

## The Universal Legal Framework Against Nuclear Terrorism

by Walter Gehr\*

### Abstract

After the events of September 11, the United Nations Security Council adopted Resolution 1373 (2001) which has been called the “Counter-Terrorism Code” of the world, because it creates legal obligations for all 192 Member States of the United Nations.

UN Security Council Resolutions 1373 (2001), 1540 (2004) and 1735 (2006) as well as a defined set of 13 global treaties constitute the universal legal framework against terrorism which must be implemented in a manner consistent with international human rights obligations. Basically, these 13 treaties as well as Resolution 1373 are international criminal law instruments.

Within this universal legal framework, the framework against nuclear terrorism is constituted by Resolution 1540, the Convention on the Physical Protection of Nuclear Material (CPPNM) which entered into force in 1987, and the International Convention for the Suppression of Terrorist Bombings which is in force since 2001.

These three legal instruments will be supplemented by the International Convention for the Suppression of Acts of Nuclear Terrorism, an amendment to the CPPNM and two Protocols amending the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, once these instruments, all of which were adopted in 2005, enter into force.

The Terrorism Prevention Branch (TPB) of the United Nations Office on Drugs and Crime (UNODC) assists countries which are in need of legislative assistance for the drafting of appropriate

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counter-terrorism laws that duly take into account the obligations contained in Resolution 1373, the United Nations sanctions against Al-Qaida and the Taliban as well as in the 13 universal conventions for the prevention and the suppression of terrorism, including the CPPNM and the new International Convention for the Suppression of Acts of Nuclear Terrorism. UNODC/TPB has also been mandated by the UN General Assembly to assist States in strengthening international cooperation mechanisms in criminal matters related to terrorism, including through national capacity-building.

## **The Counter-Terrorism Committee**

On 28 September 2001, the United Nations Security Council (UNSC) adopted Resolution 1373. This Resolution is based on Chapter VII of the Charter of the United Nations (UN). Hence, decisions reflected in Resolution 1373 are legally binding upon UN Member States.

Together with the 13 “UN conventions and protocols” against terrorism<sup>1</sup>, the Security Council resolutions concerning Al-Qaeda and the Taliban and Security Council Resolution 1540 on Weapons of Mass Destruction, Resolution 1373 is one of the four pillars of the global legal framework for the prevention and suppression of terrorism.

Through Resolution 1373,<sup>2</sup> the UNSC has established the Counter-Terrorism Committee – CTC<sup>3</sup> to monitor implementation of Resolution 1373 on the basis of reports sent by States to the CTC,<sup>4</sup> with the assistance of experts.<sup>5</sup> The CTC consists of the 15 Member States of the

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1. Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963; Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971; 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, 1988; Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988; Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, 1988; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973; International Convention Against the Taking of Hostages, 1979; Convention on the Physical Protection of Nuclear Material, 1980; Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991; International Convention for the Suppression of Terrorist Bombings, 1997; International Convention for the Suppression of the Financing of Terrorism, 1999; International Convention for the Suppression of Acts of Nuclear Terrorism, 2005 (not yet in force). In 2005, the following three legal instruments were adopted to supplement the existing framework: Amendment to the Convention on the Physical Protection of Nuclear Material, Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; none of the instruments adopted in 2005 has yet entered into force.
  2. Security Council Resolution 1373 (2001), operative paragraph 6.
  3. The CTC maintains a website at: [www.un.org/sc/ctc](http://www.un.org/sc/ctc).
  4. By 30 June 2005, the CTC had received 601 reports from Member States and others. Nevertheless, by 15 August 2006, around 88 States were late in submitting their reports.
  5. In the period from January to October 2002, the experts were nationals of the following countries: Australia, Austria, Bahamas, France, India, Jamaica, the Netherlands, Peru, Spain and Tunisia. On 17 November 2003, they were from the Bahamas, Brazil, Canada, Chile, Egypt, France, Jamaica, the Russian Federation and South Africa.

UNSC. It is currently chaired by Ambassador Ricardo Alberto Arias (Panama).<sup>6</sup> Its Vice-Chairmen are Ambassador Jorge Voto-Bernales (Peru), Ambassador Dumisani Shadrack Kumalo (South Africa) and Ambassador Nassir Abdelaziz Al-Nasser (Qatar).

Since its inception, the Committee has engaged in an ongoing dialogue with Member States and has worked to promote closer cooperation and coordination within the United Nations system and among international, regional and sub-regional bodies.

The CTC has now been analysing the reports submitted by Member States for five years. It has been, above, all the insight that this analysis must go hand in hand with an improved implementation of the CTC's recommendations that prompted the Security Council on 26 March 2004 to adopt Resolution 1535 by which the CTC was given a more institutionalised character through the creation of a Counter-Terrorism Committee Executive Directorate (CTED). On 18 May 2004, the United Nations Secretary-General appointed Ambassador Javier Ruperez (Spain) as Executive Director of the CTED.

Since then, the CTC expanded its activities to include visits to Member States. In the meantime, the CTED visited several countries such as Albania, Algeria, India and Pakistan.

A representative of the Terrorism Prevention Branch (TPB) of the United Nations Office on Drugs and Crime (UNODC) participated in almost all visits of the CTC/CTED as a member of its delegation.

In its recent global counter-terrorism strategy, the United Nations General Assembly encouraged the CTC/CTED "... to continue to improve the coherence and efficiency of technical assistance delivery in the field of counter-terrorism, in particular by strengthening its dialogue with States and relevant international, regional and subregional organisations and working closely, including by sharing information, with all bilateral and multilateral technical assistance providers."<sup>7</sup>

## **The Substantive Provisions**

### ***1) United Nations Security Council Resolution 1373 (2001)***

Operative paragraphs (OP) 1, 2 and 3 contain the substantive provisions of Resolution 1373<sup>8</sup> and, in particular, the legal obligations States are requested to implement. In a nutshell, they deal, although not exclusively, with the following issues:

- OP 1: prevention and suppression of the financing of terrorism;
- OP 2: prevention and criminalisation of acts of terrorism;
- OP 3: international cooperation as well as ratification and implementation of the 13 "UN-conventions" against terrorism.<sup>9</sup>

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6. Ambassador Arias is the sixth Chairman of the CTC after Ambassador J. Greenstock (UK), Ambassador I.F. Arias (Spain), Ambassador A.V. Konuzin (Russian Federation), Ambassador A.I. Denisov (Russian Federation) and Ambassador Margrete Løj (Denmark).

7. United Nations General Assembly Resolution 60/288 of 8 September 2006.

8. Only operative paragraphs 1 and 2 are legally binding, since only these two paragraphs reflect a decision of the Security Council taken in accordance with Article 25 of the United Nations Charter.

9. At the time of the adoption of Security Council Resolution 1373 on 28 September 2001, the 13<sup>th</sup> Counter-Terrorism Convention, the International Convention for the Suppression of Acts of Nuclear Terrorism, had not yet been adopted.

Effective implementation of the resolution requires States to criminalise the use of their respective territory for the purpose of financing, planning, facilitating or committing terrorist acts against other States or their citizens. Hence, it requires States to take the following measures:

- the criminalisation of the financing of terrorism in accordance with Articles 2 and 4 of the International Convention for the Suppression of the Financing of Terrorism (paragraph 1); and
- ensuring that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists.<sup>10</sup>

Resolution 1373 does not contain a definition of the term “terrorism”; however, operative paragraph 3 of Security Council Resolution 1566 of 8 October 2004 contains what some call a description of terrorist acts<sup>11</sup>. Security Council Resolution 1624 of 14 September 2005 gave to the CTC the additional task to monitor how States prohibit the incitement to commit acts of terrorism.<sup>12</sup>

In operative paragraph 4 of Resolution 1373, the Security Council noted “with concern the close connection between international terrorism and ... illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials” and emphasised in this regard “the need to enhance coordination of efforts on national, sub-regional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security”.

## 2) *The Sanctions Adopted Against Al-Qaida and the Taliban*

The Security Council Committee established pursuant to paragraph 6 of Resolution 1267 (1999) (hereafter referred to as the “1267 Committee”) oversees the implementation by States of the sanctions imposed by the Security Council on individuals and entities belonging or related to the Taliban, Usama Bin Laden and the Al-Qaida organisation and maintains a list of individuals and entities for this purpose.<sup>13</sup>

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10. Operative paragraph 3(g).

11. Resolution 1566, OP 3: “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols related to terrorism”.

12. The requirement to prohibit the incitement to terrorism is contained in Security Council Resolution 1624 (2005) which was not adopted under Chapter VII of the United Nations Charter. Hence this requirement does not constitute a legally binding international obligation. It is interesting to note in this context that Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR) obliges States to prohibit by law “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. Security Council Resolution 1624 (2005) does not contain a reference to this article, but to Article 19 ICCPR on the right to freedom of expression (Preambular paragraph 6).

13. The list is available on the 1267 Committee’s website together with the implementation reports of States at: [www.un.org/Docs/sc/committees/1267Template.htm](http://www.un.org/Docs/sc/committees/1267Template.htm).

In Resolutions 1267 (1999), 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005) and 1735 (2006),<sup>14</sup> the Security Council obliged all States to freeze the assets, prevent the entry into or the transit through their territories, and prevent the direct or indirect supply, sale and transfer of arms and military equipment with regard to the individuals/entities included on the list.

Resolution 1617 (2005) of 29 July 2005 emphasised that the obligation placed upon all Member States to implement, in full, Resolution 1373 (2001), is also applicable with regard to the Taliban or Al-Qaida, and any persons or entities associated therewith who have participated in financing, planning, facilitating, recruiting for, preparing, perpetrating, or otherwise supporting terrorist activities.

### 3) *The Universal Conventions Against Terrorism*

Security Council Resolution 1373 (2001) brought the universal conventions and protocols (hereafter referred to as the “conventions”) for the suppression and prevention of terrorism back to the attention of the international community. Together with the technical assistance which was given to countries, the resolution accelerated the ratification process of the 12 conventions, which had been adopted before Resolution 1373. Today these conventions have been ratified by more than 100 countries and 89 States have ratified all 12 conventions. Fourteen States have already ratified the new 13<sup>th</sup> Convention, the International Convention for the Suppression of Acts of Nuclear Terrorism.<sup>15</sup>

The counter-terrorism conventions and protocols are international treaties and are therefore governed by the provisions of international treaty law as enshrined in the 1980 Vienna Convention on the Law of Treaties. Although the rule of “*pacta sunt servanda*” belongs to the most fundamental norms of international treaty law,<sup>16</sup> it is interesting to note that the United Nations Security Council felt the need to recall this international obligation by calling upon States, in its Resolution 1373 (2001),<sup>17</sup> to “... fully implement the relevant international conventions and protocols relating to terrorism ...”.

With two exceptions,<sup>18</sup> all conventions oblige States Parties to establish as criminal offences the offences set forth therein. In the case of the International Convention for the Suppression of the Financing of Terrorism, for instance, this means that States have to establish the financing of terrorism

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14. See also Security Council Resolution 1699 of 8 August 2006 which addresses, in this context, the role of Interpol.

15. Status at 23 February 2007; these States are: Austria, the Czech Republic, El Salvador, India, Kenya, Latvia, Lebanon, Mexico, Mongolia, Romania, Russian Federation, Serbia, Spain and Slovakia.

16. See Article 26 of the Vienna Convention on the Law of Treaties which is entitled “*Pacta sunt servanda*” and which reads as follows: “Every treaty in force is binding upon the Parties to it and must be performed by them in good faith.”

17. Operative paragraph 3(e); the Security Council had already launched a similar appeal in its Resolution 1269 of 19 October 1999, operative paragraph 2.

18. The exceptions being the Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991, and the Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963.

as an autonomous offence, i.e. not as an auxiliary crime,<sup>19</sup> and independently of whether the funds were actually used to carry out a violent act.<sup>20</sup>

The rule “*pacta sunt servanda*” applied to the conventions also means that States have to establish their respective jurisdiction over the offences in cases where the alleged offender is present in their respective territories and they do not extradite that person. States are therefore requested to establish a kind of universal jurisdiction in the form of the so called “*forum deprehensionis*”.

The international criminal principle to “extradite or prosecute”<sup>21</sup> is not only enshrined in the conventions, but has been reconfirmed in operative paragraphs 2(c), (d) and (f) of Security Council Resolution 1373 and explicitly stated in Security Council Resolutions 1456 (2003)<sup>22</sup> and 1624 (2005).<sup>23</sup>

As stated above,<sup>24</sup> under Security Council Resolution 1373 (2001), States are required to ensure that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists. This obligation is expressly reiterated, *inter alia*, in the International Convention for the Suppression of Terrorist Bombings, 1997,<sup>25</sup> the International Convention for the Suppression of Acts of Nuclear Terrorism, 2005<sup>26</sup> and in the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material (CPPNM).<sup>27</sup>

#### **4) *The Legal Framework Against Nuclear Terrorism***

##### **a) *United Nations Security Council Resolution 1540 (2004)***

The proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security. This threat could become particularly acute if these weapons fall into the hands of individuals and entities not acting under the authority of any State, and in particular into the hands of terrorist organisations.

In view of this double threat, the United Nations Security Council adopted on 28 April 2004 Security Council Resolution 1540 which is therefore both a counter-terrorism and a non-proliferation resolution. Like in the case of Resolution 1373, the Security Council, through Resolution 1540, established a Committee which has been tasked with the monitoring of the resolution’s

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19. See in this regard, the briefing for Member States held in New York on 4 April 2002 at: [www.un.org/docs/sc/committees/1373/rc.htm](http://www.un.org/docs/sc/committees/1373/rc.htm).

20. Article 2(3) of the Financing Convention.

21. “*aut dedere aut judicare*” .

22. Operative paragraph 3.

23. Preambular paragraph 15.

24. See Title “The Substantive Provisions”, point 1).

25. Article 11.

26. Article 15.

27. Once this amendment will come into force, the provision will appear as Article 11A CPPNM.

implementation.<sup>28</sup> The “1540 Committee” maintains a legislative database which is accessible via the committee’s website.<sup>29</sup>

One of the main legally binding obligations for States introduced by this resolution is to adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery. Consequently, States are also required to “... renew and fulfil their commitment to multilateral cooperation, in particular within the framework of the International Atomic Energy Agency, the Organisation for the Prohibition of Chemical Weapons and the Biological and Toxin Weapons Convention ...”.<sup>30</sup>

#### b) *Treaty Provisions*

To date, the area of nuclear terrorism has been expressly<sup>31</sup> addressed by a number of universal legal instruments in addition to Security Council Resolution 1540 (2004), i.e.:

- the International Convention for the Suppression of Terrorist Bombings, 1997;<sup>32</sup>
- the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, through its 2005 Protocol;<sup>33</sup>
- the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988, through its 2005 Protocol;<sup>34</sup>
- the Convention on the Physical Protection of Nuclear Material, 1980, including through its 2005 Amendment; and
- the International Convention for the Suppression of Acts of Nuclear Terrorism, 2005.<sup>35</sup>

Already the International Convention for the Suppression of Terrorist Bombings, (the “Terrorist Bombings Convention”) adopted in 1997 by the United Nations General Assembly, established offences which can be perpetrated through the “dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material”.

It was the same UN General Assembly which adopted on 14 September 2005 the International Convention for the Suppression of Acts of Nuclear Terrorism (the “Nuclear Terrorism Convention”),<sup>36</sup>

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28. Resolution 1673 (2006) extended the mandate of the “1540 Committee” until 27 April 2008.

29. See: <http://disarmament2.un.org/Committee1540/index.html>.

30. Security Council Resolution 1540 (2004), operative paragraph 8(c).

31. Operative paragraph 2(a) of Security Council Resolution 1373 (2001) addresses this problem implicitly.

32. See Article 1(3)(b).

33. Not yet in force.

34. Not yet in force.

35. Not yet in force. See also: O. Jankowitsch-Prevor “The International Convention on the Suppression of Acts of Nuclear Terrorism” in OECD/NEA *Nuclear Law Bulletin* No. 76, Volume 2005/2.

36. The Nuclear Terrorism Convention does not address, nor can it be interpreted as addressing, in any way, the issue of the legality of the use or threat of use of nuclear weapons by States.

in spite of warnings by the International Atomic Energy Agency (IAEA)<sup>37</sup> that this Convention would overlap with the Convention on the Physical Protection of Nuclear Material (CPPNM).<sup>38</sup> There is evidence in the preamble of the Nuclear Terrorism Convention that the State representatives which adopted it in New York were aware of the CPPNM of 1980.<sup>39</sup>

However, there is no indication that they had taken into account the fact that two months earlier, on 8 July 2005, their colleagues had adopted in Vienna on 8 July 2005 an amendment to the Convention on the Physical Protection of Nuclear Material (the “amendment”). The scope of the CPPNM was limited to “nuclear material used for peaceful purposes while in international nuclear *transport*”. The amendment broadens the scope of application so as to include nuclear material used for peaceful purposes also while in domestic use, storage and transport. From the point of view of international criminal law, it is interesting to note that the amendment clarifies that the purpose of the CPPNM is to prevent and combat offences relating to nuclear materials and facilities worldwide as well as to facilitate cooperation among State Parties to those ends.<sup>40</sup>

The State representatives which adopted under the auspices of the International Maritime Organisation (IMO) in London on 14 October 2005 both:

- the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the “Maritime Navigation 2005 Protocol”); and
- the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (the “Fixed Platform 2005 Protocol”);

were fully aware of the existing legally binding framework against terrorism: the Maritime Navigation 2005 Protocol is the only legal instrument against terrorism which makes reference to United Nations Security Council Resolutions 1373 (2001) and 1540 (2004) as well as to all 12 universal conventions and protocols against terrorism which have already entered into force. In addition, it refers to the Nuclear Terrorism Convention.

Like the Terrorist Bombings Convention, the two 2005 Protocols establish offences which can be committed not only with radioactive material, but also through chemical and biological weapons. As far as nuclear terrorism is concerned, they establish offences which can be committed through “nuclear weapons or other nuclear explosive devices”.<sup>41</sup>

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37. United Nations General Assembly Document A/AC.252/1998/L.5 of 27 February 1998.

38. Currently, the possession of nuclear material needs to be criminalised in accordance with Article 7(a) CPPNM. The same obligation will exist in accordance with Article 2(1)(a) Nuclear Terrorism Convention which aims at criminalising the possession of radioactive material, since nuclear material constitutes a sub-group of radioactive material in accordance with Article 1(1) of the Nuclear Terrorism Convention.

39. However, the negotiators of the Nuclear Terrorism Convention were mainly guided by the provisions of the Terrorist Bombings Convention.

40. Article 1A. The other main purpose being “to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes”. The same article clarifies that nothing in the CPPNM shall be construed as a lawful authorisation to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.

41. Hence the two 2005 Protocols deal with biological, chemical and nuclear weapons (BCN weapons). The term “BCN weapon” is defined by Article 1(1)(d) of the Maritime Navigation 2005 Protocol. Biological



Like the International Convention for the Suppression of the Financing of Terrorism (the “Financing Convention”), the two 2005 Protocols, once in force, will oblige States Parties to establish criminal, civil or administrative liability of legal entities which commit one or more offences set forth by these legal instruments. These legal entities need to be subject to effective, proportionate and dissuasive sanctions which may be of a monetary nature.<sup>42</sup>

It remains to be seen whether the States which have not ratified the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)<sup>43</sup> will become States Parties to the Maritime Navigation 2005 Protocol, since this instrument exempts explicitly from criminalisation the transport by ship of nuclear weapons or other nuclear explosive devices undertaken in compliance with the obligations set forth in the NPT.<sup>44</sup> States which have not ratified the NPT might argue that it would not be not acceptable for them to introduce the obligation to make the transport of nuclear weapons punishable unless in compliance with the NPT, since the NPT constitutes a legal regime which creates neither obligations nor rights for them as non States Parties.<sup>45</sup>

The Financing Convention could also be considered as belonging to the universal legal framework against nuclear terrorism: in view of the very large interpretation given to the term “fund” in this convention,<sup>46</sup> the provision or collection of radiological material, including nuclear material, with the intention that it should be used or in the knowledge that it is to be used in order to carry out one or more offences related to terrorism, must also be criminalised by domestic legislation.

It is worthwhile noting that the legal instruments adopted in 2005 clarify that none of the treaties belonging to the universal legal framework against nuclear terrorism applies to the activities of armed forces during an armed conflict.<sup>47</sup>

## Human Rights

A Ministerial declaration adopted by the Security Council on 20 January 2003 in its Resolution 1456 (2003) specifically provides that “States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in

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weapons are defined in accordance with Article I of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction; chemical weapons are defined in accordance with Article II of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. There is no definition of the term “nuclear weapons and other nuclear explosive devices” in the two 2005 Protocols.

42. Articles 5 and 2 of the Maritime Navigation 2005 Protocol and of the Fixed Platform 2005 Protocol, respectively.
43. India, Israel and Pakistan.
44. See Article 4(5) Maritime Navigation 2005 Protocol which will introduce an Article 3bis(2) to that effect.
45. See IMO Document LEG/SUA/WG.1/2/9 dated 12 July 2004.
46. See Article 1(1).
47. Such a clarification exists with regard to terrorism bombings in Article 19(2) of the International Convention for the Suppression of Terrorism Bombings, 1997. See also Article 4(2) of the Nuclear Terrorism Convention, Article 2 CPPNM as amended by the 2005 Amendment and Articles 3 and 2 of the Maritime Navigation 2005 Protocol and of the Fixed Platform 2005 Protocol, respectively.

accordance with international law, in particular international human rights, refugee, and humanitarian law”.<sup>48</sup>

In the same vein – and copying thereby Article 14 of the Terrorist Bombings Convention – Article 12 of the Nuclear Terrorism Convention emphasises that alleged offenders shall be guaranteed “fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.” Similar provisions have been introduced in the other above-mentioned legal instruments.<sup>49</sup>

However, the 2005 Amendment to the CPPNM leaves the wording of Article 12 CPPNM unchanged; it reads “Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in Article 7 [CPPNM] shall be guaranteed fair treatment at all stages of the proceedings”.

Since international treaties are not to be read in clinical isolation from other sources of public international law,<sup>50</sup> the simpler formulation of Article 12 CPPNM should not mean that the international human rights guarantees should be weaker for a person who allegedly committed an offence set forth by the CPPNM than for a person who allegedly committed an offence established by the Terrorist Bombings Convention.

## **Assistance**

UNSC Resolution 1377 of 12 November 2001 has mandated the CTC to explore ways in which States can be assisted as well as the availability of existing technical, financial, legislative or other assistance programs which might facilitate the implementation of Resolution 1373. A CTC – Directory of assistance can be accessed online.<sup>51</sup> A number of States and international organisations have offered to provide assistance. The new UN Counter-Terrorism Online Handbook<sup>52</sup> also contains a list of international bodies ready to provide assistance.

Based in Vienna, UNODC commenced towards the end of 2002 a programme of legal assistance for the implementation of the 12 “UN Conventions and Protocols” against terrorism and Resolution 1373 (2001). UNODC’s assistance work is recommended by the CTC to States in need of legal advisory services in the area of counter-terrorism. Since the start of its legal advisory programme, UNODC’s Terrorism Prevention Branch – TPB has been able to deliver legal advisory services or training to approximately 100 States upon their request. It has reached out to more than 125 countries through sub-regional workshops.

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48. See also the United Nations Global Counter-Terrorism Strategy, Plan of Action, paragraph 3.

49. See Article 9 Maritime Navigation 2005 Protocol and Article 2 Fixed Platform 2005 Protocol.

50. See: [www.worldtradelaw.net/reports/wtoab/us-gasoline\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/us-gasoline(ab).pdf).

51. See: [www.un.org/Docs/sc/committees/1373/ctc\\_da/index.html](http://www.un.org/Docs/sc/committees/1373/ctc_da/index.html).

52. See: [www.un.org/terrorism/cthandbook/index.html](http://www.un.org/terrorism/cthandbook/index.html).

A UNODC publication entitled “Preventing Terrorist Acts: A Criminal Justice Strategy Integrating Rule of Law Standards in Implementation of United Nations Anti-Terrorism Instruments”, containing numerous references to the Nuclear Terrorism Convention is available online.<sup>53</sup>

The United Nations Global Counter-Terrorism Strategy, adopted by the General Assembly on 8 September 2006,<sup>54</sup> encouraged UNODC “... including its Terrorism Prevention Branch, to enhance, in close consultation with the Counter-Terrorism Committee and its Executive Directorate, its provision of technical assistance to States, upon request, to facilitate the implementation of the international conventions and protocols related to the prevention and suppression of terrorism and relevant United Nations resolutions”.<sup>55</sup>

In the context of this strategy and of United Nations Security Council Resolution 1373 (2001), the UN General Assembly recognised the role of UNODC’s Terrorism Prevention Branch in Vienna to assist “States in becoming Parties to and implementing the relevant international conventions and protocols relating to terrorism, including the most recent among them, and in strengthening international cooperation mechanisms in criminal matters related to terrorism, including through national capacity-building”.<sup>56</sup>

UNODC’s Terrorism Prevention Branch intends to provide assistance on nuclear terrorism issues in cooperation with the International Atomic Energy Agency (IAEA).

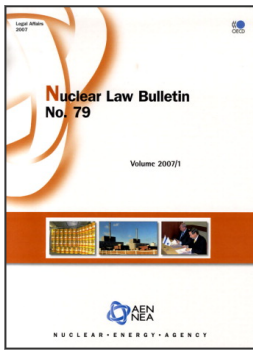
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53. It is directly available via [www.unodc.org/images/Strategy%20Paper%20Mike%2006-52890\\_ebook.pdf](http://www.unodc.org/images/Strategy%20Paper%20Mike%2006-52890_ebook.pdf). Other technical assistance tools are listed on [www.unodc.org/unodc/terrorism\\_tools.html](http://www.unodc.org/unodc/terrorism_tools.html).

54. Resolution 60/288.

55. Plan of Action, paragraph III(7).

56. Operative paragraph 18 of United Nations General Assembly 61/40 dated 4 December 2006.



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