CONCEPTUAL DIMENSIONS OF INTERNATIONAL TERRORISM UNDER INTERNATIONAL LAW

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Abstract

International terrorism has become a grave threat to almost every State's peace and security. It also threatens global prosperity as well as innocent lives and dignity of human beings. After 9/11 attack on U.S.A., the United Nations has become a much stronger body to combat international terrorism. Although many resolutions and conventions have been passed by United Nations pertaining to international terrorism but it leaves on member states to define it which has both political and legal implications. Since every State has been defining the term 'terrorism' as per its national interpretation, the lack of uniformity has hindered the international cooperation required to fight international terrorism. This research paper will try to explore the possibility of arriving at a definition of International terrorism built on global consensus; i.e. the adoption of a Comprehensive Convention on International Terrorism (CCIT), originally initiated by India in 1996 at the UN General Assembly. From investigation to prosecution, the cooperation among states is imperative which would only be possible if a generally accepted opinion jurisor legal principle is recognized by all states.

Keywords: *International terrorism, definition, United Nations, CCIT*

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INTRODUCTION

We can no longer stand by and watch as this phenomenon spreads. With their message of hate violent extremists directly assault the legitimacy of the U.N. Charter and values of peace, justice and human dignity on which the document and international relations are based.[1]

The international terrorism has become a grave and serious threat to maintenance of international peace and security and violation against human rights. The United Nations' Security Council is the most potent body to combat this threat. There has not been any consensus amongst the nations to define terrorism hence the UN has pursued more pragmatic approach and has put forth more importance to mutual cooperation amongst states to fight terrorism. It has also counter-terrorism mechanism but the lack of consistent definition of the term has hampered its fight against this growing threat as it causes technical hitches when terrorism is pronounced as a threat to international peace and security. Through resolutions and the conventions, the UN has included certain acts in the offence of terrorism but avoids particularly defining this political and notorious term. The States should have tenacity to find the universal definition of terrorism as this menace is spreading to more countries and becoming more horrendous.

All over the world the terrorist activities are on rise from West Asia to Africa to Europe to U.S.A. India also has long been battling against Pakistan-sponsored terrorist groups. This growing global terrorism requires a coordinated international response. Since the states are still giving priority to their own national interests and not agreeing to define this brutal phenomenon, it has become a big challenge to the global security now.

COMPREHENSIVE CONVENTION ON INTERNATIONAL TERRORISM

To augment the quality of cooperation amongst the states in their battle against terrorism, there must be a uniform definition; otherwise the terrorist groups are taking advantage of this indistinctness. And the best way to tackle this threat would be to define the reprehensible act by adopting Comprehensive Convention on International Terrorism (CCIT). UNGA resolution 55/158 was adopted on 12 December 2000 and mandated the Ad Hoc Committee

[1] Jeffrey Feltman, UN Under-Secretary-General for Political Affairs, Delivering the keynote address to the Arab League event organized event on 3 June, 2015.

to start work on drafting a Comprehensive Convention on International Terrorism, "both to include terrorist crimes not covered under existing conventions (such as serious attacks on the environment and a serious and credible threat to commit a terrorist act) and to adopt enhanced measures of co-operation and assistance between States. Unlike the sectoral conventions, it does not limit the means by which a terrorist act may be carried out".[2] Rather than having different conventions defining different acts in the list of offences ascribing to the concept terrorism, the single act defining the concept terrorism will be more operative to restrain it rather than having different acts describing the term under different conventions. It will become more practical for the different states to prosecute the accused guilty of committing terrorist act with judicial as well as police cooperation. As there is no international police, prosecutor or tribunal or police to investigate such a crime, the burden to investigate and prosecute terrorist is on the individual state. The perpetrators and the targets in this case may be foreigners, the funds might be from third country, the evidence and the witnesses could belong to outside the territorial limits of the State. So the concerned nations require cooperating with each other for all this. But the States like Israel and some Arab States who are not having formal diplomatic relations with each other, this cooperation is implausible. To increase the cooperation amongst these States in their fight against terrorism, they can opt for adoption of CCIT to enhance their cooperation. In general such an accepted *opinion juris*or legal principle by all states could have more legal, moral, and political force. Moreover to take action in another state, there may be legal hurdles in foreign investigations and prosecutions. Extradition also requisites the act to be crime and punishable in the requested state as well as in the requesting state. The countries won't be able to support each other in case there is any inconsistency between these two matters. In fact Although UN Security Council (SC Res.1373 of Sep. 2001) imposes on every member state to cooperate yet the States have always been reliant on bilateral treaties to make the assistance essential and swift.

"The conclusion of a convention will not only provide a U.N.-inspired umbrella to our efforts to counter terrorism, it will also send a clear message of the common will of the international

[2] Narinder Singh, The United Nations' Efforts at Combatting International Terrorism, FICHL Policy Brief Series, No. 81 (2017), p.4.

community as it strives to contain and control terrorism."[3]

The adoption of CCIT would make each State rely on single negotiation and single set of rules to apprehend, prosecute and punish the accused. This has the potential to enhance mutual assistance between different states. There is need to provide terrorism with legal definition so that there is homogeneity and uniformity in its application by the States in their domestic legislation in accordance with their human rights' commitments. The inconsistency in the understanding of terrorism is not only problematic for the court, for the prosecution and for the police but it can also become dangerous for the individual. To adequately address and defeat terrorism, the gaps in fragmented sectoral approach should be filled by adoption of Comprehensive Convention against Terrorism. H. E. Kamlesh Sharma, Permanent Representative of India to UN, explained the need to adopt CCIT when he remarked *"...planes were hijacked but the cluster of conventions on hijacking provides for action against the hijackers; on September 11 they killed themselves with their victims. Similarly, planes were used as bombs, whereas Conventions have a precise definition of an explosive. No action is envisaged against those who supported, instigated or harboured the terrorists".*[4] None of the conventions; the Terrorist Bombing[5], the Terrorist Financing[6] and the Nuclear Convention[7] defines terrorism but refers it in their titles and preambles only. So the States must resolve their differences and adopt CCIT to formulate a comprehensive definition of the crime "International Terrorism". To be effective the legal definition must be precise enough and in accordance with Criminal Law principles and Human Rights law. It will be useful if the definition is able to comprise core elements of the crime, although it is a complex task.

OBJECTIVE OF CCIT

The aim of the CCIT is not limited to improving cooperation and assistance between states but also to create comprehensive frame to those terrorist crimes which are not being covered

[3] Palitha Kohona, Ambassador, chair of the Legal Committee pursuing the CCIT, also described it as the mother of all anti-terrorism conventions, stated to Inter Press Service on 8 Jan. 2014. Available at: http://www.ipsnews.net/2014/01/despite-13-year-deadlock-u-n-makes-headway-fighting-terrorism/ (Accessed on 15Oct. 2016)
[4] Arpita Anant, India and international terrorism in David Scott, Handbook of India International Relations, (Routledge, 9th May 2011), p. 269.
[5] U.N. Doc. A/RES/52/152 Annex15 December 1997.
[6] U.N.Doc. A/54/109 Annex9 December 1999.
[7] U.N. Doc. A/59/290 Annex13 April 2005.

under present conventions. The genesis of the CCIT lies in the 1996 UN General Assembly session that created an Ad Hoc Committee to develop a comprehensive legal framework for combating international terrorism.[8] The Ad Hoc Committee worked along with Working Group of the Sixth Committee on different aspects of the treaty negotiations. India presented the first draft of CCIT[9] in the same year with the following objectives:

- To criminalize all forms of terrorism and specify a comprehensive mechanism to eliminate terrorism.
- To have a legal framework requiring all states to cut off supply of funds and deny arms and safe haven to terrorist organizations.
- To call for agreement on a universal definition of terrorism which all the 193 members of the UNGA would adopt into their domestic legal systems and wants to do away with the distinction between 'good terrorism' and 'bad terrorism'.
- This agreement would result in ban on all terrorist groups irrespective of their objectives or country of operation and prosecution of all terrorists including cross-border groups under special laws. It would have the provision to amend domestic laws to make cross-border terrorism an extraditable offence.
- To require states to expand jurisdiction over *Draft Comprehensive Convention* offences which are committed (a) in the territory of the state; (b) on board a vessel or aircraft registered by the state; or (c) by a national of the state
- To require states to cooperate in thwarting terrorist offences from being committed through the exchange of information and coordinating in law enforcement
- To require state in whose territory an alleged offender is present and which has jurisdiction to either extradite or defer the case to its competent authorities for the purposes of prosecution
- To include the offences, prohibited by the Convention, as extraditable offences in any existing extradition treaty between states parties to the Convention. The requested state may consider the Convention as a legal basis for extradition in case the state only allows extradition on the basis of a treaty and there is no treaty with a requesting state. The state shall recognize the offences as extraditable offences where a state does

[8] UN Doc. G.A. Resolution 51/210, 17 December 1996.
[9] Ibid. at CCIT, Article 3 provides that the Convention does not apply where the offence is committed within a single state, the alleged offender and the victims are nationals of that state, the alleged offender is found in the territory of that state and no other state has a basis for exercising jurisdiction.

not make extradition provisional on the existence of a treaty. Depending upon the territorial principle of jurisdiction, to make sure the broadest possible basis for extradition, the offences are to be considered in the territory of those states that have exercised jurisdiction over them and also wherever they were in fact committed as if they were committed not only in the place they were committed.

Under Article 2 of the Convention different offences have been included but without calling them terrorism, having wide and all-encompassing language:

1. *Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally causes:*

   a) Death or serious bodily injury to any person; or

   b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility, or the environment; or

   c) Damage to property, places, facilities, or systems referred to in paragraph 1(b) of this article, resulting or likely to result in major economic loss. When the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing act.

Article 2 also specify that it is an offence to make a plausible and serious threat to commit any of these acts, or to attempt to commit any of these acts. An additional provision renders criminal the participation in, organisation of, or contribution to, the commission of any of these acts. The convention defines an offence, acts by any person without differentiating between Government actors and non-State groups, including national liberation movement &without concerning whether the act is committed during times of peace or in armed conflict. The offence is not confined to attacks against civilians but also includes attacks against military personnel. Also includes serious damage to property, infrastructure, and the environment within the definition.

According to Article 6, it is required that each State party adopts legislation to confirm that the acts within the scope of convention are 'under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic or other similar nature'.

As per the convention no request for extradition or mutual legal assistance may be declined only on the ground that the offence was driven by political motives.

The other elements like jurisdiction, extradite or prosecute principle, criminalization etc. were taken from the essential elements of the sectoral treaties. There have been deliberations, modifications but the general impediments have always prevented the efforts to conclude CCIT. The disputatious issues were of freedom fighters and state terrorism at that time. The consensus could not be reached so the CCIT could not become a binding and enforceable instrument of international criminal law.[10] In this Convention also the nationalistic approach versus the foremost military power approach could be observed as it happened in 1907 Hague Regulations, 1949 Geneva Conventions and 1977 Additional Protocol to Geneva Conventions.

The Group of the Sixth Committee and Ad Hoc Committee has been confronted by two divergent tendencies between different political and regional groups. The Organization of the Islamic Conference wants to make a clear difference between acts committed in the system of an armed struggle in the application of the right of peoples to self-determination and acts of terrorism, specifically by people under alien domination, colonial or foreign occupation (constrain the rights of self-determination groups in Kashmir, Palestine etc.).

Most of the Western- European states had not accepted this general definition as they wanted an operational or criminal law definition, accentuating that the Draft CCIT was a law-enforcement mechanism not dealing with extensive political issues such as self-determination,

But with individual criminal responsibility, some members of the Non- Aligned Movement, mainly those in Latin America, had apprehension of addressing 'State terrorism' in a convention intended to be 'comprehensive' in nature. Some other States, mainly US and the United Kingdom, were concerned regarding the activities of military forces of a State in peacetime which otherwise would be subject to national military laws.

On September 11, 2001 Al-Qaeda attacked World Centre and the Pentagon which left everyone staggered but the ghastly attack could not be defined as crime of terrorism. Although the significant Security Council Resolution 1373 of December 2001 in its preamble

[10] See Measures to Eliminate International Terrorism, Report of the Working Group, UN Doc. A/C.6/55/L.2, 19th October 2000, Annex II

stated "…that such acts, like any act of international terrorism, constitute a threat to international peace and security' yet never defined the term terrorism. To offset the burden of specific conduct and treaty obligations, States negotiated vehemently during session of Working Group in October 2001 and not so formally with sixth committee." Ultimately the important provision of the Convention; i.e. *Art. 18 related to scope of convention and protection of exercise of the right to self-determination,* was the only bone of contention left by the representatives of European Union, the major world powers and the interest delegations.

Elements of the Compromise Package and its Underlying Rationale

The dissenting opinions over the period of time shifted from the issues of definition to the extent of application of CCIT and the negotiations then were followed on the compromise package presented by the Coordinator of the CCIT drafting process at 65th session of the General Assembly in 2002.The main text of the draft[11]having compromise was:

Preamble

Noting that activities of the military States are governed by rules of International Law outside the framework of this Convention, and the exclusion of certain actions from the coverage of the present Convention does not condone or make otherwise unlawful acts or preclude prosecution under any other laws….

Article 3 (18)

1) *Nothing in the present Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law;*
2) *The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by the present Convention;*

[11] See "Text circulated by the coordinator for Discussion" in *Report of the Ad. Hoc. Committee established by General Assembly Res. 51/120 of 17th December 1996*, UN Doc A/57/37 (28th Jan.-1Feb. 2002) Annex IV, 18.

3) *The activities undertaken by military forces of a State in the exercise of their official duties, in as much as they are governed by other rules of international law are not governed by the present Convention;*
4) *Nothing in the present article condones or makes lawful exercise unlawful acts, nor precludes prosecution under other laws; acts which would amount to an offence as defined in Article 2 of the present Convention remain punishable under such laws;*
5) *The present Convention is without prejudice to the rules of international law applicable in armed conflict, in particular those rules applicable to acts lawful under international humanitarian law.*

The above compromise package for the CCIT assurances that it does not supersede or interfere but work along with and preserves the integrity of other legal regimes applicable in particular situations. The States must make sure that any steps taken to fight terrorism are in compliance with their obligations under international law and in particularly IHL, international human rights law, international refugee law, reiterating significance of these laws.

Article 18(2) of the original draft stated above mentions that 'the activities of armed forces during an armed conflict…are not governed by this Convention'. The Organization of the Islamic Conference, seemingly referring to the Palestinian situation, has offered in 'the activities of the *parties* during an armed conflict, *including in situations of foreign occupation* … are not governed by this Convention'.[12]

As per the coordinators of informal consultations on the CCIT, Art.18 which attempts to resolve the relations between the Convention and international humanitarian law, has now appeared as the 'sole remaining outstanding issue on which the adoption of the draft convention hinge[s]'.[13] The term "the *parties* during an armed conflict" is general and wider than "armed forces during an armed conflict" and would cover the activities of any party to an armed conflict, including all civilians on the side of any such party, not essentially governed by international humanitarian law. So it would exclude 'terrorism,' suicide bombings, missile attacks, and other acts of violence against civilians and civilian objects by any group or individual combating to support people's right to self-determination, from the

[12] Ibid. CCIT, Annex IV (emphasis added).
[13] Supra Note 121, *Annex II (Reports of the Coordinators on the Results of the Informal Bilateral Consultations), UN Doc A/58/37 (2003).*

domain of definition of crime. Under Art.3 of Geneva Conventions the term 'armed forces', in its scope of application, applies to all parties of an internal conflict.[14] Besides, the exceptions in Art.18 state firstly the term "armed forces" and then secondly "military forces of a State." Between the two distinct terms, the former can be construed as more comprehensive i.e. including recognized national liberation movements, non-governmental forces which are parties to a non-international armed conflict and organized opposition groups that are established along military lines, subject to a system of military discipline, and conceivably operating in accordance with international humanitarian law.

The international cooperation is essentially required under the mandate of UN to fight international terrorism and the first important step is to adopt CCIT with consensus.

As per the definition under the CCIT no terrorist organization can be called 'freedom fighters' even if they are fighting for national liberation or some other declared legitimate goals, if it intentionally targets civilians. Such targeting is against mankind and the ends can't justify the means. The States should not back such terrorist organizations and must give up their own national interests or change their priorities otherwise the war against this ever growing monster, without defining the term, becomes futile.

The Consensus must reach the negotiation process on the CCIT and the countries should give up their political preferences and accept the compromise proposal. The CCIT would most significantly criminalise terrorist activities generally, and not only in the specific situations as covered by the existing counter-terrorism treaties. Such a general counter-terrorism convention would also assist to integrate and strengthen existing conventions by reviewing facets of these earlier instruments. The CCIT could be a useful means for bringing the entire framework of international counter-terrorism law up-to-date with existing standards. At present the informal text of Art 2 *bis* stipulates that where the *Draft Comprehensive Convention* and a treaty dealing with a specific category of terrorist offence are both applicable in relation to the same act, the provisions of the specific instrument will prevail. To obtain consistency, it would perhaps be required that the *Draft Comprehensive Convention* be amended and replace the earlier Conventions by establishing that those acts

[14] Art.3, common to all four Geneva Conventions, covers situations of non-international armed conflicts. It calls on the parties to the conflict to bring all or parts of the Geneva Conventions into force through so-called special agreements. It recognizes that the application of these rules does not affect the legal status of the parties to the conflict. Application of common Article 3 is important as that most armed conflicts today are non-international.

prohibited by previous treaties are criminal offences under the *Draft Comprehensive Convention*.

THE INTERNATIONAL CRIMINAL COURT TO HAVE JURISDICTION

As mentioned above, the CCIT gave a wide definition of terrorism and particularly punished the crime of association; besides contemplating the usual provisions on judicial cooperation. However, there are several impediments that affect the efficacy of the present international measures to get terrorist offenders prosecuted. The *Draft Comprehensive Convention* depends primarily on an obligation to prosecute or extradite terrorist suspects. Regarding the relevant offences, if the State does not extradite then it is 'obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution'.[15]The bombing of Pan Am Flight 103 over Lockerbie, Scotland in 1988, showed the loopholes in this mechanism as it could not be operated effectively. One could infer that it doesn't ensure the capacity to secure prompt and effective prosecution of terrorist suspects. A distinguished feature of the United Nations' counter-terrorism treaties is their inclusion of compulsory dispute settlement provisions which require submitting unresolved disputes between contracting parties to arbitration or to the International Court of Justice.[16] As it happened in the Lockerbie case[17] when Libya, the arresting state, exhibited a disposition to prosecute the two suspects seemingly consistent with the terms of the *Montreal Convention*[18], so both arbitration and judicial settlement are not expected to be of major assistance in such conditions. It is essential to look beyond the relevant counter-terrorism mechanisms.

A point reiterated earlier, in the aftermath 11 September 2001, the Security Council has assumed wide-ranging responsibilities in combating international terrorism and has shown

[15] CCIT, Art.11.
[16] CCIT, Art 23. According to Article 23(1), "Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court." Article 23(2) provides that on becoming a party to the *Draft Comprehensive Convention* a state party may include a reservation stating that it does not consider itself bound by art 23(1).
[17] Libyan Arab Jamahiriya v United Kingdom, Order, provisional measures, ICJ GL No 88, [1992] ICJ Rep 3, ICGJ 75 (ICJ 1992), 14th April 1992, United Nations [UN]; International Court of Justice [ICJ]
[18] *Convention for the Unification of Certain Rules for International Carriage by Air* ("Montreal Convention") was opened to signature in Montreal by the states participating in the "International Conference on Air Law" held in Montreal during May 10th to 28th 1999 for the purpose of harmonizing of the Warsaw Convention to today's conditions.

willingness to become more engaged in monitoring the compliance by states with their obligations to tackle terrorism. However, the *Lockerbie* case depicts that the Security Council offers a narrow scope for measures in case there are disputes between states. It was an ad hoc approach of referring the prosecution of the suspects to trial and a decision by the Scottish court, sitting in the Netherlands, which brought two Libyan nationals before an institution that got the confidence of all Member States. This process was onerous that is likely to not be repeated. There is possibility of more perdurable solution to this specific problem, especially with the recent establishment of the International Criminal Court.

As stated earlier, since the 11 September 2001 attacks on the United States, the Security Council has presumed wide-ranging responsibilities in combating international terrorism and has shown willingness to become more preoccupied in monitoring the compliance by states with their obligations to combat terrorism. To have the most suitable forum for prosecuting terrorist offences, the *Lockerbie* case depicts that the Security Council offers only a restricted range of measures in case there are disputes between states. It was an ad hoc approach of referring the prosecution of the suspects to trial and a decision by the Scottish court, sitting in the Netherlands which brought two Libyan nationals before an institution that got the confidence of all Member States. This process was very difficult and burdensome which is not likely to be repeated. There might be a more permanent solution to this specific problem with the recent establishment of the International Criminal Court.

It is suggested that the ICC can assume jurisdiction,[19]the inclusion of a clearly defined crime of terrorism would be a helpful addition to the ICC's jurisdiction, over terrorism offences, once a general offence of terrorism under CCIT is satisfactorily defined and incorporated in the *Rome Statute* [20] It will also strengthen domestic anti-terrorism laws in light of the role of

[19] The ICC is a permanent judicial body that has attracted widespread support It is an independent and impartial international institution that incorporates significant due process guarantees for suspects and includes a right of appeal. Hence, prosecutions by the ICC may be widely perceived to be fairer and more legitimate than prosecutions by domestic courts in highly contentious cases. and may thereby 'enhance worldwide assurance of the justice of the conviction of terrorists'. Available at: http://www.icc-cpi.int (Accessed on: 15 November 2015)

[20] The ICC's competence is currently 'limited to the most serious crimes of concern to the international community as a whole', namely genocide, crimes against humanity, war crimes and, when (and if) defined, the crime of aggression. (Rome Statute opened for signature 17 July 1998, 2187 UNTS 90, art 5(1) (entered into force 1 July 2002). Arts 6, 7, 8 define genocide, crimes against humanity and war crimes respectively.) Nonetheless, the ICC may have an opportunity to deal with terrorist offences under its existing jurisdiction, as very serious terrorist offences could potentially be characterized as 'crimes against humanity' within the definition provided by art 7 of the Rome Statute and art 7 of the Elements of Crimes adopted by the Assembly of States Parties in September 2002.

the ICC as body that has been designed with the objective of supplementing national criminal jurisdictions.[21] To maintain its balancing characteristic, instead of opting for a leading role in prosecuting terrorist offences in limited circumstances, it can serve to supplement the procedures already in existence for investigating and prosecuting crimes through domestic courts. There are numerous ways to through which this can be achieved. First, the ICC may step in to assure effective investigation and prosecution of terrorist offences where domestic courts are not willing or are unable to exercise jurisdiction over terrorist crimes that could also be classified as crimes against humanity.[22]Second, in subsequent high-profile cases, the ICC could potentially be used to avoid the issues encountered in the Lockerbie case wherein several states, each competent to assert its jurisdiction, made competing claims. In similar situations in the future, the referral of prosecution to the ICC could help break the political stalemate in negotiations between states, and probably provide a neutral forum for prosecution.

CONCLUSION

The successful offensive against 'International Terrorism' and its curtailment require that there ought to be perspicuous-single definition of it in international law. The paper argues that it is only through CCIT that the nation-states will be able to act in collective and meaningful manner, translating the consequent global co-operation into cohesive and effective ways to combat the scourge of international terrorism. Thus, it is of utmost importance to secure an agreement on adoption of the draft comprehensive convention as soon as possible. The UN should use its capacity, global political clout and institutional mechanisms to create the requisite political will for finalization of negotiations on the Comprehensive Convention on International Terrorism.

[21] The jurisdiction of the ICC is 'complementary' to national criminal jurisdictions *(Rome Statute*, opened for signature 17 July 1998, 2187 UNTS 90, Preamble (entered into force 1 July 2002)) in the sense that a case can only be brought before the ICC if a state with jurisdiction is unwilling or unable genuinely to investigate or prosecute the case *(Rome Statute*, opened for signature 17 July 1998, 2187 UNTS 90, art 17 (entered into force 1 July 2002)).

[22] See, *Policy Working Group on the United Nations and Terrorism*, UN Doc A/57/273–S/2002/875 (2002).