

## United Nations viewpoint on International Terrorism

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### Abstract

*In this article, it is argued that the long-awaited United Nations Convention on international terrorism has the potential to fill a gap in international law, but only if it includes the provisions on the most recent forms of terrorism that proposed in the following pages, as well as an annex including a list of terrorist organisations that all international communities agree upon. This article's goal is to offer a possible way out of the impasse that has developed between states in their efforts to define international terrorism in a way that is acceptable to all. This suggestion appears bold and even offensive, but study says that the never-ending debate surrounding the draught convention needs a new beginning. A single definition of international terrorism, as acknowledged, would address the gaps in the international cooperation framework by "resolving some of the contradictions and unnecessarily wide or restrictive definitions," respectively.*

**Keywords:** *International Civil Aviation, international terrorist groups, international terrorism.*

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### Introduction

With the advent of the terrorist phenomenon on a global scale several decades ago, states have fought to settle on a common definition. After the growth of groups like Al Qaeda, however, the international community — here we include not just states and international organisations but also NGOs and the general public — agreed that certain groups should be designated as terrorist organisations. On light of their nature, methods, and practises, many nations have "labelled" certain groups as terrorist. On August 15, 2014, the United Nations Security Council unanimously adopted Resolution 2170/2014, which clearly recognised the terrorist nature of ISIL and the ANF and all other individuals, groups, undertakings, and entities associated with Al-Qaida for ongoing and multiple criminal terrorist acts with the express purpose of causing the deaths of civilians and other victims. On February 12, 2015, the United Nations Security Council overwhelmingly passed Resolution No. 2199/2015, reiterating its previous condemnation. U.N. Security Council Resolution 2249 was passed unanimously on November 20, 2015 in reaction to terrorist

attacks in Sousse, Ankara, over Sina, in Beirut, and Paris between June and November of that year. In light of the "unprecedented" threat posed by these terrorist organisations, this essay is an attempt to resurrect the idea of a global convention on international terrorism. A number of resolutions have been enacted by the United Nations Security Council over the years, urging or obligating UN Member States to denounce terrorist actions as a threat to peace and security and to take various measures to confront the phenomena. All forms of terrorism, from hostage-taking to nuclear bombing, are explicitly outlawed by these resolutions. The freezing of assets and other preventative steps have played a major role in these initiatives. The sanctions regime is based primarily on two legal instruments, Resolutions 1267 (1999) and 1373 (2001) of the United Nations Security Council (2001). Civil freedoms, such as the rights to due process and private property, have been repressed as a result of the system's ineffectiveness. First Ombudsperson Kimberly Prost found "procedural problems and fairness concerns" with the current system. For two reasons, the 1267 Committee, which is in charge of creating the UN list, is made up of members of the UN Security Council. There is no meaningful recourse through the mechanism established at the intergovernmental level for those who are publicly acknowledged as having committed or been complicit in terrorist offences but who have not been convicted or even investigated at the national level. If a party to an international dispute is not satisfied with the outcome, they can seek a retrial before an impartial court. While the situation has greatly improved since the UN Secretary General established the Ombudsperson in 2009, it still cannot be compared to a truly independent and impartial judiciary. As pointed out by the newly appointed Ombudsperson, Catherine Marchi-Uhel, 'the process of the Ombudsperson remains unnecessarily opaque' in terms of transparency, delay in notifying the petitioner in the event of retention in the list, and in terms of autonomy of the Office of the Ombudsperson which should be established as 'a stand-alone special political mission with a dedicated budget'. Furthermore, the latest report from the Ombudsperson demonstrates that only a formal agreement and numerous arrangements with other countries have governed access to confidential material.

### An offer

**The Conference of the Parties to the Convention against International Terrorism maintains a list of terrorist organisations that it updates on a regular basis.**

We can now move on to a proposal regarding the treaty's annexes, leaving aside the specifics of what should be included in each article of the future comprehensive Convention, which should consider measures capable of countering phenomena like the rising number of foreign terrorist fighters and the criminal routes exploited by human traffickers. Appendices are commonly included to round out the convention's material. Potentially, the States Parties to the relevant treaty could include an annex listing the organisations they have deemed to be terrorist organisations. An initial list could be compiled at the international conference hosted under the UN's auspices. Although it is impossible to foresee the outcome of the negotiations between States, it is plausible to argue that groups universally considered as terrorists by the UN Security Council, and by civil society worldwide, such as Al Qaida, the Islamic State, and Al-Nusra Front (ANF), could be easily included. Yet, given that some organisations are already widely considered to be terrorist without the need to place them on another list, this may seem like a useless answer. By ratifying the Convention, the member states agree on the names of organisations whose condemnation originates from more than just a United Nations Security Council resolution, which is obligatory on all UN States but adopted by only 15 of them. As a result of the Convention, politics would be altered drastically. According to the doctrine of estoppel, no State Party will be entitled to decline involvement in the fight against designated terrorist organisations because doing so would be inconsistent with a position it has already expressed. In addition, the Convention could provide the institutional framework for expanded global cooperation (in areas such as mutual legal assistance, extradition, and border control). There are two concerns that must be addressed if the amendment is to be accepted. The first has to do with revising the list of proscribed terrorist organisations in the treaty. Which group possesses the expertise to implement the required modifications? How will the rights to due process be safeguarded for identified terrorist groups? Due process rights make it more difficult to place individuals in the appendix of a treaty, hence this idea does not apply to them.

Yet, legal entities have the same right to safety as natural ones. The second issue is how to deal with groups or factions within groups that are considered terrorist by some states but national liberation organisations aiming for self-determination by others, as is the case with the groups mentioned in the caveats to the Convention.

## Change in the List

In order to ensure that all parties to a treaty are abiding by its provisions, the parties to the treaty regularly congregate in what are called "Conferences of the Parties" (CoP). One could argue that a similar strategy would be useful in combating international terrorism through the Convention. The CoP will hold meetings on a regular basis to discuss and update the list of proscribed terrorist organisations. The treaty may provide that a particular number of State parties (let's say one third) require unanimity, even though consensus voting will be the norm. To accomplish this goal, the CoP would act in an executive role. We will evaluate this proposed mechanism by contrasting it with two that already exist: the Antarctic Treaty Consultation Meetings and the Council Meetings of the International Civil Aviation Organization.

## Creating a New Position for the UN's Chief Ombudsman

This ability to make binding revisions to annexes for all Contracting Countries was made explicit through a comparison of two systems with similar executive decision-making powers. Others might say that the inapplicability of lessons learnt non Antarctica and the ICAO systems to the battle against global terrorism is due to the extreme technicality of both regions. Perhaps we can discover some areas of agreement. However, it should be noted that the United Nations has established a number of "executive" committees, such as the Counter-Terrorism Committee and the 1267 Committee, whose limited membership and focus is on verifying that member states are adhering to the letter of UN Security Council resolutions, in an effort to combat terrorism on a global scale. It is advocated in these pages that these two bodies be gradually replaced by a more representative body that will respond to the CoP of the comprehensive Convention against international terrorism in order to ensure that all human rights and freedoms will be fully safeguarded. One of the authors suggests that there has been "some semblance of continuity in terms of counterterrorism collaboration across time," and they go on to discuss the significance of international cooperation and a multidisciplinary approach. The Convention would have more 'democratic legitimacy' than the current system because international treaties are ratified by States according to their internal procedure and have an effect on public opinion. Further, if a country recognises the actions of any non-State actors as legitimate fighting, it may not effectively establish or implement anti-terrorist laws under the 1373 (2001) framework. Even if it accepts the Convention, a State may "opt out," or choose not to treat an organisation as terrorist. Yet, if the targeted state sees the entity in question as a national liberation movement striving for self-determination, the method may backfire.

In this light, the role of the UN Ombudsperson, who has been helpful to the asset-freezing process, may require some rethinking. There are two opportunities for the Ombudsperson to step in: first, during the review of the list, and second, after a request to be removed from the list has been made. The treaty should mandate that the Council reach a unanimous agreement on which organisations should be included whenever the list is updated. It just takes one-third of the State Parties to call for unanimity. After consulting with the Ombudsperson, who has the authority to protest to the designation, the UN Security Council or a majority of states from around the world should issue a resolution condemning the designated terrorist organisation. A second option is for a coalition of states from various regions to put forth the name. The treaty should make it possible for the Ombudsperson to gain access to private information when it is required for the performance of duties. A key challenge for the Ombudsperson so far has been the difficulty to acquire confidential information by countries regarding potential designations.

The long-term fate of the United Nations' asset-freezing mechanism, in particular, is not addressed in the preceding research. This article does not fully cover the difficulties associated with the processes of designating (alleged) terrorists and terrorist organisations. Yet, we are confident that there are problems with the UN system that should be addressed, problems that have been highlighted by several critics and courts. Multilateral efforts to combat terrorism are highly valued by all countries, but in recent years, they have become more consolidated outside the United Nations, where safeguards for human rights appear to be dwindling. To avoid any confusion, we believe that the United Nations' asset freeze regime should be maintained. The analysis needs to go far further in depth, considering every potential outcome. This is hardly a perfect solution, especially considering the Ombudsperson's growing importance in guaranteeing a minimum level of protection for human rights in recent years.

## Conclusion

We propose that the treaty be accompanied by an annex listing designated terrorist organisations and that this list be maintained and constantly updated. We've outlined a few reasons why we think this idea has promise. To begin, the 15-member United Nations Security Council will be reflected in the Conference of States Parties, which will now make decisions instead of the 1267 Committee. Second, the success of the UN Ombudsperson so far suggests rethinking the position within the framework set by the comprehensive Convention, with the Office of the Ombudsperson becoming an independent body with access to confidential information and a more robust role in examining individual complaints lodged against the designation. Thirdly, there would be a "opt-out" clause on the list that would prevent governments from classifying as terrorist any organisation they recognise as a national liberation movement. A system based on annexed lists may be successful only in cases of technical cooperation provided by international treaties, involving a limited number of States, and without concerns related to the protection of human rights, but this is only one possible solution to break the impasse in the international debate. As a rebuttal, we could point out that there is little need for yet another forum to encourage collaboration in the battle against terrorism.

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