initiatives that were to follow.

Another key development was the recognition in the Declaration that political and related considerations could not be invoked as grounds to justify the perpetration of terrorist acts; thus, paragraph 3 of the Declaration provides that:

“Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them;”

The question of non-invocation of political considerations or motivation to justify acts of terrorism was to surface in sharper focus in the context of subsequent legal instruments to be negotiated in this field.

The Declaration also envisages practical measures of cooperation among Member States by way of preventive measures for combating terrorism, which are set out in paragraphs 5 (d) and 6 of the Declaration. These include:

- (a) strengthening the exchange of information concerning the prevention and combating of terrorism;
- (b) effective implementation of the relevant international conventions, including the harmonization of domestic legislation with these conventions; and
- (c) conclusion of mutual judicial assistance and extradition agreements on a bilateral, regional and multilateral basis.

The Secretary-General was also mandated to assist in the implementation of the Declaration by taking specific practical measures to enhance international cooperation, including through the collection of data on the status and implementation of existing bilateral and multilateral treaties relating to terrorism, the preparation of a compendium of national laws and regulations regarding the prevention and suppression of international terrorism and the preparation of an analytical review of existing international legal instruments relating to international terrorism, in order to assist States to identify aspects that had not been covered by such instruments and could be addressed to develop further a comprehensive legal framework of conventions dealing with international terrorism.

Influence of the Instrument on Subsequent Legal Developments

The Declaration contributed to the crystallisation of several norms for subsequent incorporation as treaty principles in legal instruments that were to follow.

The reiteration of the principle of non-use of territory for the commission of hostile acts against another State in the Declaration gave it a specific emphasis in the context of measures to combat terrorism and found its way into subsequent legal instruments, such as the International Convention for the Suppression of Acts of Nuclear Terrorism (2005) and the draft Comprehensive Convention on International Terrorism.

The incorporation of the principle of non-abuse of asylum or refugee status in the Declaration was a precursor to its further elaboration in the 1996 Supplement and thereafter in the draft Comprehensive Convention on International Terrorism.

Perhaps a crucial contribution made by the Declaration was the elaboration of the principle that political purpose or related considerations may not be invoked to justify criminal acts intended or calculated to provoke a state of terror in the general public. This principle laid the foundation for the subsequent emergence of the principle that terrorist offences should not be regarded as “political offences” for purposes of extradition, as elaborated in the sectoral conventions that were to follow.

Finally, by calling for an analytical review of existing international legal instruments relating to international terrorism with a view to identifying aspects that had not been covered by such instruments and could be addressed to develop further a comprehensive legal framework of conventions, the Declaration paved the way for the “new generation” of conventions that were to follow, commencing with the International Convention for the Suppression of Terrorist Bombings, as well as the draft Comprehensive Convention on International Terrorism, currently under negotiation. Indeed, in his 1996 report on measures to eliminate international terrorism, the Secretary-General of the United Nations identified several areas of terrorist activities for which no treaty existed, including terrorist bombings, terrorist fund-raising and the use of weapons of mass destruction for terrorist purposes, and concluded that there may be a need to develop international instruments in these fields (A/51/336 and Add.1).

1996 Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism

Significant Developments in the Negotiating History and Summary of Key Provisions

The principal focus of the 1996 Supplement, which was adopted by General Assembly resolution 51/210 of 17 December 1996, was the question of abuse of refugee status for the perpetration of terrorist acts against third States, which was receiving the increasing attention of the international community, in particular the refugee recipient States. The negotiations on this issue revealed the need to strike a careful balance between the need to prevent an abuse of refugee status for terrorist purposes, on the one hand, and the need to have due regard to human rights considerations, on the other. The preamble and the operational provisions of the 1996 Supplement reflect the delicate compromise that was achieved in this regard.

Preambular paragraph 6 notes that the Convention relating to the Status of Refugees (1951) (hereinafter referred to as the Refugee Convention) does not provide a basis for the protection of perpetrators of terrorist acts. It also notes in this context articles 1, 2, 32 and 33 of the Refugee Convention covering, *inter alia*, grounds for non-applicability of the

Refugee Convention, such as where a person seeking such status has committed grave crimes.

This provision is balanced in preambular paragraph 7, which stresses the importance of full compliance by States with their obligations under the Refugee Convention and its Protocol of 1967, including the principle of *non-refoulement* precluding the return of refugees to places where their life or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group or political opinion. The 1996 Supplement affirms “that the present Declaration does not affect the protection afforded under the terms of the Convention and the Protocol and other provisions of international law.”

The operative part of the 1996 Supplement maintains the balance that was sought to be struck and reflected in the preambular part between these contending considerations. Thus, the measures envisaged in paragraph 3 of the 1996 Supplement are required to be taken “in conformity with the relevant provisions of national and international law, including international standards of human rights...”

Subject to the above, States are required to take appropriate measures before granting refugee status for the purpose of ensuring that the asylum seeker has not participated in terrorist acts, considering in this regard relevant information as to whether the asylum seeker is subject to investigation for or is charged with or has been convicted of offences connected with terrorism. After granting refugee status, States are similarly obliged to consider relevant information to ensure that the status is not used for the purpose of preparing or organizing terrorist acts intended to be committed against other States or their citizens.

Paragraph 4 of the 1996 Supplement emphasises that asylum seekers who are awaiting the processing of the asylum applications may not thereby avoid prosecution for terrorist acts. This is consistent with the concerns of the international community to prevent safe havens being granted to terrorist offenders.

These provisions relating to the prevention of abuse of asylum status had a clear impact on subsequent instruments, as reflected in the draft articles of the draft Comprehensive Convention on International Terrorism, closely modelled on the provisions of the 1996 Supplement, which also take into account the need to balance the obligation to prevent abuse of asylum, with human rights law and human rights standards.

The 1996 Supplement reaffirms in paragraph 5 the importance of ensuring effective cooperation among Member States so that those who have participated in terrorist acts are brought to justice. In this respect, the commitment of Member States to take all appropriate steps under their domestic laws, either to extradite terrorist offenders or to submit the cases to their competent authorities for purposes of prosecution, is particularly underlined.

Influence of the 1996 Supplement on Subsequent Legal Developments

Paragraph 6 of the 1996 Supplement makes a significant contribution to the development of the principle that “terrorist crimes are not to be regarded as political offences” so as to constitute an exception to extradition, thus continuing the trend which commenced with the 1994 Declaration. The 1996 Supplement further develops the

principle by encouraging States when concluding or applying extradition agreements “not to regard as political offences excluded from the scope of those agreements offences connected with terrorism which endanger or represent a physical threat to the safety and security of persons, whatever the motives which may be invoked to justify them.” This important principle was to later acquire the form of a treaty obligation by virtue of its incorporation in the “new generation” of sectoral conventions, commencing with the International Convention for the Suppression of Terrorist Bombings (1997).

Another important contribution to the development of international law in the area of international terrorism is found in the resolution accompanying the 1996 Supplement, which provided the framework for the negotiating of further counter-terrorism legal instruments to fill the gaps identified in the report of the Secretary-General. Paragraph 9 of the resolution provided for the establishment an Ad Hoc Committee “to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of nuclear terrorism, to supplement related existing international instruments, and thereafter to address means of further developing a comprehensive legal framework of conventions dealing with international terrorism”. It is in the framework of this Committee that the “new generation” of sectoral conventions were negotiated: the International Convention for the Suppression of Terrorist Bombings (1997), the International Convention for the Suppression of the Financing of Terrorism (1999), and the International Convention for the Suppression of Acts of Nuclear Terrorism (2005). The Ad Hoc Committee is currently (September 2008) negotiating the draft Comprehensive Convention on International Terrorism.

Related Materials

A. Legal Instruments

Convention relating to the Status of Refugees, Geneva, 28 July 1951, United Nations, *Treaty Series*, vol. 189, p. 137.

Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States, General Assembly resolution 2625 (XXV) of 24 October 1970.

International Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997, United Nations, *Treaty Series*, vol. 2149, p. 256.

International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999, United Nations, *Treaty Series*, vol. 2178, p. 197.

International Convention for the Suppression of Acts of Nuclear Terrorism, New York, 13 April 2005, General Assembly resolution 59/290 of 13 April 2005.

B. Documents

Report of the Secretary-General on measures to eliminate international terrorism, 6 September 1996 (A/51/336 and Add.1).