

Regional workshop on “The legal aspects related to the prevention of terrorism”

Abu Dhabi, UAE

21-23 May 2013

Participating countries: Afghanistan, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen

I. Background:

As terrorism continues to pose a fundamental challenge to our society, the international community has acknowledged the importance of a preventive approach to counter terrorism. This approach is a long-term strategy, which addresses all of the preventive aspects of counter-terrorism by specifically focusing on the creation and the activities of terrorist groups before they can attempt or accomplish a violent offence. The strategy also includes measures to counter violent extremism. Such a preventive approach demands from Member States that lawful investigative and evidentiary mechanisms are established to facilitate prosecutorial intervention before tragedies occur, while respecting the protections embedded in the rule of law.

To this end, the United Nations (UN) has developed a legal framework aimed at the prevention of acts of terrorism. In particular, in its Resolution 1373 (2001), the UN Security Council decides that Member States shall “ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice.” In the same resolution, the Council decides that all States shall “afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings.” UN Security Council Resolutions 1267 (1999), 1540 (2004) and 1624 (2005) also request that Member States adopt a series of measures to prevent any form of preparation of terrorist attacks, as well as any support - active or passive - to entities or persons involved in terrorist activities. Several criminal offences are also established by the universal anti-terrorism conventions and protocols, which focus in particular on the need to criminalize acts such as the planning, the organization and the financing of terrorist acts. The United Nations Global Counter-Terrorism Strategy, adopted in 2006, recalls the importance of a preventive approach to counter-terrorism, highlighting also “that effective counter-terrorism measures and the

protection of human rights are not conflicting goals, but complementary and mutually reinforcing”. This overall international legal framework introduces an efficient preventive strategy that permits timely preventive action.

II. The workshop:

The United Nations Office on Drugs and Crime (UNODC) and Hedayah welcomed more than thirty-five international participants and experts in Abu Dhabi, UAE for this first jointly organized regional activity. The workshop took place from 21 to 23 May 2013 at the Intercontinental Abu Dhabi.

High-level criminal justice officers from Afghanistan, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen were invited to discuss challenges and experiences related to the prevention of terrorism. Senior experts from the UN Counter-Terrorism Committee Executive Directorate (CTED), Hedayah, Spain, Morocco, United States and Afghanistan presented international and national legal frameworks, experiences and best practices in order to strengthen the participants’ understanding on the legal aspects related to the prevention of terrorism.

i. Objectives of the workshop

The main objectives of the conference were the following:

- Present the universal legal framework.
- Analyze the challenges related to the investigation and prosecution of preventative offences, especially those posed by the full support for the rule of law and human rights principles.
- Share best practices and experiences.
- Explore regional cooperation mechanisms essential to any efficient terrorism prevention.

ii. Opening and introductory remarks

The workshop presented an opportunity for the participants and experts to discuss the legal challenges in counter-terrorism through a study and analysis of concrete cases related to the different stages of the preventive strategy and the criminal proceedings.

The event was inaugurated by the welcome speech of HE Ambassador Mahash Saeed Al Hameli, Director of the International Security Cooperation of the Ministry of Foreign Affairs of the UAE, who highlighted the importance of cooperation to combat terrorism. Dr. Hatem Aly, UNODC regional Representative for the Gulf Cooperation Council (GCC) countries, emphasized in his opening remarks the strong commitment of the UN to

assisting Member States in developing efficient legislation to prevent terrorism and related crimes in compliance with the relevant international legal instruments. His statement was followed by the speech of the Representative and Chief of Section of the Terrorism Prevention Branch (TPB) of the UNODC - Dr. Mauro Miedico - who started by thanking participants and recalling the strong support of the Gulf Member States to the initiatives of the TPB. He also mentioned the up-coming national activities in Afghanistan and Yemen, which are organized in the framework of successful national terrorism prevention programmes. Dr. Miedico also presented the different challenges related to terrorism prevention strategies, notably the necessity to criminalize preventive offences, the legal and procedural issues related to their investigation and prosecution, and the importance of international cooperation in criminal matters related to terrorism. Dr. Miedico also outlined the objectives of the three-day workshop.

Mr. Maqsood Kruse, Chief Executive Officer of Hedayah presented the Center and its core objectives to participate, as a dialogue, training and research institution on countering violent extremism, in the global efforts to prevent and counter terrorism. In particular, Mr. Kruse mentioned a series of priorities at the core of terrorism prevention strategies such as prison de-radicalization and victims of terrorism.

The opening ceremony was concluded by all the participants, experts and members of delegations who were given the floor to introduce themselves.

iii. Discussions

The first working session focused on the international legal framework through a presentation of the rule of law-based approach to prevent the commission of terrorist acts and the universal legal regime against terrorism. Following the introduction of the TPB's mandate, Dr. Miedico outlined the universal legal framework, as well as the challenges in the criminal justice approach to prevent terrorism. In particular, he highlighted the objectives of such a strategy, which is to facilitate the intervention of the criminal justice system before tragedies can occur and to ensure the protection of civilians, including victims of terrorism. The presentation also considered policy-making strategies and the need to establish specific terrorism prevention offences as criminal offences under domestic law. Another important issue covered by Dr. Miedico's presentation was the procedural and evidentiary challenges and the complementary character of human rights in terrorism prevention. The differences between preventive offences and preparatory acts were also highlighted, both of which represent important pillars of the criminal justice strategy to prevent terrorism.

Ms. Cecilia Naddeo, Human Rights Officer at the CTED, provided a clear overview of the obligations of the Member States, stemming from the UN Security Council Resolutions 1373 (2001) and 1624 (2005). After mentioning the provisions included in the Resolutions, and in particular in relation to incitement, Ms. Naddeo discussed the investigation, prosecution and trial-related consequences thereof, such as the necessity to bring terrorists to justice and to prevent terrorists from using a State's territory for his or

her purposes against other States or their citizens. Ms. Naddeo also referred to the international human rights framework, notably the due process guarantees, as well as the challenges in establishing limitations instead of derogation.

In relation to the international legal framework against terrorism, delegates highlighted the importance of respect of human rights and the dilemmas pertaining to any limitations to freedom of speech. Discussions on the role of the defence in criminal proceedings and ways to strengthen international legal frameworks concluded the session.

The preventive aspects of counter-terrorism strategies also include factors that can lead to radicalization. In the second session Mr. Ivo Veenkamp, Chief Operating Officer at Hedayah, presented the different types of violent extremism and outlined the different approaches to the definition of radicalization. Mr. Veenkamp further discussed the means and purposes to prevent radicalization and countering violent extremism. He also highlighted the importance of prevention and outlined the multi-strand approach to counter violent extremism, such as tackling the breeding ground, making vulnerable groups more resilient, undermining the “supply” of extremist ideas and the possible intervention to counter this phenomenon (development of appropriate training, intervention in prison, etc.).

Mr. Veenkamp’s presentation was followed by the intervention of Dr. Miedico on the topic of the prosecution and investigation of incitement to commit acts of terrorism. After pointing out the challenges and the key role of the Internet as a trans-border means of disseminating propaganda and of communication in a fast and anonymous way, Dr. Miedico expanded on the issue of international and national policies and legal frameworks, and presented several incitement-related terrorism cases.

The participants proceeded to discuss their national experiences in prosecuting and investigating incitement, also raising the issue of the role that religious institutions and the media could play in the process of incitement. The participants also highlighted the issue of freedom of speech in relation to incitement. Some relevant cases were further presented and the issue of the surveillance and monitoring of the websites was discussed. Mr. Moulay Hassan al-Daki, Chief Prosecutor of the Court of Appeal of Rabat, mentioned the key role of the Internet in the radicalization process by giving the example of the “Lone wolf” case scenario. Some delegates also discussed the role of media in countering radicalization processes.

The second day of the workshop was opened by a session and a round-table discussion dedicated to the important preventive challenge to support the victims of acts of terrorism. Ms. Chouchane of the UNODC/TPB started by presenting the UNODC technical assistance publication on the “Support to victims of acts of terrorism”. She recalled the international standards and norms related to victims of terrorism, highlighting the new trend in establishing mechanisms and norms in this domain, considering that for many years victims have often been described as the “forgotten party” in criminal proceedings. Another main point discussed in this presentation was the recognition of the status of

victims, their access to justice, their protection during the criminal proceedings and the challenge of their reparation and compensation.

Ms. Begdori of the Moroccan Association of Victims of Terrorism provided the audience with her personal experience as a victim of terrorism as she lost both her husband and her son in the Casablanca 2003 terrorist attacks. She explained the difficulty with access to justice in Morocco, the lack of information on victims' rights and the absence of financial reparation. She also discussed the work of the Association she leads and mentioned the difficulties faced, in particular considering that victims are not expected to play a role in criminal proceedings. Ms. Begdori and her team tried to benefit from the experience of a similar association, in particular from Europe. Ten years after its establishment, the Association was included in a commemoration event in Morocco for the first time and had made some recommendations to policy-makers and officials attending the event: to establish legal protection mechanisms for victims of terrorism, to support related civil society organizations and initiatives and to enhance tolerance and respect for human rights. Ms. Bagdori then discussed the role of the media that, in her opinion, could be "used for good and for evil". She indicated that it could happen that the media undermines the victim's rights and could make the victims feel that they are exploited due to lack of consultation them. The presentation was concluded by recalling the importance of the victims' right to privacy.

During the round-table discussion dedicated to this important issue, some delegations highlighted their national experiences or pointed out the lack of legal provisions related to victims of terrorism. Mr. Reardon, the expert from the US Department of Justice, suggested that the establishment of a dedicated office or legal department in charge of dealing with victims-related issues could be a solution, using the example of an existing office in the US. Mr. Reardon further talked about the progress made during the last 15 years toward developing more respect and guarantees for victims in criminal proceedings in his country. Mr. Daki, Chief Prosecutor in Morocco, discussed the latest legal developments in Morocco aimed at ensuring more protection and support to victims and detailed some mechanisms that have been established, such as the provision of a private mobile phone with a direct connection to a police station, to be used by victims in cases of feeling threatened or intimidated. Mr. Daki also talked about the issue of compensation and the role the insurance companies could play in this respect. Experts and delegations further discussed the role of the media and the very important necessity for the international community to strengthen efforts deployed to achieve the protection and the support of victims of acts of terrorism.

This session was followed by the intervention of Mr. Carlos Bautista, Prosecutor from the Counter-terrorism prosecution of Spain (*Audiencia nacional*) who expanded on the experience of his country in criminalizing the membership of terrorist groups or associations, and the recruitment and training for terrorism. Mr. Bautista reminded the audience of the Spanish as well as the European legal framework, which contain several provisions related to the membership of terrorist groups or associations. He further referred to several terrorist cases concerning the prosecution of individuals for their membership to identified terrorist groups. Through this practical presentation the

difficulties in assessing the status of membership were highlighted, considering that the Spanish legal framework in question allows the prosecution of individuals who only collaborate with identified terrorist groups. The discussion with delegations was further developed around this delicate issue, particularly concerning the difference between membership in a terrorist organization and the participation in terrorist activities, the role of the confession in the prosecution of individuals in related terrorist cases and the investigation-related issues.

The financing of terrorism was another important aspect in discussed in relation to the prevention of terrorism. Mr. Moneeb, Counter-terrorism Desk Officer at the Ministry of Foreign Affairs of Afghanistan, presented the situation in his country, highlighting the important national efforts to develop legal framework in compliance with the international legal standards developed by the United Nations. He also discussed the different financial sources available for the terrorist groups in his country, in particular from criminal activity. He concluded by mentioning some difficulties faced in his country in the investigation and the prosecution of terrorist financing offences.

This second successful day of work concluded with the presentation of Mr. Reardon, Counter-terrorism Prosecutor representing the US Department of Justice. Mr. Reardon focused on the use of preparatory criminal offences, such as the support to the preparation of terrorist acts, the conspiracy and the participation in a terrorist organization. He also further expanded the topic of the investigation and prosecution tools established to prevent terrorist activity and on the possible inter-agency coordination in his country. He likewise referred to the Rabat Memorandum on Good Practices for Effective Counter-terrorism Practice in the Criminal Justice Sector, developed by the Global Counter-Terrorism Forum.

This presentation was followed by a substantive discussion, focusing mainly on the important challenge of the legal assessment of the level and evidentiary requirements of the intention of individuals to participate in a terrorist activity before the commission of an act of terrorism.

On the third day, experts and participants were offered the opportunity to discuss the challenges in the prosecution and the investigation of terrorist preventive and preparatory offences, in particular through the presentation of national experiences of Morocco, United States and Afghanistan. Issues including the challenge of gathering and protecting evidence, the protection of witnesses, the role of informant, the cooperation with intelligence agencies and the use of special investigation techniques, were discussed at length. A number of terrorism cases were presented to highlight the practical difficulties and challenges in using circumstantial evidences and conducting lawful covert investigations.

The necessity to develop international and regional cooperation in criminal matters concerning terrorism was also discussed, in particular through an introduction to UNODC mechanisms, initiatives and platforms. In this context, special reference was made to the development of Central Authorities and the Judicial Criminal Cooperation Platform for

the Sahel Countries, established to enhance, facilitate and accelerate judicial cooperation in criminal matters with the support of the UNODC/ TPB. Delegates and international experts agreed on the importance in establishing or strengthening existing cooperation mechanisms.

III. Conclusion and follow -up.

The workshop concluded by highlighting, the necessity to share experiences and to facilitate the prevention of terrorism by developing an understanding of international legal frameworks, which provide Member States with efficient legal provisions to criminalize, investigate and prosecute preventive offences. In this respect, participants and experts stressed the importance of strengthening national capacity-building and enhancing regional dialogue to prevent terrorism, including by addressing the conditions conducive to the spread of terrorism and the important role of victims in countering terrorist narratives.

Participants particularly expressed their willingness to benefit from follow-up activities, highlighting their interest in the following thematic areas:

- Countering radicalization and violent extremism;
- Support to victims of acts of terrorism;
- Countering the use of new technologies and the Internet for terrorist purposes;
- Strengthening mechanisms for effective international cooperation in criminal matters.

Based on the participants' recommendations, UNODC and Hedayah foresee an organization of a follow-up event in the course of this year. In the context of such follow-up event, the Gulf Cooperation Council countries, as well as some neighbouring countries, would be invited to explore the legal challenges of radicalization, including the related preventive offences, as well as the ways of strengthening regional cooperation in preventing and combating radicalization. The follow-up event would address the factors contributing to radicalization and the manifestations of violent extremism that could ultimately lead to the commission of terrorist acts, the role of the Internet in such a process, but also the way in which the Internet could be used as a key tool for countering the appeal of terrorism. In this perspective, the role of victims of terrorism is essential and would be further analyzed through the study of concrete cases in addition to the relevant national and international legal frameworks and policies.

Other activities will also be developed at the regional level, to positively respond to the need manifested by participants to organize specialized workshops on the other topics mentioned above.