UN Security Council Resolution 1373: The substantive basis for a developing legal framework for the prevention and suppression of acts of terrorism

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A thesis submitted in partial fulfilment of the requirements of the University of Greenwich for the Degree of Doctor of Philosophy

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DECLARATION

I certify that the work contained in this thesis, or any part of it, has not been accepted in substance for any previous degree awarded to me or any other person, and is not concurrently being submitted for any other degree other than that of Doctor of Philosophy which has been studied at the University of Greenwich, London, UK.

I also declare that the work contained in this thesis is the result of my own investigations, except where otherwise identified and acknowledged by references. I further declare that no aspects of the contents of this thesis are the outcome of any form of research misconduct.

I declare any personal, sensitive or confidential information/data has been removed or participants have been anonymised. I further declare that where any questionnaires, survey answers or other qualitative responses of participants are recorded/included in the appendices, all personal information has been removed or anonymised. Where University forms (such as those from the Research Ethics Committee) have been included in appendices, all handwritten/scanned signatures have been removed.

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ABSTRACT

The original contribution of this thesis is to argue that UN Security Council Resolution 1373 has formed the basis for a developing legal framework for the preventing and suppression of acts of terrorism. The absence of a single definition of the term "terrorism" led to 12 separate UN counter-terrorism conventions being adopted, each of which criminalised a specific act of terrorism. The gaps in implementing all 12 conventions by Member States meant that perpetrators could evade prosecution and escape extradition in countries where the acts were not criminalised. Resolution 1373 led to a change in the behaviour of Member States in terms of an increase in the implementation of the 12 pre-existing UN counter terrorism conventions.

The focus of this thesis is the implementation of paragraphs 3(d) and 3(e) of Resolution 1373 which called upon Member States to become party to and implement the 12 pre-existing UN counter terrorism conventions. Resolution 1373 could not compel Member States to implement the conventions. This research uses three case studies to show the laws that Member States adopted as a result of implementing paragraphs 3(d) and 3 (e). This is a departure from the existing literature, much of which focused on the Security Council's use of Chapter VII to adopt the resolution. Following an international law methodology, this thesis reinterprets an international legal framework to include rules, norms, laws, conventions, as well as processes carried out by national or international organisations. It shows Resolution 1373 has produced three elements common to all legal frameworks: 1) it developed an international standard for the criminalisation of specific acts of terrorism; 2) it created a process of implementation and compliance; and 3) the process is invoked through a global network of institutions. Subsequently, the standard has transitioned into a norm on the basis of consensual compliance from Member States that considered it legitimate to be able to prosecute or extradite the perpetrators of these acts. Resolution 1373 has changed how international law is used to support the coordination of Member States to prevent and suppress acts of terrorism.

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LIST OF ABBREVIATIONS

ASEAN	Association of South East Nations
CIS	Commonwealth of Independent States
CFATF	Caribbean Financial Action Task Force
CTC	Counter-terrorism Committee
CTED	Counter-terrorism Executive Directorate
CTTOCA	Counter-Terrorism and Transnational Organised Crime Act
EEZ	Exclusive Economic Zones
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EU	European Union
FATF	Financial Action Task Force
FATF (APG)	Financial Action Task Force Asia-Pacific Group on Money Laundering
FATF GAFI	Financial Action Task Force Group d'action financere
GAFALIT	Financial Action Task Force of Latin America
IAC	International Armed Conflict
ICAO	International Civil Aviation Organisation
ICC	International Criminal Court
ICJ	International Court of Justice
ICCPR	International Convention on Civil and Political Rights
IHL	International Humanitarian Law
IFALPA	International Federation of Air Line Pilots Associations
ILA	International Law Association
ILC	International Law Commission
IMO	International Maritime Organisation
MENA FATF	Middle East and North Africa Financial Action Task Force
MLPCA	Money Laundering and Proceeds of Crime Act
NATO	North Atlantic Treaty Organisation
NIAC	Non-International Armed Conflict

OAS	Organisation of American States
OAU	Organisation of African Unity
OIC	Organisation of Islamic Conference
PFLP	Popular Front for the Liberation of Palestine
SAARC	South Asian Association for Regional Cooperation
SCO	Shanghai Cooperation Organisation
STL	Special Tribunal for Lebanon
UAPA	Unlawful Activities (Prevention) Act
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNODC	United Nations Office on Drugs and Crime

PART I

Chapter 1: Introduction

Resolution 1373 was adopted on 28 September 2001, following the attacks of 9/11 where four commercial aircraft were hi-jacked. Two of the planes crashed into the World Trade Centre towers in New York City, another crashed into a section of the Pentagon in Washington DC and the fourth plane crashed in rural Pennsylvania after passengers tried to overwhelm the hijackers.[1] Approximately 2,750 people were killed in New York, 184 at the Pentagon and 40 in Pennsylvania. [2]

Before Resolution 1373 was adopted the use of international law to tackle acts of terrorism was limited to 12 pre-existing UN counter-terrorism conventions; 11 of them sought to suppress a specific act of terrorism and one sought to prevent the financing and funding of acts of terrorism. These are[3]:

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft signed at Tokyo on 14 September 1963 (entered into force on 4 December 1969);
2. Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16 December 1970 (entered into force on 14 October 1971);
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971 (entered into force on 26 January 1973;
4. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973 adopted by the General Assembly of the United Nations on 14 December 1973 (entered into force on 20 February 1977)
5. International Convention against the Taking of Hostages adopted by the General Assembly of the United Nations on 17 December 1979 (entered into force on 3 June 1983)

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[1] Encyclopedia Britannica, September 11 Attacks, https://www.britannica.com/event/September-11-attacks/The-attacks accessed on 30 June 2019

[2] Ibid

[3] As set out in UNGA Measures to Eliminate International Terrorism Report of the Secretary-General, 56th session (3 July 2001) UN Doc A/56/160 at 18 (also listed in Appendix 1)

6. Convention on the Physical Protection of Nuclear Material signed at Vienna on 3 March 1980 (entered into force on 8 February 1987);
7. 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, signed at Montreal on 24 February 1988 (entered into force on 6 August 1989);
8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation done at Rome on 10 March 1988 (entered into force on 1 March 1992)
9. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988 (entered into force on 1 March 1992)
10. Convention on the Marking of Plastic Explosives for the Purpose of Detection signed at Montreal on 1 March 1991 (entered into force on 21 June 1998);
11. International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly of the United Nations on 15 December 1997 (opened for signature on 12 January 1998 until 31 December 1999);
12. International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on 9 December 1999 (opened for signature on 10 January 2000 until 31 December 2001)

An assumption has been made in existing literature that the 12 pre-existing UN counter terrorism conventions are part of a legal framework concerning acts of terrorism, but there has been no real examination as to what constitutes that legal framework. Each convention used the principle *aut dedere aut judicare* as the mechanism by which national institutions could establish jurisdiction over each act of terrorism, by criminalising each as an offence in their national legal systems. [4] The principle means to prosecute or extradite, and both characteristics require implementation in order to give a convention full effect. As is consistent with the Law of Treaties[5] however, Member States did not have to became party to and implement any of these conventions. If they had, then there would have been widespread implementation of *aut dedere aut judicare*, which would have meant that across the world the majority of Member States could have criminalised the same acts of terrorism and, therefore, perpetrators of these acts would not have been able to escape prosecution.

[4] UNODC 'Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments' (New York 2006)
[5] Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

There was no coordination by either the UN Security Council or General Assembly in terms of ensuring that the national laws implemented by Member States were compliant with the requirements of each convention they had acceded to. At the time of the 9/11 attacks only 45 out of 193 Member States had ratified seven or more of the12 pre-existing UN counter-terrorism conventions. [6] Consequently, those carrying out these acts were able to find safe havens in some states where they could escape prosecution and evade extradition.

Resolution 1373 is significant because of the effect it has had in terms of how international law is now used to prevent and suppress acts of terrorism. It did not provide the much-coveted single definition of the term "terrorism," but instead, promoted the criminalisation of the acts in the 12 pre-existing UN counter-terrorism conventions. The first two paragraphs of the resolution contained measures that Member States were obliged to implement, by virtue of its adoption under Chapter VII of the UN Charter. The third paragraph contained measures which were not considered mandatory, including that Member States should report how they have implemented the resolution to the Counter Terrorism Committee (CTC) and Counter Terrorism Executive Directorate (CTED). Paragraph 3(d) of the resolution called upon Member States to:

> "…become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999".

Paragraph 3(e) expanded this to "fully implement the relevant international conventions and protocols relating to terrorism".[7] The UN Security Council could only request that Member States become party to and implement the pre-existing UN counter terrorism conventions because, in accordance with the Law of Treaties[8] Member States could not be made for accede to any international conventions. It is the implementation of these paragraphs by Member States that has led to a change in their behaviour from that which existed before Resolution 1373 was adopted. Member States chose to criminalise the specific acts of terrorism in the 12 pre-existing UN counter terrorism conventions, collectively recognising that this was the necessary response following the attacks of 9/11. This developed the

[6] By June 1999, only 45 out of 193 Member States had ratified seven or more of the conventions see UNGA Measures to Eliminate International Terrorism Report of the Secretary General (3 September 1999) UN Doc A/54/301 p.16

[7] UN Doc S/RES/1373 (n1) [3(d)]

[8] Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

international standard for the criminalisation of specific acts of terrorism, where the majority of Member States have an obligation to prosecute or extradite the perpetrators of those acts. Member States amended existing laws and implemented new laws in order to meet not only the requirements of the 12 pre-existing UN counter terrorism conventions, but to implement paragraphs 3(d) and 3(e) of Resolution 1373. The institutions in Member States acted upon recommendations from the CTC, CTED and other international institutions as part of the implementation process created by the resolution. This behaviour demonstrated how legitimate Member States perceived the request in these paragraphs to be and indicates that the standard has transitioned into a norm. By adopting Resolution 1373, the UN Security Council generated a global response to acts of terrorism which is coordinated through international law. Not only did Resolution 1373 lead to the development of an international standard, it created a process for implementation and compliance which was invoked through a global network of institutions. The resolution has been the foundation for subsequent UN Security Council resolutions, including those which tackle new methods of carrying out acts of terrorism such as the use of foreign terrorist fighters[9], and those which seek to strengthen the capacity of states by prohibiting incitement to commit acts of terrorism[10].

Resolution 1373 has been examined previously in scholarly literature in the context of what it is not; a comprehensive convention, and what it does not provide; a single definition of the term "terrorism". This means there has been very little consideration of what the resolution has achieved, in terms of how international law is now used to support the coordination of Member States to not only suppress acts of terrorism, but to also prevent acts of terrorism. This thesis aims to do that by showing how Resolution 1373 has formed the substantive basis for a developing international legal framework for the prevention and suppression of acts of terrorism. It will examine what the consequences have been for the adoption of Resolution 1373 for the use of international law to prevent and suppress acts of terrorism. It will show what constitutes a legal framework in international law, and examine the issues concerning why there is no single definition of the term "terrorism." This thesis will show how the behaviour of Member States has changed following the adoption of Resolution 1373 and what effect this has had. This chapter outlines the use of international

[9] UNSC Res 2178 (24 September 2014) UN Doc S/RES/2178 Threats to international peace and security caused by terrorist acts
[10] UNSC Res 1624 (14 September 2005) UN Doc S/RES/1624 Threats to international peace and security (Security Council Summit 2005)

law to tackle acts of terrorism before Resolution 1373 was adopted and sets out the scope of the thesis.

1. The institutions of the UN and international law: Tackling acts of terrorism pre-Resolution 1373

A lack of agreement over a single definition for the term "terrorism" led to the adoption of 12 separate UN counter-terrorism conventions, each of which proscribed a specific act of terrorism. Member States could not be coerced into becoming party to or implementing any of the conventions because of the Vienna Convention on the Law of Treaties.[11] Instead, they were encouraged to take action against acts of terrorism through numerous resolutions from the General Assembly, which suggested criminalising the specific acts of terrorism in the 12 pre-existing UN counter-terrorism conventions.

At this time, there was also no UN institution which was able to support the coordination of Member States national responses to acts of terrorism. The General Assembly in 1979 when it adopted a resolution on Measures to Prevent International Terrorism,[12]appealed to Member States to become party to the existing UN counter terrorism conventions, in addition to requesting that Member States to provide details of their national counter-terrorism laws. Where this was a request and not mandatory only nine states replied including the United States of America, Russia, Denmark, Germany and Sweden,[13] all of which provided responses that lacked detail on the implementation of the existing UN counter terrorism conventions.[14]

Both these situations arose from the UN Security Council's struggle to identify the perpetrators of acts of terrorism falling within the scope of its responsibility. The historical position in international law was that it regulated relations between states, but not their citizens. Therefore, when individuals started hijacking commercial aircraft in the 1960s [15] the UN Security Council's response was to urge Member States to prevent any interference with air travel. [16] The Security Council did not condemn the hijackings, because to do so

[11] Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331
[12] UNGA Res 34/145 (17 December 1979) UN Doc A/RES/34/145 at [8] and [14]
[13] Ibid 6
[14] Ibid (n12)
[15] P Wilkinson & B Jenkins, *'Aviation Terrorism and Security*, (1st Ed. Frank Cass, 1999) 32-33
[16] UNSC Res 286 (9 September 1970) UN Doc S/RES/286

would have indicated that it was potentially willing to take action. The hijackings were not identified as an act of terrorism, despite the threat to the lives of passengers on those flights, and the disruption to the flow of international air traffic. This was because these perpetrators were considered to be non-state actors and, therefore, not subjects of international law.[17] This position limited the Security Council's ability to even consider that international law could be used against acts of terrorism. It took until 1969, over a year after a commercial flight to Syria was hijacked, [18] for the Security Council to become "gravely concerned" about the hijacking of commercial aircraft.[19] It was the International Civil Aviation Organisation[20] (ICAO) that responded to the threat pose by the hijackers. The ICAO began to coordinate international aircraft security which resulted in the Convention on Offences and Certain Other Acts Committed on Board Aircraft which came into force in 1969[21] and the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft.[22]

The actions of the group the Popular Front for the Liberation of Palestine (PFLP) and the Black September group caused division amongst the Security Council, as to whether groups fell within the scope of the Council's responsibility. In 1972, the PFLP sponsored the Japanese Red Army to attack Lod airport killing twenty-nine people.[23] Two months later nine Israeli athletes were taken hostage by the Black September group at the Munich Olympics.[24] Not surprisingly the UN Security Council's response was prosaic, describing the hostage taking at the Munich Olympics as "a tense situation",[25] a phrase it used again when American Embassy officials were held hostage in Tehran in 1979. [26] At a meeting of the UN Security Council the Soviet Union insisted that that there was no basis for linking the attack at Lod airport to the events in Munich. [27] The Soviet Union supported a non-

[17] Lassa Oppenheim "The Science of International Law: Its Task and Method" (1908) 2 AJIL 313, 328
[18] Cable dated 1 September 1969 addressed to the Secretary-General by the President of the International Federation of Air Line Pilots Association, S/9428 of 3 September 1969 after a Trans World Airline Boeing 707 to Syria was hijacked https://www.un.org/unispal/document/auto-insert-198975/ accessed 25 July 2019
[19] UNSC Res 286 (9 September 1970) UN Doc S/RES/286
[20] International Civil Aviation Organisation http://www.icao.int/Pages/default.aspx accessed on 9 February 2013
[21] The Convention on Offences and Certain Other Acts Committed on Board Aircraft (signed on 14 September 1963, entered into force 4 December 1969)
[22] Convention for the Suppression of Unlawful Seizure of Aircraft (signed on 16 December 1970, entered into force 14 October 1971) 860 UNTS 105
[23] BBC ON This Day, '1972 Japanese Kill 26 at Tel Aviv Airport' recruited by the Popular Front for the Liberation of Palestine (PFLP)http://news.bbc.co.uk/onthisday/hi/dates/stories/may/29/newsid_2542000/2542263.stm accessed on 6 March 2013
[24] The Independent, Olympics Massacre: Munich- The real story, Sunday 22 January found at http://www.independent.co.uk/news/world/europe/olympics-massacre-munich--the-real-story-524011.html accessed on 10 February 2013
[25] UNSC 1661st mtg (10 September 1972) S/PV.1661
[26] UNSC Res 461 (31 December 1979) UN Doc S/RES/461 during which the Security Council's threat to use measures under Chapter VII was never fulfilled
[27] UNSC 1661st mtg (10 September 1972) S/PV.1661 49-50

aligned three-power draft resolution which made it clear that the relevant issue was an act of military intervention by Israel towards Lebanon.[28] The United States of America responded with a draft resolution that held the Black September group as non-state actors responsible for the events in Munich and highlighted the international concern over acts of terrorism.[29] Neither resolution was successful.

It was not until 1985 that the UN Security Council identified the taking of hostages as an act of terrorism.[30] This was considered a demonstration of the Council's willingness to broaden its approach, and to identify acts of terrorism committed by non-state actors as falling within the scope of its responsibility under Article 39 of the UN Charter as a threat to international peace and security:[31]

> "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

A decision made under Article 39 to identify a situation as a threat to peace could subsequently allow the UN Security Council to decide under Article 41:

> "…what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

Both Article 39 and Article 41 are measures under Chapter VII of the UN Charter which allow the UN Security Council to take action with respect to threats to peace, breaches of the peace and acts of aggression. Hence the reference in Resolution 1373 to the Security Council acting "under Chapter VII"[32] because it had identified "any act of international terrorism to be a threat to international peace and security".[33] Member States are obliged to carry out decisions of the Security Council in accordance with Article 25 of the Charter,[34]

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[28] Ibid supporters included Guinea, Somalia, Sudan, Syria, Argentina, Yugoslavia, France

[29] S/PV.1661 141 (n27)

[30] UNGA Res 34/146 (17 December 1979)

[31] Something that it would not do until 2001 when it adopted Resolution 1368 of 12 September 2001 calling all acts of terrorism a threat to international peace and security.

[32] UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373

[33] Ibid

[34] Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Provisional Measures, Order of 14 April1992, I.C.J. Reports 1992 [39]

and under Article 103 Member States obligations to the UN Charter will prevail over their obligations to any other treaty.[35]

Linked to the issue of whether non-state actors fell within the scope of the Security Council's powers, has been the identification of the PFLP and the Black September group as national liberation movements by some Member States. Supporters argue that the actions of these groups have been justified because their pursuit of self-determination is legitimate,[36] and as such they should be excluded from being defined as terrorists. The principle of self -determination is enshrined in the UN Charter[37] and some resolutions from the General Assembly.[38] Using acts of terrorism to achieve self-determination is not permitted, and a distinction has been made between acts of terrorism and acts of self-determination. Contributing to this position was a report by the General Assembly in 1972[39] which distinguished international terrorism from the legitimate use of force and revolutionary mass movements.[40] Later the same year, the General Assembly adopted a resolution that reinforced the right to self-determination and the legitimacy of struggles for national liberation movements.[41] Subsequently, three regional organisations, the African Union, the Arab League and the Organisation of Islamic Cooperation (OIC)[42] have all made a distinction between acts of terrorism and acts of self-determination in their regional conventions against acts of terrorism. Such is the strength of the distinction between acts of terrorism and acts of self-determination that it has affected the adoption of some UN counter-terrorism conventions. For example, the Terrorist Bombing Convention adopted in 1997[43] was criticised for not reflecting the complexities around self-determination, despite being the first convention to use the term "terrorism".[44] However, it did reinforce the

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[35] Ibid (n27)
[36] UNSC 1662nd mtg (10 September 1972) UN Doc S/PV.1662 of 10 September 1972 and see also S/PV.1661 of 10 September 1972
[37] Charter of the United Nations 1945, Preamble per Articles 1(2) and 55
[38] Declaration on the Granting of Independence to Colonial Countries and Peoples UNGA Res 1541 (XV) (15 December 1960); Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970, UNGA Res 2625 (XXV) (24 October 1970) and Universal realization of the right of peoples to self-determination UNGA Res 60/145 (14 February 2006)
[39] UNGA Sixth Committee (28th Session) Report of the Ad Hoc Committee on International Terrorism (2 November 1972) UN Doc A/C.6/418
[40] Ibid 10 and 11
[41] Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes UNGA Res 3034 (XXVII) (18 December 1972) UN Doc A/RES/3034 [2]
[42] The League of Arab States, Arab Convention for the Suppression of Terrorism (22 April 1998); The Organisation of Islamic Conference (OIC), Convention of the Organisation of Islamic Conference on Combating International Terrorism (1 July 1999); The Organisation of African Union Convention on the Prevention and Combating of Terrorism (1 July 1999)
[43] International Convention for the Suppression of Terrorist Bombings (adopted on 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256 (Terrorist Bombings Convention)
[44] UNGA Sixth Committee (52nd Session) Measures to Eliminate International Terrorism (2 December 1997) UN Doc A/C.6/52/SR.33

distance between criminalising acts of terrorism and *jus in bello* applicable to armed conflict in Article 19 where it excluded from its scope 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 this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention."[45]

The adoption of the Suppression of Terrorist Financing Convention 1999[46] was also subject to the debate which echoed the concerns about the need to distinguish between acts of terrorism and acts of self-determination.[47] The ongoing debate on this issue was the reason for the adoption of 12 individual UN counter-terrorism conventions. Each convention defined a prohibited act of terrorism, on the basis there was no agreement as to a single definition that bridged the distinction between acts of terrorism and acts of self-determination.[48] All six regional conventions adopted before Resolution 1373 had achieved something that the UN had been unable to, which was to provide a definition of the term "terrorism" for the purpose of each of the region's state members. Whilst a few of the regional conventions identified the implementation of the 12 pre-existing UN counter-terrorism conventions as something their state members should action,[49] prior to the adoption of Resolution 1373 the UN Security Council did not recognise the influence of the regional conventions on state members and Member States to the UN. Yet subsequently in the 2005 World Summit the UN Security Council specifically urged regional organisations to enhance the effectiveness of their counter-terrorism efforts.[50]

In the same year as the attack on Lod airport, the Secretary General requested that acts of terrorism be placed on the agenda of the General Assembly.[51] Consequently the General Assembly urged all states to adopt the 1963 Convention on Offences and Certain Other Acts

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[41] per Pakistan; [57] per Syrian Arab Republic; [81] per Jamaica

45 Terrorist Bombings Convention Article 19(2)

46 International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197

47 UNGA Sixth Committee (54th Session) Measures to Eliminate International Terrorism (18 May 2000) UN Doc A/C.6/54/SR.32 [10] per Iraq; [24] per Oman; see also A/C.6/54/SR.34 at [28] per Pakistan

48 J N Maogoto, *Battling terrorism, legal perspectives on the use of force and the war on terror*, (1st Ed Ashgate Publishing 1975) Chapter 2 53

49 The League of Arab States, Arab Convention for the Suppression of Terrorism (22 April 1998); The Organisation of Islamic Conference (OIC), Convention of the Organisation of Islamic Conference on Combating International Terrorism (1 July 1999); The Organisation of African Union Convention on the Prevention and Combating of Terrorism (1 July 1999)

50 UNGA 60th session 2005 World Summit Outcomes UN Doc A/60/L.1 (20 September 2005) at [170]

51 UNGA General Committee (199th Session) Statement made by the Secretary-General (20 September 1972) UN Doc A/8791. Add 1

Committed on Board Aircraft which came into force in 1969[52] and the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft,[53] in addition to adopting the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States.[54] The Declaration urged every state to:

> 'refrain from organising, instigating, assisting or participating in terrorist acts against another State, or in acquiescing in organised activities within its territory directed towards the commission of such acts, when such acts involve the threat or use of force.'[55]

In 1979 the General Assembly adopted the resolution on Measures to Prevent International Terrorism[56] which asked Member States to give the Secretary-General details of their national counter-terrorism laws including the ratification and implementation of the 12 pre-existing UN counter-terrorism conventions.[57] Although the General Assembly had made this request there was no mechanism to facilitate this degree of international cooperation. Where Member States had not implemented the conventions, this meant that the General Assembly did not have jurisdiction over the prohibited conduct which had been identified as an act of terrorism.

Each of the 12 pre-existing UN counter-terrorism conventions were underpinned by a principle of international law called *aut dedere aut judicare*.[58] This required states to establish jurisdiction over the acts that each convention proscribed so that domestic courts were able to prosecute perpetrators of the acts. Each convention also constituted a sufficient legal basis for granting extradition[59] by setting out minimum rules in relation to the offences defined in them. *Aut dedere aut judicare* is limited to parties to the conventions because it is established by states in national legal systems. It, therefore, required the implementation

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[52] The Convention on Offences and Certain Other Acts Committed on Board Aircraft (signed on 14 September 1963, entered into force 4 December 1969)

[53] Convention for the Suppression of Unlawful Seizure of Aircraft (signed on 16 December 1970, entered into force 14 October 1971) 860 UNTS 105

[54] UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/2625

[55] UN Doc A/RES/2625 122

[56] UNGA Res 34/145 (17 December 1979 (UN Doc A/RES/34/145

[57]Iibid 14a

[58] For example, Article 8 of the International Convention for the Suppression of Terrorist Bombings states: *The State party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of the State…"*

[59] United Nations Office on Drugs and Crime (UNODC), Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments (New York: 2006) at 443

of all the conventions by Member States in order to reduce the number of safe havens where terrorists could evade prosecution.[60] This will be discussed further in chapter 4.

Leading up to the adoption of Resolution 1373, the Security Council started to connect acts of terrorism as a threat to international peace and security. It adopted three resolutions under Chapter VII of the UN Charter which imposed economic sanctions on different states for harbouring alleged terrorists. The first resolution (Resolution 748) to issue sanctions was in response to Libya's refusal to surrender for trial the two suspected state nationals responsible for the Lockerbie bombing. [61] Lengthy investigations by the United Kingdom and the United States of America identified that that bomb had been placed on the plane by two Libyan nationals who were acting as agents of the Libyan Government. [62] On 27 November the United Kingdom and the United States issued a joint statement demanding that Libya surrender the two suspects for trial in either country.[63] Libya refused and the Security Council adopted Resolution 731 of 21 January 1992 recommending that Libya comply with the request.[64] Resolution 748 imposed significant sanctions against Libya, finding their failure to extradite the suspects contrary to the principles of the UN Charter.[65] The resolution was adopted against the backdrop of a request for Provisional Measures by the Libya,[66] asking that the United States be temporarily stopped from taking any further action against the state. Three days after the hearings on the request for provisional measures closed, the Security Council adopted Resolution 748. The ICJ confirmed the validity and binding force of this resolution.[67] It reiterated that Member States are obliged to carry out decisions of the Security Council in accordance with Article 25 and Article 103 of the Charter as described above. [68] Whilst this was progressive in terms of the Security Council broadening its approach to what constituted a threat to international peace and

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[60] A Cassese, *International Law*, (2nd Ed Oxford University Press 2005) 481

[61] UNSC Res 748 (31 March 1992) UN Doc S/RES/748

[62] M. Plachta, "The Lockerbie Case: The Role of the Security Council in Enforcing the Principles Aut Dedere Aut Judicare" EJIL (2001) Vol. 12 No. 1 125-140, 126

[63] Statement Issued by the Government of the United States on November 27, 1991, Regarding the Bombing of Pan Am 103, U.N. Doc. S/23308 (1991)

[64] UNSC Res 731 (21 January 1992) UN Doc S/RES/731

[65] UN Doc S/RES/748 (n53). The sanctions included measures to limit the movement, use and refurbishing of Libyan aircraft and to reduce Libyan diplomatic staff posted abroad

[66] Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya *v.* United Kingdom) request for the indication of provisional measures Order of 14 April 1992 ICJ Reports 1993, p3; Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya *v.* United Kingdom) Request for Indication of Provisional Measures Order of 14 April 1992 ICJ Reports 1992

[67] Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya *v.* United Kingdom) Request for Indication of Provisional Measures Order of 14 April 1992, ICJ Reports 1992 at [37]

[68] Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Provisional Measures, Order of 14 April1992, I.C.J. Reports 1992, [39]

security, it was evident that the Security Council remained cautious where non-state actors were concerned. It did not identify the Lockerbie bombing as a threat to international peace and security, it identified the failure of the Libyan government to respond fully and effectively to the requests in Resolution 731 as constituting a threat to international peace and security.[69] In 1996, the Security Council used sanctions against Sudan following the attempted assassination of Egypt's President.[70] The resolution supported the request made by the Organisation of African Unity to extradite the three suspects,[71] reiterating that Sudan's failure to comply was a threat to international peace and security.[72] The Security Council did not identify the assassination as a threat to international peace and security. The Council also used mandatory sanctions in 1998 against Afghanistan[73] albeit not as successfully. Member States had become concerned about the deterioration of the humanitarian situation, particularly for women and children,[74] and also that state was hosting terrorist training camps run by the Taliban.[75] Where Afghanistan had ignored the numerous resolutions adopted previously, the Security Council used Chapter VII to issue sanctions against the state.[76] None of the resolutions against Libya, Sudan or Afghanistan identified the relevant act of terrorism as a threat to international peace and security within the context of Article 39. This is because to do so would have been considered by the permanent members of the Security Council as interfering with the internal affairs of the states.[77] All three resolutions, however, did contain the following statement:

> "Convinced that the suppression of acts of international terrorism is essential for the maintenance of international peace and security"[78]

Not only did this hint to the possibility of the Security Council considering an act of international terrorism to fall within the remit of Chapter VII, but it also suggests that the Security Council's position towards the12 pre-existing UN counter-terrorism conventions was to encourage their global implementation.

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[69] UN Doc S/RES/748 (n53)
[70] UNSC Res 1044 (16 August 1966) UN Doc S/RES 1044
[71] Ibid 4a
[72] UNSC Res 1054 (26 April 1996) UN Doc S/RES/1054
[73] UNSC Res 1333 (19 December 2000) UN Doc S/RES/1333 at paragraphs 2 and 3
[74] UNSC 4051st mtg (15 October 1999) S/PV.4051
[75] Ibid 2 and 3
[76] UNSC Res 1189 (13 August 1998) UN Doc S/RES/1189; UNSC Res 1193 (28 August 1998) UN Doc S/RES/1193 and UNSC Res 1214 (8 December 1998) UN Doc S/RES/ 1214
[77] UNSC 3145th mtg (31 December 1992) S/PV.3145 at 17
[78] UNSC Res 748 (31 March 1992) UN Doc S/RES/748; UNSC Res 1044 (16 August 1966) UN Doc S/RES 1044; UNSC Res 1333 (19 December 2000) UN Doc S/RES/1333

1.1 The adoption of UN Security Council Resolution 1373

By virtue of the use of Chapter VII of the UN Charter to adopt Resolution 1373, Member States became obliged to implement the measures in the first two paragraphs.[79] The resolution was not prescriptive as to how it should be implemented. The Security Council declared that:

> "acts, methods and practices of terrorism [were] contrary to the purposes and principles of the United Nations [and] that knowingly financing, planning and inciting terrorist acts [were] also contrary to the purposes and principles of the United Nations".[80]

The Security Council decided that all Member States should "take the necessary steps to prevent the commission of terrorist acts",[81] but it could not oblige Member States to become party to or implement any convention by virtue of the principle *pacta sunt servanda* set out in the Vienna Convention of the Law of Treaties.[82] Therefore it called upon all states to "become parties as soon as possible to the relevant international conventions and protocols relating to terrorism".[83] The resolution did not define the term "terrorism,"[84] but it did reinforce the suppression of acts of terrorism rather than explicitly identifying any offences on the basis the 12 pre-existing UN counter-terrorism conventions already did this. It also emphasised measures to prevent the financing and funding of acts of terrorism. The resolution established the CTC whose role was to monitor its implementation through the process of Member States submitting reports.[85] The CTED was subsequently set up to assist the work of the CTC and coordinate the process of monitoring Resolution 1373.[86] Member States were required to submit their first report within three months of the resolution being adopted[87] to ensure that they were not ignoring their responsibility to implement it. Regional organisations were also required to promote the implementation of the resolution amongst

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[79] Member States were obliged to carry out decisions of the Security Council in accordance with Article 25 of the Charter, and that under Article 103, the Charter will prevail per the decision in Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya *v.* United Kingdom) request for indication of provisional measures Order of 14 April 1992 ICJ Reports 1992 [39]

[80] UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373 at 5

[81] Ibid 2b

[82] Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

[83] UN Doc S/RES/1373 (n24) 3d

[84] United Nations Office on Drugs and Crime (UNODC), 'Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments' (New York 2006) page 6 paragraph 9

[85] UN Doc S/RES/1373 (n24) 6, which established the Counter-terrorism Committee

[86] UNSC RES 1535 (26 March 2004) UN Doc S/RES/1535

[87] UNSC Annex to the letter dated 19 October 2001 from the Chairman of the Counter-Terrorism Committee addressed to the President of the Security Council (19 October 2001) UN Doc S/2001/986 for the first 90 ninety- day period. States were asked to submit their reports by 27 December 2001.

their state members in order to "strengthen a global response".[88] Working alongside the CTC and CTED, is the Financial Action Task Force (FATF) and its regional associate bodies, which is responsible for promoting the effective implementation of "legal, regulatory and operational measures for combating terrorist financing and other related threats to the integrity of the international financial system".[89] The FATF supports Member States implementation of the Suppression of Terrorist Financing Convention.[90]

1.1.1 The War on Terror

Following the attacks of 9/11, President George W. Bush launched his "war on terror". It was described as war where "known political boundaries, which previously existed in traditional wars [did] not exist…"[91] This was not a rhetorical device, or the use of a metaphor to inspire a response in the same way that President Reagan had done when he initiated the war on drugs.[92] The administration was asserting the authority to use the legal rights that become available when a country is at war and under armed attack. The characterisation of the attacks as a war supported the use of military force. The United States of America invoked Article 51 of the UN Charter to launch Operation Enduring Freedom on 7 October 2001, with the aim of disrupting the use of Afghanistan as a base for terrorists.[93] The United Kingdom was a partner in the military operation,[94] and both states described their actions in letters to the Security Council as pre-emptive self-defence, action which had previously been condemned by states.[95] Resolution 1373 recognised the "inherent right of individual or collective self- defence".[96] It did not expressly authorise any state to act by way of self-defence because to do so required an IAC within the meaning of Article 2 of the Geneva Conventions.[97] In accordance with International Humanitarian

[88] UN Doc S/RES/1373 (n24) 4
[89] Financial Action Task Force https://www.fatf-gafi.org/about/ accessed on 16 June 2019
[90] Ibid
[91] Ari Fleischer, 'Press Gaggle. Aboard Air Force One' 5 November 2002 found at http://www.presidency.ucsb.edu/ws/index.php?pid=47444 accessed on 26 August 2016
[92] Radio Address to the Nation on Economic Growth and the War on Drugs, 2 Pub. Papers 1310, 1311 Oct. 8, 1988 in S Lee, Intervention, Terrorism and Torture: Contemporary Challenges to Just War Theory, (1st Ed, Springer 2007) at p.151
[93] UNSC Letter dated 7 October 2001 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (7 October 2001) UN Doc S/2001/946
[94] UNSC Letter dated 7 October 2001 from the Chargé d'affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (7 October 2001) UN Doc S/2001/947
[95] *Guyana* v *Suriname*, Permanent Court of Arbitration, Award of Arbitral Tribunal, 17 September 2007 at 143 onwards at http://www.pca-cpa.org/showpage.asp?pag_id=1147 accessed on 5 December 2012
[96] UN Doc S/RES/1373 (n24)
[97] International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287 https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/9861b8c2f0e83ed3c1256403003fb8c5/c5031f972dd7e216c12563cd0051b998 accessed on 3 November 2018

Law (IHL) an International Armed Conflict (IAC) can only be between two or more states.[98] Armed groups may act under the authority of a state, but their conduct must be attributable to that state as set out by the International Court of Justice in the case of Nicaragua.[99] The Court considered state assistance to "rebels in the form of the provision of weapons or logistical or other support" would not be included in the concept of an armed attack.[100] Whilst multiple allegations were made against the Taliban for harbouring and supporting Al-Qaeda, there was no case made that Afghanistan had legal responsibility for the attacks.[101] There was also no evidence put forward of the Taliban's control over Al-Qaeda, or none that would amount to that set out in the case of *Nicaragua.*[102] It is therefore questionable as to whether there was an IAC because the necessary standards had not been met and neither were they met for the requirements of a non-international armed conflict (NIAC).[103] The "war on terror" is outside the scope of this thesis on the basis that its focus is on acts of terrorism as criminal acts- a premise which is endorsed by the 12 pre-existing UN counter-terrorism conventions- as opposed to acts of terrorism as an act of war.[104] The 12 pre-existing UN counter terrorism conventions encourage a national response rooted in criminal law where perpetrators can be prosecuted and punished.

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[98] Ibid

[99] "The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to" an actual armed attack conducted by regular forces. "
The Court considered state assistance to "rebels in the form of the provision of weapons or logistical or other support" *Military and paramilitary activities in and against Nicaragua* (*Nicaragua* v *United States of America*) Merits ICJ Reports 17 June 1986 at paragraph 191 where the court accepted as the legal authority, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970, UNGA Res 2625 (XXV) (24 October 1970)

[100] *Military and paramilitary activities in and against Nicaragua* (*Nicaragua* v *United States of America*) Merits ICJ Reports 17 June 1986 [195]

[101] See The Guardian 'Tony Blair, Attack on Afghanistan' 7 October 2001 which states, "these attacks were carried out by the al-Qaida network headed by Osama Bin Laden. Equally, it is clear that they are harboured and supported by the Taliban regime inside Afghanistan." See also Operation Enduring Freedom and the Conflict in Afghanistan"
https://www.theguardian.com/world/2001/oct/07/afghanistan.terrorism11 accessed on 20 August 2016
See also 'Operation Enduring Freedom and the Conflict in Afghanistan' House of Commons Research paper 01/81 (31 October 2001) at 10-12 references are made to the Taliban regime supporting, or harbouring al-Qaeda
https://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP01-81 accessed on 3 November 2018

[102] *Military and paramilitary activities in and against Nicaragua* (*Nicaragua* v *United States of America*) Merits ICJ Reports 17 June 1986 at [191] where the court accepted as the legal authority, where the court accepted as the legal authority, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970, UNGA Res 2625 (XXV) (24 October 1970).

[103] Article3 common to the Geneva Conventions I-IV and Protocol II apply to non-international armed conflicts. The ICTY in the case of *Prosecutor v Dusko Tadic; IT-94-1, ICTY, Decisions of the Appeals Chamber on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October, 1995*, [70] stated that the application of Protocol II applied only when there was 'protracted armed violence'. UNSC 'Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General Pursuant to Security Council Resolution 1564 of 18 September 2004' (25 January 2005) endorsed the judgment in *Tadic* and stated that the three requirements for a non -international armed conflict were: There must be organised groups fighting against the central authorities; these organised groups must have control over parts of the territory; fighting must be protracted. Found at
http://www.un.org/news/dh/sudan/com_inq_darfur.pdf accessed on 2 November 2016

[104] For more on this see Acharya Upenda D, War on Terror as Terror Wars: The Problem in Defining Terrorism, 37 Denv. J. Int'l L. & Pol'y 653 2008-2009, 660

1.1.2 The Draft UN Comprehensive Convention on International Terrorism

Since 1996 Member States have been in negotiations to develop a comprehensive convention on international terrorism. The idea, proposed by India was to adopt a comprehensive legal instrument to deal with acts of terrorism, which would replicate the elements of the existing UN counter-terrorism conventions, to provide:

> "an umbrella convention, which will be a comprehensive, binding international legal instrument establishing universal jurisdiction over and criminality of terrorist activities and Offenders".[105]

India identified the need for international cooperation to:

> "…prevent and combat terrorism [which] arises from cross-border support to terrorist activities. Increase in the speed of communications has added to the complexity of the problem. Often acts of terrorism are planned in one country and executed in another State where the act is committed. The consequence of terrorist actions spills across international borders…"[106]

The proposal sought to:

> "…give effect to the principle of "prosecute or extradite". This is already included in the resolution on "Measures to eliminate international terrorism". It must be implemented in practice".[107]

The General Assembly established the Ad Hoc Committee in December 1996 with the mandate to further develop "a comprehensive legal framework of conventions dealing with international terrorism".[108] India's initial draft[109] was used as a basis for Ad Hoc Committee's activity.[110] The Ad Hoc Committee has yet to conclude the convention, because one of the outstanding issues concerns the definition of the term "terrorism",[111] specifically the distinction between acts of terrorism and acts of self-determination. This remains the central issue that is preventing the convention being finalised and adopted. This will be discussed in more detail in chapter 6.

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[105] UNGA Report of the Secretary-General "Measures to Eliminate International Terrorism" (25 July 1994) UN Doc A/49/257 per India's reply 27 June 1994 at [12]

[106] Ibid (n105)

[107] Ibid (n105)

[108] UNGA Res 55/210 Measures to Eliminate International Terrorism (17 December 1996) UN Doc A/Res/55/2010

[109] UNGA Sixth Committee (55th Session) Draft comprehensive convention on international terrorism. Working document submitted by India (28 August 2000) UN Doc A/C.6/55/1

[110] UNGA Res 55/158 (30 January 2001) UN Doc A/Res/55/158

[111] UNGA Report of the Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December 1996 (16th Session) (8-12 April 2013) UN Doc A/68/37. The notion of state terrorism including acts committed by the military forces of States were also an issue preventing the conclusion of the definition of the term terrorism (at 24)

Chapter 2: Scholarly Literature Review and Research Questions

2. Introduction

There is a significant amount of literature which examines both Resolution 1373 and the use of international law in tackling acts of terrorism. Initially it is necessary to understand what the literature says about the scope of the Security Council's powers in terms of placing obligations on Member States in particular, the perception that when it adopted the resolution its actions were legislative. It will also be necessary to review the existing literature to determine what has already been said about Member States behaviour in response to implementing Resolution 1373. Linked to the implementation of Resolution 1373 is the language that it used. Understanding what the literature says about the nature of the obligations it provided will also assist in understanding why the resolution did not provide the much-coveted single definition of the term "terrorism". It will be helpful to understand why the existing literature has focused on the problems with not having a single definition of the term "terrorism". This will inform how the phrase is used in this thesis and what the accepted terminology will be. Of fundamental importance to the overall thesis is the understanding of what scholars consider forms an international legal framework, and how this has been used to describe the situation both before and after the adoption of Resolution 1373. Reviewing the literature in these areas will be essential to understanding the arguments that have already been made and it will help to identify not only common themes but also gaps in the literature.

2.1 Resolution 1373: The use of Chapter VII

There is a body of literature that questions whether the Security Council acted within its remit when it adopted Resolution 1373 under Chapter VII, calling its actions legislative. Erika De Wet [1] considered the legality of the resolution as being rooted in the interpretation of a "threat to peace". In her examination of the use of Chapter VII she argued that the UN Security Council had acted beyond the scope of its powers because it did not identify a specific threat to international peace and security under Article 39 before taking action. Examples of specific threats that were used include situations that led to the sanction measures adopted against Libya and Sudan, and the listing process under Resolution 1267 in 1999 which initially designated the Taliban a terrorist organisation and developed a list

[1] Erika De Wet, *The chapter VII powers of the United Nations Security Council*, (1st Ed, Hart 2004)

of associated people and entities.[2] Both Erika De Wet and Ian Johnstone[3] make the point that decisions of the Security Council are not subject to judicial review, despite the ICJ hinting that it may assert such a power.[4] An alternative position to consider is that in adopting Resolution 1373, the Security Council unilaterally imposed treaty obligations by way of adopting the resolution under Chapter VII.[5] This was the position considered when the Security Council adopted Resolution 1757 which established a Special Tribunal for Lebanon.[6] The Tribunal however, held that the resolution integrated the provisions of draft agreements negotiated between the UN and Lebanon[7] and did not unilaterally impose treaty obligations. An examination of whether this is analogous with Resolution 1373 is outside the scope of this thesis, but Ian Johnstone[8] countered this position, suggesting that what constituted a threat to peace had been redefined by the Security Council. In addition, Mirko Sossai[9] found that the Security Council in adopting Resolution 1373 had demonstrated that international terrorism could destabilise the world order, which was a threat that the Council was required to prevent under Chapter VII. The idea that the UN Charter is a document that has the capacity to evolve to deal with new threats to the international community was put forward by David Malone[10] and Bruno Simma. [11] Matthew Happold[12] took a similar approach to De Wet and considered that in adopting the resolution, the Security Council had gone too far in expanding its interpretation of what constituted an international threat to peace. He made the point that in doing this the Security Council has eroded state sovereignty by interfering with a role that Member States reserve for themselves which is to instigate legal obligations for their citizens.[13] This position draws upon the past practice of the Security Council however as template for its future actions so when it started expanding the remit of its powers it was accused of applying its powers excessively. Some scholars have

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[2] UNSC Res 1267 (15 October 1999) UN Doc S/RES/1267

[3] I. Johnstone 'Legislation and Adjudication in the UN Security Council: Bringing Down and Deliberative Deficit',[3] 102 AJIL 275

[4] Cases referred to include Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie, Preliminary Objections, 1998 ICJ REP. 115 (Feb. 27); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), Preliminary Objections, 1996 ICJ REP. 595

[5] B. Fassbender, "Reflections on the International Legality of the Special Tribunal for Lebanon" *Journal of International Criminal Justice* 5 (2007), 1091-1105

[6] UNSC Res 1757 (30 May 2007) UN Doc S/RES/1757

[7] *Prosecutor* v *Ayyash et al* February 2013 STL-11-01/I/TC

[8] Johnstone (n3)

[9] Mirko Sossai, UN SC Res 1373 (2001) and International Law Making: A Transformation in the Nature of the Legal Obligations for the Fight against Terrorism? Paper presented at the Agora on Terrorism and International Law, Inaugural Conference of the European Society of International Law, Florence, 14 May 2004

[10] D Malone, *The UN Security Council: From the Cold War to the 21st Century* (1st Ed Lynne Rienner 2004) chapter 2

[11] Frowein J.A and Kirsch N, "Chapter VII Action with respect to Threats to the Peace and Breaches of the Peace, and Act of Aggression" in B Simma, *The Charter of the United Nations: A Commentary,* (3rd Ed OUP 2012)

[12] M Happold, 'Security Council 1373 and the Constitution of the United Nations', (2003) 16 LJIL at 600

[13] Ibid 607-610

referred to Resolution 1373 as international legislation because of the "general and abstract character of the obligations imposed."[14] José E. Álvarez called it "anti-terrorism legislation." [15] The description of the resolution in this way positioned the Security Council as the legislature or "world legislator."[16] Both Eric Rosand and Luis M. Hinojosa Martínez described the actions of the Security Council in this way, but found this use of Chapter VII to adopt Resolution 1373 to be innovative rather than excessive.[17] Eric Rosand[18] referred to the "widely accepted definition of legislation in the context of the United Nations" as having three characteristics: 1) it must be unilateral in form, 2) it must create or modify some element of a legal norm, and 3) the legal norm in question must be general in nature and capable of repeated application over time.

Examining whether Resolution 1373 is legislation is beyond the scope of this research (referred to in the limitations later in this chapter), but this thesis will reject the premise that in adopting the resolution the Security Council acted as legislature. There is a risk in drawing an analogy with domestic systems in terms of the legislature, executive and judiciary. Any analogy will inevitably fail because the perfect "similitude between domestic and international institutions or regimes can never be achieved."[19] There is no perfect fit for the Security Council at a domestic level where it has said to have acted as legislator, judiciary and executive.[20] Another example of the fit being imperfect,[21] is that at a domestic level the constituents of a state are normally the recipients of any action, yet the actions of the Security Council, whilst traditionally directed at states have also been targeted at individuals[22] or groups as discussed in chapter 1. Furthermore, scholarly literature that specifically examines global counter terrorism, considers the resolution to be state centred.[23] The premise arising from this is that UN adopted a supportive role and the states are the

[14] S. Talmon "The Security Council as World Legislature" (2005) 99 The American Journal of International Law 175 at 176 see also Giulio Teofilatto PhD thesis: La Funzione "legislativa" del consiglio di sicurezza delle nazioni unite" 2017-18

[15] José E. Álvarez (2009) Derecho internacional contemporáneo: ¿el 'imperio de la ley' o la 'ley del imperio'? No. 24 of the American University International Law Review, pp. 811-842

[16] K. Dicke (2001) "Weltgesetzgeber Sicherheitsrat." *Vereinte Nationen* 5.2001163-167.

[17] Paul C Szasz, 'The Security Council starts legislating' (2002) 96 A.J.I.L 901 at 904; E Rosand does the same in 'The Security Council as 'Global Legislator': Ultra Vires or Ultra Innovative?' (2005) Int'l L.J. 542 at 548; L M H Martinez, 'The legislative role of the Security Council in its fight against terrorism: legal, political and practical limits', (2008) I.C.L.Q. 333

[18] Eric Rosand, 'The Security Council as Global Legislator: Ultra Vires or Ultra Innovative' (2005) 28 Fordham Int'l LJ 542

[19] Devon Whittle "The Limits of Legality and the United Nations Security Council: Applying the Extra- Legal Measures Model to Chapter VII Action*" EJIL* (2015) Vol. 26 No. 3, 671–698, 684

[20] Keith Harper, 'Does the United Nations Security Council Have the Competence to Act as Court and Legislature?', 27 *New York University Journal of International Law and Politics* (1995) 103, at 107–108, 126; Bjorn Elberling, 'The Ultra Vires Character of Legislative Action by the Security Council', 2 *International Organizations Law Review* (*IOLR*) (2005) 337 at 348

[21] Ibid (n19) 689

[22] UNSC Res 1267 (15 October 1999) UN Doc S/RES/1267

[23] W. B Messmer and C. Yordan, "The Origins of United Nations' Counter-Terrorism System" (2010) HAOL, Núm. 22 173-182 at 179

primary actors in the global struggle against terrorism.[24] Literature that identifies the Security Council's actions as progressive, does so in the context that the determination of what constituted a threat to international peace and security has been able to evolve. This indicates that Resolution 1373 is underpinned by the notion of global cooperation not global enforcement.[25]

2.2 Resolution 1373: The Language

The complex nature of the relationship between the paragraphs of Resolution 1373 can be revealed through an examination of the term "calls upon," on the basis that "decides" denotes a mandatory obligation by virtue of Article 25 of the UN Charter.[26] James D Fry[27] argues that "calls upon" can be interpreted to be mandatory depending on the context in which it is used. This serves to demonstrate how necessary it is to consider the content and intent of the resolution in which it is used, to determine how it should be interpreted, which will be done in Chapter 5. The notion that despite some resolutions being non-binding the carefully negotiated contents could have normative significance, was put forward by Malcolm Evans.[28] Rosalyn Higgins also acknowledges that legal consequences can flow from acts which are not in the formal sense binding.[29] Both these points will be explored in Chapter 5 concerning paragraph three of the resolution.

2.2.1 Resolution 1373: Its implementation

Whilst the language used in the resolution should be examined, the notion of why Resolution 1373 has been implemented should also be considered. The "Baxter Paradox" named after the late Professor R. R. Baxter identified that, "…as the number of parties to a treaty increases it becomes more difficult to demonstrate what is the state of customary international law *dehors* the treaty."[30] Thus, where there is a widely ratified treaty it is harder to obtain evidence of *opinio juris* for the conduct of states because the practice flows

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[24] Ibid (n23) 174

[25] D Malone, *The UN Security Council: From the Cold War to the 21st Century* (1st Ed Lynne Rienner 2004); Mirko Sossai, UN SC Res 1373 (2001) and International Law Making: A Transformation in the Nature of the Legal Obligations for the Fight against Terrorism? Paper presented at the Agora on Terrorism and International Law, Inaugural Conference of the European Society of International Law, Florence, 14 May 2004; Frowein J.A and Kirsch N, "Chapter VII Action with respect to Threats to the Peace and Breaches of the Peace, and Act of Aggression" in B Simma, *The Charter of the United Nations: A Commentary,* (3rd Ed OUP 2012)

[26] Article 25 "the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter"

[27] James D Fry, 'Dionysian Disarmament: Security Council WMD Coercive Disarmament Measures and Their Legal Implications' (2008) 29 Mich J Intl 229-32

[28] Malcolm D Evans *International Law* (4th Ed, Oxford University Press 2014) 120

[29] Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford University Press, 1995) 24

[30] R.R. Baxter, *Treaties and Custom*, 129 Recueil Des Cours 64 (1970)

from the obligation in the treaty, and not because the states have the conviction to follow a certain practice as if it were law.[31] The paradox is relevant to the discussion here on two points; first because of the complex relationship that exists between all the paragraphs of Resolution 1373 as discussed above, and second because one of the arguments that underpins the core question of this thesis is that the behaviour of Member States has changed following the adoption of Resolution 1373 in terms of the suppression and prevention of acts of terrorism. Such a premise could be undermined by the Baxter paradox.

In addressing the first point, as Chapter 5 will explain paragraph three of Resolution 1373 could not use "decides" because it would be mandating states to become party to and ratify treaties which goes against the principle *pacta sunt servanda* set out in the Vienna Convention of the Law of Treaties (more on this in Chapter 5).[32] It is worth noting however, that the latter convention only applies to those states who are party to it, despite some literature suggesting it has been accepted as Customary International Law.[33] *Pacta sunt servanda* means that a state can be "legally bound only by its own will, and hence by its consent to the norms regulating its behaviour".[34] This voluntary approach to international law was initially set down in the *Lotus* case in 1927 which stated:

> "The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between those co-existing independent communities or with a view to the achievement of common aims."[35]

Therefore, despite the Vienna Convention on the Law of Treaties only applying to states that are party to it, the voluntarist approach set down in the *Lotus* case, means that where Member States changed their behaviour after Resolution 1373, they did so despite remaining free to act as they wish.

Before the attacks of 9/11, Member States were not becoming party to and ratifying the 12 pre-existing UN counter terrorism conventions. The adoption of Resolution 1373 moved the UN away from producing conventions that dealt with some of the symptoms of acts of

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[31] J L Brierly, *The Law of Nations*, (6th Ed Oxford 1963) 59

[32] Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

[33] Anthony Aust, (June 2006) Vienna Convention on the Law of Treaties 1969 Max Planck Encyclopedia; Eric Posner & Jack L. Goldsmith, "A Theory of Customary International Law," 66 *University of Chicago Law Review* 1113 (1999)

[34] Hans Kelsen, *Principles of International Law* (2nd Ed, Holt, Rinehart & Winston 1966) 447

[35] PCIJ Rep Judgment of 7 September 1927 Series A, No10 page 18

terrorism, to an action-orientated approach that had not been seen before. It provided a "positive inducement" towards the implementation of the 12 pre-existing UN counter terrorism conventions,[36] although part of the motivation for compliance from with the resolution from states could also be attributed to the severity of the attacks of 9/11. David Victor put forward the notion that states seem more willing to adopt clear and ambitious commitments when they are in non-binding form.[37] This was the idea which transpired in paragraphs 3(d) and 3(e) and, coupled with the process of reporting to the CTC supports the evidence that Resolution 1373 has driven the implementation and ratification of the 12 pre-existing UN counter terrorism conventions. The behaviour of Member States in adopting new legislation, as well as changing existing legislation can be distinguished from the "Baxter Paradox." Member States were implementing Resolution 1373, and not simply widely ratifying treaties and implementing the obligations contained in them, otherwise they would have been doing this before the adoption of the resolution. This means that without Resolution 1373 it is unlikely that the behaviour of Member States would have changed i.e. it is unlikely they would have sought to ratify and implement the 12 pre-existing UN counter terrorism conventions without such a "positive inducement."

Other literature which discusses the implementation of Resolution 1373 highlights how Member States cooperation in implementing it is a limitation to the Security Council's use of its powers. Put simply Member States would not cooperate if they did not accept the legitimacy of the Council's actions.[38] Paul Szasz[39] and Stefan Talman[40] both make the point that Resolution 1373 could only be successful if it reflected the general will of Member States to ensure full cooperation in implementation.[41] Literature on the implementation of Resolution 1373 has focused on either individual Member States or regional organisations. Victor Ramraj, Michael Hor, Kent Roach and George Williams[42] cover an extensive amount of information about domestic, regional and international responses to acts of terrorism. The book compensates for what the authors describe as the focus having been on Anglo-

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[36] BBC On The Record Broadcast 28.10.01 http://www.bbc.co.uk/otr/intext/20011028_film_2.html accessed on 10 April 2020
[37] David G. Victor, Proceedings of the Annual Meeting, *American Society of International Law* Vol. 91, Implementation, Compliance and Effectiveness (April 9-12, 1997) pp. 241-250
[38] L M H Martinez, 'The legislative role of the Security Council in its fight against terrorism: legal, political and practical limits', (2008) I.C.L.Q. 333
[39] P. Szasz, 'The Security Council starts legislating' (2002) 96 A.J.I.L 901 at 904
[40] S. Talman, 'The Security Council as World Legislation' (2005) A.J.I.L 175 at 189
[41] E Rosand 'The Security Council as 'Global Legislator': Ultra Vires or Ultra Innovative?' (2005) Int'l L.J. 542 at 548
[42] V Ramraj, M Hor M, K Roach and G Williams *Global Anti-terrorism Law and Policy* (2nd Ed Cambridge University Press 2005)

American and European perspectives in existing English literature,[43] and thus they examine countries and regions in the Africa, Asia and the Middle East taking a comparative approach.[44] What they do not do however, is examine the implementation of Resolution 1373 in the context of an international legal framework, nor do they examine whether state behaviour has changed since the adoption of Resolution 1373 towards the implementation of the 12 pre-existing UN counter-terrorism conventions. Scholars that have focused on individual states responses include Kent Roach[45] who examined the introduction of a broad range of counter-terrorism measures in Canada post 9/11 including those that derived from Resolution 1373. The key argument Roach puts forward is that the response by Canada to the attacks of 9/11, including military responses, have been rooted too much in criminal law, which he argues aligns itself with the approach taken by the United States of America.[46] In later literature Roach[47] focuses more on the implementation of Resolution 1373 in a number of countries. He looks at responses from the United States of America, the United Kingdom, Canada and Australia, and compares them to states that have suffered more in terms of terrorist attacks including Egypt, Syria, Israel, Singapore and Indonesia. Roach identifies common themes across all the countries, and shows how the UN has promoted new counter-terrorism laws without defining the term "terrorism" and without reminding Member States to respect human rights when creating new counter-terrorism laws.[48] In contrast, Katja Samuel[49] explores the Organisation of Islamic Cooperation's law-making practices in the context of implementing UN counter-terrorism law. It is of particular interest because it analyses the relationship between the OIC and the UN draft comprehensive convention on international terrorism. This will be discussed further in chapter 4. Jimmy Gurule[50] examined the implementation of Resolution 1373 in the context of what it had achieved for asset freezing. Resolution 1267, mentioned above,[51] required Member States to report to the Sanctions Committee that oversaw the implementation of the resolution on the action they had taken against the named individuals, as well as putting forward names of people who should have their assets frozen. Gurule makes the point that prior to

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[43] Some of the literature that has focused on Anglo-American and European counter-terrorism law includes; K Roach, *September 11: Consequences for Canada*, (1st Ed, McGill: Queens University Press 2003); K Roach, *The 9/11 Effect Comparative Counter-terrorism*, (1st Ed, Cambridge University Press 2011).
[44] Ramraj (n42)
[45] K Roach, *September 11: Consequences for Canada*, (1st Ed, McGill: Queens University Press 2003)
[46] Ibid 196
[47] K Roach, *The 9/11 Effect Comparative Counter-terrorism*, (1st Ed, Cambridge University Press 2011)
[48] Ibid
[49] Katja Samuel, *The OIC, the UN and Counter-terrorism Law Making*, (1st Ed, Hart Publishing 2013)
[50] Jimmy Gurule, *Unfunding Terror. The Legal Response to the Financing of Global Terrorism*, (1st Ed, Edward Elgar Publishing 2008)
[51] UNSC Res 1267 (15 October 1999) UN Doc S/RES/1267

Resolution 1373 Member States had not been submitting names to the Sanctions Committee, but after the resolution there was a surge in names being put forward, indicating increased cooperation.[52]

This is relevant to Resolution 1373 when determining whether Member States were obliged to implement the 12 pre-existing UN counter-terrorism conventions, an issue that will be examined in chapter 5.

2.2.2 Resolution 1373: In summary

The literature that identified the use of Chapter VII to adopt Resolution 1373 as excessive has supported the perception that the Security Council acted beyond its remit of maintaining international peace and security. The notion that Resolution 1373 is legislation does not correspond with the remit given to the Security Council or the role of the United Nations more generally, which was not set up to be a global authority over Member States. The literature has demonstrated how the Security Council's understanding of what constitutes a threat to peace has had to evolve to take into account threats which were not established at the time the UN Charter was created. The idea that Member States legitimise Resolution 1373 by accepting and implementing it needs to be explored further, specifically, in terms of whether it underpins the concept that Resolution 1373 has formed the basis for a developing legal framework. This has not yet been done in the current literature. Two questions remain unanswered; First if Resolution 1373 cannot be characterised as legislation, then how should it be characterised? This will be addressed in chapter 4. Second, to what extent is the nature of Resolution 1373 mandatory? This will be examined in chapter 5.

2.3 Defining the Term "Terrorism"

International law is concerned with acts of terrorism which affect international relations and which therefore amount to international terrorism. National acts of terrorism i.e. those acts committed in a single state and where the perpetrator is found in the territory of that state, are left to the exclusive control of the state in which they occur. Discussions that refer to a single definition of the term terrorism do so in the context of international law.

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[52] Gurule (n50)

Resolution 1373 did not provide a definition for the term "terrorism" so it is necessary to understand what has been written about the merits or otherwise of defining this term for the purpose of international law. Two phrases have been adopted in the literature: "acts of terrorism" and "terrorism". The former derives from the UN counter-terrorism conventions which Gilbert Guillaume[53] argued were sufficient because each sought to criminalise and define a specific act of terrorism. Guillaume acknowledged that lack of implementation of all the conventions had left a void in the capability of all Member States to deal effectively with those who commit acts of terrorism.[54] He described Resolution 1373 as a remedy to this situation.[55] Other literature focuses on the difficulty in adopting a single definition of the term "terrorism". Bruce Hoffman suggested that if the Security Council had sought to include a single definition then it would have challenged the distinction between acts of terrorism and acts of self-determination adopted by some states and some regions.[56] The literature highlighting the relationship between acts of self-determination and a single definition of the term "terrorism" is discussed below. In this context the drive to define the term "terrorism" has been described by Eric Rosand as politically, rather than legally, motivated.[57] Ben Saul[58] made the point that "terrorism" can be defined in a number of ways including at a domestic level; at a regional level; in UN conventions and through custom. Saul's focus was on the underlying policy question about whether "terrorism" should be defined for the purpose of creating a separate international crime. Saul blames the absence of a single definition as being responsible for the overreach in some national laws, where there is limited precision.[59] Katja Samuel, Nigel D White, Ben Saul and Jelen Pejic all highlight Resolution 1566 adopted in 2004, as providing a definition of the term "terrorism."[60] They were all in agreement however, that this definition was both too late to influence Member States many of which had already defined the term "terrorism," and that at best it was a working definition to which Member States did not have to confirm.[61] There is a general consensus in the literature that there is no customary rule in relation to

[53] G. Guillaume, 'Terrorism and International Law' (2004) International & Comparative Law Quarterly 53(3) 543
[54] Ibid 541-542
[55] Ibid (n53) 543
[56] B Hoffman, *Inside terrorism*, (1st Ed, Columbria University Press 2006)
[57] E Rosand, Security Council Resolution 1373, the Counter-terrorism Committee and the Fight Against Terrorism, (2003) 97 AJIL
[58] B Saul, *Defining terrorism in international law* (1st Ed, OUP 2006)
[59] Ibid 57-59
[60] Katja LH Samuel, The Rule of Law Framework and its Lacuane: Normative, Interpretative and/or Policy Created chapter 1, 18: Nigel D White, The United Nations and Counter-Terrorism: Multi-Lateral and Executive Law Making chapter 3, 71-2: B Saul, Criminality and Terrorism chapter 6, 145: J Pejic, Armed Conflict and Terrorism: There is a (Big) Difference chapter 7, 195 all in Salinas de Frias et al, *Counter-terrorism: International Law and Practice*, (1st Ed, OUP 2012)
[61] Ibid

the term "terrorism" however, Antonio Cassese[62] provided an alternative to this position, which will be examined further as part of chapter 4. Rosalyn Higgins and Maurice Flory[63] concluded that terrorism is a term with no legal meaning, but one which has become a convenient way of alluding to other activities which are unlawful, and which share some common elements. Maurice Flory placed emphasis on the need for a single definition in order to move forward, whilst at the same time agreeing that the failure to define the term "terrorism" in international law is political.[64] The tacit agreement that acts of terrorism are a form of political violence and therefore subject to ongoing controversy because it remains in the sphere of national and international politics is expressed by Bardo Fassbender.[65] He recalls the sympathy of a large part of the international community for the liberation of peoples from colonial and foreign domination, before accepting that the obstacle to a single definition and the completion of the draft comprehensive convention on international terrorism, is the question of who would be excluded from the scope of the treaty.[66] This pays particular reference to the distinction between acts of terrorism and acts of self - determination, which is discussed throughout this thesis but is examined in detail in chapter 4. Drawing from this literature, this thesis will use the phrase "acts of terrorism" to denote the relevant law deriving from the UN counter-terrorism conventions. This will be distinguished from the generic term "terrorism" which has become politicised. Further explanation of the terminology used in this thesis is set out later in this chapter.

2.4 Self-determination and the single definition of terrorism

The issue of creating a single definition applied to the term "terrorism" is linked to the principle of self-determination, which Bruce Hoffman alluded to above[67]. Although Michael Newton[68] did not address the issue of defining the term "terrorism" directly, in writing about *aut dedere aut judicare* he argued for a distinction between the bodies of international law that are concerned with acts of terrorism. He suggested that acts committed in an IAC or NIAC should be dealt with through IHL, and acts of terrorism outside this should be subject

[62] A Cassese, *International Law*, (2nd Ed. Oxford University Press, 2005) 481
[63] Rosalyn Higgins and Maurice Flory, *Terrorism and international law*, (Routledge: London, 1997)
[64] Ibid
[65] Bardo Fassbender, "The UN Security Council and International Terrorism" in Andrea Bianchi, *Enforcing International Law Norms Against Terrorism*, (1st Ed, Hart Publishing, 2004) 97-98
[66] Ibid 227
[67] Hoffman (n56)
[68] Michael A Newton "Terrorist Crimes and Aut Dedere Aut Judicare" in Larissa van den Herk and Nico Schrijver, *Counter-terrorism Strategies in a Fragmented International Law Order: Meeting the Challenges* (Cambridge 2013)

to the criminal sanctions of domestic law.[69] This position reflects that of regional organisations that have made a distinction between acts of self-determination and acts of terrorism in their regional definitions of the term "terrorism". These are examined in chapter 4. Elizabeth Chadwick [70] suggested that states are more willing to identify an IAC than a NIAC because of the political bias against implementing rules of IHL. She makes this point because of the political consequences in recognising IHL which constrains both parties to conflict. The inviolability of state sovereignty means states can choose to ignore IHL.[71] She highlights how this issue has restricted the progress of the draft comprehensive convention on international terrorism. Amrith Rohan Perera[72] explained why this is so, identifying the definitional impasse as that which exists between recognising the distinction between acts of self- determination committed by armed groups in a IAC and NIAC that would be governed by IHL, and acts of terrorism which would fall outside of the scope of the draft convention but within the scope of domestic criminal law. This definitional impasse has remained the same to the current day.

2.4.1 *Defining Terrorism: In summary*

The meaning of the term "terrorism" in international law is widely debated in a body of literature that predominantly seeks to understand why there has been no single definition applied to it. The literature accepts that international law has become fragmented by virtue of the absence of a single defining form of words for the term "terrorism", but this should be questioned. The question as to whether a definition remains necessary following the adoption of Resolution 1373 and the increased implementation of the 12 pre-existing UN counter-terrorism conventions remains unanswered. Both these questions are examined in chapter 4.

2.5 Identifying international legal frameworks

The core question to be answered by this thesis is whether Resolution 1373 has formed a substantive basis for a developing international legal framework for the prevention and suppression of acts of terrorism. To determine this, it is necessary to understand what

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[69] Ibid (n68) 86

[70] Elizabeth Chadwick, 'Terrorism and self- determination', in Ben Saul, *Research Handbook on International Law and Terrorism* (1st Ed, Edward Elgar Publishing 2014)

[71] Ibid 300

[72] Amrith Rohan Perera, The draft United Nations Comprehensive Convention on International Terrorism" in Ben Saul, *Research Handbook on International Law and Terrorism* (1st Ed, Edward Elgar Publishing 2014) 151

constitutes a legal framework in international law, and what has already been identified as the international legal framework for the prevention and suppression of acts of terrorism.

The Cambridge Dictionary describes a legal framework as "a broad system of rules that governs and regulates decision making, agreements, laws".[73] Where much of the existing literature talks about the existence of an international legal framework in this area, it is not surprising that the 12 pre-existing UN counter terrorism conventions are identified as part of that framework. Before Resolution 1373 they were the only instruments that identified specific acts of terrorism to be criminalised. Robert Kolb[74] describes them as a network of treaties. They are at the centre of his suggestion to combine them with a global approach to defining international terrorism; where one limb refers to the acts covered by the conventions and the other limb is a more general definition of terrorist acts referencing elements of terror and coercion.[75] They have been identified as a criminal law response to acts of international terrorism[76] by Antonio Cassese who also drew upon resolutions from the General Assembly, national laws and the draft comprehensive convention on terrorism for what he described as the current legal framework in an article in 2002.[77] The literature implies however, that the 12 pre-existing UN counter-terrorism conventions should be replaced to eliminate the weakness of having separate conventions which states can pick and choose from.[78] Bassiouni suggests that the gaps and ambiguities between them all necessitated a comprehensive convention on international terrorism. [79] The issue is closely linked to the definition of the term "terrorism". Whilst it is accepted that international cooperation is required to tackle acts of international terrorism, for Alex Schmid the only way to achieve this is by way of a UN consensus definition in a comprehensive convention.[80] It is clear that the 12 pre-existing UN counter-terrorism conventions have been central to the description of the legal framework in international law concerning acts of terrorism. For some scholars however, the only way to achieve global cooperation on this issue is through a comprehensive convention which would bring together the 12 pre-existing

[73] Cambridge Dictionary online https://dictionary.cambridge.org/dictionary/english/framework accessed on 20 March 2020
[74] Robert Kolb, "The Exercise of Criminal Jurisdiction over International Terrorists" in Andrea Bianchi, *Enforcing International Law Norms Against Terrorism*, (1st Ed, Hart Publishing, 2004)
[75] Ibid 227
[76] Antonio Cassese, The Multifaceted Criminal Notion of Terrorism in International Law, 4 J. Int'l Crim. Just. 933 (2006)
[77] Ibid
[78] M. Cherif Bassiouni, Legal Control of International Terrorism: A Policy-Oriented Assessment, 43 HARV. INT'L L.J. 83 (2002) 92
[79] M Bassiouni, *International Terrorism: Multilateral Conventions 1937-2001* (1st Ed, Transnational Publishers 2001)
[80] Alex Schmid, Terrorism - The Definitional Problem, 36 Case W. Res. J. Int'l L. 375 (2004) 387

UN counter-terrorism conventions and also define the term "terrorism". [81] The absence of a single definition is considered to be one of the weaknesses that if resolved, would bring the conventions together. Chapter 3 distinguishes the 12 pre-existing UN counter terrorism conventions from the UN Convention on the Law Of the Sea (UNCLOS) on the basis that the latter is considered to be a framework convention that brought together a number of conventions which defined the Law of the Sea.[82] The UN Economic Commission for Europe (UNECE) in 2011[83] described a Framework Convention as a legally binding treaty which establishes broad commitments for its parties whilst leaving the setting of specific targets to national legislation or more detailed agreements. It highlighted the advantage of a Framework Convention being based on a general overarching agreement as to the basic principles of the area at issue, which, guide the process of further negotiation towards detailed and targeted protocols. This describes the UN Framework Convention on Climate Change.[84] Its objective is to "stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system," but it does not set binding limits on greenhouse gas emissions for individual countries and it contains no enforcement mechanisms.[85] Unlike UNCLOS, the Convention on Climate Change does not bring together a number of conventions or consolidate customary law, but it does provide a framework for negotiating specific protocols including those that may set binding limits on greenhouse gases.[86] Both these framework conventions are umbrella documents, which, reflect the decision of the parties to establish general obligations and rules of governance. Some parallels can be drawn between the concept of a framework convention and Resolution 1373, because of the general obligations it provided that set specific targets to national legislation, and the mechanism through the CTC to govern implementation. The resolution, however, could not be described as an umbrella document in the context of a framework convention for two reasons. Firstly, the UNECE description is underpinned by the notion of a legally binding convention which Resolution 1373 is not. Secondly, whilst it can be said that the resolution establishes broad commitments which take effect in national legislation, these were not decided upon by Member States in the same context that parties to a framework convention establish general obligations and rules of

[81] M Bassiouni, *International Terrorism: Multilateral Conventions 1937-2001* (1st Ed, Transnational Publishers 2001); M. Cherif Bassiouni, Legal Control of International Terrorism: A Policy-Oriented Assessment, 43 HARV. INT'L L.J. 83 (2002) at 92; Alex Schmid, Terrorism - The Definitional Problem, 36 Case W. Res. J. Int'l L. 375 (2004) 387;

[82] Max Planck *Encyclopedia of Public International Law* Framework Agreements, (Oxford University Press 2011)

[83] UNECE, The Committee on Housing and Land Management Framework Convention Concept 72nd Session (3 and 4 October 2011)

[84] United Nations Framework Convention on Climate Change (adopted 9 May 1992 entered into force 21 March 1994)

[85] Ibid Article 2

[86] Ibid (n84) Article 17 Protocols

governance. Resolution 1373 does not provide a mechanism for the negotiation of future protocols or future agreements in the same way that the framework conventions identified above have done. Another relevant point is that Resolution 1373 is not considered a source of international law under Article 38(1) of the International Court of Justice (ICJ), [87] unlike the 12 pre-existing UN counter terrorism conventions which, have collectively underpinned the scholarly commentary about a legal framework for countering acts of terrorism.

Helen Duffy revisited the development of a legal framework in 2015,[88] exploring post 9/11 practice alongside the notion of the global "war on terror". She places emphasis on the sources of international law in Article 38 of the Statute of the ICJ and focuses on treaty law and customary international law. In terms of unpicking what constituted this legal framework, Duffy did not really look beyond the contents of Article 38 of the Statute of the ICJ. Ana Maria Salinas de Frias, Katja Samuel and Nigel White[89] sought to determine a workable and just legal framework in the context of counter terrorism. Katja Samuel examines a rule of law framework in international law drawn from the sources of Article 38(1) of the Statute of the ICJ, along with "norms that are not terrorism specific but which may apply equally to terrorist crimes"[90] and soft law described as UN General Assembly resolutions and the UN CT Strategy.[91] Nigel White mentions a "general legal framework" when examining the role of the General Assembly.[92] It is evident that the 12 pre-existing UN counter terrorism conventions are part of the existing international legal framework but how that is constructed appears to be open to interpretation.

The literature has shown that use of the term legal framework appears to be synonymous with the use of the term regime, depending on the perception of the scholar. Stephen Krasner defined a regime as, "principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given issue area" [93] which remains the standard

[87] Statute of the International Court of Justice 1946 Article 38
[88] Helen Duffy, *The War on Terror and the Framework of International Law* (2nd Ed, Cambridge 2015) after the first edition was published in 2005 Helen Duffy, *The War on Terror and the Framework of International Law* (1st Ed, Cambridge 2005)
[89] Salinas de Frias et al, *Counter-terrorism: International Law and Practice*, (1st Ed, OUP 2012)
[90] Katja LH Samuel, The Rule of Law Framework and its Lacuane: Normative, Interpretative and/or Policy Created chapter 1, 15-16 in Salinas de Frias et al, *Counter-terrorism: International Law and Practice*, (1st Ed, OUP 2012)
[91] Ibid
[92] Nigel D White, the United Nations and Counter-Terrorism: Multi-Lateral and Executive Law Making chapter 3, 65, 73, 77-78 in Salinas de Frias et al, *Counter-terrorism: International Law and Practice*, (1st Ed, OUP 2012)
[93] Krasner Stephen D, *International Regimes* (1st Ed. Ithaca: Cornell University Press, 1983)

formulation.[94] The term regime is distinct from the terms "order" and "systems".[95] Ernst Haas identifies a system to be the "whole"[96] which is consistent with the Oxford Dictionary's definition of an "organised set of ideas or theories or a particular way of doing something".[97] Haas identified a regime as part of the system, describing it as "man-made arrangements for managing conflict in a setting of interdependence."[98] UNCLOS[99] has been referred to as an international regime to settle maritime disputes, [100] in the wider system of international law.[101] William Hurst however, adopted the term legal regime, which he defines as "a system or framework of rules governing some physical territory or discrete realm of action that is at least in principle rooted in some sort of law."[102] Hurst places emphasis on relationships between institutions and actors in legal regimes, in particular individuals and social groups and non-legal system state institutions.[103] Hurst interprets Krasner's regime theory as shaping "actors' expectations and behaviour across national jurisdictions or between states in the international arena."[104] From this, some similarities can be made with Resolution 1373. The rules or obligations it provides have shaped actors expectations and behaviour at both a national and international level, but returning to Krasner's definition, a key part of a regime is a mechanism for decision-making in the context of actors converging in a given issue area. The lack of a shared understanding as to the definition of the term terrorism, however, means that it cannot be said that actors expectations have truly converged in this area. Member States have acted to implement domestic legislation as a result of Resolution 1373, but they have done so with different definitions of the term terrorism. The only consistency between the actions of Member States is the implementation of the 12 pre-existing UN counter terrorism conventions.

Returning to the concept of a legal framework, Philip Alston highlights the complexity of what this means in his research on non-state actors and human rights.[105] Alston identifies

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[94] The most recent text that follows this premise is by Richard Little, International Regimes in, Baylis S, Smith S and Owens P, (2014) *The Globalization of World Politics*. 6th Ed. Oxford University Press Chapter 19. The 2016 version of this book does not include a chapter on international regimes.
[95] Ernst B. Haas "Words Can Hurt you; Or, Who Said what to Whom about Regimes"
International Organization, Vol. 36, No. 2, International Regimes (Spring, 1982), pp. 207-243 at 210
[96] Ibid at 211
[97] https://www.oxfordlearnersdictionaries.com/definition/american_english/system accessed on 2 April 2020
[98] Ibid (n95) at 210
[99] The Convention on the Law of the Sea of the 10 December 1982
[100] N Hong, *UNCLOS and Ocean Dispute Settlement, Law and Politics in the South China Sea*, (1st Ed. New York: Routledge. 2012)
[101] Ibid
[102] William Hurst, *The Politics of Legal Regimes in China and Indonesia* (Northwestern University, Illinois, 2018) page 24
[103] Ibid page 25
[104] Ibid (n102) page 21
[105] A Philip, *Non-State Actors and Human Rights*, (1st Ed OUP 2005)

elements common to all legal frameworks in order to examine multiple sources of law, and multiple actors. The elements he uses are:

1. the standard of behavioural rules themselves

2. the procedures used in discussing, supervising and maybe enforcing compliance with standards and

3.the institutions, forums, networks within which the procedures are activated to invoke the standards. [106]

His reason for taking this approach concerns how actors in international law are identified negatively in terms of their relationship with states i.e. not a state or non-state. Such a description only serves to reinforce the state as the main actor.[107] As already highlighted in chapter 1, the Security Council had struggled with the concept as to whether individuals or groups who committed acts of terrorism were within the scope of its responsibility, on that basis that both were non-state actors. In Alston's research he argues the need to make space for non-state actors in the legal framework of International Human Rights. He includes rules, norms, laws, conventions, as well as legal and political processes carried out by national or international organisations as part of what constitutes a legal framework. Identifying these as elements moves away from relying solely on the sources of international in Article 38 of the Statute of the International Court of Justice (ICJ), all of which are denoted by state activity.

The body of literature that places the 12 pre-existing UN Counter-terrorism conventions at the heart of an international legal framework to tackle acts of terrorism does not however, demonstrate an understanding of what constitutes an international legal framework. What can be derived from this scholarly commentary is that the legal framework before Resolution 1373 was not working well, on the basis that Member States did not accede to and implement the majority of the 12 pre-existing UN counter-terrorism conventions. There was no instrument in international law that brought all of the conventions together as a set of proscribed acts of terrorism, Member States *could* become party to all 12 pre-existing UN counter-terrorism conventions if they chose to. The literature also reinforces the notion that the sources of international law from Article 38(1) of the Statute of the ICJ are the traditional approach to the construction of a legal framework in international law, which in turn, supports the concept that a comprehensive convention is required to define the term

[106] Philip (n105) 38-42
[107] Philip (n105)

"terrorism". This thesis, however, moves beyond the traditional, on the basis that the contents of Resolution 1373 refer to multiple sources of law in order that Member States create and implement new laws in national legal systems. Implementation of the contents of the resolution requires multiple actors, including state governments, the CTC, CTED and the FATF at an international level, and regional organisations. Using elements that are common to all legal frameworks will, therefore, will take the examination of what constitutes a legal framework in international law beyond Article 38 of the Statute of the ICJ.

In order to examine whether Resolution 1373 has formed the substantive basis for a developing international legal framework for the prevention and suppression of acts of terrorism, it is necessary to look beyond the traditional sources of international law contained in Article 38. Christine Chinkin emphasises the importance of "understanding the processes at work within the law-making environment and the products that flow from it." [108] This supports the notion that a variety of techniques can be utilised outside of formal law-making processes but still create norms and standards that give rise to an expectation of behaviour.[109] Relying only on the sources in Article 38 would overlook the effect of the multiple sources of law that Resolution 1373 required Member States to implement, and also the multiple actors that monitor the process of implementation and compliance of these sources of law. Alston's elements provide a lens through which to examine what constitutes a legal framework in international law for the purpose of including standards, norms, laws, conventions, as well as legal and political processes carried out by national or international organisations. The use of these elements does not suggest they are new sources of international law, instead they will show that there is room for international law to develop outside of the traditional doctrine. This will be particularly relevant on two points: first where there is no single shared definition of the issue area, in addition to where the behaviour of Member States emanates from a non-traditional aspect of international law, such as a non-mandatory request made in a Chapter VII resolution.

Alston's elements will be adapted for purpose of this thesis. This thesis argues that the standard of the behavioural rule is the criminalisation of specific acts of terrorism, therefore

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[108] Christine Chinkin, "Normative Development in the International Legal System" in Dinah Shelton, *Commitment and Compliance. The Role of Non-Binding Norms in the International Legal System* (1st Ed, OUP 2000) 23
[109] Ibid 24

standards in international law is one element that will be used to examine what constitutes an international legal framework. The process of implementation and compliance with the relevant paragraphs of Resolution 1373, in addition to the 12 pre-existing UN counter terrorism conventions Member States have implemented is another element that will be examined as part of what constitutes an international legal framework. The interaction between the CTC, CTED and state governments and regional organisations has driven the implementation of Resolution 1373 in terms of more Member States becoming party to and acceding to the 12 pre-existing UN counter-terrorism conventions. The global network created by these international, national and regional institutions will form the third element that is examined as part of an international legal framework. The elements, therefore, that will be used are:

1. Standards and norms in international law
2. The process of implementation and compliance, and
3. International, regional and national institutions: forming a global network[110]

Using these three elements moves away from reinforcing what Resolution 1373 is not. Whilst it clearly is not a convention, analysing it in terms of the traditional sources will only seek to reinforce this. This would lead to the position Alston highlighted in his research where actors in international law are identified in in terms of them not being a state.[111] Re-interpreting what constitutes a legal framework in international law will expose the gaps in what the literature has accepted as the legal framework. The elements are examined in more detail below.

2.5.1 Standards and norms in international law

Standards can be distinguished from rules. H.L.A Hart suggested that the characteristic of a legal rule in particular is that deviation from certain types of behaviour will be punished by officials. [112] A rule attempts to define in advance the conduct that is allowed, specifically what facts will lead to what legal results.[113] In contrast, standards allow for a degree of individualisation in terms of how they are applied to each situation[114], and are less precise about what facts lead to legal results. As Dieter Kerwer points out, standards seek to

[110] Philip (n105) 39
[111] Philip (n105)
[112] H.L.A Hart, *The Concept of Law* (2nd Ed, OUP, 1994) page 10, see also Kathleen M. Sullivan, Foreword: The Justices of Rules and Standards, 106 *Harv. L. Rev*. 22 (1992)
[113] Kathleen Sullivan, Foreword: The Justices of Rules and Standards, 105 *Harv. L. Rev*. 22 (1993)
[114] Ibid 58

convince rather than coerce[115] on the basis that they act as a "guide for behaviour and for judging behaviour".[116] With standards, "to a considerable extent we do not know what the law is until the particular cases arise."[117] An example used in the literature is the international standard of treatment for human beings in the form of human rights[118]. The UN Charter contained some vague human rights provisions, but they did not establish an immediate obligation to preserve human rights and fundamental freedoms,[119] mainly because Member States were not prepared to agree on such a provision.[120] When the General Assembly adopted the 1948 Universal Declaration of Human Rights (UDHR), it gave meaning to the term "human rights and fundamental freedoms" found in the UN Charter. They are a "…common standard of achievement for all people and all nations" and that every individual and every organ of society "shall strive ... to secure their universal and effective recognition and observance."[121] International human rights standards subsequently developed to become a minimum required level of behaviour below which states should not go. Another example is the Framework Convention on Climate Change, which is understood to provide general standards, for example, requiring states to adopt domestic policies and measures to reduce emissions of greenhouse gases.[122] In contrast, a set of rules can be found in the Kyoto Protocol which set specific emission limitation commitments for each industrialised country.[123] The standards described indicate the behaviour that is expected by Member States,[124] and as international standards, they tend to imply some generally accepted canons of behaviour for states.[125] For the purpose of this thesis, the standard referred to will be the international standard for the criminalisation of acts of terrorism, which has developed out of the general consensus by Member States that criminalising specific acts of terrorism is an accepted canon of behaviour.

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[115] Dieter Kerwer, *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 18, No. 4, October 2005 (pp. 611–632)

[116] Kenneth W. Abbott and Duncan Snidal (2001) International 'standards' and international governance, Journal of European Public Policy, 8:3, 345-370 at 345 https://doi.org/10.1080/13501760110056013

[117] Cass R. Sunstein, Problems with Rules, 83 Cal. L. Rev.953 (1995).

[118] Thomas Buergenthal, "Evolution of International Human Rights", (1997) Human Rights Quarterly 19 (1997) 703-723; Amichai Cohen, "Rules and Standards in the Application of International Humanitarian Law", 41 Lsr. L . Rev.41 (2008) 55

[119] Stephen D Krasner, *International Regimes* (1st Ed. Ithaca: Cornell University Press, 1983)

[120] The United Kingdom, France and the United States of America had serious human rights problems of their own.

[121] Universal Declaration of Human Rights UNGA Res 217 (10 December 1948)

[122] United Nations Framework Convention on Climate Change (UNFCC) (adopted 9 May 1992 entered into force 21 March 1994)

[123] UNFCC What is the Kyoto Protocol? https://unfccc.int/kyoto_protocol accessed on 13 April 2020

[124] Standards in International Law." *Harvard Law Review*, vol. 34, no. 7, 1921, 776–779. *JSTOR*, www.jstor.org/stable/1329232

[125] Herbert V. Morais, 'The Quest for International Standards: Global Governance vs. Sovereignty' (2002) 50(4) U Kan L Rev 779

Thomas M Franck suggests that the notion of legitimacy shapes international behaviour.[126] Legitimacy can be identified where there is a "normative belief by an actor that a rule or institution ought to be obeyed….which helps to define how the actor sees its interests."[127] Where there is a perception of legitimacy, "compliance is no longer motivated by the simple fear of retribution, or by a calculation of self-interest, but instead by an internal sense of moral obligation." [128] Legitimacy will be used to refer to behaviour that Member States consider ought to be obeyed, on the basis that compliance is motivated by the obligation to prevent and suppress acts of terrorism.

This consensus of behaviour can also create norms which have been identified as "prescriptions for action in situations of choice".[129] "Norms are generally created through a consensual process" unlike rules, which are created through a majoritarian process.[130] Furthermore norms, unlike rules do not come into existence at a definite point in time, nor are they the result of a manageable number of identifiable acts.[131] The standard in the UDHR for the treatment of human beings developed into a norm.[132] Member States considered the standard in the UDHR as legitimate behaviour that they ought to follow,[133] but not because it was enforced.[134] A norm acquires legitimacy when it is a "reasonable behavioural response to the environmental conditions facing members of the community".[135] The consolidation of a norm generally takes place when its implementation transitions from being that of a conscious approach, to implementation being intrinsic.[136] This requires a general consensus as to the norms content and how it is defined.[137] Increased compliance by the actors concerned is also required, which is more commonly recognised

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[126] Thomas M Franck, 'The Power of Legitimacy Among Nations', (OUP, 1990), see also Ann Florini, 'The evolution of international norms' International Studies Quarterly, (1996) 40(3), 363-389.
[127] Ian Hurd, 'Legitimacy and Authority in International Politics' (1999) 53 International Organization pp379-408, 381
[128] R.A Dahl and C.E. Lindblom, *Politics, Markets, and Welfare* (2nd ed, New Brunswick N.J.Transaction Publishers, 1992) 114
[129] Andrew P. Cortell and James W. Davis jr, Understanding the Domestic Impact of International Norms: A Research Agenda International Studies review, Vol 2. No. 1 (Spring 2000) 65-87, 69
[130] Daniel Bodansky, Rules vs Standards in International Environmental Law (2004) *Proceedings of the ASIL Annual Meeting,* 98 275-280
[131] Matthew Hoffmann, "Entrepreneurs and Norm Dynamics: An Agent-Based Model of the Norm Life Cycle" www.polisci.upenn.edu/ps-i/Pamela/Hofmann_norms.doc
[132] Buergenthal (n118) 708
[133] Buergenthal (n118) 8
[134] Ann Florini, 'The evolution of international norms' International Studies Quarterly, (1996) 40(3), 363-389.
[135] Florini (n134) see also Andrew P. Cortell and James W. Davis jr, Understanding the Domestic Impact of International Norms: A Research Agenda International Studies review, Vol 2. No. 1 (Spring 2000) pp65-87 at 69
[136] Lisbeth Segerlund, *Making Corporate Social Responsibility a Global Concern: Norm Construction in a Globalizing World*, (Routledge 2016) and see also Thomas Buergenthal, "Evolution of International Human Rights", Human Rights Quarterly 19 (1997) 703-723, 705
[137] Lisbeth Segerlund, *Making Corporate Social Responsibility a Global Concern: Norm Construction in a Globalizing World*, (Routledge 2016) and see also Buergenthal (n118) 705

in international law through state practice.[138] For example, the consolidation of international human rights norms was through states and other organisations promoting and protecting human rights on a global scale.[139] Franck stated that norms can provide for consistency and a degree of predictability in the issue area in which they operate, and this can support compliance from states.[140]

2.5.2 The process of implementation and compliance

J Craig Barker [141] described the process of implementing Resolution 1373, in particular the publication of country reports as social coercion.[142] Unlike Andrea Bianchi below, Barker understands Member States participation in the reporting to the CTC as legitimising the "institutional response to international terrorism".[143] David Cortright adopted a similar position[144] when he sought to provide an overview of the UN counter-terrorism programme in order to measure its overall progress. Cortright is clear that the issue of implementing the programme is a political one, but he highlights the CTC as building capacity amongst states as well as international and regional institutions.[145] The term "implementation" in this context refers to the implementation of Resolution 1373 in its entirety, as well as the implementation of the relevant paragraphs that refer to the 12 pre-existing UN counter terrorism conventions. The term "compliance" refers to compliance with the requirements of the 12 pre-existing UN counter terrorism conventions.

2.5.3 International, regional and national institutions: forming a global network

For a norm to consolidate from a standard in international law the institutions in Member States must accept it. Ramses A. Wessel[146] argued that acceptance of the rules and standards can sometimes be because there is nothing else to follow and states need to play along. Andrea Bianchi[147] considered acceptance of Resolution 1373 by Member States in the

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[138] Ibid (n137)
[139] Buergenthal (n118) 723
[140] Franck (n126)
[141] J Craig Barker "The Politics of International Law Making: Constructing Security in Response to Global Terrorism" *Journal of International Law and International Relations* (Spring 2007) Vol 3 (1) 19
[142] Ibid
[143] Barker (n141) 16
[144] D Cortright, 'A Critical Evaluation of the UN Counter-Terrorism Programme: Accomplishments and Challenges' *Global Enforcement Regimes Transnational Organised Crime, International Terrorism and Money Laundering* Transnational Institute Amsterdam, 28-29 April 2005 and see also D Cortright and G Lopez, Strategic Counter Terrorism, in Uniting Against Terror (MIT Press 2007)
[145] D Cortright and G Lopez, Strategic Counter Terrorism, in Uniting Against Terror (MIT Press 2007) 9
[146] 'Institutional Lawmaking: The emergence of a global normative web' in Catherine Brolmann and Yannick Radi, *Research handbook on Theory and Practice of International Law Making* (1st Ed, Edward Elgar Publishing 2016)
[147] A Bianchi, "Assessing the effectiveness of the UN Security Council's anti-terrorism measures: The quest for legitimacy and cohesion" EJIL 881-918

context of how legitimate the Security Council's actions were. Bianchi concludes that the actions of the Security Council were not sustainable in the context of being representative of the will of the international community, but he acknowledged that Member States seemingly accepted and implemented it. Ian Johnstone[148] also examined the legitimacy of the Security Council's actions in adopting Resolution 1373. He argued there was a democratic deficit in the Security Council which put at risk the success of the resolution. His argument was much more centred around transforming the Security Council as a body to ensure substantive deliberation which would then lead to substantive agreement and the ability to progress even with disagreement.[149] Peter Romaniuk [150] suggested that it was also important that international and regional institutions accepted the resolution. The role of networks in international law has been discussed by J Craig Barker[151] who argues for the recognition of formal intergovernmental expert networks which are comprised of actors other than states. According to Barker, the network includes judges of the International Court of Justice, treaty-monitoring bodies, such as the Human Rights Committee, and the expert members of the CTC. He suggests the need to recognise the importance of these networks existing alongside the direct interaction with states, both of which provide the opportunity for communicative action to develop into mutual expectations or shared understandings. [152] The general theme in this literature is the recognition that Member States have responded positively to what is being asked of them by Resolution 1373. Discussions as to the legitimacy of the Security Council's actions has weakened the idea that interaction between the institutions that have a role in implementing Resolution 1373, has developed a network. It is Barker who shows the importance of intergovernmental networks, which in this thesis would be underpinned by the CTC and CTED's interaction with Member States, along with the FATF.

2.5.4 Identifying international legal frameworks: In summary

There are two key points that have emerged from the literature. The first is that a number of scholars have accepted that an international legal framework in the context of tackling acts of terrorism exists without fully examining its contents. Philip Alston has attempted to

[148] Ian Johnstone "Legislation and Adjudication in the UN Security Council: Bringing Down and Deliberative Deficit" 102 AJIL 275
[149] Ibid (n96) 276
[150] P Romaniuk, *Multilateral Counter-Terrorism: The Global Politics of Cooperation and Contestation*, (1st Ed, Routledge 2010)
[151] Barker (n141) 19
[152] Ibid

dissect what constitutes a legal framework,[153] and in doing so the elements he identifies will provide the foundation for a targeted examination as to whether Resolution 1373 constitutes a substantive basis for a developing international legal framework. This will take place in chapter 4. The second point is how some scholars perceive that the only way to achieve global cooperation where acts of terrorism are concerned is through a convention which draws together the 12 pre-existing UN counter-terrorism conventions, and which provides a single definition of the term "terrorism". This issue will also be explored in chapter 4.

2.6 Research aim and questions

The literature concerning Resolution 1373 has shown that the Security Council's use of Chapter VII has had to evolve. The discussions as to whether the resolution was legislation has arisen from a misplaced comparison of international law with national law, which has placed emphasis on what Resolution 1373 is not. The acceptance by some scholars that an international legal framework existed with limited scrutiny as to how this framework was constructed, has missed the opportunity to consider the resolution in the sense of what it has achieved. Determining the existence of a legal framework through the notion of elements will enable a targeted examination as to whether Resolution 1373 forms a substantive basis for a developing legal framework. The literature that looks at the nature of the resolution in terms of the language of the obligations placed on Member States has missed the opportunity to determine how legitimate they perceived the non-mandatory provisions to be. It is significant that Member States implemented the 12 pre-existing UN counter-terrorism conventions after the adoption of Resolution 1373, given that they could not be forced to do so. If Member States considered that they ought to implement these conventions, then they not only found the request in the resolution legitimate, but in doing so they developed an international standard for the criminalisation of specific acts of terrorism. The existing literature has missed this point. Further, it has missed the issue that the extent of Member States behaviour in implementing the 12 pre-existing UN counter-terrorism conventions has consolidated this standard into a norm. Much of the literature also concludes that a single definition of the term "terrorism" is still required in order to create a comprehensive convention. There is a distinct absence of any real discussion about whether following the adoption of Resolution 1373 this definition is still necessary. Whilst the literature surrounding the resolution is extensive, this scholarly literature review has

[153] Alston (n105*)* 39

highlighted the gaps and shown that Resolution 1373 needs to be understood in terms of what it is, as opposed to what it is not.

The core question at the heart of this thesis therefore, is whether Resolution 1373 constitutes a substantive basis for a developing international legal framework for the suppression and prevention of acts of terrorism? In order to determine this, the following subsidiary questions will to be answered:

1. What obligations does Resolution 1373 impose on Member States and what was the consequence of its adoption for the use of international law to prevent and suppress act of terrorism?
2. What has prevented the agreement of a single definition of the term "terrorism" and how has this manifested at a regional level? Is it necessary to have a single definition for the purpose of international law, to prevent and suppress acts of terrorism?
3. How has the behaviour of Member States changed following the adoption of Resolution 1373 and what effect has this had on a) the developing legal framework, b) how legitimate Member States perceived the measures to implement the 12 pre-existing UN counter-terrorism conventions to be and c) the international standard for the criminalisation of specific acts of terrorism?

Chapter 3: Terminology and Methodology

3. Introduction

As the scholarly literature review has shown in this area of international law there is a vast amount of terminology that has been used. This section will set out what the key phrases mean in relation to how they will be used in this thesis. It will then show the methodology that will be used, setting out the case studies, the structure of the thesis and its limitations.

3.1 Terminology

The phrase "acts of terrorism" will be used to refer to the acts which are proscribed by the 12 pre-existing UN counter-terrorism conventions. The acts are specific in terms of the characteristics set down in each convention which includes acts of violence committed on board aircraft,[1] acts of violence at airports,[2]unlawful acts against the safety of aircraft,[3] and the hijacking of aircraft.[4] Other acts of violence include the taking of hostages,[5] the act of discharging or detonating an explosive or other lethal device unlawfully in a place which members of the public use, and the acts of providing or collecting funds which are used with the intention of committed any of the acts proscribed by the 12 pre-existing UN counter terrorism conventions or any other violent act intended to cause death or harm.[6] The taking of hostages and providing or collecting funds share the common motive of compelling a government or international organisation to do or not to do something. The act of discharging or detonating an explosive or other lethal device unlawfully requires the intention to cause death or serious injury or the intention to cause extensive destruction to a place, facility or system which is likely to result in major economic loss. [7]

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[1] Convention on Offences and Certain Other Acts Committed on Board Aircraft (signed on 14 September 1963, entered into force 4 December 1969) 704 UNTS 219

[2] 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 (adopted on 24 February 1988, entered into force 6 August 1989) 1589 UNTS

[3] Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (concluded on 23 September 1971, entered into force 26 January 1973) 974 UNTS

[4] Convention for the Suppression of Unlawful Seizure of Aircraft (signed on 16 December 1970, entered into force 14 October 1971) 860 UNTS 105

[5] UNGA International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205

[6] International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197

[7] International Convention for the Suppression of Terrorist Bombings (adopted on 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256

The use of the term "terrorism" refers to the political label attributed to it by Member States and regional organisations driving their desire to produce a single definition for it. This is discussed in chapters 4, 5 and 6. Where the term "terrorism" is used it does not refer to the acts of terrorism criminalised in national laws by virtue of the implementation of the 12 pre-existing UN counter terrorism conventions.

The use of the term "counter terrorism" describes the aim of the 12 pre-existing UN conventions in the same way they are referred to in UN documentation. Mention of the 12 pre-existing UN counter terrorism conventions refers to the conventions which are listed in the methodology and which were adopted before Resolution 1373. The term "suppression" refers to preventing something from continuing by making it illegal, which in this context is the criminalisation of a specific act of terrorism by the 12 pre-existing UN counter-terrorism conventions. The term "prevention" has been used to mean stopping acts of terrorism from happening by eliminating their funding in the context of the International Convention for the Suppression of the Financing of Terrorism, by prohibiting incitement to commit terrorist acts in the context of Resolution 1624 of September 2005[8] and by developing strategies to counter violent extremism through tackling foreign terrorist fighters in the context of Resolution 2178 of 24 September 2014.[9] Both of these phrases are elaborated upon in chapter 5.

The term "implementation" as one element of the international legal framework being examined in chapter 4, refers to the implementation of Resolution 1373 in its entirety, as well as the implementation of the relevant paragraphs that refer to the 12 pre-existing UN counter terrorism conventions. The term "compliance" as part of the same element refers to compliance with the requirements of the 12 pre-existing UN counter terrorism conventions.

The term "Member States" is used to refer to states that are members of the UN. Where regional organisations are discussed, the phrase "state members" refers to states which are members of that regional organisation.

[8] UNSC Res 1624 (14 September 2005) UN Doc S/RES/1624 Threats to international peace and security (Security Council Summit 2005)

[9] UNSC Res 2178 (24 September 2014) UN Doc S/RES/2178 Threats to international peace and security caused by terrorist acts

Self-determination is explained in chapter 6, but for the purpose of this thesis, acts of self-determination refers to acts which have been excluded from the definition of acts of terrorism by three regional organisations. The justification for this approach from these organisations is their right to "freely determine… their political status and to pursue their economic, social and cultural development…"[10]

Where the term "safe haven" is used, it refers to Member States which have not established jurisdiction and criminalised the acts proscribed by the 12 pre-existing UN counter-terrorism conventions, and therefore, cannot prosecute or extradite a perpetrator of one of the proscribed acts of terrorism. It does not refer to situations where money is used to bribe government officials.[11]

3.2 Methodology

Identifying the gaps in the review of the scholarly literature has led to the formation of the research questions set out above. In order to answer these questions, it will be necessary to acquire new knowledge therefore, the methodology that will be used is that of international law. The sources of international law set down in Article 38 of the Statute of the ICJ will be a starting point, but this thesis reinterprets an international legal framework to include rules, norms, laws, conventions, as well as processes carried out by national or international organisations. The three elements are; standards in international law, the process of implementation and compliance and the global network formed by international, regional and national institutions. This will support the determination of whether Resolution 1373 has formed a substantive basis for a developing legal framework.

3.2.1 Method

The research method is doctrinal where the process involves locating the sources of law and then interpreting and analysing them. Adopting an inductive approach will lead to an analysis of state behaviour in the context of the relevant national laws which implement the 12 pre-existing UN counter-terrorism conventions, in order to deduce the extent to which state behaviour has changed.

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[10] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970, UNGA Res 2625 (XXV) (24 October 1970)

[11] Jimmy Gurule, *Unfunding Terror. The Legal Response to the Financing of Global Terrorism*, (1st Ed, Edward Elgar Publishing 2008) 27

To help answer the research questions, the research starts with the sources of international law as set out in Article 38(1) of the Statute of the International Court of Justice (ICJ):[12]

a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b) international custom as evidence of a general practice accepted as law;
c) the general principles of law recognized by civilised nations;
d) subject to Article 59[13] judicial decisions and the teachings of the most highly qualified publicists of various nations as subsidiary means for the determinations of rules of law.

Turning to international conventions as one of the main sources of law, they have been described as a source of obligation under law[14] on the basis they are binding only when states become party to them. Some conventions however, are statements of customary law in that they are freely negotiated by a large number of states and they codify unwritten rules of custom,[15] an example of which is the UN Convention on Law of the Sea (UNCLOS).[16] The 12 pre-existing UN counter-terrorism conventions[17] become binding on states that are party to them, they do not codify unwritten rules of custom as chapter 4 will highlight. The 12 pre-existing UN counter-terrorism conventions were developed by a number of UN institutions. For example, the International Civil Aviation Organisation sets the standards for aviation security which has included the implementation of the following five instruments:

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft 1963;
2. Convention for the Suppression of Unlawful Seizure of Aircraft, 1970;

[12] Statute of the International Court of Justice 1946 Article 38
[13] Article 59 provides that 'The decision of the Court has no binding force except between the parties and in respect of that particular case.'
[14] Christopher Greenwood, "Sources of International Law: An Introduction" in Gillian Triggs, *International Law: Contemporary Principles and Practice* (2nd Ed LexisNexis 2011)
[15] ibid
[16] UN Convention on the Law of the Sea (adopted on 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, 1834 UNTS 3 and 1835 UNTS 3
[17] The 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and its 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, the 1973 Internationally Protected Persons Convention, the 1979 Hostages Convention, the 1980 Nuclear Material Convention, the 1988 Safety of Maritime Navigation Convention and its 1988 Fixed Platforms Protocol, 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection, and the 1997 Terrorist Bombings Convention and the 1999 Financing of Terrorism Convention.

3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971;
4. 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 and
5. Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991.

The International Atomic Agency had been responsible for the implementation of the Convention on the Physical Protection of Nuclear Material 1980.[18] The International Maritime Organisation had been responsible for the implementation of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988,[19] along with the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf 1988.[20] The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents 1973 although adopted by the General Assembly was aimed more specifically at protecting international relations.[21]

In order to drive implementation, the remaining three conventions have fallen under the responsibility of either the General Assembly or the Security Council:

1. International Convention against the Taking of Hostages, 1979:
2. International Convention for the Suppression of Terrorist Bombings, 1997 and
3. International Convention for the Suppression of the Financing of Terrorism, 1999

Each convention identifies a specific act of international terrorism that cannot be justified by way of the perpetrator claiming a political offence.[22] A political offence is one which protects the offender from prosecution for political crimes and from prosecution for purely

[18] Convention on the Physical Protection of Nuclear Material 1979 (adopted 3 March 1980 entered into force February 1987) 24631 UNTS 1456

[19] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988(adopted 10 March 1988 entered into force 1 March 1992) 29004 UNTS 1678. This was updated in the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (entered into force 14 October 2005)

[20] Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (adopted March 1988 entered into force 1 March 1992) UNTS 1678

[21] Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents (adopted 1 March 1991, entered into force 21 June 1998) 2122 UNTS 359

[22] The 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft expressly exempted from its application offences against penal laws of a political nature or those based on racial or religious discrimination. Any reference to an exception based on political or discriminatory grounds was omitted from the subsequent conventions between 1970 and 1991 but was included in the International Convention against the Taking of Hostages, 1979, International Convention for the Suppression of Terrorist Bombings, 1997 and the International Convention for the Suppression of the Financing of Terrorism 1999.

political motivation in and by the requesting state.[23] The substantive provisions of these conventions do not refer to the term "terrorism", although some do in their preambles. For example, the Taking of Hostages Convention describes "all acts of hostage taking as manifestations of international terrorism",[24] and the Convention for the Suppression of Terrorist Bombings and the Convention for the Suppression of the Financing of Terrorism recalled General Assembly Resolution 49/60[25] which condemned all acts and methods of terrorism as criminal and unjustifiable. The latter also noted that "the number and seriousness of acts of international terrorism depend on the financing that terrorists may obtain".[26] These three conventions received a significant increase in ratifications following the adoption of Resolution 1373. The Convention for the Suppression of Terrorist Bombings was open for signature between 12 January 1998 and 31 December 1999 before it came into force on 23 May 2001. As of 13 June 2001, it had 59 signatures and only 24 Member States had ratified it.[27] As of June 2002 64 Member States had ratified it[28] and by July 2010 a total of 164 Member States had ratified it.[29] The Convention for the Suppression of the Financing of Terrorism was opened for signature between 19 January 2000 and 31 December 2001and came into force in April 2002. By June 2001 it had 43 signatures and 3 Member States had ratified it[30] and by June 2002 it had 132 signatures and 39 Member States had ratified it.[31] By July 2010 173 Member States had ratified it. [32] The Taking of Hostages convention also saw an increase of 72 Member States having ratified it by July 2010.[33] It is for these reasons that these three conventions have been selected as the case studies for this research. An analysis of how Member States have implemented these three conventions will show the extent to which the international standard for the criminalisation of specific acts of terrorism has developed, and how it has consolidated into a norm.

[23] Antje C. Petersen, "Extradition and the Political Offense Exception in the Suppression of Terrorism," (1992) Indiana Law Journal: Vol. 67 Issue 3 773 at http://www.repository.law.indiana.edu/ilj/vol67/iss3/6 accessed on 8 April 2020

[24] UNGA International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205

[25] International Convention for the Suppression of Terrorist Bombings (adopted on 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256; International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197

[26] UNGA Measures to Eliminate International Terrorism UNGA Res 49/60 (9 December 1994)

[27] UNGA Measures to Eliminate International Terrorism Report of the Secretary-General, 56th session (3 July 2001) UN Doc A/56/160 19

[28] UNGA Measures to Eliminate International Terrorism Report of the Secretary-General, 57th session (2 July 2002) UN Doc A/57/183 37

[29] UNGA Measures to Eliminate International Terrorism Report of the Secretary-General, 56th session (27 July 2010) UN Doc A/65/175 26

[30] UN Doc A/56/160 (n25) 19

[31] UN Doc A/57/183 (n26) 37

[32] UN Doc A/65/175 (n27) 26

[33] UN Doc A/56/160 (n25) 19 and UN Doc A/65/175 (n27) 26

The 12 pre-existing UN counter-terrorism conventions are distinct from a convention such as UNCLOS which codified rules of customary law. UNCLOS is described as a comprehensive convention, which created a legal framework by bringing together a number of conventions which defined the area at issue.[34] In order to understand whether a comprehensive convention is the only way to achieve global cooperation concerning tackling acts of terrorism, chapter 4 will draw upon UNCLOS as an example of a framework convention as part of the examination of what constitutes a legal framework in international law.

Secondly, the thesis accepts the definition of international custom as, "evidence of general practice accepted as law",[35] as set down by the ICJ and widely accepted in literature.[36] The notion of general practice has been described as the "material element" of customary international law.[37] States are the primary subjects in international law, therefore, the material element can be evidenced through state practice, that is conduct which is attributable to states.[38] This can manifest in a number of ways,[39] but this thesis has focused on legislative acts, constitutions and draft bills,[40] and practice in connection with the

[34] Max Planck *Encyclopedia of Public International Law* Framework Agreements, (Oxford University Press 2011)

[35] Statute of the International Court of Justice, Article 38 1(b)

[36] A. Cassese, *International Law*, (2nd Ed OUP 2005) 153-169 ("the fundamental elements constituting custom: State practice (usus or diuturnitas) and the corresponding views of States (opinio juris or opinio necessitatis)"); V Lowe, *International Law* (OUP 2007) 36-63; M. N. Shaw, *International Law*, (6th Ed, Cambridge University Press 2008) 72-93 ("it is possible to detect two basic elements in the make-up of a custom. These are the material facts, that is, the actual behaviour of states and the psychological or subjective belief that such behaviour is law"); S. Murphy, *Principles of International Law*, (2nd Ed West, 2012) 92-101 ("States through their practice, and international lawyers through writings and judicial decisions, have agreed that customary international law exists whenever two key requirements are met: (1) a relatively uniform and consistent state practice regarding a particular matter; and (2) a belief among states that such practice is legally required"); J Crawford, *Brownlie's Principles of Public International Law*, (8th Ed, OUP 2012) 23- 30 ("the existence of custom is ... the conclusion of someone (a legal adviser, a court, a government, a commentator) as to two related questions: (a) is there a general practice; (b) is it accepted as international law?"); J. Klabbers, *International Law* (= Cambridge University Press 2013) 26-34 ("two main requirements: there must be a general practice, and this general practice must be accepted as law ...."); A Kaczorowska-Ireland, *Public International Law*, (5th Ed, Routledge, New York, 2015) 22 and 29-36 ("A customary rule requires the presence of two elements: a material element consisting of a relatively uniform and constant state practice and…the subjective conviction of the state that it is legally bound to behave in a particular way in respect of a particular type of situation i.e. that is accepts that practice as law")

[37] A Kaczorowska-Ireland, *Public International Law*, (5th Ed, Routledge, New York 2015) 31-32

[38] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya),* Judgment, I.C.J. Reports 1982, 18, at 46, [43]

[39] J. Crawford, *Brownlie's Principles of Public International Law*, (8th Ed, OUP 2012) and included diplomatic correspondence, policy statements, press releases, the opinions of government legal advisers, official manuals on legal questions (e.g. manuals of military law), executive decisions and practices, orders to military forces (e.g. rules of engagement), comments by governments on ILC drafts and corresponding commentaries, legislation, international and national judicial decisions, recitals in treaties and other international instruments (especially when in "all states" form), an extensive pattern of treaties in the same terms, the practice of international organs, and resolutions relating to legal questions in UN organs, notably the General Assembly

[40] *North Sea Continental Shelf,* Judgment, I.C.J. Reports 1969, p. 3, at pp. 105, 107 and 129 (Separate Opinion of Judge Fouad Ammoun, where he says, inter alia, "The bill [that was submitted to the Belgian Chamber of Representatives] ... expresses the official point of view of the Government. It constitutes one of those acts within the municipal legal order which can be counted among the precedents to be taken into consideration, where appropriate, for recognizing the existence of custom"); *Fisheries Jurisdiction (United Kingdom v. Iceland*), Jurisdiction of the Court, Judgment, I.C.J. Reports 1973, p. 3, at p. 44 (Dissenting Opinion of Judge Padilla Nervo), and *Fisheries Jurisdiction (United Kingdom v. Iceland),* Merits, Judgment, I.C.J. Reports 1974, p. 3, at p. 51 (Joint Separate

conventions including negotiating, concluding, ratification and implementation.[41] The position of international terrorism *vis a vis* customary law will be informed by the requirement of "uniform" state practice,[42] accompanied by the relevant *opinio juris sive necessitates*.[43] *Opinio juris* can be determined as the conviction of the state to follow a certain practice as if it were law and that if it were to depart from it, there would be a form of sanction for doing so.[44] The requirement should be identifiable by other states and able to be distinguished from practice that is accidental or merely comity.

Moving on, Article 38 refers to the "general principles of law recognised by civilised nations." These are used to fill the gap when there is no guiding authority to be applied to the question at issue,[45] operating to close the gaps in international law and to avoid the ICJ's inability to render judgment due to an insufficiency of law.[46] Relevant examples include the sovereign equality of states in the context of mutual recognition of each state's jurisdictional rights and the non-intervention in the internal affairs of another state. How these principles are defined is matter of ongoing interpretation amongst scholars[47], but two interpretations have emerged from the discussions. The first is that general principles are derived from a comparison of various national legal systems and the extraction of those principles are those which are shared by the majority.[48] The emphasis of this interpretation is on the principles being recognised by "civilised nations". The second interpretation concerns the general principles being inferred from existing international rules, be they through custom or

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Opinion of Judges Forster, Bengzon, Jiménez de Aréchaga, Nagendra Singh and Ruda), and p. 84 (Separate Opinion of Judge De Castro);

[41] *North Sea Continental Shelf* Judgment, I.C.J. Reports 1969, p. 3, at p. 43 and pp. 104-105, 126 and 128 (Separate Opinion of Judge Fouad Ammoun); *Barcelona Traction, Light and Power Company, Limited*, Judgment, I.C.J. Reports 1970, p. 3, at p. 347 (Dissenting Opinion of Judge Riphagen);

[42] Colombian-Peruvian asylum case, Judgment of November 20th, 1950: I.C.J. Reports p. 266 at p. 276. RMM Wallace, O Martin-Ortega, *International Law* (7th Ed, London, Sweet and Maxwell 2013) at 12 "Inconsistency relating to state practice as seen in this case prevented the crystallisation of a rule into custom, but a number of factors need to be considered in each situation. These include the subject matter of the rule; the number of states practising inconsistent behaviour, and whether there are any established rules which conflict with the rule to be crystalised".

[43] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America),* Merits, Judgment, I.C.J. Rep 1986 p.14 at p.109 [207]: "For a new customary rule to be formed, not only must the acts concerned "amount to a settled practice", but they must be accompanied by the opinion *juris sive necessitatis*. Either the States taking such action or other States in a position to react to it, must have behaved so that their conduct is; "evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it" (ICJ Reports 1969 p.44 [77]).

[44] J L Brierly, *The Law of Nations*, (6th Ed Oxford 1963) 59

[45] "What are general principles of international law?" International Judicial Monitor, American Society of International Law and the International Judicial Academy, Jul/Aug 2007, Vol 2, Issue 2

[46] RMM Wallace, O Martin-Ortega, *International Law* (7th Ed, London, Sweet and Maxwell, 2013) 23

[47] C Enache-Brown and A Fried, 'Universal Crime, Jurisdiction and Duty: The Obligation of Aut Dedere Aut Judicare in International Law', (1998) 43 McGill L J 613 at 631; Rosalyn Higgins and Maurice Flory, *Terrorism and international law*, (Routledge: London, 1997) in which Rosalyn Higgins argues that it is treaty based. See also Robert Kolb, "The Exercise of Criminal Jurisdiction Over International Terrorists", in A Bianchi, Enforcing International Law Norms Against Terrorism, (1st Ed OUP 2004) p. 273 who supports the view that it belongs to general international law, drawing upon M Cherif Bassiouni and Edward M Wise, *Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law* (Martinus Nijhoff, 1995).

[48] Hugh Thirlway, The Sources of International Law, (1st Ed, oxford University Press 2002) 95

conventions. Examples can be drawn from general principles of international law which are inferred or extracted from conventional and customary rules of international law, such as *consuetudo est servanda* (all international subjects must comply with customary rules) and *pacta sunt servanda* (the parties to international agreements must abide by them).[49] Examples can also be drawn from principles peculiar to a particular branch of international law such as the Law of the Sea or IHL.[50]

Robert Kolb[51] is in the minority, for arguing that *aut dedere aut judicare* falls within the category of a general principle of law. He put forward that the principle was one of conventional universal jurisdiction because it is contained in numerous multilateral conventions, both international and regional.[52] It is a particular feature of the UN counter-terrorism conventions, Article 8 of the International Convention for the Suppression of Terrorist Bombings is one example:

> "The State party in the territory of which the alleged offender is present shall, in cases to which article 6 applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of the State…"

Kolb acknowledged the difference between *aut dedere aut judicare* and universal jurisdiction;[53] *aut dedere aut judicare* is limited to parties to conventions and is exercised by the state, and universal jurisdiction applies to a limited number of international crimes considered to affect the interests of the international community so seriously. That the requirement of a specific link in order for a state to be allowed to prosecute is waivered. He described universal jurisdiction as a "title to try", and *aut dedere aut judicare* as a duty to either prosecute or extradite.[54] The scholarly literature above draws upon Malcolm Evans,[55]

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[49] A Cassese, *International Law*, (2nd Ed, OUP 2005) 189

[50] ibid for example the ICTY in *Furundzija* 10 December 1998 (case no. IT-95-17/1-T) was faced with the legal issue of determining whether oral penetration constituted rape as a crime against humanity or a war crime. After having recourse to a general principle it held that the "general principle of respect for human dignity is the basic underpinning and indeed the very *raison d'etre* of IHL and human rights law…this principle is intended to shield human beings from outrages upon their personal dignity, whether such outrages are carried out by unlawfully attacking the body or by humiliating or debasing the honour, self-respect or the mental well-being of a person." As such it drew the conclusion that forced oral penteration should be classified as rape.

[51] Robert Kolb, "The Exercise of Criminal Jurisdiction Over International Terrorists", in A Bianchi, Enforcing International Law Norms Against Terrorism, (1st Ed OUP 2004) 273

[52] International Law Commission (ILC) Survey of multilateral conventions that may be of relevance for the work of the International Law Commission on the topic: 'The obligation to extradite or prosecute (*aut dedere aut judicare*)' (18 June 2010) UN Doc A/CN.4/630, 4. A list of the treaties included in the survey with the text of the relevant provisions is available in the Annex

[53] For a useful discussion of the history of universal jurisdiction see M. Cherif Bassiouni "the History of Universal Jurisdiction and its Place in International Law" in Stephen Macedo *Universal Jurisdiction* (1st Ed Pennsylvania Press 2004)

[54] Kolb (n49) 252

[55] Malcolm D Evans International Law (4th Ed, Oxford University Press 2014) p.120

Antonio Cassese[56] and Rosalyn Higgins[57] all of whom are highly recognised publicists. None of these publicists identify *aut dedere aut judicare* as a general principle of law.[58] Teachings of these and other highly qualified publicists along with judicial decisions are also considered a subsidiary source in Article 38.

3.2.2 Case studies

The case studies will be used to demonstrate how the behaviour of Member States has changed in terms of the prevention and suppression of acts of terrorism, by implementing the 12 pre-existing UN counter-terrorism conventions. In order to examine the implementation of the conventions resulting from the adoption of Resolution 1373, the two relevant paragraphs from the resolution are: paragraph 3(d) which called upon states to:

> "Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999",

Paragraph 3(e) called upon states to "fully implement the relevant international conventions and protocols relating to terrorism."[59] Chapters 7, 8 and 9 will examine three pre-existing UN counter-terrorism conventions, which are:

1. International Convention against the Taking of Hostages, 1979:
2. International Convention for the Suppression of Terrorist Bombings, 1997 and
3. International Convention for the Suppression of the Financing of Terrorism, 1999

As set out above, each convention identifies a specific act of international terrorism, each requires implementation in national law and all three conventions received a significant increase in ratifications following the adoption of Resolution 1373. An examination of these three conventions in terms of identifying the relevant laws that Member States have implemented for each, will provide an indication of the change in behaviour of Member States towards implementing all the 12 pre-existing UN counter-terrorism conventions. It will show the development of the international standard to criminalise specific acts of terrorism, and it will demonstrate whether Member States have consolidated the standard into a norm. The decision to use case studies was informed by the limited data available from the CTC through the reports from Member States. After 2007, the CTED made the

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[56] Cassese (n47)

[57] Rosalyn Higgins, Problems and Process: International Law and How We Use It (Oxford University Press, 1995) 24

[58] Malcolm D Evans International Law (4th Ed, Oxford University Press 2014); Rosalyn Higgins and Maurice Flory, *Terrorism and international law*, (Routledge: London, 1997) p.27; A Cassese, *International Law*, (2nd Ed, OUP 2005) 189

[59] UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373 3(d)

reports confidential which means they are not accessible.[60] The three case studies selected from the 12 pre-existing UN counter-terrorism conventions had each criminalised a specific act of terrorism, and also they received the highest increase in accessions after the adoption of Resolution 1373.[61] The number of accessions after Resolution 1373 will be illustrated in three separate tables in the appendices.

The analysis will be conducted regionally, and the composition of the regions has been adopted from The Global Survey of the Implementation by Member States of Security Council Resolution 1373.[62] The data collected for each case study will be taken from Member States which acceded to these conventions after the adoption of Resolution 1373, so as to be considered as implementing the aforementioned paragraphs of the resolution. Due to the complexity in translating legal texts from other languages, only laws that have been drafted in English or which have an official English translation will be used. Where the text is not in English or where an official translation cannot be found, other sources will be referred to in order to provide an indication as to whether the conduct has been criminalised and whether jurisdiction has been established. These sources will include the Financial Action Taskforce (FATF) and its nine associate bodies, where their role has been to:

> "promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system".[63]

The FATF and its associate bodies work to generate the necessary will to bring about legislative reform, but they cannot make states change their national laws. The series of recommendations for money laundering were first developed by the FATF in 1990 and have been recognised as the international standard.[64] In 2001 they added eight recommendations as standards for terrorist financing[65] which have been developed through a process of Mutual Evaluation Reports where countries are encouraged to address any shortfall in their laws to tackle the issue. The role of the FATF will be examined in detail in chapter 2.

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[60] Counter-terrorism Committee's Updated Working Methods, 17 October 2006 https://www.un.org/sc/ctc/wp-content/uploads/2016/09/workingmethods-2006-10-17.pdf accessed on 1 April 2017

[61] UN Doc A/65/175 (n27) 26

[62] UNSC Global survey of the implementation by Member States of Security Council Resolution 1373 (2001) UN Doc S/2016/49

[63] Financial Action Task Force https://www.fatf-gafi.org/about/ accessed on 16 June 2019

[64] Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism. The FATF Recommendations, October 2018

[65] Financial Action Task Force (n61) https://www.fatf-gafi.org/about/ accessed on 16 June 2019

3.3 Structure of the thesis

This thesis has a three -part structure. Part I contains chapters 1 to 3. Chapter 1 introduces the scope of the research, setting out the background to the adoption of Resolution 1373 up until January 2019. Chapter 2 provides a scholarly literature review which identifies the gaps in the literature and hence, the research questions that need answering. This leads into the research aim and questions for this thesis. The method for answering these questions is set out in chapter 3, which also sets out the case studies along with an outline of the terminology that is used in this thesis. Part II contains chapter's 4, 5 and 6. Chapter 4 examines the elements that constitute a legal framework in international law as derived from the scholarly literature review, with the aim of identifying whether Resolution 1373 is capable of forming a substantive basis for a developing legal framework to suppress and prevent acts of terrorism. Chapter 5 reviews Resolution 1373 to determine the consequence of its adoption for the use of international law to prevent and suppress acts of terrorism in terms of what obligations it contains. Chapter 6 examines the policy and practice of regional organisations in order to understand the extent to which they have shaped the international response to the prevention and suppression of acts of terrorism. It also explores whether, following the adoption of Resolution 1373 a single definition of the term "terrorism" is necessary.

Part III contains chapters 7 to 9 and focuses on examining how state behaviour has changed following the adoption of Resolution 1373, and in terms of the prevention and suppression of acts of terrorism. As highlighted above chapters 7, 8 and 9 will examine three of the 12 pre-existing UN counter-terrorism conventions as case studies, in order to identify and discuss the relevant laws that Member States have implemented for each convention, as a result of paragraphs 3(d) and 3(e) from Resolution 1373. Chapter 7 provides an analysis of state practice towards the implementation of the International Convention against the Taking of Hostages 1979. Chapter 8 provides an analysis of state practice towards the implementation of the International Convention for the Suppression of Terrorist Bombings 1997, and Chapter 9 provides an analysis of state practice towards the implementation of the International Convention for the Suppression of the Financing of Terrorism 1999. Chapter 10 analyses the extent to which Member States have adopted new laws to confirm the existence of the international standard for the criminalisation of acts of terrorism, and

whether the standard has consolidated into a norm of international law. In Part IV, Chapter 11 offers conclusions on the thesis and recommendations for future research. The law in this thesis is correct as of January 2019.

3.4 Limitations of this thesis

This thesis is rooted in international law in terms of acts of international terrorism, it will not analyse Member States national criminal law or national counter-terrorism laws. The data collection will focus on accessions to the three case studies after the adoption of Resolution 1373, it does not include data from Member States that acceded to the conventions before the resolution was adopted. Chapters 7,8 and 9 will not provide a detailed description of the laws that Member States have implemented to meet the requirements of the three conventions used as case studies. The laws identified as implementing the case studies will not be listed in the bibliography. This thesis does not discuss the practice of Member States in the context of the implementation of Resolution 1373 that has interfered with international human rights law. Nor does it examine whether Member States have upheld the political offence exception when implementing the 12 pre-existing UN counter terrorism conventions. It does not seek to identify the domestic implementing laws which have been identified as in breach of international human rights. This thesis does not examine the legality of the use of Chapter VII to adopt Resolution 1373 nor does it examine whether Resolution 1373 is legislation. This thesis will not provide an in-depth analysis of the distinction between acts of terrorism within the scope of criminal law and acts of self-determination within the scope of IHL. As such, it will also not consider the issue of state terrorism (including acts committed by the military forces of states) as another issue preventing the conclusion of the definition of the term terrorism in the draft comprehensive convention on international terrorism. This research will draw on the recommendations of the FATF and the FATF associate bodies, but it will not examine or discuss issues relating to the freezing of assets of suspected terrorists and the names submitted by states for inclusion on the UN Consolidated List.[66] The purpose of referring to the FATF has been on the basis that it and its associate bodies have supported states in developing their laws to comply with the International Convention for the Suppression of the Financing of Terrorism 1999. This thesis will also not examine the war on terrorism beyond that which has been discussed in chapter 1.

[66] UNSC Res 1267 (15 October 1999) UN Doc S/RES/1267

PART II

Chapter 4: A developing legal framework in international law

4. Introduction

Before the adoption of Resolution 1373, the use of international law to tackle acts of terrorism was limited to 12 pre-existing UN counter-terrorism conventions. These did not codify any customary rules, nor did they present a common view shared amongst Member States as to a definition of the term "terrorism". They were treated as separate conventions in terms of Member States choosing which they acceded to, and there was no international cooperation between Member States to implement them all. Some scholars[1] along with Member States[2] consider that the only way to close the gap between these separate conventions is to adopt a comprehensive convention that defines the term "terrorism" and that brings the 12 pre-existing UN counter terrorism conventions together. After the adoption of Resolution 1373 Member States developed a consensus in the need to implement the 12 pre-existing UN counter-terrorism conventions and establishing jurisdiction over the acts each proscribed. This change in behaviour resulted from the implementation of paragraphs 3(d) and 3(e) of the resolution. Despite Resolution 1373 not defining the term "terrorism" it has been used as the foundation for subsequent resolutions.

This chapter will examine whether Resolution 1373 has formed the substantive basis for a developing legal framework to prevent and suppress acts of terrorism through the examination of three elements common to all legal frameworks: standards in international law, the process for implementation and compliance and a global network which invokes this process. To show the gaps that existed between the 12 pre-existing UN counter terrorism conventions, the UN Convention on the Law of the Sea (UNCLOS) will be used as an example of a comprehensive convention that brought together a consensus position and crystallised customary law, creating an international legal framework for the Law of the Sea. This chapter will highlight the subsequent resolutions for which Resolution 1373 has formed the basis.

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[1] M Bassiouni, *International Terrorism: Multilateral Conventions 1937-2001* (1st Ed, Transnational Publishers 2001); M. Cherif Bassiouni, Legal Control of International Terrorism: A Policy-Oriented Assessment, 43 HARV. INT'L L.J. 83 (2002) at 92; Alex Schmid, Terrorism - The Definitional Problem, 36 Case W. Res. J. Int'l L. 375 (2004) at 387; see also Salinas de Frias et al, *Counter-terrorism: International Law and Practice*, (1st Ed, OUP 2012)

[2] See chapter 1 pages 15-16 where the discussion shows how eager Member States are to produce a comprehensive convention on international terrorism

4.1 Legal frameworks in international law

In international law, legal frameworks operate to predominantly regulate the behaviour of states. The scholarly literature reviewed in chapter 2 suggests that legal frameworks in international law can only be formed from the sources in Article 38(1) of the Statute of the ICJ. The notion that the only way to achieve global cooperation to tackle acts of terrorism is through a comprehensive convention has been shared by scholars[3] and Member States alike. This is why Member States are persistent in pursuing a comprehensive convention on terrorism through the Ad Hoc Committee,[4] in order to provide the necessary legal framework. International conventions are one source in Article 38(1), and broadly speaking these are dependent on the consent of the parties to be bound to them, an example being the 12 pre-existing UN counter-terrorism conventions. Some international conventions, however, are comprehensive in terms of providing a legal framework for Member States. An example is the UNCLOS.[5] UNCLOS provided a legal framework which has brought together a number of conventions and consolidated customary law for the governance and management of the world's oceans,[6] defining the rights and responsibilities of states in this area. It was adopted during a unique set of circumstances that would be difficult to repeat, in terms of the number of states participating in the third UN Conference on the Law of the Sea (UNCLOS III) which led to the adoption of the 1982 convention was greater than those which attended UNCLOS I and II.[7] In addition, the evolution of state practice prior to the conclusion of UNCLOS III led to considerable acceptance of either the separate fisheries zone or the Exclusive Economic Zone.[8] Essentially, given the wide range of issues of ocean governance addressed by UNCLOS III it was recognised that the outcome would have to be a consensus position on a range of issues which reflected and balanced the interests of all states, including existing customary international law[9]. UNCLOS comprises of 320 articles and nine annexes, and it is referenced by conventions that deal with other areas of international law. For example, the UN Convention against Illicit Traffic in Narcotic Drugs

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[3] M Bassiouni, *International Terrorism: Multilateral Conventions 1937-2001* (1st Ed, Transnational Publishers 2001); M. Cherif Bassiouni, Legal Control of International Terrorism: A Policy-Oriented Assessment, 43 HARV. INT'L L.J. 83 (2002) at 92; Alex Schmid, Terrorism - The Definitional Problem, 36 Case W. Res. J. Int'l L. 375 (2004) at 387;

[4] UNGA Res 55/210 Measures to Eliminate International Terrorism (17 December 1996) UN Doc A/Res/55/2010

[5] UN Convention on the Law of the Sea (adopted on 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, 1834 UNTS 3 and 1835 UNTS 3

[6] Donald R Rothwell and Tim Stephens, The International Law of the Sea (2nd Ed, Hart Publishing 2016) 1

[7] Ibid

[8] Ibid (n6) 13

[9] Anthony Aust, *Modern Treaty Law and Practice* (2nd Ed Cambridge University Press 2007) 11

and Psychotropic Substances,[10] refers to the "conformity with the international law of the sea" in Article 17 in terms of the parties cooperating to suppress illicit traffic by sea. [11] This is recognised as an indirect reference to UNCLOS.[12]

It is clear that the 12 pre-existing UN counter-terrorism conventions cannot be compared to UNCLOS, they are very different; each convention proscribed a specific offence which Member States had agreed amounted to an act of terrorism,[13] there was no shared state practice in terms of collective action to implement all 12 pre-existing UN counter terrorism conventions and there was no consensus on defining the term "terrorism". Each of the conventions used the principle *aut dedere aut judicare* as the mechanism by which states could establish jurisdiction over each offence.[14] A perpetrator could be prosecuted in the state the offence was committed but only if that state had implemented the convention. Each convention constituted a sufficient legal basis for granting extradition[15] by setting out minimum rules in relation to the offences defined in them. *Aut dedere aut judicare* required widespread implementation of the 12 pre-existing UN counter-terrorism conventions so that across the world, the majority of Member States could have criminalised the same acts of terrorism. This would have ensured that there were no safe states where perpetrators could evade prosecution and punishment[16] Member States were reliant on each other to effectively criminalise these acts. In accordance with the Law of Treaties[17] however, they were under no obligation to sign, ratify or implement any convention. This is why, by June 1999 only 45 out of 193 Member States had ratified seven or more of the conventions.[18] The literature review in chapter 2 placed the 12 pre-existing UN counter-terrorism conventions at the centre of a legal framework in international law concerning the suppression of acts of terrorism. The gap between them however, in terms of them being separate conventions, was evident on the basis that Member States had chosen which convention they implemented.[19]

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[10] Adopted 20 December 1988, entered into force 11 November 1990. 1582 UNTS 165

[11] UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (adopted 20 December 1988) entered into force 11 November 1990. 1582 UNTS 165 per Article 17

[12] Jill Barrett and Richard Barnes, Law of the Sea. UNCLOS as a Living Treaty (1st Ed BIICL 2016) 33

[13] See Method in chapter 3

[14] United Nations Office on Drugs and Crime (UNODC), 'Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments' (New York 2006)

[15] Ibid 443

[16] A Cassese, *International Law*, (2nd Ed Oxford University Press 2005) 481

[17] Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

[18] UNGA Measures to Eliminate International Terrorism Report of the Secretary General (3 September 1999) UN Doc A/54/301, 16

[19] M Bassiouni, *International Terrorism: Multilateral Conventions 1937-2001* (1st Ed, Transnational Publishers 2001)

The literature reviewed in chapter 2 shows how scholars accept the traditional approach to the construction of a legal framework in international law in terms of drawing on the sources in Article 38(1) of the Statute of the ICJ. The assumption has been that the 12 pre-existing UN counter terrorism conventions are part of an international legal framework concerning acts of terrorism, but there has been no real examination as to what constitutes that legal framework. As identified in chapter 2 three elements will be used to examine the implementation of the non-mandatory paragraphs, 3(d) and 3 (e) of Resolution 1373, to determine whether it has formed the substantive basis of a developing legal framework. The elements are:

1. Standards in international law
2. The process of implementation and compliance and
3. The institutions, forums, networks within which the procedures are activated to invoke the standards.[20]

Using these elements will allow an analysis that goes beyond the traditional sources of international law,[21] showing the gap between the 12 pre-existing UN counter terrorism conventions that existed before Resolution 1373 was adopted, but also demonstrating show the resolution has achieved.

4.2 Standards in international law

The literature in chapter 2 concerning standards in international law suggests that they seek to convince rather than coerce. [22] Standards more generally allow for a degree of individualisation in terms of how they are applied to each situation,[23] but in international law standards indicate the behaviour that is expected by Member States.[24] In UNCLOS standards were developed around a shared understanding of the Law of the Sea. Member States were required to act collectively to establish international rules and standards,[25] whilst also being required to adopt national laws and regulations that at least have the same effect as that of "generally accepted international rules and standards".[26] The international

[20] Philip Alston, *Non-State Actors and Human Rights*, (1st Ed OUP 2005) 39
[21] Ibid
[22] Dieter Kerwer, *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 18, No. 4, October 2005, 611–632
[23] Kathleen M. Sullivan, Foreword: The Justices of Rules and Standards, 106 *Harvard. Law Review*. 22 (1992) 58
[24] Harvard Law Review Association, "Standards in International Law" *Harvard Law Review*, vol. 34, no. 7, 1921, 776–779 www.jstor.org/stable/1329232 accessed on 27 July 2019. See also Herbert V Morais, 'The Quest for International Standards: Global Governance vs. Sovereignty' (2002) 50(4) U Kan L Rev 779
[25] Ibid
[26] UN Convention on the Law of the Sea (adopted on 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3, 1834 UNTS 3 and 1835 UNTS 3 per Article 211 (2) concerning the prevention of marine pollution from vessels

standard for the criminalisation of specific acts of terrorism did not develop before Resolution 1373 because of two issues: no single definition of the term "terrorism" and no shared understanding concerning the use of international law to prevent and suppress acts of terrorism through the implementation of the 12 pre-existing UN counter terrorism conventions.

4.2.1 No single definition of the term "terrorism"

Had a single definition of the term "terrorism" been established this could have served as the basis for shared state practice. The literature review acknowledges that a working definition was produced in Resolution 1566 in 2004[27] as:

> "…criminal acts, including against civilians, committed with the intend 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 relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature..."

The resolution was not adopted under Chapter VII therefore, it is not binding on Member States. It is also widely accepted that it was too late to have an influence on Member States many of which had already developed or amended their definition of the term "terrorism" following the adoption of Resolution 1373.[28]

In UNCLOS Member States had a shared concept of the subject matter which helped to resolve any differences between Member States when adopting the convention. For example, initially some developed states did not accept the deep-sea regime, which meant they did not ratify the convention.[29] The 1994 Implementing Agreement was subsequently adopted which satisfied the developed states sufficiently for them to become party to the

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[27] UNSC Res 1566 (8 October 2004) UN Doc S/RES/1566 [3]

[28] Katja LH Samuel, The Rule of Law Framework and its Lacuane: Normative, Interpretative and/or Policy Created chapter 1, 18: Nigel D White, The United Nations and Counter-Terrorism: Multi-Lateral and Executive Law Making chapter 3, 71-2: B Saul, Criminality and Terrorism chapter 6, 145: J Pejic, Armed Conflict and Terrorism: There is a (Big) Difference chapter 7, 195 all in Salinas de Frias et al, *Counter-terrorism: International Law and Practice*, (1st Ed, OUP 2012)

[29] The original Part XI established an international regime on the deep-sea bed, but this proved unacceptable for developed states who declined to ratify the Convention because of it. This meant that, despite sufficient developing states ratifying the Convention to bring it into force, these states lacked financial capacity to fund both the deep sea-bed regime in Part XI and other institutions created by the Convention. The implementing agreement modified Part XI to meet the objections of developed states and also meant that developing states were willing to accept it partly because of the financial need to involve developed states in the 1982 Convention.

convention,[30] in order to ensure it could become a generally accepted statement on the Law of the Sea.[31] The term "terrorism" however, has become a way of alluding to particular activities that are disapproved of, and which are unlawful, but it has no specific legal meaning[32]. Member States define what amounts to terrorism on this basis and also in accordance with their political and domestic legal systems. The distinction between acts of terrorism and acts of self-determination highlighted in chapter 1 has been adopted by three regional organisations and their state members. This was a significant factor behind why none of the 12 pre-existing UN counter-terrorism conventions provided a single definition of the term "terrorism". In the absence of a single definition, state practice has not developed consistently and, therefore, no customary rule has crystallised.[33] Antonio Cassese has argued otherwise.[34] As Judge and President of the Special Tribunal for Lebanon, he opined that the requisite *opinio juris* could be found in the UN counter-terrorism conventions, UN resolutions, and the legislation and judicial practice of states.[35] The Tribunal interpreted the implementation of the Arab Convention for the Suppression of Terrorism between state members Jordan, Iraq, the United Arab Emirates, Egypt and Tunisia, as the states all sharing national laws that criminalised acts that endanger social order and spread fear or harm among the population or damage property or infrastructure in a way that endangers society.[36] Upon further examination however, Tunisia's laws were not consistent with the other states because it provided no specific threshold in relation to the damage required for an act to be that of terrorism.[37] The Tribunal also identified common themes in national definitions of the term "terrorism", for example states that had followed the United Kingdom's requirement of a religious or political motive in addition to an intent to coerce

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[30] Developed states that are party to the Convention include the United Kingdom, France, Germany, Australia.

[31] The original Part XI established an international regime on the deep-sea bed, but this proved unacceptable for developed states who declined to ratify the Convention because of it. This meant that, despite sufficient developing states ratifying the Convention to bring it into force, these states lacked financial capacity to fund both the deep sea-bed regime in Part XI and other institutions created by the Convention. The implementing agreement modified Part XI to meet the objections of developed states and also meant that developing states were willing to accept it partly because of the financial need to involve developed states in the 1982 Convention.

[32] Rosalyn Higgins and Maurice Flory, *Terrorism and international law*, (Routledge: London 1997) 27

[33] B Saul *Defining Terrorism in International Law* (1st Ed OUP 2006) 270; A Schmid, Terrorism: The Definitional Problem, (2004) 36 Case Western Reserve Journal of International Law 375

[34] A Cassese, *International Criminal Law*, (3rd Ed Oxford University Press 2003) 148- 152

[35] *Special Tribunal for Lebanon Appeals Chamber*, Interlocutory Decision on the Applicable Law, 16 February 2011 [85]

[36] ibid [93]. The states were Jordan, Iraq, the United Arab Emirates, Egypt and Tunisia.

[37] Tunisian Law 2003-75 of 10 December 2003, Article 4 of the state's primary anti-terrorism legislation provides that; 'Every crime, regardless of its motives, connected to an individual or collective initiative ("enterprise") aiming at terrorizing one person or a group of people and spreading fear among the population, for the purpose of, among other things, influencing State policies and compelling it to act in a particular way or preventing it from so acting; or disturbing public order or international peace and security, or attacking people or facilities, damaging buildings housing diplomatic missions, prejudicing the environment, so as to endangering the life of its inhabitants, their health or jeopardizing vital resources, infrastructures, means of transport and communications, computer systems or public services'

a governmental authority or intimidate a population.[38] Latin American states were used as examples of having included in their definitions the intent to spread fear and the use of means capable of causing havoc or public danger.[39] There was no mention however, of Syria's penal code containing a definition of the term "terrorism" where there was no specific requirement to cause death or serious injury.[40] Nor was there any discussion of Bahrain's requirement that an act of terrorism should disrupt "public order," threaten the Kingdoms' "safety and security" or damage "national unity."[41] The UN Special Rapporteur on Counter-Terrorism and the UN High Level Panel on Threats, Challenges and Change both stated that these terms were vague and could be interpreted in a way that would exceed the required purpose of the legislation.[42] The accepted definition of customary law by the ICJ requires consistent state practice for a customary rule of an international definition of the term "terrorism" to emerge.[43] Member States do not share any similar definitions or shared practices, such as implementing the 12 pre-existing UN counter terrorism conventions. There is no evidence of the requisite uniform practice,[44] which means that no custom has emerged. It also shows that Member States were not acting to meet the

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[38] Terrorism Act 2000, section 1"terrorism means the use or threat of an action where the use or threat is designed to influence government or an international governmental organisation or to intimidate the public or a section of the public and the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause". See also Australia Section 100.1 of the Criminal Code defines a terrorist act as "an action or threat of action" which is done or made with the intention of: advancing a political, religious or ideological cause; and coercing, or influencing by intimidation, the government of the Commonwealth, State or Territory or the government of a foreign country or intimidating the public or a section of the public. This had been followed by Australia, Canada, Pakistan and New Zealand see *Special Tribunal for Lebanon Appeals Chamber*, Interlocutory Decision on the Applicable Law, 16 February 2011 [93]

[39] *Special Tribunal for Lebanon Appeals Chamber*, Interlocutory Decision on the Applicable Law, 16 February 2011 [93] Columbia, Peru, Chile and Panama

[40] Syrian Penal Code, originally enacted 1948, https://www.unodc.org/tldb/showDocument.do?documentUid=1480 accessed on 10 September 2015, terrorism is defined to include all acts '*intended to create a state of fear which are committed by means such as explosives, military weapons, inflammable materials, poisonous or burning products or epidemic or microbial agents likely to cause public danger'*

[41] Law No 58 of 2006 with Respect to Protection of the Community Against Terrorist Acts, Article 1

[42] As defined by the UN Special Rapporteur on counterterrorism, which stated that the intent must be to "intimidate" a population or "compel" a government or organization per the UN High Level Panel on Threats, Challenges and Change, A More Secure World: our Shared responsibility A/59/565 of 2 December 2004 at 164(d) http://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/565 accessed on 7 September 2015

[43] Cassese (n34)153-169 ("the fundamental elements constituting custom: State practice and the corresponding views of States (*opinio juris or opinio necessitatis*)"); V Lowe, *International Law* (OUP 2007), pp. 36-63; M. N. Shaw, *International Law*, (6th Ed, Cambridge University Press 2008) 72-93 ("it is possible to detect two basic elements in the make-up of a custom. These are the material facts, that is, the actual behaviour of states and the psychological or subjective belief that such behaviour is law"); S. Murphy, *Principles of International Law*, (2nd Ed West, 2012) 92-101 ("States through their practice, and international lawyers through writings and judicial decisions, have agreed that customary international law exists whenever two key requirements are met: (1) a relatively uniform and consistent state practice regarding a particular matter; and (2) a belief among states that such practice is legally required"); J Crawford, *Brownlie's Principles of Public International Law*, (8th Ed, OUP 2012) 23- 30 ("the existence of custom is ... the conclusion of someone (a legal adviser, a court, a government, a commentator) as to two related questions: (a) is there a general practice; (b) is it accepted as international law?"); J. Klabbers, *International Law* (= Cambridge University Press 2013) 26-34 ("two main requirements: there must be a general practice, and this general practice must be accepted as law ...."); A Kaczorowska-Ireland, *Public International Law*, (5th Ed, Routledge, New York, 2015) 22 and 29-36 ("A customary rule requires the presence of two elements: a material element consisting of a relatively uniform and constant state practice and…the subjective conviction of the state that it is legally bound to behave in a particular way in respect of a particular type of situation i.e. that is accepts that practice as law")

[44] *Colombian-Peruvian asylum case*, Judgment of November 20th, 1950: I.C.J. Reports p.266 at 276

international standard for the criminalisation of specific acts of terrorism, because it did not exist.

4.2.2 No shared practice, no collective action: The 12 pre-existing UN counter-terrorism conventions

The 12 pre-existing UN counter-terrorism conventions had all been developed through various UN institutions, including the General Assembly, the Security Council and the International Civil Aviation Organisation.[45] Collectively they proscribed specific acts of terrorism, but each demanded criminalisation in national law which had not been forthcoming by Member States. Common to each convention was: defining as an offence the terrorist activity that was causing concern; the requirement of the parties to penalise that conduct; the identification of certain key aspects over which the parties agree to exercise their criminal jurisdiction to control the defined offence and; the creation of further jurisdictional obligations whereby a state in which a suspect is found must establish and exercise competence over the offence and refer it for prosecution if extradition is not granted pursuant to that particular convention or protocol- the principle *aut dedere aut judicare*.[46]

Unlike the Law of the Sea where Member States had come together through common practices implemented in international law, there was no shared practice over the suppression or prevention of acts of terrorism that brought Member States together. Since the 1960s Member States had been urged to deal with the issue using national laws[47] because, as described in chapter 1 the UN Security Council had struggled to identify the actions of individuals and groups as falling within the scope of its responsibility. In this respect, it is likely that Member States did not consider acts of terrorism to be something that international law could address,[48] which could explain why they had not implemented the 12 pre-existing UN counter-terrorism conventions. After the adoption of Resolution 1373 the majority of Member States, in complying with paragraphs 3(d) and 3(e) of the resolution adopted new laws which implemented the 12 pre-existing UN counter-terrorism conventions. It is the response to Resolution 1373 and the practice of states implementing the conventions that has developed the international standard for the criminalisation of

[45] See chapter 3 pp 48-49 which sets out the UN institutions that have developed the 12 pre-existing UN counter terrorism conventions
[46] United Nations Office on Drugs and Crime (UNODC), 'Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments' (New York 2006)
[47] See discussion in chapter 1 pp16-20
[48] Ibid

specific acts of terrorism. The standard, like any other standard in international law is voluntary,[49] on the basis that implementation of the conventions has not been because Member States are legally bound to do so, but because they were brought together by Resolution 1373 to take collective action against acts of terrorism. Chapters 7, 8 and 9 will show how the process of implementation and compliance provided by Resolution 1373 has brought Member States together to comply with each convention, even if that means modifying or adopting new laws. This behaviour is an indication of a general consensus amongst Member States that the request in paragraphs 3(d) and 3(e) of Resolution 1373 to implement the 12 pre-existing UN counter-terrorism conventions was behaviour that was expected of them all. It is this behaviour that has developed the international standard for the criminalisation of specific acts of terrorism

4.3 The process of implementation and compliance

Before Resolution 1373 there was no process in place to monitor Member States implementation of the 12 pre-existing UN counter-terrorism conventions and compliance with the requirements of each convention. Part of the reason for this was the need to accord to the Law of Treaties and not compel a state to become party to a convention.[50] Member States had to ratify or accede to each convention before incorporating the measures into national law. The General Assembly had adopted a number of resolutions requesting that Member States work cooperatively and become parties to all the existing conventions,[51] but they received little response. The conventions required Member States to establish jurisdiction over each offence by adopting national legislation to give effect to each convention. Without this procedure taking place in all Member States, perpetrators of these acts could evade prosecution and escape extradition.

This situation was far removed from that concerning UNCLOS. The framework document provided a detailed governance regime on issues such as the innocent passage through

[49] "Non-State Actors Participation in International Environmental Lawmaking: NGO's, Private Persons and Standard-setting Associations" in Catherine Brolmann and Yannick Radi, *Research handbook on Theory and Practice of International Law Making* (1st Ed Edward Elgar Publishing 2016) 439

[50] Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

[51] Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes UNGA Res 40/61 (9 December 1985) UN Doc A/RES/40/61, see also UNGA Res 42/159 (7 December 1987); UNGA Res 44/29 (4 December 1989), UNGA Res 46/51 (9 December 1991; UNGA Res 49/60 (17 February 1995); UNGA Res 50/53 (29 January 1996); UNGA Res 51/210 (16 January 1997); UNGA Res 52/165 (19 January 1998); UNGA Res 53/108 (26 January 1999); UNGA Res 54/110 (2 February 2000); UNGA Res 55/158 (30 January 2001)

territorial waters and the definition of the continental shelf.[52] On other matters such as safety of shipping and pollution prevention UNCLOS sets down broad principles and refers to other treaties to elaborate those rules.[53] Member States had a shared notion as to what to comply with. Concerning the 12 pre-existing UN counter-terrorism conventions, Member States were asked to give the Secretary-General details of their national counter-terrorism laws, as well as details of the conventions they had ratified.[54] There were only nine responses from Member States and they were generic[55] and lacked detail on implementation.[56] The United States of America had suggested that enforcement mechanisms should be considered to encourage states to implement the conventions,[57] because of the small number of Member States that had implemented all the 12 pre-existing UN counter terrorism conventions.

Member States had not taken collective action over acts of terrorism in the way they had with the Law of the Sea. This changed when the Security Council used its powers under Chapter VII of the UN Charter (concerning action with respect to threats to peace, breaches of the peace and acts of aggression).[58] By virtue of UN membership states had agreed that the Security Council "may decide what measures not involving the use of armed force are to be employed to give effect to its decisions",[59] and they agreed "to accept and carry out the decisions of the Security Council in accordance with the UN Charter."[60] Decisions made under Chapter VII should relate to the maintenance of international peace and security,[61] a notion that was not defined by the UN Charter, and one which has had to evolve.[62] The ICJ ruled that the scope of the decisions taken under Chapter VII prevailed over treaties.[63] The Appeal Chamber of the International Criminal Tribunal of Rwanda (ICTR) accepted that

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[52] Oceans and Law of the Sea, UN Convention on the Law of the Sea (adopted on 10 December 1982, entered into force 16 November 1994). Overview and full text. http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm accessed on 18 February 2019

[53] Ibid

[54] UNGA Res 34/145 (17 December 1979) UN Doc A/RES/34/145 at 14(a)

[55] Ibid 6 including the United States of America, Russia, Denmark, Germany and Sweden

[56] Ibid (n54) 6

[57] Measures to Prevent International Terrorism Report of the Secretary General (21 September 1981) Un Doc A/36/425, 23

[58] United Nations Charter (signed on 26 June 1945, entered into force 24 October 1945 Article 39

[59] Ibid Article 41

[60] Ibid (n52) Article 25

[61] Ibid (n52) Article 24 (1); In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf. See also the *Certain Expenses* case ICJ Rep 1962 151

[62] Johnstone J, "Legislation and Adjudication in the UN Security Council: Bringing Down and Deliberative Deficit", 102 AJIL 275 at 283

[63] Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya* v. *United States of America*), Provisional Measures, Order of 14 April1992, **1.** C.J. Reports 1992, p. 126

the Security Council had a wide margin of discretion in determining a threat to international peace and security. Such decisions were determined not to be "justiciable"[64] because they involved a number of social, political and circumstantial factors and, were, therefore, to be decided exclusively by the Security Council.[65]

Connecting acts of terrorism to the maintenance of international peace and security dates back to 1992 following the Lockerbie bombing .[66] The Security Council had used Chapter VII to impose economic sanctions on Member States that refused to extradite alleged terrorists, or those which harboured terrorists or assisted in the commission of terrorist acts in another state.[67] In this context they were normally limited in time and to a specific geographic area.[68] The use of Chapter VII to adopt Resolution 1373 was different, because the measures it contained were general and did not relate to commercial or financial penalties aimed at a specific state.[69] It was adopted in the wake of 9/11, which was a unique situation, following which, acts of terrorism were identified as a threat to international peace and security.[70]

Some scholars have described Resolution 1373 as legislation, which positions the Security Council as the legislature, [71] on the basis that, as Matthew Happold points out it imposed, "a series of general obligations binding on all UN member states".[72] An examination as to the extent that Resolution 1373 can be called legislation is peripheral to the thesis (referred to in the limitations). The argument that positions the Security Council as legislature specifically in relation to Resolution 1373 is rejected by this thesis. In addition to the points already made in the scholarly review of literature in chapter 2 on this issue, three further

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[64] *Prosecutor v Joseph Kanyabashi* ICTR-96-15-T Decision on the defence motion on Jurisdiction 18 June 1997 [20]
[65] ibid [22]
[66] UNSC Res 748 (31 March 1992) UN Doc S/RES/748 addressed Libya's refusal to extradite the Lockerbie bombing suspects. Subsequent resolutions that also noted 'the suppression of acts of international terrorism including those in which States are directly or indirectly involved, is essential for the maintenance of international peace and security,' include UNSC Res 1044 (16 August 1966) UN Doc S/RES/1044 following the attempted assassination attempt of Egypt's President Mubarak and UNSC Res 1189 (13 August 1988) UN Doc S/RES/1189 after the bombings on the US embassies in Tanzania and Kenya.
[67] Libya, Egypt an Afghanistan were the three states subject to sanction measures see chapter 1
[68] For example, the sanctions measures against Sudan in UNSC Res 1044 (16 August 1966) UN Doc S/RES/1044 which were lifted in September 2001 after compliance by Sudan see Press Release 'Security Council Lifts Sanctions Against Sudan' (28 September 2001) UN Doc SC/7517 and Libya in UNSC Res 748 (31 March 1992) UN Doc S/RES/748 which were lifted in April 1999 when Libya complied in UNSC Statement by the President of the Security Council (8 April 1999) UN Doc S/PRST/1999/10 p.2
[69] T Becker, Terrorism and the State, (1st Ed Hart Publishing: 2006) 122
[70] UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373
[71] M Happold, 'Security Council Resolution 1373 and the Constitution of the United Nations', Leiden Journal of International Law, 16 (2003) 593-610; B Saul, 4 Chinese J.Int'l L. (2005) Vol. 4 No. 1 141-166 at 141; P Szasz , 'The Security Council starts Legislating', 96 AJIL (2002) 901; S Talmon, 'The Security Council as World Legislature', 99 AJIL, (2005), 176-178 at 175
[72] M Happold, 'Security Council Resolution 1373 and the Constitution of the United Nations', Leiden Journal of International Law, 16 (2003) 593-610 at 595

reasons for the rejection are: First, Resolution 1373 should be viewed as an "important departure in the way the Security Council has historically reacted to acts of terrorism."[73] Acts of terrorism are on example of where the Security Council has had to deal with threats to international peace and security that either did not exist or were not as developed when the UN Charter was adopted. The history of this is set out in chapter 1. Despite the criticism of the Security Council in expanding its powers by adopting Resolution 1373,[74] the point that the UN Charter is a living document, deliberately designed to have capacity to meet new threats to peace and security[75] supports the open-endedness of the resolution. No time limit was placed on its implementation so as to ensure it could continue to tackle the evolving threat from terrorists.[76] Second, the Security Council, through the adoption of Resolution 1373 developed a state-centred system, where states remain the primary actors and the UN has a supportive role.[77] Neither the CTC or CTED were given the powers to sanction states that have not complied with Resolution 1373. As discussed later in this chapter, both organisations take an approach that builds the capacity of states to comply with Resolution 1373.[78] It is the resolution that has established a global network of international, regional and national institutions which will be demonstrated throughout this thesis. Third, an important characteristic of any legislature is that it their decisions can be scrutinised by a court. This point has been debated extensively and is considered in the literature in chapter 2, but the case of *Dusko Tadic*[79] reiterated that in the UN there is "no legislature, in the technical sense of the term… That is to say, there exists no corporate organ formally empowered to enact laws directly binding on international legal subjects."[80] There is also no express power in the UN Charter which provides for the ICJ to review the decisions of the Security Council. The validity of the Security Council's actions rests in the

[73] W. B Messmer and C. Yordan, "The Origins of United Nations' Counter-Terrorism System" (2010) HAOL, Núm. 22 173-182
[74] See A Byrnes et al, *International Law in the New Age of Globerlization*, (1st Ed Martinus Nijhoff Publishers 2013) at 32 which reiterates the argument that the Security Council can only adopt peace-enforcing measures rather than law making or law enforcing measures or law determining measures. See also Kosskenniemi, The Police in the Temple- Order, Justice and the UN: A Dialectical View, (1995) European Journal of International Law 325
[75] See D Malone, *The UN Security Council: From the Cold War to the 21st Century* (1st Ed Lynne Rienner 2004) and see also Frowein J.A and Kirsch N, "Chapter VII Action with respect to Threats to the Peace and Breaches of the Peace, and Act of Aggression" in B Simma, *The Charter of the United Nations: A Commentary,* (3rd Ed OUP 2012)
[76] CTC Chair Jeremy Greenstock, Presentation to symposium : Combating International Terrorism: The Contribution of the United Nations, Vienna 3-4 June 2002 accessed at http://www.un.org/en/sc/ctc/docs/rights/2002_06_03_ctcchair_symposium.pdf 10 March 2014
[77] Ibid (n73) at 179
[78] Per Ambassador Jeremy Greenstock Security-Statement by Chairman of Counter-Terrorism Committee, 4 October 2002
[79] *Prosecutor v Dusko Tadic;* IT-94-1, ICTY, Decisions of the Appeals Chamber on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995
[80] Ibid [4]

response from Member States, and the high level of compliance with Resolution 1373 indicated acceptance.[81]

The role of monitoring implementation was initially solely undertaken by the CTC[82] to which Member States were required to submit reports.[83] Despite the Security Council "calling upon" states to report to the CTC, the number of responses to the request indicated that Member States perceived it as a legitimate response to the environmental conditions facing the international community.[84] Non-reporting to the CTC has been considered to indicate a lack of compliance,[85] although it does not have a remit to action against a Member State.[86] The CTC has been proactive in providing technical assistance to states in matters concerning implementation [87] which has led to a constructive dialogue between the CTC and Member States.[88] Compliance with the resolution has been described as being on the basis of social coercion,[89] because country reports were published on the CTC's website. This meant that Member States could see what each other had implemented and use that information as they saw fit. The practice of publishing country reports was in place up until 2006 when, following a review of the Committee's working methods it was discontinued and country reports were made confidential. The CTC wanted to enable targeted and focused discussions on the implementation of Resolution 1373, and less on reporting as an "end in and of

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[81] By December 2002, the Committee had received 284 reports, 178 of these were first reports and 105 were second reports from Member States. CTC Programme of Work for the Sixth 90-day reporting period UN Doc S/2003/72 (17 January 2003) [3] https://www.un.org/sc/ctc/resources/ctccted-basic-documents/work-programmes/?wpv_aux_current_post_id=5436&wpv_view_count=3591-CATTRd237c4ac6b10356998c0d3f3ec31d977TCPID5436&wpv_paged=2 accessed 27 July 2019

[82] UN Doc S/RES/1373(n64) [6] and [8]

[83] Ibid [6]

[84] By December 2002, the Committee had received 284 reports, 178 of these were first reports and 105 were second reports from Member States. CTC Programme of Work for the Sixth 90-day reporting period UN Doc S/2003/72 (17 January 2003) [3] https://www.un.org/sc/ctc/resources/ctccted-basic-documents/work-programmes/?wpv_aux_current_post_id=5436&wpv_view_count=3591-CATTRd237c4ac6b10356998c0d3f3ec31d977TCPID5436&wpv_paged=2 accessed 27 July 2019. See also Ann Florini, 'The evolution of international norms' International Studies Quarterly, (1996) 40(3), 363-389

[85] UNSC 4688th mtg (20 January 2003) UN Doc S/PV.4688, 4 per Sir Jeremy Greenstock

[86] Ibid. "The CTC will bring to the attention of the Council any difficulties it encounters, as requested in the declaration that will be adopted today."

[87] UNSC Letter from the Chairman of the Security Council Committee Established Pursuant to Resolution 1373 (2001) concerning the Counter-terrorism Committee Addressed to the President of the Security Council (19 February 2004) UN Doc S/2004/124 Proposal for the Revitalisation of the Counter-Terrorism Committee http://www.un.org/en/sc/ctc/docs/S-2004-124.pdf accessed on 30 November 2015

[88] Luis M Hinojosa-Martinez, 'A Critical Assessment of the Implementation of Security Council Resolution 1373' in Ben Saul, *Research Handbook on International Law and Terrorism* (1st Ed Edward Elgar Publishing 2014) 2.1

[89] J Craig Barker 'The Politics of International Law Making: Constructing Security in Response to Global Terrorism' Journal of International Law and International Relations (Spring 2007) Vol 3 (1) 19

itself'.[90] In 2004, the Counter-terrorism Executive Directorate (CTED) was created to assist the work of the CTC and coordinate the process of monitoring implementation of Resolution 1373.[91] Where the CTC had initially reviewed Member States' legislative and executive measures[92] the focus of its work shifted to strengthening institutional mechanisms to improve their capacity to combat terrorism.[93]

4.4 International, regional and national institutions: forming a global network

The literature reviewed for this element identifies institutions at three levels: national, international and regional. At a national level the institutions are the governments of Member States. At an international level the institutions are the Security Council, the CTC which is formed of all 15 members of the Security Council, the CTED which is formed of legal experts and two human rights officers[94] and the Financial Action Task Force (FATF). At a regional level the institutions are found in the regional organisations and the associate bodies of the FATF.[95] The CTC and CTED's interaction with the institutions at all these levels has driven the creation of a network which has implemented Resolution 1373. The success of this network can be seen in the country visits facilitated by CTED with the consent of the host government. These have helped to create two global surveys for the implementation of Resolution 1373[96] which serve to identify progress as well as gaps in order to advise Member States as to where to focus their efforts.[97] The 284 reports from

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[90] Counter-terrorism Committee's Updated Working Methods, 17 October 2006 https://www.un.org/sc/ctc/wp-content/uploads/2016/09/workingmethods-2006-10-17.pdf accessed on 1 April 2017. The CTC is comprised of Members of the UN Security Council and information received by the CTC will be kept confidential if the provider requests so or if the CTC so decided, Guidelines of the Committee for the Conduct of its Work ,16 October 2001 https://www.un.org/sc/ctc/wp-content/uploads/2016/09/guidelines-for-conduct-ctc.pdf accessed on 25 August 2019.

[91] UNSC RES 1535 (26 March 2004) UN Doc S/RES/1535

[92] UN Doc S/PV.4688 (n77) 3 the Secretary General

[93] Ibid

[94] The Counter-terrorism Committee and Executive Directorate Press Kit, June 2016 https://www.un.org/sc/ctc/wp-content/uploads/2015/09/CTED-press-kit-2016-ENGLISH.pdf accessed on 22 February 2019

[95] From the FATF website these are:
Asia/Pacific Group on Money Laundering (APG)
Caribbean Financial Action Task Force (CFATF)
Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)
Eurasian Group (EAG)
Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
Financial Action Task Force of Latin America (GAFILAT)
Inter Governmental Action Group against Money Laundering in West Africa (GIABA)
Middle East and North Africa Financial Action Task Force (MENAFATF)
Task Force on Money Laundering in Central Africa (GABAC)
http://www.fatf-gafi.org/about/membersandobservers/ accessed on 20 April 2019

[96] The Counter-terrorism Committee and Executive Directorate Press Kit, June 2016 https://www.un.org/sc/ctc/wp-content/uploads/2015/09/CTED-press-kit-2016-ENGLISH.pdf accessed on 22 February 2019

[97] Ibid

states submitted to the CTC by December 2002[98] provided an indication as to the success of the network invoking the process for implementation/compliance. The interactive nature of the relationship between the CTC, CTED, and Member States underpins the success of the implementation process. Ambassador Jeremy Greenstock directed the CTC to build the capacity of Member States to comply with Resolution 1373 through the process of consensus and dialogue, which recognises that states have differing abilities to meet the obligations the imposed on them.[99] The initial state response up until 2006 has been attributed to social coercion[100] initially discussed in chapter 2, because country reports were published on the CTC website. After publication of them ceased however, Member States engagement with the CTC, CTED and the other international and regional institutions cannot be because they felt coerced. Member States continue to develop a coordinated approach to tackling acts of terrorism that did not exist before Resolution 1373.

The remit of the CTC and CTED has been extended to supporting Member States implement Resolutions 1624 and 2178 (discussed in detail below).[101] Resolution 1624 in its preamble stresses the:

> "… importance of the role of the media, civil and religious society, the business community and educational institutions in those efforts to enhance dialogue and broaden understanding, and in promoting tolerance and coexistence, and in fostering an environment which is not conducive to incitement of terrorism".[102]

This extends the global network to non-state actors such as the media, and educational institutions to support the implementation of the resolution. Resolution 2178 encouraged Member States to

> "…to engage with relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite

[98] By December 2002, the Committee had received 284 reports, 178 of these were first reports and 105 were second reports from Member States. CTC Programme of Work for the Sixth 90-day reporting period UN Doc S/2003/72 (17 January 2003) [3] https://www.un.org/sc/ctc/resources/ctccted-basic-documents/work-programmes/?wpv_aux_current_post_id=5436&wpv_view_count=3591-CATTRd237c4ac6b10356998c0d3f3ec31d977TCPID5436&wpv_paged=2 accessed 27 July 2019

[99] Press Release, United Nations Security Council, Security Council Considers Terrorists Threats to International Peace, Security-Statement by Chairman of Counter-Terrorism Committee (Oct. 4, 2002) https://www.un.org/press/en/2002/sc7522.doc.htm accessed 7 April 2020

[100] J Craig Barker "The Politics of International Law Making: Constructing Security in Response to Global Terrorism" *Journal of International Law and International Relations* (Spring 2007) Vol 3 (1) 19

[101] UNSC Res 1624 (14 September 2005) UN Doc S/RES/1624 Threats to international peace and security (Security Council Summit 2005) [6]

[102] UNSC Res 1624 (14 September 2005) UN Doc S/RES/1624 Threats to international peace and security (Security Council Summit 2005)

> terrorist acts. States are also called upon to address the conditions conducive to the spread of violent extremism, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society, and promoting social inclusion and cohesion."[103]

This further extends the network to local community groups. Both resolutions also urged Member States to become party to the 12 pre-existing UN counter terrorism conventions.[104] The global network, extended to national institutions invokes the process of implementation and compliance with Resolution 1624 and 2178.

The change in behaviour of Member States towards criminalising specific acts of terrorism is evident in the increased number of accessions and ratifications to the 12 pre-existing UN counter-terrorism conventions, as set out in chapter 1. Emphasising a point made earlier, before Resolution 1373, Member States were not forthcoming in providing information about how they had implemented the 12 pre-existing UN counter-terrorism conventions. After the adoption of the resolution, this situation changed. Examples of the new and amended laws Member States have adopted to ensure that acts of terrorism are criminalised to the requirements of the conventions are discussed in chapters 7, 8 and 9.

4.5 Resolution 1373 forming the basis for subsequent resolutions

The global network has encouraged national institutions to strengthen their capacity to tackle acts of terrorism through subsequent resolutions, which all have a foundation in Resolution 1373. For example, Resolution 1624 of September 2005 called upon all states to prohibit incitement to commit terrorist acts.[105] The language referred to Member State's existing obligations in international law by way of Resolution 1373 to prevent terrorist acts and deny a safe haven to any suspected perpetrators of incitement.[106] Member States were urged to:

> "… continue international efforts to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures, and to take all measures as may be necessary and appropriate and in accordance with their obligations under international law to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent

[103] UNSC Res 2178 (24 September 2014) UN Doc S/RES/2178 Threats to international peace and security caused by terrorist acts
[104] UN Doc S/RES/1624 (n93) 2 and UN Doc S/RES/2178, (n95) 3
[105] UN Doc S/RES/1624 (n96)
[106] For further discussion on Resolution 1373 and what obligations it imposed on Member States see chapter 5

> the subversion of educational, cultural, and religious institutions by terrorists and their supporters."[107]

In 2014 Resolution 2178 was adopted under Chapter VII to tackle foreign terrorist fighters.[108] It built on the effective flows of information at a national and international level established as a result of Resolution 1373. It encouraged Member States to engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremism narrative that can incite terrorist acts, and to address the conditions conducive to the spread of violent extremism, which can be conducive to terrorism, including by empowering youth, families, women, religious, cultural and education leaders, and all other concerned groups of civil society.[109] Paragraph 6 of the resolution stated the Security Council:

> "Recalls its decision, in Resolution 1373 (2001), that all 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, and decides that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense ...
> (b) the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training…

The basis for this can be found in paragraph one of Resolution 1373 and the International Convention for the Suppression of the Financing of Terrorism 1999, which is discussed in more detail in chapter 5. Where combatting terrorist financing had become a priority for the FATF in 2001[110] (more below), the FATF was able to update their recommendations to support the implementation of Resolution 2178; updated Recommendation 5 provides that the offence of terrorist financing must cover financing the travel of foreign terrorist fighters.[111]

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[107] UN Doc S/RES/1624 (n96) [3]
[108] UN Doc S/RES/2178 (n98)
[109] Ibid (n98)
[110] Financial Action Task Force (FATF) http://www.fatf-gafi.org/about/whoweare/ accessed on 13 February 2019
[111] FATF Guidance, Criminalising Terrorist Financing (Recommendation 5), October 2016 at [15] http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-Criminalising-Terrorist-Financing.pdf accessed on 20 April 2019

Resolution 1373 was the foundation for both these resolutions, which sought to encourage national institutions to engage with the relevant actors through a number of forums. This included a series of workshops that were held in 2010 which explored effective ways to counter incitement through law enforcement as well as community-based approaches. [112] Other forums to further develop practical experiences of working with communities and promoting dialogue have included the special meeting on "Stemming the Flow of Foreign Terrorist Fighters" in 2015. [113] Hosted by the Government of Spain, one of the working sessions focused on the theme of prevention and included participants from governments, civil society organisations, and representatives of international organisations. In September 2015, the CTED held an open briefing on "The Role of Women in Countering Terrorism and Violent Extremism".[114] It was noted that the potential for women to act as a vital response in policy and planning on countering violent extremism had been largely untapped, and yet they could have positive and proactive roles as agents of change through their influence on family, community and also governments.[115]

Interaction between the FATF and Member States following the adoption of Resolution 1373 has increased. The FATF was established to initially examine and develop measures to combat money laundering, but in October 2001 it extended its mandate to combat the financing of terrorism.[116] Its role is to promote the effective implementation of the legal, regulatory and operational measures in this context, working to generate the necessary political will to enable regulatory and legislative reform for both the financing of terrorism and money laundering. It has 36 members,[117] and associate members include a number of regional organisations which support their state members in implementing legal, regulatory and operational measures to combat the financing of terrorism.[118] The FATF

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[112] Counter-terrorism Executive Directorate https://www.ohchr.org/Documents/Issues/RuleOfLaw/PCVE/CTED.pdf accessed on 18 February 2019

[113] UNSC CTC Special meeting of the Counter-Terrorism Committee in Madrid concludes with recommendations on stemming the flow of foreign terrorist fighters, Thursday 30 July 2015 https://www.un.org/sc/ctc/news/2015/07/30/special-meeting-of-the-counter-terrorism-committee-in-madrid-concludes-with-recommendations-on-stemming-the-flow-of-foreign-terrorist-fighters/ accessed on 18 February 2019

[114] Security Council Counter-terrorism Committee. In a first for the Counter-Terrorism Committee, the Security Council body holds open briefing on the role of women in countering terrorism and violent extremism, Wednesday 9 September 2015 https://www.un.org/sc/ctc/news/2015/09/09/in-a-first-for-the-counter-terrorism-committee-the-security-council-body-holds-open-briefing-on-the-role-of-women-in-countering-terrorism-and-violent-extremism/ accessed on 18 February 2019

[115] Counter-terrorism Executive Directorate https://www.ohchr.org/Documents/Issues/RuleOfLaw/PCVE/CTED.pdf accessed on 18 February 2019

[116] Financial Action Task Force (FATF) (n97)

[117] The 36 members of the FATF are listed on their website http://www.fatf-gafi.org/about/membersandobservers/ accessed on 13 February 2019

[118] FATF Associate Members include: Asia/Pacific Group on Money Laundering (APG); Caribbean Financial Action Task Force (CFATF); Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of

Recommendations set out a comprehensive set of measures which Member States should implement in order to give effect to the relevant measures in Resolution 1373 along with the International Convention for the Suppression of the Financing of Terrorism.[119] They have been endorsed and adopted by the UN Security Council in Resolution 1617.[120] The procedure to assess a state's compliance with the FATF Recommendations concerns a questionnaire that guides an assessment team through an on-site visit, which results in a Mutual Evaluation Report being produced. The report is discussed with each state,[121] and it is also made public. The practical effect of this work is examined in chapter 9 which shows the laws Member States have created to meet Recommendation 5 which requires states to "comprehensively criminalise terrorist financing as a distinct offence".[122]

Before Resolution 1373 regional organisations had been condemning and promoting terrorism through their own conventions.[123] As has already been stated, three regional organisations promoted the distinction between acts of terrorism and acts of self-determination.[124] Such has been the influence of this position it has also affected the negotiations over a draft UN comprehensive convention on international terrorism, which will be discussed in more detail in chapter 6. In Resolution 1373, the Security Council recognised the influence that regional organisations have on Member States when it emphasised:

> "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".[125]

Terrorism (MONEYVAL); Eurasian Group (EAG) ; Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) ; Financial Action Task Force of Latin America (GAFILAT) (formerly known as Financial Action Task Force on Money Laundering in South America (GAFISUD)); Inter Governmental Action Group against Money Laundering in West Africa (GIABA); Middle East and North Africa Financial Action Task Force (MENAFATF); Task Force on Money Laundering in Central Africa (GABAC)

[119] Not only Resolution 1373, the recommendations also set the standard for states to effectively combat money laundering. The Recommendations can be found in the FATF Guidance, Criminalising Terrorist Financing (Recommendation 5), October 2016 at [1] http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Terrorist-Financing-Strategy.pdf accessed on 20 April 2019

[120] UNSC Res 1617 (29 July 2005) UN Doc S/Res/1617

[121] For more detail on the methodology of the FATF Anti-Money Laundering and Combating the Financing of Terrorism Mutual Evaluations Program (MEP) see Dimitropoulos, Georgios (2014), 'Compliance through collegiality: Peer Review in international law', MPILux Working Paper 3, available at: www.mpi.lu

[122] FATF Guidance, Criminalising Terrorist Financing (Recommendation 5), October 2016 at [1-2] http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Terrorist-Financing-Strategy.pdf accessed on 20 April 2019

[123] These are listed in chapter 1

[124] These were the Organisation of Islamic Cooperation, the African Union and Arab League

[125] UN Doc S/RES/1373 (n65) [4]

Subsequently, regional organisations have actively encouraged their state members to cooperate to combat terrorism, by setting out what they should implement in national legal systems. For example, a Comprehensive Anti-Terrorism Model Law provided guidelines for law enforcement and a regional approach to dealing with terrorist offences.[126]

Resolution 1373 has formed the foundation for thirty -seven subsequent resolutions to date,[127] two of which were Resolutions 1624 and 2178 discussed above. Others have dealt with acts of terrorism in specific states, such as Resolution 1636 which was adopted after a terrorist bombing which took place in Beirut in February 2005. [128] It was adopted under Chapter VII and referred to Resolution 1373 in the context of Lebanon and Syria's potential involvement in the attack, and how that would be a violation of the obligations contained in the resolution.[129] Resolution 1465 was adopted after a terror bomb in Bogota, Columbia in February 2003 and the Security Council urged:

> "all States, in accordance with their obligations under resolution 1373 (2001), to work together urgently and to cooperate with and provide support and assistance, as appropriate, to the Colombian authorities in their efforts to find and bring to justice the perpetrators, organizers and sponsors of this terrorist attack".[130]

This statement was also used in Resolution 1516 which was adopted after a terrorist attack in Istanbul, Turkey in November 2003.[131] Each of the thirty-seven resolutions have reaffirmed the position taken by Resolution 1373 and reiterated its purpose indicating the behaviour that is expected by Member States.[132] These subsequent resolutions continue to place emphasis on the need for Member States to cooperate with each other, as well as for the role of the CTC and CTED in supporting the capacity of Member States to implement, not only Resolution 1373, but also Resolutions 1624 and 2178.

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[126] The African Model Anti-Terrorism Law, final draft endorsed by the 17th Ordinary Session of the Assembly of the Union (30 June – 1 July 2011) http://caert.org.dz/official-documents/african-model-law-en.pdf accessed on 24 June 2017

[127] UN Doc S/RES/1373 (n64) showing the subsequent resolutions that have quoted it http://unscr.com/en/resolutions/1373 accessed on 1 November 2018.

[128] For example, UNSC Res 1636 (31 October 2005) UN Doc S/RES/1636 The Situation in Lebanon following a terrorist bombing in Beirut in February 2005.

[129] Ibid. The Situation in Lebanon following a terrorist bombing in Beirut in February 2005 at paragraph 5. Takes note with extreme concern also of the Commission's conclusion that, while the Syrian authorities have cooperated in form but not in substance with the Commission, several Syrian officials tried to mislead the Commission by giving false or inaccurate information, and determines that Syria's continued lack of cooperation to the inquiry would constitute a serious violation of its obligations under relevant resolutions, including 1373 (2001)

[130] UNSC Res 1465 (13 February 2003) UN Doc S/RES/1465 Threats to international peace and security caused by terrorist acts

[131] UNSC Res 1516 (20 November 2003) UN Doc S/RES/1516 Threats to international peace and security caused by terrorist acts

[132] Harvard Law Review Association (n20). See also Morais (n24)

4.6 Conclusions

The analysis in this chapter has examined how Resolution 1373 has formed the substantive basis for a developing legal framework. It highlighted the view shared by scholars[133] and Member States alike, that the only way to achieve global cooperation to tackle acts of terrorism is through a comprehensive convention which brings together the 12 pre-existing UN counter-terrorism conventions, and where the term "terrorism" is defined. UNCLOS provided an example of a comprehensive convention which created an international legal framework for the Law of the Sea. This chapter used three elements common to all legal frameworks as a lens through which to examine what constitutes an international legal framework. In doing so, it demonstrated that the resolution has actually produced all three of these elements:

- Standards in international law
- The process for implementation and compliance and
- International, regional and national institutions: forming a global network.[134]

A standard in international law seeks to convince Member States to take action,[135] indicating the behaviour that is expected by Member States.[136] Before Resolution 1373 Member States did not consider that the 12 pre-existing UN counter-terrorism conventions produced a standard which they ought to meet; implementation of all the conventions was patchy and inconsistent. The lack of a single definition of the term "terrorism" meant that no shared practices existed between Member States. The limited implementation of all the 12 pre-existing UN counter-terrorism conventions indicated that acts of terrorism were not perceived to be an issue that Member States considered could be dealt with through international law.

Resolution 1373 changed this. It set down what Member States needed to achieve in order to prevent and suppress acts of terrorism by reinforcing the criminalisation of such acts through the 12 pre-existing UN counter-terrorism conventions through paragraphs 3(d) and

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[133] M Bassiouni, *International Terrorism: Multilateral Conventions 1937-2001* (1st Ed, Transnational Publishers 2001); M. Cherif Bassiouni, Legal Control of International Terrorism: A Policy-Oriented Assessment, 43 HARV. INT'L L.J. 83 (2002) at 92; Alex Schmid, Terrorism - The Definitional Problem, 36 Case W. Res. J. Int'l L. 375 (2004) at 387;

[134] Philip Alston*, Non-State Actors and Human Rights*, (1st Ed OUP 2005) 39

[135] Kerwer (n22) 2

[136] Harvard Law Review Association (n20). See also Morais (n24)

3(e). The requirement of implementing these conventions in national legal systems has not changed, and Member States cannot be forced to become party to them. So, it is even more significant that following Resolution 1373 Member States behaviour changed towards the implementation of the 12 pre-existing UN counter-terrorism conventions on the basis of a request. The new practice from Member States developed the international standard for the criminalisation of specific acts of terrorism. The process of implementation and compliance created by Resolution 1373 is invoked through the global network of international, regional and national institutions, led by the CTC and CTED. The success of this process has led to the remit of the CTC and CTED being extended to other resolutions of the Security Council- such as Resolution 1624 and Resolution 1278- and other acts of terrorism. The global network has been extended to non-state actors such as educational institutions and community groups, within which the process of implementation has been invoked. This chapter has shown how Resolution 1373 has produced the three elements common to an international legal framework.

Resolution 1373 has been the foundation for 37 subsequent resolutions which reaffirm its purpose; to prevent and suppress acts of terrorism. One example is Resolution 1624 which prohibits the incitement to commit terrorist acts.[137] This referred to Member States existing obligations in international law by way of Resolution 1373 to prevent terrorist acts and deny a safe haven to any suspected perpetrators of incitement.[138] The second example is Resolution 2178 which tackles foreign terrorist fighters,[139] and which referred to Resolution 1373 in terms of states ensuring that they establish an offence for the financing, planning or preparation or support for acts of terrorism".[140] The behaviour expected by Member States from these resolutions and Resolution 1373 is the criminalisation of specific acts of terrorism, achieved through the implementation of the 12 pre-existing UN counter terrorism conventions. Despite not being a comprehensive convention, Resolution 1373 brought together the pre-existing UN counter terrorism conventions in terms of Member States considering their implementation to be a standard of behaviour expected by them. The process of implementation and compliance through the global network is used to implement some of the resolutions that Resolution 1373 has been the foundation for. These points

[137] UN Doc S/RES/1624 (n96)
[138] For further discussion on Resolution 1373 see chapter 5
[139] UN Doc S/RES/2178 (n98)
[140] Ibid [6]

indicate that Resolution 1373 has become a substantive basis for a developing legal framework to prevent and suppress acts of terrorism.

To confirm this, it is necessary to identify that the international standard for the criminalisation of specific acts of terrorism has developed, which will be examined in chapters 7, 8 and 9 through three of the 12 pre-existing UN counter terrorism conventions. Before that however, chapter 5 will determine the extent of the obligations that Resolution 1373 imposed on Member States, in particular paragraphs 3(d) and 3(e). It will examine whether these paragraphs were actually requests and what the consequence has been for the use of international law in preventing and suppressing acts of terrorism.

Chapter 5: The elements of Resolution 1373

5. Introduction

Chapter 4 established that Resolution 1373[1] has produced three elements that are common to all legal frameworks, indicating that it has formed the substantive basis for a developing legal framework to prevent and suppress acts of terrorism. The consequence of its adoption for the use of international law to prevent and suppress acts of terrorism has not been identified in the scholarly literature reviewed in chapter 2. The obligations Resolution 1373 placed on Member States were general in terms of not being aimed at any one particular state, and the resolution could not oblige Member States to sign, ratify or implement any of the 12 pre-existing UN counter-terrorism conventions.[2] A distinction has been made in the resolution between "decisions" as obligations and "calls upon" as recommendations and this chapter will examine what Resolution 1373 asked Member States to achieve. It will examine the three main paragraphs to show what exactly Member States were obliged to implement.

5.1 The nature of the resolution

Resolution 1373 has been described as legislative, on the basis that it created general obligations that are binding on all UN Member States.[3] The argument put forward in the literature that identified the use of Chapter VII to adopt Resolution 1373 as going beyond the remit of the Security Council focused on the legislative role that the Security Council was perceived to have taken on. Chapter 4 disagrees with this premise. It is unlikely however, that Member States perceived the Council's actions in those terms.[4] The notion that the resolution could potentially influence international cooperation was lost in the dialogue about the expansion of the Security Council's powers.[5] Gilbert Guillaume was one of a few scholars that described the resolution as a solution to the gap in the capability of Member States resulting from the lack of implementation of the 12 pre-existing UN counter-terrorism conventions.[6]

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[1] UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373

[2] Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

[3] M Happold, 'Security Council Resolution 1373 and the Constitution of the United Nations', Leiden Journal of International Law, 16 (2003) 593-610 595

[4] Ian Johnstone 'Legislation and Adjudication in the UN Security Council: Bringing Down and Deliberative Deficit', 102 AJIL 275, 283
and see also Paul C. Szasz, 'The Security Council Starts Legislating', (2002) 96 AM. J. INT'L L. 902, 905

[5] Happold (n3) 600

[6] Gilbert Guillaume Terrorism and International Law, (2004) 53 *ICLQ* 543

Two main paragraphs placed general obligations on Member States which required them to change and update their counter-terrorism laws. The first paragraph contained measures that dealt with the prevention and suppression of the financing of terrorism. The second paragraph addressed the prevention and criminalisation of acts of terrorism. The third paragraph was aimed at international cooperation, and ratification and implementation of the 12 pre-existing UN counter-terrorism conventions. The first two paragraphs used the phrase "decides that all States shall," language which indicates that the measures should be considered binding.[7] The third paragraph "Calls upon all states…" which is language that, along with phrases such as "recommends", and "appeals to" has been considered to imply compulsion.[8] There is however, a suggestion that in practice this language is closer to having a mandatory meaning.[9] The basis for this argument lies in two Security Council resolutions adopted under Chapter VII which contained sanctions against Iran for proliferation of nuclear activities.[10] Three members of the Security Council each asserted that the use of "Calls upon" in these resolutions denoted mandatory measures.[11] The Member States pointed to the use of the phrase in the UN Charter in Articles 33(2) and 41 to demonstrate how it bestowed obligations. Article 33(2) calls upon "…parties to settle their disputes,"[12] and Article 41 provides for the Security Council to "decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures".[13] In order to determine whether there is weight in this argument, it is necessary to examine the context in which it has been used. Article 33 in its entirety provides for the settlement of disputes where if they were to continue, there would be a risk to international peace and security.[14] Article 33(2) sets out

[7] Bruno Simma et al, *The Charter of the United Nations, A Commentary* (Vol III, 3rd Ed, (Oxford University Press 2012) 1264-1266

[8] Szasz (n4); Stefan Talmon, The Security Council as World Legislature (2005) 99 AM. J. INT'L L. 175, 186

[9] James D Fry, 'Dionysian Disarmament: Security Council WMD Coercive Disarmament Measures and Their Legal Implications' (2008) 29 Mich J Intl 229-32

[10] UNSC 5500th mtg. (31 July 2006) UN Doc S/PV.5500 at 3 leading to the adoption of UNSC Res 1696 (31 July 2006) UN Doc S/Res/1696 and UNSC 5612th mtg. (23 December 2006) UN Doc S/PV.5612 at 2 leading to the adoption of UNSC Res 1737 (27 December 2006) UN Doc S/RES/1737

[11] UN Doc S/PV.5500 (n10) 3 and. UN Doc S/PV.5612 (n10) 2

[12] Article 33(2) "The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means".

[13] Article 41 "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations".

[14] Article 33 of the UN Charter:

(1) The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

(2) The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

that the Security Council can when necessary "call upon the parties to settle their disputes."[15] In this context, although there is an implied assertion that the Security Council cannot force Member States to settle their disputes, if the situation becomes a risk to international peace and security it falls within the scope of the Security Council's powers and the Security Council can encourage Member States to settle their dispute accordingly. The use of phrase here although it appears to be recommendatory, could potentially be interpreted as something that requires compliance. Article 41 concerns a different aspect of international law to that of Article 33(2), namely action with respect to threats to the pace, breaches of the peace and acts of aggression. It states that:

> The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations. [16]

The use of the term "decides" denotes a mandatory obligation by virtue of Article 25 of the UN Charter[17] where Member States have to agree and carry decisions of the Council. Therefore, the phrase, "calls upon" in this context takes on a meaning which is consistent with the overall aim of the paragraph: to carry out the action required from a decision made by the Security Council. What both these articles show is that the intention depicted by the phrase "calls upon" depends upon the context in which it is used. The use of the phrase in the sanction measures adopted against Iran were aimed at getting the state to suspend all uranium enrichment-related and reprocessing activities.[18] Paragraph 10 of the resolution:

> "Calls upon all States to exercise vigilance regarding the entry into or transit through their territories of individuals who are engaged in, directly associated with or providing support for Iran's proliferation sensitive nuclear activities or for the development of nuclear weapon delivery systems, and decides in this regard that all States shall notify the Committee of the entry into or transit through their territories of the persons designated in the Annex to this resolution…".[19]

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[15] Per Article 33(2) (n12)
[16] Article 41 (n13)
[17] Article 25 "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter".
[18] UNSC Res 1737 (27 December 2006) UN Doc S/RES/1737 [10]
[19] Ibid

This paragraph, which opens with "calls upon" and then recommends that states are vigilant can be distinguished from Article 41 of the UN Charter which is discussed above. This paragraph goes on to oblige Member States to notify the committee about specific individuals who had been designated by the Security Council as being engaged in or associated with or providing support to Iran's proliferation of sensitive nuclear activities. The mandatory character of the measure was not denoted by the opening phrase, and it would limit its purpose if it was interpreted as only a suggestion because of that. Whilst this analysis has demonstrated the ambiguity in the use of the phrase, it cannot be said that "calls upon" has adopted a consistent binding character. It is necessary to have regard for the content and intent of any resolution in which the phrase is used.[20] In Resolution 1373 its use denotes a recommendatory request to Member States because of the Vienna Convention on the Law of Treaties.[21]

Another aspect of the nature of Resolution 1373 was that it referred to acts of terrorism in paragraphs 1(a) to (c), and 2 (a) to (f). This avoided the possibility of addressing the lack of a single definition as discussed in chapter 4. Terrorist acts are not defined in the resolution *per se*, but the use of the phrase closely follows text very similar to that found in the 1999 International Convention for the Suppression of the Financing of Terrorism (Financing of Terrorism Convention) which is discussed in more detail below.[22] It would be logical to assume,[23] for the sake of consistency, that the acts are no different to any of those set out in the convention, which refers to the acts in the 12 pre-existing UN counter-terrorism conventions alongside:

> "Any other act intended to accuse death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act".[24]

[20] Alan Boyle and Christine Chinkin, *The Making of International Law*, (Oxford University Press: 2007) 230

[21] By virtue of the principle *pacta sunt servanda* set out in the Vienna Convention of the Law of Treaties (n2)

[22] International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197

[23] This argument was advanced by Szasz (n4) 904 and also echoed by Wondwossen D Kassa in "Rethinking the No Definition Consensus and the Would have Been Binding Assumption Pertaining to Security Council Resolution 1373" (2015) Flinders Law Journal 127-154 at 140-143

[24] International Convention for the Suppression of the Financing of Terrorism (n22) Article 2(1)(a) and (b) respectively

Connected to this is the notion of "suppressing" acts of terrorism. To suppress an activity according to the dictionary means to prevent it from continuing…by making it illegal.[25] This was the process that was initiated by the 12 pre-existing UN counter-terrorism conventions, each of which sought to criminalise a specific act of terrorism. The term has also been used in the title of some of the conventions, for example the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft[26] and the 1999 International Convention for the Suppression of the Financing of Terrorism.[27] Resolution 1373 continued to use it in the same context, placing emphasis on the prosecution and punishment of the perpetrators of terrorist acts, which is the interpretation adopted for the purpose of this research.[28] Resolution 1373 introduced preventative measures, which can be interpreted in accordance with the International Convention for the Suppression of the Financing of Terrorism (as will be examined below) which is aimed at stopping acts of terrorism from happening by eliminating the funding. This research has interpreted terrorist acts to mean those provided for by the 12 pre-existing UN counter-terrorism conventions and adopts the meaning of suppression and prevention from Resolution 1373 as set out above.

5.2 Paragraph One: Preventing and Suppressing the Financing of Terrorism

This paragraph placed two obligations on states in relation to criminalising the financing of terrorism. This stated in Paragraph 1(a) provided that states shall "Prevent and suppress the financing of terrorist acts." Unlike the Financing of Terrorism Convention which could only be applied to acts that were committed outside of the territory of a single state,[29] the obligation in paragraph 1(a) applied irrespective of any transnational element. A continuation of this obligation can be found in paragraph 1(b) which provided that states shall:

> "criminalise the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories, with the intention that the funds

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[25] Collins English Dictionary Online "If someone in authority suppresses an activity, they prevent it from continuing by using force or making illegal" https://www.collinsdictionary.com/dictionary/english/suppress accessed on 1 October 2018

[26] Convention for the Suppression of Unlawful Seizure of Aircraft (signed on 16 December 1970, entered into force 14 October 1971) 860 UNTS 105

[27] International Convention for the Suppression of the Financing of Terrorism (n22)

[28] Ibid. In its preamble is states: *Being convinced* of the urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators. See also the terminology section in chapter 3.

[29] International Convention for the Suppression of the Financing of Terrorism (n22) Article 3 "This Convention shall not apply where the offence is committed within a single State, the alleged offender is a national of that State and is present in the territory of that State and no other State has a basis under article 7, [1] or [2] to exercise jurisdiction, except that the provisions of articles 12 to 18 shall, as appropriate, apply in those cases".

should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts".

The language is similar to that found in Article 2 of the Financing of Terrorism Convention, which set out the offence of financing terrorism and as already identified above, defined what constituted a terrorist act for the purposes of the instrument:

"if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part in order to carry out [An act]…"[30]

Paragraph 2(e) of the resolution, discussed later in the chapter, required states to qualify the perpetration of terrorist acts as well as their financing and planning.[31] This, when read in conjunction with paragraph 1(b)[32] has extended what was a contractual obligation found in Article 4 of the Financing of Terrorism Convention, to all Member States:[33]

"Each State Party shall adopt such measures as may be necessary: (a) To establish as criminal offences under its domestic law the offences set forth in article 2; (b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences".

Member States only became bound by this article when they became party to the Convention, now by virtue of Chapter VII they have been obliged to give effect to it.

Although the Suppression of Terrorist Financing Convention was comprehensive, it did not contain measures which prohibited the placing of funds or financial services at the disposal of terrorists.[34] Paragraph 1(d) of the resolution did and it contained the second obligation concerning the financing of terrorists. It specified that states shall:

"prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other

[30] International Convention for the Suppression of the Financing of Terrorism (n22) Article 2 "Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part in order to carry out [An act]…"

[31] "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 and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts".

[32] Luis M Hinojosa-Martinez, 'A Critical Assessment of the Implementation of Security Council Resolution 1373' in Ben Saul, *Research Handbook on International Law and Terrorism* (1st Ed, Edward Elgar Publishing 2014) 2.1

[33] International Convention for the Suppression of the Financing of Terrorism (n22) Article 4

[34] United Nations Office on Drugs and Crime (UNODC), 'Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments' (New York 2006) 303

> related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist *acts, of* entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons".

This operates alongside Article 18 of the Suppression of Terrorist Financing Convention which required states to:

> "report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith".[35]

In contrast to Article 18 which referred to "other professions involved in financial transactions"[36] paragraph 1(d) applies to not only financial institutions but those involved in financial transactions. Member States are required to impose appropriate penalties on financial institutions, and their directors and employees that failed to report to the authorities any facts which might be evidence of the financing of terrorism.[37] The obligation in the resolution went beyond the text of the Suppression of Terrorist Financing Convention to fill a gap in international law.[38]

Resolution 1373 also expanded the scope of the existing asset freezing obligations and reiterated the importance of stopping the flow of funds to terrorist organisations. Paragraph 1(c) covered all terrorists and terrorist organisations and required states to:

> "Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities".

The asset freezing process was delivered by way of Security Council Resolution 1267[39]

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[35] International Convention for the Suppression of the Financing of Terrorism (n22) Article 18 (1) (b iii)
[36] Ibid Article 18 (1)(b)
[37] Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments (n33) (New York 2006) 304
[38] Hinojosa-Martinez (n32)
[39] UNSR Res 1267 (15 October 1999) UN Doc 1267:
Acting under Chapter VII of the Charter of the United Nations,
1. Insists that the Afghan faction known as the Taliban, which also calls itself the Islamic Emirate of Afghanistan, comply promptly with its previous resolutions and in particular cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and

which required all Member States to freeze the assets of the Taliban. In addition, Resolution 1333[40] required Member States to freeze the assets of Osama bin Laden and those in the Al Qaeda organisation. The procedure under both these resolutions established the Al-Qaeda and Taliban Sanctions Committees which required states to freeze the assets of, and impose travel restrictions and arms embargo on the entities or individuals named by the Committee as having participated, financed or supported terrorist acts.[41] Member States were required to provide the names of individual linked to these organisations who were in their territory. Prior to the adoption of the resolution Member States had lacked involvement in submitting names to the Al-Qaeda and Taliban Sanctions Committee.[42] By the end of 2001, however, 285 names had been submitted to the Committee and this has continued to grow year after year,[43] on the basis that Resolution 1373 had renewed a strengthened commitment towards asset freezing.[44] Unlike Resolutions 1267 and 1333, paragraph 1(c) does not specify the individuals or entities whose funds must be frozen. There is also no requirement for them to have been listed by the Al-Qaeda and Taliban Sanctions Committee in order for states to take steps to freeze their assets.[45] The scope of the obligation in Resolution 1373, therefore, appeared broader than that found in the previous resolutions, but at the same time it was narrower than the obligation in the Suppression of Terrorist Financing Convention.[46] The latter required states to take measures for the "identification, detection and freezing or seizure of any funds" intended to be used for the perpetration of terrorist acts. The resolution required only the freezing of financial assets of terrorists and those who support them.

5.3 Paragraph Two: Preventing and Criminalising Acts of Terrorism

This paragraph concerned the prevention of acts of terrorism, along with measures to ensure

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camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with efforts to bring indicted terrorists to justice;

2. Demands that the Taliban turn over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned

[40] UNSC Res 1333 (19 December 2000) UN Doc 1333

[41] UN Doc S/RES/1267 (n39)

[42] UNSC Report of the Analytical Support and Sanctions Monitoring Team appointed pursuant to Security Council Resolutions 1617 (2005) and 1735 (2006) concerning Al-Qaida and the Taliban and associated individuals and entities (29 November 2007) UN Doc S/2007/677
per Annex III Impact of listings on the value of frozen assets http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Terrorism%20S%202007%20677.pdf accessed on 2 March 2017.

[43] ibid

[44] Jimmy Gurule, *Unfunding Terror. The Legal Response to the Financing of Global Terrorism*, (1st Ed, Edward Elgar Publishing 2008) 8

[45] Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments' (n34)

[46] International Convention for the Suppression of the Financing of Terrorism (n22) Article 8 (1) "Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in article 2 as well as the proceeds derived from such offences, for purposes of possible forfeiture".

effective criminalisation. It reiterated the general obligation on states to refrain from tolerating terrorist activities in their territories which had been set out in General Assembly Resolution 2625 (XXV).[47] As a declaration this was not a formally binding document, but two of its provisions have been regarded as declaratory of customary international law.[48] Paragraph 2(a) re-stated these existing obligations and provided that states shall:

> Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.

The language, however, went beyond the scope of the previous General Assembly declaration.[49] It required states to "suppress" recruitment of terrorist groups, therefore obliging them to create a specific offence, alongside preventing the supply of weapons. The obligation in paragraph 2(a) was extended by paragraph 2(d) which effectively required states to criminalise the use of their territory for the planning and preparation of terrorism in order that they[50] "prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other states or their citizens". [51] Paragraph 2(b) mandated states to implement measures to ensure effective criminalisation of terrorism and to "take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other states by exchange of information". An explicit reference as to one aspect of prevention was set down in Paragraph 2(g) which required states to:

> "prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents".

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[47] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970, UNGA Res 2625 (XXV) (24 October 1970) [1] "refrain from organising, instigating, assisting, or participating in terrorist acts in another state or acquiescing in organised activities within its territory directed towards the commission of such acts".

[48] *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v *Uganda* (Merits) (2006) 45 ILM 162 where the ICJ held the following: "Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force" and "no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State" as declaratory of customary international law. .

[49] Declaration on Principles of International Law concerning Friendly Relations (n47)

[50] Walter Gehr, The Counter-terrorism Committee and Security Council Resolution 1373 (2001) in Forum on Crim and Society (2004) Vol 4, Nos 1 and 2

[51] UN Doc S/RES/1373 (n1)

This developed counter-terrorism measures in the context of obliging Member States to strengthen internal and international security by ensuring each state had an effective border control strategy.[52] This measure should be considered alongside paragraph 3[53] which set out how states could prevent the movement of terrorists.

Paragraph 2 (c) provided that all states shall: "Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens." The idea that no safe haven should exist for terrorists was an important enforcement mechanism to achieve the prevention and suppression of acts of terrorism. It reduced the risk that a terrorist could remain in the territory of a state that was either friendly, powerless or not inclined to investigate and punish them. It is in these states that terrorists could stay and avoid the application of international law. An act of terrorism has not been considered a crime which has universal jurisdiction.[54] This refers to the notion that a national court could prosecute individuals for any serious crime against international law, such as genocide, torture, crimes against humanity and war crimes. Member States, therefore, for the purpose of acts of terrorism were encouraged to establish jurisdiction by implementing the *aut dedere aut judicare* principle, initially highlighted in chapter 1.[55] The obligation in paragraph 2 (c) was extended beyond individuals who had committed acts of terrorism, but also those who supported terrorist activity. Paragraph 2(e) emphasised this point:

> "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 and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts".

The necessity for Member States to establish jurisdiction over acts of terrorism was explicit in Resolution 1373. *Aut dedere aut judicare* contained the two characteristics of prosecution and extradition, and both required sufficient implementation in order to give full effect to the principle. Member States needed to work together and share information that could be

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[52] Mirko Sossai, UN SC Res 1373 (2001) and International Law Making: A Transformation in the Nature of the Legal Obligations for the Fight against Terrorism? Paper presented at the Agora on Terrorism and International Law, Inaugural Conference of the European Society of International Law, Florence, 14 May 2004

[53] UN Doc S/RES/1373 (n1) [3(f)] and [3(g)]

[54] For a discussion of whether the crime of terrorism should be subject to universal jurisdiction see Luz E. Nagle, Should Terrorism Be Subject to Universal Jurisdiction? (2010) 8 Santa Clara J. Int'l L. 87

[55] Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments (n34) 352, see also Robert Kolb, 'The Exercise of Criminal Jurisdiction Over International Terrorists', in A Bianchi, *Enforcing International Law Norms Against Terrorism,* (1st Ed, OUP 2004) 252

necessary in the prosecution of a suspect. Whilst this had previously only been a recommendation to states, [56] Resolution 1373 made it a requirement and included international cooperation in criminal matters under paragraph 2(f):

> "Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings".

International cooperation featured in a number of the UN counter-terrorism conventions. The 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation[57] set out that any state "having reason to believe that one of the offences …will be committed" has to furnish any relevant information in its possession.[58] This obligation became broader in the 1973 Internationally Protected Persons Convention to include the duty to exchange information and coordinate administrative and other preventive measures.[59] In the 1979 Hostages Convention, this was expressly defined as including the supplying of all evidence at the disposal of state parties.[60] The Financing of Terrorism Convention invited states to give consideration to establishing mechanisms for sharing with other states information or evidence needed to establish criminal, civil or administrative liability. [61] Exchanging information was a requirement in paragraph 2(b) above, which meant that information was called for in particular when a state had substantial grounds for believing an offence would be committed. It would then alert the states concerned to provide them with the relevant information. The obligations were binding on state parties to the conventions, but the lack of ratification at the time Resolution 1373 was adopted meant that international cooperation in this context was limited. By virtue of the mandatory character of paragraphs 2 (b) and (f), however, states became obliged to find ways of exchanging information effectively.

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[56] UNSC Res 1269 (19 October 1999) UN Doc S/RES/1269 per Article 2; see also Measures to Eliminate International Terrorism UNGA Res 49/60 (9 December 1994) Article 5(e)

[57] Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (concluded on 23 September 1971, entered into force 26 January 1973) 974 UNTS 177

[58] Ibid (n57)

[59] Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents (adopted 1 March 1991, entered into force 21 June 1998) 2122 UNTS 359

[60] International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205

[61] International Convention for the Suppression of the Financing of Terrorism (n22) Article 12 (4)

Extradition played an important role in the cooperation between states to combat acts of terrorism and the process was part of a number of regional conventions.[62] It is the procedure whereby a sovereign state agrees to hand over an individual to another sovereign state for prosecution. Having been included in all of the 12 pre-existing UN counter-terrorism conventions, the principle of extradition enabled state parties to use them as a sufficient legal basis for granting extradition.[63] This removed the requirement for states to negotiate specific agreements with each other because the offences referred to in the UN counter-terrorism conventions were automatically deemed to be included in existing bilateral or multi-lateral extradition treaties.[64] For example, Article 9(3) of the Terrorist Bombing Convention provided that:

> "State Parties which do not make extradition conditional on the existence of a treaty shall recognise the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State".

None of the offences contained in the 12 pre-existing UN counter-terrorism conventions for the purposes of extradition could be regarded as a political offence, and accordingly a request for extradition based on the offence contained in the conventions could not be refused on the ground that it concerned a political offence.[65]

5.4 Paragraph Three: International Cooperation and ratification of the 12 pre-existing UN Counter-Terrorism Conventions

This paragraph underpinned the premise of international cooperation by asking states to ratify and implement the 12 pre-existing UN counter-terrorism conventions. This paragraph "called upon" Member States to take the relevant action and, as acknowledged earlier in this chapter, the ambiguity of its use meant that Member States had to interpret the provisions of this paragraph having regard for the intention of the resolution as a whole.

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[62] The League of Arab States, Arab Convention for the Suppression of Terrorism (22 April 1998) per Article 6, The Organisation of Islamic Conference (OIC), Convention of the Organisation of Islamic Conference on Combating International Terrorism (1 July 1999) per Article 6, the Organisation of African Union Convention on the Prevention and Combating of Terrorism (1 July 1999) per Article 8 and the European Convention on Extradition (signed 13 December 1957) and Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (13 June 2002) 2002/584/JHA

[63] Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments (n34) 443

[64] Guide for the Legislative Incorporation and Implementation of the Universal Anti-Terrorism Instruments (n34) 444 for example UNGA International Convention for the Suppression of the Financing of Terrorism (n22) Article 9

[65] For example, see International Convention for the Suppression of the Financing of Terrorism (n22) Article 14; International Convention for the Suppression of Terrorist Bombings (adopted on 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256 Article 11

There are two aspects to the measures contained in paragraph 3. As has already been articulated earlier in the chapter, the first aspect elaborated the means necessary for states to accomplish the mandatory obligations placed on them in paragraph 2.[66] Specifically, these were denying a safe haven to terrorists;[67] ensuring those who participate in or support the financing, preparation or planning of terrorist acts are brought to justice;[68] affording one another the greatest of assistance in criminal investigations and proceedings relating to financing or supporting terrorism including to obtain evidence as was necessary for such proceedings,[69] and exchanging information.[70] The theme in these measures had been to ensure that states established jurisdiction with respect to acts of terrorism. Implementation of the 12 pre-existing UN counter-terrorism conventions underpinned this principle, which is why paragraph 3(d) called upon states to:

> "…become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999",

and paragraph 3(e) expanded this to "fully implement the relevant international conventions and protocols relating to terrorism".[71] The reason that these could only be recommendations and not part of any decision from the Security Council, was because to compel states to ratify the conventions would be in breach of the Law of Treaties.[72] Member States were under no obligation to implement them, although to do so was the practical way of achieving the obligation set out in paragraph 2.

The second aspect contained in paragraph 3 was that of states denying terrorists a safe haven through the implementation of effective international refugee instruments.[73] Paragraph 3(f) called upon states to:

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[66] States had been obliged to exchange information with each other; denying a safe haven to terrorists; ensuring those who participate in or support the financing, preparation or planning of terrorist acts are brought to justice and affording one another the greatest of assistance in criminal investigations and proceedings relating to financing or supporting terrorism including to obtain evidence as was necessary for such proceedings.
[67] UN Doc S/RES/1373 (n1) [2(c)]
[68] UN Doc S/RES/1373 (n1) [2(e)]
[69] UN Doc S/RES/1373 (n1) [2(f)]
[70] UN Doc S/RES/1373 (n1) [2(b)]
[71] UN Doc S/RES/1373 (n1) [3(d)]
[72] Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331
[73] Office of the United Nations High Commissioner for Refugees, "Addressing security concerns without undermining refugee protection: UNHCR's perspective", statement issued on 29 November 2001 available at www.unhcr.org/refworld/docid/3c0b880e0.html

> "Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts"

and paragraph 3 (g) called upon states to:

> "Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists".

These reflected existing measures under international refugee law. They were similar to those described in the General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States,[74] which were also advocated in Resolution 1269.[75] Recognition of refugee status stems from the application of the 1951 Geneva Convention and 1967 Protocol relating to the Status of Refugees,[76] where the principle of non-refoulment asserted that a refugee should not be returned to a country where they face serious threats to their life or freedom.[77] The 1951 Convention is not applicable to any person where there are serious risks that they have committed a "crime against peace, a war crime, or a crime against humanity…a serious non-political crime outside the country of refuge…acts contrary to the purpose and principles of the United Nations".[78] The benefit of protection offered by refugee status may not be:

> "claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country".

Therefore, although states have an obligation under the Convention relating to the Status of Refugees [79] to accord protection to any person fleeing political persecution by granting

[74] Measures to Eliminate International Terrorism UNGA Res 49/60 (9 December 1994) [5(f)]: "To take appropriate measures, before granting asylum, for the purpose of ensuring that the asylum seeker has not engaged in terrorist activities and, after granting asylum, for the purpose of ensuring that the refugee status is not used in a manner contrary to the provisions set out in subparagraph [5] (a)"

[75] UN Doc 1269 (n56) "take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts".

[76] Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 and the Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1976) 606 UNTS 267

[77] Ibid. Per Article 33(1) "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

[78] Convention relating to the Status of Refugees (n76) Article 1F

[79] Convention relating to the Status of Refugees (n76) both for part of the body of IHL

asylum, such protection should not be afforded to perpetrators of acts of terrorism. The measures in paragraphs 3(f) and 3(g) were included in Resolution 1373 in order that states be required to ensure there could be no avenue for terrorists to access a state to avoid prosecution and punishment. Paragraphs 3(f) and (g) can be linked to paragraph 2(g), which required states to prevent the movement of terrorists by implementing effective border controls.[80] A person who arrived at a border seeking asylum however, must not be rejected without a fair and efficient procedure to determine refugee status.[81] *Prima facie* the language in Resolution 1373 reiterated the obligations already in place to states who were party to the 1951 Convention 1967 Protocol relating to the Status of Refugees.[82] As a request, this position has not been reflected in practice, however, with some states unduly impacting on the rights of refugees. For example, the United Kingdom enacted the 2001 Anti-Terrorism Crime and Security Act which included a provision which allowed the Secretary of State, in an asylum appeal to certify that the 1951 Convention did not apply, that the appellant was not entitled to the protection of non-refoulment and that the removal of the appellant from the United Kingdom would be conducive to the public good.[83]

Aspects of mutual assistance were contained in paragraphs 3(b)[84] and 3(c)[85] both of which elaborated on the mandatory obligation set out in paragraph 2.[86] There are a number of bilateral or multilateral treaties which provide for mutual legal assistance in criminal matters.[87] They support the work of detection and law enforcement services[88] by enabling authorities to obtain evidence abroad through a procedure that is admissible under domestic law, to summon witnesses, to secure evidence and issue warrants.[89] Mutual legal assistance

[80] UNODC, Handbook on Criminal Justice Responses to Terrorism, New York, 2009 24-25

[81] For example, Office of the United Nations High Commissioner for Refugees, Global Consultations on International Protection/ Asylum Processes (Fair and Efficient Asylum Procedures) (2001) UN Doc EC/GC/01/12 [8].

[82] Convention relating to the Status of Refugees (n76)

[83] Anti-Terrorism Crime and Security Act 2001 s.33

[84] Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

[85] Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

[86] UN Doc S/RES/1373 (n1) [2(f)]

[87] These are notably the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (adopted 20 December 1988, entered into force 11 November 1990) 1582 UNTS 95 (see article 7); the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990 (see articles 8 to 10), the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union 2000, the OAS Inter-American Convention against Corruption 1996 and the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1999.

[88] International Criminal Police Organisation (Interpol) which is advocated in Article 18 (4) of the International Convention for the Suppression of the Financing of Terrorism 1999.

[89] International Criminal Police Organisation (Interpol) Resolution AGN/53/RES/7 of 1984, per Article 2, the General Assembly of Interpol officially decided to cooperate to the suppression of terrorist acts, its man- date having hitherto been limited to crimes under "ordinary law". The Organisation cannot in any way replace a national authority or directly lead investigations. Its role is officially

is also part of the 12 pre-existing UN counter-terrorism conventions[90] and other relevant texts including the Model Treaty on Mutual Assistance in Criminal Matters[91] and the UN Manual on the same.[92] These instruments give states a legal basis to communicate with another state for information, however both documents lacked specific procedures for such cooperation and create challenges to effective cooperation concerning information and evidence sharing.[93]

5.5 The Remaining Provisions

In addition to creating the CTC, which has been discussed in chapters 1 and 4 already, the Security Council also noted the influence of regional organisations:

> "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".[94]

The conventions adopted by regional organisations have supplemented the 12 pre-existing UN counter-terrorism conventions. These regional conventions have shaped the response of international law to the prevention and suppression of acts of terrorism. Chapter 6 will examine these issues in detail.

The resolution also note the potential links between acts of terrorism and international organised crime:

> "Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes 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".[95]

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established in the conventions on mutual legal assistance in criminal matters and, in particular, in the conventions adopted by the Council of Europe.

[90] For example, see International Convention for the Suppression of the Financing of Terrorism (n21) Article 14; 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents (adopted 1 March 1991, entered into force 21 June 1998) 2122 UNTS 359.See discussion on [2].

[91] Model Treaty on Mutual Assistance in Criminal Matters UNGA Res 45/117 (14 December 1990)

[92] UNODC, Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters, 6-8 December 2002 https://www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf accessed on 1 April 2017

[93] Kimberley Prost, 'The Need for a Multilateral Cooperative Framework for Mutual Legal Assistance' in Larissa van den Herk and Nico Schrijver, *Counter-terrorism Strategies in a Fragmented International Law Order: Meeting the Challenges* (Cambridge 2013)

[94] UN Doc S/RES/1373 (n1) [6]

[95] UN Doc S/RES/1373 (n1) [4]

Linking back to the creation of the CTC, and also providing another example as to why the Resolution was not given a specific timeframe, it was hoped that this provision and the structures of support being put in place by the CTC and CTED, "may have a wider value and effectiveness in strengthening the capacity of all Governments against international crime of all kinds."[96]

5.6 Conclusion

The language used in Resolution 1373 provided for the nature of the obligations that were placed on Member States. Addressing acts of terrorism moved away from providing a single definition of the term "terrorism," and underpinned the 12 pre-existing UN counter-terrorism conventions in which specific acts of terrorism were already proscribed.

Whilst "decides" is a clear indication of Security Council intent, "calls upon" has been shown to be ambiguous as to the degree of compliance required from Member States. For Resolution 1373 the use of the phrase "calls upon" has predominantly been in the context of providing detail as to how states could accomplish implementation of the obligations set out in the preceding paragraphs. One significant aspect was that of states assuming jurisdiction over acts of terrorism and as such implementing the *aut dedere aut judicare* principle. It is here that the relationship between Resolution 1373 and the 12 pre-existing UN counter-terrorism conventions has become evident. The enabler to jurisdiction flowed from these conventions, which proscribed specific acts as terrorism. The resolution could only advocate that these international instruments should be implemented in conjunction with the mandate to "prevent the commission of terrorist acts" and "take the necessary steps to prevent the commission of terrorist acts".[97] Member States were under no obligation to implement these conventions. The increase in ratification and accession that followed the adoption of the resolution on the basis of paragraphs 3(d) and 3(e) is, therefore, a significant change in state practice.

The obligations set out in paragraphs one and two sought to fill gaps in the international legal system, despite the issue concerning the financing of acts of terrorism having become

[96] UNSC 4688th mtg (20 January 2003) UN Doc S/PV.4688, 4-5 per Sir Jeremy Greenstock
[97] UN Doc S/RES/1373 (n1)

apparent only in the last decade. Although the International Convention for the Suppression of the Financing of Terrorism was not in force at the time the resolution was adopted, the content of paragraph one extended some of the obligations set down in the Convention to all states. Such was the need to complement the existing suppression measures with preventative ones.

The analysis in this chapter has demonstrated how Resolution 1373 was designed to coordinate Member States activity in international law. It sought to ensure Member States created jurisdiction over acts of terrorism by obliging them to use existing principles. The reach of the obligations placed on Member States has not been limited by the absence of a single definition of the term "terrorism", but it is essential to understand why Member States have not been able to achieve agreement on this issue. Where the Security Council acknowledged the influence of regional organisations in the resolution, it is necessary to determine the extent of their interaction with international law in the context of preventing and suppressing acts of terrorism. Both these issues will be examined in chapter 6.

The UN Security Council's aim in adopting Resolution 1373 was to generate a truly global response to acts of terrorism. As subsequent chapters will show it has achieved that. In doing so it has put international law at the forefront of preventing and suppressing acts of terrorism

Chapter 6: Regional approaches to prevent and suppress acts of terrorism: How the distinction between acts of self -determination and acts of terrorism has shaped international law

6. Introduction

When Resolution 1373 acknowledged the important role of regional organisations,[1] it did so as part of generating a global response to acts of terrorism. In the years before the resolution, a number of regional organisations had already condemned terrorism and promoted cooperation amongst their state members. As chapter 1 has already highlighted there were three regional organisations which had excluded acts of self-determination from the scope of acts of terrorism. The African Union, the Arab League and the Organisation of Islamic Cooperation (OIC)[2] all reflected this position in their respective regional conventions. None of these organisations changed this position after the adoption of Resolution 1373. The distinction between acts of terrorism and acts of self-determination has been one of the underlying issues which has prevented agreement over a single definition of the term "terrorism", which in turn has influenced negotiations concerning the draft UN comprehensive convention on international terrorism.[3] This chapter will examine the policy and practice of regional organisations to understand the extent to which they have shaped the international response to the prevention and suppression of acts of terrorism. In light of this practice, this chapter will explore whether a single definition of the term "terrorism" is still necessary following the adoption of Resolution 1373.

6.1 Regional Organisations

As chapters 1 and 4 highlighted regional organisations form one of the institutions which interact with the CTC and CTED as part of the global network that has implemented Resolution 1373.

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[1] UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373 [4]

[2] The League of Arab States, Arab Convention for the Suppression of Terrorism (22 April 1998); The Organisation of Islamic Conference (OIC), Convention of the Organisation of Islamic Conference on Combating International Terrorism (1 July 1999); The Organisation of African Unity Convention on the Prevention and Combating of Terrorism (1 July 1999)

[3] Andrea Bianchi, Security Council's Anti-Terrorism Resolutions and their Implementation by Member States, Journal of International Criminal Justice (2006) 4 1044-1073 at 1049

Regional organisations developed between neighbouring countries by way of religious or cultural affiliation.[4] Eight of them have adopted conventions that condemned acts of terrorism and promoted cooperation before Resolution 1373:

- the League of Arab States which adopted the Arab Convention on the Suppression of Terrorism on 22 April 1998[5],
- the Organisation of African Unity (OAU) which adopted the Convention on the Prevention and Combating of Terrorism in July 1999, [6]
- the Organisation of Islamic Cooperation (OIC)[7] which adopted its Convention on Combating Terrorism in 1999,[8]
- the Council of Europe which adopted the European Convention for the Suppression of Terrorism in 1977,[9]
- the Shanghai Corporation Organisation (SCO) which adopted the Shanghai Convention on Combating Terrorism, Separatism and Extremism in June 2001,[10]
- the Organisation of American States (OAS) which adopted the Convention to Prevent and Punish the Acts of Terrorism in 1971,[11]
- the South Asian Association for Regional Cooperation (SAARC) which adopted its convention on the suppression of Terrorism in November 1987,[12]
- and the Commonwealth of Independent States (CIS) [13] which adopted its Treaty on Cooperation in Combating Terrorism in June 1999.

Two regional organisations adopted instruments after Resolution 1373 that condemned acts of terrorism and promoted cooperation. These were:

- the European Union (EU), which adopted a Framework Decision 2002/475/JHA of 13 June 2002 on Combating Terrorism,[14]

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[4] Such as the Organisations of Islamic Cooperation (formerly Organisation of Islamic Conference) and the League of Arab States
[5] The League of Arab States, Arab Convention for the Suppression of Terrorism (22 April 1998)
[6] The Organisation of African Union Convention on the Prevention and Combating of Terrorism (1 July 1999)
[7] Formerly the Organisation of Islamic Conference
[8] The Organisation of Islamic Conference (OIC), Convention of the Organisation of Islamic Conference on Combating International Terrorism (1 July 1999)
[9] Council of Europe Treaty Series - No. 196
[10] Shanghai Convention on Combating Terrorism, Separatism and Extremism (15 June 2001)
[11] Convention to Prevent and Punish the Acts of Terrorism taking the form of Crimes Against the Persons and related Extortion that are of International Significance (2 February 1971)
[12] South Asian Association for Regional Cooperation (SAARC) Regional Convention on the Suppression of Terrorism (4 November 1987)
[13] Treaty on Cooperation amongst the States Members of the Commonwealth of Independent States in Combating Terrorism (adopted 4 June 1999, entered into force 4 June 1999)
[14] Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (13 June 2002) 2002/584/JHA: Council of Europe Convention on the Prevention of Terrorism 2005. See also A European

- and the Association of South East Asian Nations (ASEAN), which adopted the ASEAN Convention on Counter Terrorism in 2007. [15]

Each regional convention approached the definition of the term "terrorism" differently. The OAS[16], ASEAN[17] and SAARC[18] all addressed specific acts of terrorism by reference to the 12 pre-existing UN counter-terrorism conventions. The Council of Europe not only specified offences[19] but it also added ancillary offences.[20] After the adoption of Resolution 1373 a number of regional organisations adopted action plans and agreements[21] outlining how their members should cooperate to combat acts of terrorism, and what they should implement as the necessary national legislation. The example highlighted in chapter 2 was the Comprehensive Anti-Terrorism Model Law developed by the African Union, which provided guidelines for law enforcement and a regional approach to dealing with terrorist offences.[22] As chapter 1 identified, the three regions which made the distinction between acts of terrorism and acts self-determination were the OIC, African Union and Arab League.

6.2 Acts of self-determination

The principle of self -determination is part of the UN Charter,[23] and it has been reinforced in a number of General Assembly resolutions.[24] In as far as the principle has been defined, Common Article 1 of both the International Covenant on Civil and Political Rights

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Agenda on Security: EU signs Convention on prevention of terrorism (22 October 2015) https://ec.europa.eu/home-affairs/what-is-new/news/news/2015/20151022_2_en accessed on 3 September 2017

[15] ASEAN Convention on Counter-Terrorism (ACCT) (entered into force May 2011) http://asean.org/asean-convention-on-counter-terrorism-completes-ratification-process/ accessed on 21 June 2017

[16] Convention to Prevent and Punish the Acts of Terrorism taking the form of Crimes Against the Persons and related Extortion that are of International Significance (2 February 1971) per Article 2

[17] ASEAN Convention on Counter-Terrorism (n15) Article 2

[18] South Asian Association for Regional Cooperation (SAARC) Regional Convention on the Suppression of Terrorism (4 November 1987) Article 1

[19] Council of Europe Convention on the Prevention of Terrorism 2005 CETS 196 Article 5

[20] Ibid Article 9

[21] UNGA Measures to Eliminate International Terrorism, Report of the Secretary-General (23 July 2013) UN Doc A/68/180 for example the CIS per para 96 highlighted the agreement on the cooperation of training of counter-terrorism department or unit specialists on educational establishments of competent authorities of the Commonwealth and cooperation in the provision of material and technical supplies to competent authorities combating terrorism and other forms of extremism: See also UNGA Measures to Eliminate International Terrorism Report of the Secretary-General (12 August 2005) UN Doc A/60/228 per the OAS at [117] provided an outline of the activities carried out under the OAS counter-terrorism capacity- building and technical assistance programmes managed by the Inter-American Committee against Terrorism.

[22] The African Model Anti-Terrorism Law, final draft endorsed by the 17th Ordinary Session of the Assembly of the Union (30 June – 1 July 2011) http://caert.org.dz/official-documents/african-model-law-en.pdf accessed on 24 June 2017

[23] Charter of the United Nations 1945 Articles 1(2) and 55

[24] Declaration on the Granting of Independence to Colonial Countries and Peoples UNGA Res 1541 (XV) (15 December 1960); Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970, UNGA Res 2625 (XXV) (24 October 1970) and Universal realization of the right of peoples to self-determination UNGA Res 60/145 (14 February 2006)

(ICCPR)[25] and the International Covenant of Economic, Social and Civil Rights (ICESCR)[26] provides that:

> "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".

The 1970 Declaration on Principles of International Law, Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations adopted a similar approach:

> "…all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter."[27]

The aspects of self-determination that are common to both definitions are the right of all peoples to "freely determine their political status" and to "freely pursue their economic, social and cultural development". The 1970 Declaration framed this right as having to be in accordance with the provisions of the UN Charter.[28] Defining who are the "peoples," however, has not been generally agreed upon, [29] although the ICJ has found the term to apply to a population of a state.[30] Elizabeth Chadwick identified "peoples" as a group which desired greater freedom from outside control. [31] Liberation movements have become synonymous with "peoples" who are pursuing their legitimate aim for liberation and self-determination, which was highlighted in chapter 1 where some Member States identified the PFLP and Black September group in this context. "Peoples" struggle for self-

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[25] International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations (adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966)

[26] International Covenant on Economic, Social and Cultural Rights, (adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976)

[27] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970, UNGA Res 2625 (XXV) (24 October 1970)

[28] Ibid

[29] Max Planck Encyclopedia of Public International Law [MPEPIL] "Self-Determination December 2008 http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e873 accessed on 1 January 2019 see also International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (8 June 1977) 1125 UNTS 3

[30] East Timor (Portugal v Australia) case took note of the fact that both parties to the dispute agreed that the people of East Timor had the right to self-determination [31] and [37]) and Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory [Advisory Opinion] [118]

[31] Elizabeth Chadwick, 'Terrorism and self- determination', in Ben Saul, *Research Handbook on International Law and Terrorism* (1st Ed, Edward Elgar Publishing 2014) 301

determination has often led to the use of violence to achieve independence, which is where such actions can become conflated with acts of terrorism.[32]

6.2.1 Classifying acts of self-determination

Struggles for self-determination have fallen within the classification of conflicts in International Humanitarian Law (IHL). The literature examined in chapter 2 concerning the need to provide a single definition of the term "terrorism" has highlighted how a distinction has been made between acts of terrorism and acts of self-determination.

In IHL, Protocol I Article 1(4) of the Geneva Conventions refers to an IAC as:

> "…armed struggles in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."[33]

Where one party in a struggle for self-determination is not a state then the conflict can be classified as a NIAC. The minimum requirements of Common Article 3 to the 1949 Geneva Conventions is applicable. These have been understood to have become customary international law: [34]

> "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> *(1)* Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion, or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
>   *a.* violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture
>
>   *b.* taking of hostages

[32] Ibid (n31)

[33] International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (8 June 1977) 1125 UNTS 3 Article 1(4)

[34] *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v U.S.*), *Merits* [1986] ICJ Rep p14 [218]

c. outrages upon personal dignity, in particular, humiliating and degrading treatment,
d. the passing of sentences and carrying out executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognised as indispensable by civilised peoples. [35]

The scholarly literature reviewed in chapter 2, showed that these classifications in IHL have been the underlying issue which has prevented agreement of a definition of the term "terrorism" in the draft UN comprehensive convention on international terrorism. The discussion in this chapter will highlight that the reasoning of the three regional organisations that distinguish between acts of terrorism and acts of self-determination has been that the pursuit of self-determination should be carried out in accordance with the rules of armed conflict. Such acts would, therefore, fall outside of the scope of the draft convention where acts of terrorism are subject to the sanction of criminal law. This was initially highlighted in chapter 1, where the 12 pre-existing UN counter-terrorism conventions were shown to endorse the response to acts of terrorism in criminal law. The scholarly literature reviewed also suggests that states can choose whether they apply IHL to a situation, in particular a NIAC.[36] If other regional organisations were to recognise the distinction between acts of terrorism and acts of self-determination this could subsequently result in a situation where a liberation group that carried out acts of terrorism with the aim of self-determination could evade regulation if the state they were taking action against did not engage with the rules of armed conflict and recognise the action as a NIAC. The same group would potentially evade prosecution for their actions under the sanction of criminal law because their actions could be considered acts of self-determination, even if IHL was not applied. The risk posed by recognising the distinction leaves a gap between IHL and national criminal law in which perpetrators of acts of terrorism could operate unregulated and unpunished.

All three conventions; the Arab League's Convention for the Suppression of Terrorism (1998),[37] the OIC's Convention on Combating International Terrorism (1992),[38] and the

[35] Common Article 3 of the Geneva Conventions 1949
[36] Chadwick (n31)
[37] Article 2(a) "All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, shall not be regarded as an offence. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State."
[38] Article 2(a) "Peoples struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime."

African Union's Convention on the Prevention and Combating of Terrorism (1999),[39] appear to legitimise acts of violence if perpetrated for the purpose of self-determination, despite the body of rules for a NIAC prohibiting acts of violence. Importantly, however, none of these conventions authorise acts of terrorism to be committed in pursuit of self-determination.

6.2.2 Arab Convention for the Suppression of Terrorism

The Arab League was formed in 1945. The Convention for the Suppression of Terrorism was adopted in 1998, and in the preamble it affirmed:

> "The right of peoples to combat foreign occupation and aggression by whatever means, including armed struggle, in order to liberate their territories and secure the right to self-determination, and independence and to do so in such a manner as to preserve the territorial integrity of each Arab country."

The convention contained a far–reaching definition of the term "terrorism", which incorporated a broad range of conduct that could be identified as a terrorist act:

> "Any act or threat of violence, whatever its motives or purposes, that occurs for the advancement of an individual or collective criminal agenda, causing terror among people, causing fear by harming them, or placing their lives, liberty or security in danger, or aiming to cause damage to the environment or to public or private installations or property or to occupy or to seize them, or aiming to jeopardize a national resource.[40]

A terrorist offence was defined by reference to six of the 12 pre-existing UN counter-terrorism conventions as:

> "Any offence or attempted offence committed in furtherance of a terrorist objective in any of the Contracting States, or against their nationals, property or interests, that is punishable by their domestic law. The offences stipulated in the following conventions, except where conventions have not been ratified by Contracting States or where offences have been excluded by their legislation, shall also be regarded as terrorist offences:
>
> 1. The Tokyo Convention on offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1963;
> 2. The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970;

[39] Article 3 (1) "Notwithstanding the provisions of Article 1, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts."

[40] Arab Convention for the Suppression of Terrorism (n5) Article 1(2)

3. The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971, and the Protocol thereto of 10 May 1984;
4. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973;
5. The International Convention against the Taking of Hostages, of 17 December 1979;
6. The provisions of the United Nations Convention on the Law of the Sea of 1982, relating to piracy on the high seas.

Article 2(a) excluded all cases of struggle by whatever means for the purpose of self-determination from the scope of the term "terrorism":

> "All cases of struggle by whatever means including armed struggle against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, shall not be regarded as an offence. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State". [41]

The use of the phrase "by whatever means" implies that the Arab League wanted to justify any violence carried out pursuant to self-determination. This would conflict with the minimum requirements of Common Article 3 to the 1949 Geneva Conventions pertaining to a NIAC. The convention did use the phrase "in accordance with the principles of international law" which is common to all three conventions. The interpretation of this will be discussed later in this chapter.

6.2.3 African Union Convention on the Prevention and Combating of Terrorism

The position of the African Union has been shaped by its predecessor the Organisation of African Unity (OAU). [42] The OAU's historical response to international terrorism was not necessarily to acknowledge it, but to promote solidarity and adherence to the principles of state sovereignty whilst maintaining its core function of protecting the region from former colonial powers.[43] This approach changed in 1994 when the OAU adopted the Declaration

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[41] Arab Convention for the Suppression of Terrorism (n5) Article 2(a) and also UNGA Measures to Eliminate International Terrorism Report of the Secretary-General (2 July 2002) UN Doc A/57/183 [212]

[42] Martin Ewi and Anton Du Plessis, "Counter-terrorism and Pan-Africanism: From non-action to non-indifference" in Ben Saul, *Research Handbook on International Law and Terrorism* (Edward Elgar: Cheltenham, 2014) 734-375

[43] The Entebbe hostage crisis in began on 27 June1976 and the OAU responded by condemning Israel's recuse operation as an aggression against sovereignty. The Lockerbie bombing on 21 December1988, the OAU Commission on Jurists on the Lockerbie Case produced a number of conclusions see report of the OAU Commission of Jurists on the Lockerbie Case: Summary and Addendum 8-10 July 2002.

on a Code of Conduct for Inter-Africa Relations.[44] Acts of terrorism were condemned as a criminal act and African states were required to abide by the relevant international law to tackle the issue. The Code also introduced state members to *aut dedere aut judicare*.[45] The Convention on the Prevention and Combating of Terrorism was adopted in 1999 and set out the crime of terrorism:[46]

> "Terrorist act" means:
> (a) any act which is a violation of the criminal laws of a state party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
>
> > (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
> > (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
> > (iii) create general insurrection in a State;
>
> (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to (iii).

The definition of the term "terrorism" focused on what constituted a terrorist act and because of this was slightly narrower in scope than the definition found in the Arab Convention. The approach of the African Union has been to expressly exempt armed struggles against colonialism and domination by foreign forces from the regional definition of terrorism:[47]

> "Notwithstanding the provisions of Article 1, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts."

It adopted a similar approach to the Arab League and affirmed that struggles should be waged in accordance with the principles of international law. As with the Arab League it referred specifically to armed struggles, and in doing so it reaffirmed that any struggles

[44] Assembly of Heads and State and Government of the OAU Declaration 2 (XXX) (13-15 June 1994)
[45] Assembly of Heads and State and Government of the OAU Declaration 2 (XXX) (13-15 June 1994) at [15]
[46] African Union Convention on the Prevention and Combating of Terrorism (n6) Article 1
[47] ibid Article 3: Notwithstanding the provisions of Article 1, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts.

pursuant to liberation or self-determination would therefore be subject to the relevant obligations in international law.

6.2.4 The OIC Convention on Combating International Terrorism

The issue of self-determination for the OIC concerned that of the Palestinian people seeking recognition of an independent Palestinian state, which was an objective of the OIC Charter.[48]

The preamble to the convention confirmed:

> "…the legitimacy of the right of peoples to struggle against foreign occupation and colonialist and racist regimes by all means, including armed struggle to liberate their territories and attain their rights to self-determination and independence in compliance with the purposes and principles of the Charter and resolutions of the United Nations"

The regional definition of the term "terrorism" was as broad as that found in the Arab Convention:

> "Any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperilling their lives, honour, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent states."[49]

Acts of terrorism were identified as those listed in the 12 pre-existing UN counter-terrorism conventions.[50] Terms such as "imperilling," "hazards to the environment" and "activity which endangered natural resources" were left undefined. This meant the convention captured an expansive range of actions that could fall within the definition of the term "terrorism", whilst at the same time excluding armed struggles aimed at self-determination:

> "Peoples' struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in

[48] Katja LH Samuel, *The OIC, the UN and Counter-Terrorism Law-Making Conflicting or Cooperative Legal Orders?* (Oxford and Portland, Oregon 2013) 425-426

[49] The Organisation of Islamic Conference (OIC), Convention of the Organisation of Islamic Conference on Combating International Terrorism (1 July 1999) Article 1(2)

[50] Ibid Article 1(4)

accordance with the principles of international law shall not be considered a terrorist crime." [51]

Article 2 also went on to state that none of the crimes considered in Article 1 would be considered political crimes.[52] It then listed six specific crimes which would also not be considered political crimes even if they had been politically motivated.[53] Although this was not thought of as a particularly strong instrument on the basis that only 14 out of 57 state members had ratified it in the years after its adoption,[54] nevertheless a number of state members including Sudan,[55] Jordan, Libya,[56] Oman,[57] and Pakistan[58] have referred to the convention when affirming their national legal positions.

6.3 Interpreting the distinction between acts of self -determination and acts of terrorism

The aforementioned three conventions have required acts of self -determination to be carried out "in accordance with the principles of international law". Where reference has been made to "armed struggles" the relevant principles become an IAC or a NIAC, [59] which are part of IHL. Therefore, when a group uses force to achieve self-determination, the prohibitions found in IHL are directly applicable. Anyone entitled to the protections of IHL during such struggles must abide by the laws of armed conflict which include not committing a terrorist

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[51] Convention of the Organisation of Islamic Conference on Combating International Terrorism (n49) Article 2(a)
[52] Convention of the Organisation of Islamic Conference on Combating International Terrorism (n49) Article 2(b)
[53] Convention of the Organisation of Islamic Conference on Combating International Terrorism (n49) Article 2(c). In the implementation of the provisions of this Convention the following crimes shall not be considered political crimes even when politically motivated:
Aggression against kings and heads of state of Contracting States or against their spouses, their ascendants or descendants.
Aggression against crown princes or vice-presidents or deputy heads of government or ministers in any of the Contracting States.
Aggression against persons enjoying international immunity including Ambassadors and diplomats in Contracting States or in countries of accreditation
Murder or robbery by force against individuals or authorities or means of transport and communications.
Acts of sabotage and destruction of public properties and properties geared for public services, even if belonging to another Contracting states,
Crimes of manufacturing, smuggling or possessing arms and ammunition or explosives or other materials prepared for committing terrorist crimes.
All forms of international crimes, including illegal trafficking in narcotics and human beings money laundering aimed at financing terrorist objectives shall be considered terrorist crimes.
[54] Samuel (n43) 427
[55] UNGA Sixth Committee (58th Session) Summary record of 8th meeting (11 June 2003) UN Doc A/C.6/57/SR.8 [23]
[56] ibid [35] and [48]
[57] UNGA Measures to Eliminate International Terrorism Report of the Secretary-General (2 July 2003) UN Doc A/58/211 [62] http://www.un.org/en/ga/search/view_doc.asp?symbol=A/58/116
[58] UNGA Measures to Eliminate International Terrorism Report of the Secretary-General (26 July 2000) UN Doc A/55/179 [59] https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/558/25/PDF/N0055825.pdf?OpenElement
[59] Michael De Feo, 'The Political Offence Concept in Regional and International Conventions Relating to Terrorism' in Giuseppe Nesi, *International Cooperation in Counter-Terrorism. The United Nations and Regional Organisations in the Fight Against Terrorism*, (Routledge: London and New York: 2016) 118

act.[60] Any breaches are punishable in IHL. The use of the phrase, "in accordance with the principles of international law" underlined that only legitimate violent resistance would not be considered an act of terrorism, such was the importance of the principle to the regions that had suffered political oppression. The International Convention for the Taking of Hostages supported this premise and excluded from its scope:

> "hostage-taking in armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination".[61]

This implied that hostage-taking by liberation movements was dealt with in IHL. [62] It was this exclusion which resolved the impasse between acts of terrorism and acts of self-determination that had been a contentious issue during the drafting process for the convention.[63] Resolution 1373 has supported the notion that acts of terrorism and IAC and NIAC should not be conflated in the context of international law.[64] It has emphasised that the response to acts of terrorism should be in criminal law through the 12 pre-existing UN counter-terrorism conventions. It is evident that the distinction made by the three regional organisations seeks to preserve the principle of self- determination and prevent it being diluted into the system of criminal law that seeks to prevent and suppress acts of terrorism.

6.3.1 The Self-Determination Distinction as a Regional Norm

Each of the three regions that have made the distinction between acts of terrorism and acts of self-determination have been consistent in their practice. Such is the extent of the distinction that it has extended into international law and has been one of the key issues that has stopped, and continues to stop, the adoption of the draft UN comprehensive convention on international terrorism, discussed below and also in chapter 1. It is evident in the practice of these regions that the relevant organisations consider the distinction to be legitimate behaviour that they ought to follow.[65] The examination of the regional practice below, coupled with the rationale for the ongoing distinction as set out above, suggests that the AU,

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[60] See 1949 Fourth Geneva Convention, Article 3; 1977 Protocol I, Article 51(2); 1977 Protocol II, Articles 13(2) and 4(2)(d); see also ICTR Statute, Article 4; 2000 Statute of the Special Court for Sierra Leone (annexed to UN Security Council Resolution 1315 (2000), Article 3(d).

[61]UNGA Sixth Committee (32nd Session) 'Report on the Ad Hoc Committee on the Drafting of and International Convention Against the Taking of Hostages' (October 1977) UN Doc A/AC,188/L.6

[62] Ben Saul, Introductory Note, International Convention on the Taking of Hostages, UN Audio-Visual Library of International Law http://legal.un.org/avl/ha/icath/icath.html accessed on 12 October 2018

[63] Ibid

[64] UN Sub-Commission on the Promotion and Protection of Human Rights, Terrorism and Human Rights: Progress report prepared by Ms. Kalliopi K. Koufa, Special Rapporteur (27 June 2001) E/CN.4/Sub.2/2001/31 [77]

[65] Thomas Buergenthal, 'Evolution of International Human Rights', (1997) Human Rights Quarterly 19 (1997) 703-723, 708

Arab League and OIC have created an expectation that each will continue to exclude acts of self-determination from the scope of acts of terrorism in the future. This is based on the historical behaviour of the three regional organisations and their state members dating back 20 years[66] that has sought to uphold the right to self -determination as a principle of international law within the framework of IHL. This is the consistency and degree of predictability which Franck suggests is provided by a norm.[67]

6.3.2 Organisation of Islamic Cooperation (OIC)

Out of the three regional organisations that have distinguished acts of self-determination from acts of terrorism, the OIC has provided consistent and uniform practice concerning this distinction. [68] It is a position that has been identified as legal rather than political on the basis that the principle of self-determination has emerged as customary OIC law.[69] The practice of the OIC derives from the notion that this principle is binding, albeit on the basis of religious obligations and rules.[70]

This position not only affected the negotiations for the draft UN comprehensive convention on international terrorism[71], it also affected negotiations for two other UN counter-terrorism conventions. The first was the Hostages Convention,[72] where the OIC argued that the definition of hostage taking should distinguish between terrorists and national liberation fighters; that the scope of the convention should exempt national liberation movements, and the concern that the legitimacy of self-determination struggles should not be undermined by the Hostages Convention. [73] Whilst formally, it has been supportive of the Hostages

[66] Arab Convention for the Suppression of Terrorism (n5)

[67] Thomas M Franck, 'The Power of Legitimacy and The Legitimacy of Power: International Law in the Age of Power Disequilibrium' (2006) 100 Am. J. Int'l L. 88 at 93

[68] The Organisation of Islamic Conference (OIC), Convention of the Organisation of Islamic Conference on Combating International Terrorism (1 July 1999) per Article 2(a) Peoples struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.

[69] Samuel (n48) 425-426

[70] For a more detailed explanation of this point refer to Samuel (n48) chapter 8

[71] For example, Press Release Ad Hoc Committee Negotiating Comprehensive Anti-Terrorism Convention Opens One Week Headquarters Session, (8 April 2013) UN Doc L/3209 per Algeria, Egypt, Kuwait, Malaysia and Pakistan all aligned with the OIC and supported the need to make a distinction between terrorism and the exercise of the legitimate rights of peoples to resist foreign occupation.
https://www.un.org/press/en/2013/l3209.doc.htm, accessed 7 June 2017.

[72] UNGA International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205

[73] UNGA Report of the AD-Hoc Committee on the draft of an International Convention Against the Taking of Hostages (32nd session New York 1977) UN Doc A/32/39 p.30 per Algeria, p.50 per Guinea, p.76 per Libya
http://legal.un.org/avl/pdf/ha/icath/A3239.pdf accessed on 20 January 2017

Convention,[74] it does not seek to promote it or further its implementation amongst its members.[75] The OIC took the same stance with regards to the Suppression of Terrorist Financing Convention[76] having taken issue with the definition and scope of Article 2(1)(b):[77]

> "Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
> (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act"

State members suggested alternatives that excluded any mention of acts of self-determination on the basis that this definition did not make the distinction.[78] The OIC instead, affirmed its own Convention on Combating International Terrorism. A few state members have limited the scope of some of the 12 pre-existing UN counter-terrorism conventions in their domestic law by entering a declaration. For example, when Iran ratified the Hostages Convention it declared that the exercise of self-determination should not be affected by the fight against terrorism.[79] Lebanon made a similar declaration:

> "The provisions of the Convention, and in particular those of its article 13, shall not affect the Lebanese Republic's stance of supporting the right of States and peoples to oppose and resist foreign occupation of their territories."[80]

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[74] The preamble to the Organisation of Islamic Conference (OIC), Convention of the Organisation of Islamic Conference on Combating International Terrorism (1 July 1999) reaffirms all "relevant UN resolutions on procedures aimed at eliminating international terrorism…" Article 1(4) endorses the terrorist offences of those multi-lateral counter-terrorism conventions that existed at the time of its adoption which include those specified in the Hostages Convention

[75] The Organisation of Islamic Conference (OIC), Convention of the Organisation of Islamic Conference on Combating International Terrorism (1 July 1999) does not mention the Hostages Convention see further Samuel (n48) 470-473

[76] International Convention for the Suppression of the Financing of Terrorism (n21)

[77] Per Article 2 (1) Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

[78]UNGA Sixth Committee (32nd Session) 'Report on the Ad Hoc Committee on the Drafting of and International Convention Against the Taking of Hostages' (October 1977) UN Doc A/AC,188/L.6 per p.27 per Jordan, and p. 38 per Egypt see also A/AC.188/L.9 working paper submitted by Syria A/AX.188/L10 and L11

[79] UNGA International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 per Iran's Interpretative declaration https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en accessed on 24 June 2017

[80] Ibid Lebanon's declaration https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en accessed on 24 June 2017

Three other state members of the OIC made declarations which concerned the Suppression of Terrorist Financing Convention. Egypt limited the scope of the definition contained in the convention:

> "… the Arab Republic of Egypt does not consider acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view to liberation and self-determination, as terrorist acts within the meaning of article 2, paragraph 1, subparagraph (b), of the Convention".[81]

Kuwait was more explicit about its obligations to the regional organisations to which it was a member:

> "The commitment of the State of Kuwait to the Convention is without prejudice to its Arab and Islamic obligations in respect of the definition of terrorism and the distinction between terrorism and legitimate national struggle against occupation".[82]

Syria made a reservation that considered acts of resistance to foreign occupation not to be included under acts of terrorism in Article 2(1).[83] Pakistan, another OIC state member also declared when ratifying the Terrorist Bombing Convention:

> "…that nothing in this Convention shall be applicable to struggles, including armed struggle, for the realization of right of self-determination launched against any alien or foreign occupation or domination, in accordance with the rules of international law".[84]

6.3.3 The African Union

Although the AU convention contained a broad definition of the term "terrorism", the underlying principle was that acts of terrorism were not justifiable in any circumstances. The all-encompassing definition could incorporate those who engage in proscribed activities in the circumstances of a NIAC.[85] Although Article 3 of the Convention excluded from the

[81] International Convention for the Suppression of the Financing of Terrorism (n21) Egypt https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&clang=_en accessed on 24 June 2017

[82] International Convention for the Suppression of the Financing of Terrorism (n21) Kuwait https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&clang=_en accessed on 24 June 2017

[83] International Convention for the Suppression of the Financing of Terrorism (n21) Syria "A reservation concerning the provisions of its article 2, paragraph 1 (b), inasmuch as the Syrian Arab Republic considers that acts of resistance to foreign occupation are not included under acts of terrorism…" https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&clang=_en accessed on 24 June 2017

[84] International Convention for the Suppression of Terrorist Bombings (adopted on 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256 per Pakistan https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-9&chapter=18&clang=_en#EndDec accessed on 24 June 2017

[85] Allieu Ibrahim Kanu, "The African Union" in Giuseppe Nesi, *International Cooperation in Counter-Terrorism. The United Nations and Regional Organisations in the Fight Against Terrorism* (Routledge: London and New York 2016) 174

scope of the term "terrorism", the right of national liberation movements fighting for self-determination, the contents of Article 3(2) reinforced that any struggle of this nature should be in accordance with the principles of international law. State members have been vocal in their support of the distinction particularly in discussions of the UN General Assembly's Sixth Committee. For example, Egypt urged the UN Sixth Committee for the need to avoid the confusion between acts of terrorism and legitimate right of peoples to fight against occupation, highlighting the right that was recognised in international law and in international instruments adopted by the UN.[86] Ghana had also called for the same distinction to be made, [87] and did so again in 2006,[88] as did Algeria. [89] In 2005 it was Libya which echoed this statement.[90]

State members to the AU Convention on the Prevention and Combating of Terrorism, [91] were asked to consider becoming signatories to and ratifying the UN counter-terrorism conventions listed in the annex.[92] Despite the adoption of an additional Protocol,[93] which committed members to becoming party to the relevant international instruments on the prevention and combating of terrorism,[94] states struggled to implement what was required. In July 2011, the AU developed a Comprehensive Anti-Terrorism Model Law to facilitate the elaboration of domestic legislation in this context. The Model Law provided guidelines for law enforcement and provides a regional approach to dealing with terrorist offences that included terrorist bombing, kidnapping, hijacking, assassination, hostage-taking, terrorist financing, violence against civil aviation and other criminal acts.[95]

6.3.4 The Arab League

State members to the League of Arab States have reflected the position of the regional organisation in national law. For instance, both Syria[96] and Iraq,[97] referred to this

[86] UNGA Sixth Committee (58th Session) Summary record of 8th meeting (11 June 2003) Un Doc A/C.6/57/SR.8 [41]
[87] UNGA Sixth Committee, (59th Session) Summary record of 8th meeting (18 October 2004) UN Doc A/C.6/59/SR.7 [24]
[88] UNGA Sixth Committee, (60th Session) Summary record of 8th meeting (18 October 2004) UN Doc A/C.6/60/SR.3 [24]
[89] UNGA Sixth Committee, (61st Session) Summary record of 2nd meeting (11 October 2006) UN Doc A/C.6/61/SR.2 [48]
[90] UNGA Sixth Committee, (60th Session) Summary record of 4th meeting (7 October 2005) UN Doc A/C.6/60/SR.4 [74]
[91] African Union Convention on the Prevention and Combating of Terrorism (n6)
[92] African Union Convention on the Prevention and Combating of Terrorism (n6) Article 2(b)
[93] Protocol to the OAU Convention on the Prevention and Combating of Terrorism, adopted 8 July 2004
[94] Ibid Article 3(j)
[95] The African Model Anti-Terrorism Law, final draft endorsed by the 17th Ordinary Session of the Assembly of the Union, 30 June – 1 July 2011 http://caert.org.dz/official-documents/african-model-law-en.pdf accessed on 24 June 2017
[96] Letter dated 14 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter terrorism addressed to the President of the Security Council (14 December 2001) UN Doc S/2001/1204, 3
[97] Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter terrorism, addressed to the President of the Security Council, (27 December 2001) UN Doc S/2001/1291, 2

convention as the basis for having distinguished between terrorist acts and acts of self-determination. Syria has also promulgated this position in response to the UN Secretary General.[98] In a 2003 meeting of the Security Council, Bahrain, another state member showed support for the distinction whilst condemning and opposing terrorism in all its forms.[99] It referred to ratification of the Arab Convention in its second report to the CTC.[100] Egypt made it clear that it had largely adopted the definition of terrorism found in this convention, into its penal code.[101] The Arab states placed special importance on coordination to combat terrorism which included ratifying the 12 pre-existing UN counter-terrorism conventions.[102] The Arab Convention on the Suppression of Terrorism[103] aligned itself with six of the 12 pre-existing UN counter-terrorism conventions.[104] The detail in the 42 articles has supported the effective implementation of the convention, on the basis that state members were provided with a precise and detailed course of legal action to tackle acts of terrorism at a regional level.[105] In March 2002 an additional effort was made to further the effectiveness of the convention and state members voted to amend the convention and include the following acts in its scope: incitement and applauding terrorism; printing and distributing documents supporting terrorism; collecting charity contributions for the benefit of terrorism, and the acquisition and usage of property for terrorism.[106] As one of the first regional conventions, this was presented as an example for other states to follow to achieve the same level of cooperation.[107]

The effect of the distinction between acts of terrorism and acts of self-determination has influenced the negotiations of the draft UN comprehensive convention on international terrorism. In 2016 the Sixth Committee working group undertook to finalise the convention.[108] During 2017 a meeting was held to discuss the proposed recommendations which had already been put to the Sixth Committee. The overarching issue that remained

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[98] Measures to Eliminate International Terrorism Report of the Secretary-General 5 August 2004, 59th session UN Doc A/59/210, 59 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/452/28/PDF/N0445228.pdf?OpenElement

[99] UNSC 4710th mtg (20 February 2003) UN Doc S/PV.4710, 14

[100] Supplementary report of the Kingdom of Bahrain, (6 March 2003) UN Doc S/2003/268 pursuant to [6] of UNSC Res 1377 (12 November 2001) UN Doc S/RES/1377 at 3.4

[101] Report submitted by Egypt (20 December 2001) UN Doc S/2001/1237 pursuant to paragraph 6 of UNSC Res 1377 (12 November 2001) UN Doc S/RES/1377 at 26 and Article 2 of the Arab Convention for the Suppression of Terrorism (n5)

[102] Measures to Eliminate International Terrorism, Report of the Secretary-General (2 July 2002) UN Doc A/57/183 [217]

[103] Arab Convention for the Suppression of Terrorism (n5)

[104] Arab Convention on the Suppression of Terrorism (n5) Article 1.3

[105] Mahmoud Samy, The League of Arab States in Giuseppe Nesi, *International Cooperation in Counter-Terrorism. The United Nations and Regional Organisations in the Fight Against Terrorism*, (Routledge: London and New York: 2016) 157

[106] Council of Europe Convention on the Prevention of Terrorism 2005

[107] Samy (n105) 159

[108] UNGA Sixth Committee (72nd Session) Summary record of the 28th meeting (3 November 2017) UN Doc A/C.6/72/SR.28

contentious was whether acts of self-determination were excluded from its scope. [109] Argentina[110] along with the OIC acting on behalf of its state members[111] submitted proposals that reaffirmed the use of the IHL framework to govern armed struggles in the context of self-determination. As recently as the Sixth Committee's 73rd Session on 3 October 2018 both the AU and OIC have remained committed to the distinction and have been clear that the language of the convention should not deny peoples their right to self-determination.[112] It is abundantly clear that whilst all Member States remain unequivocal in their condemnation of acts of terrorism, the distinction between acts of terrorism and acts of self-determination by three regions has been the dominant issue that has shaped how international and regional law has responded to acts of terrorism.[113]

6.4 Conflicting regional practice and the effect on the regional norm

The distinction between acts of terrorism and acts of self-determination has not been followed by the other regional organisations. These regions have condemned terrorism in all its forms, without exception, and have not subscribed to the distinction. The state members in these regions often refer to all the 12 pre-existing UN counter-terrorism conventions in the negotiations for the draft UN comprehensive convention on international terrorism, advocating acts of terrorism as criminal acts. For example, Qatar expressed that "…efforts be made to eliminate the conditions conducive to terrorism. This can only be achieved through cooperation and a commitment to international instruments".[114] The European Union referred to "strengthening law enforcement", Singapore as then Chair of the ASEAN referred to how seriously it took the implementation of the UN counter-terrorism conventions, and El-Salvador placed emphasis on a "national criminal justice system[s] based on respect for human rights and the rule of law, due process and fair trial guarantees".[115] The conflicting practice from the remaining regions has not stopped the

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[109] UNGA Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996 (8 to 12 April 2013) A/68/37 https://undocs.org/A/C.6/72/SR.28 accessed on 6 October 2018

[110] Proposal submitted by Argentina amending document A/C.6/60/INF/2 (A/61/37, annex II) in UNGA Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996 (8 to 12 April 2013) UN Doc A/68/37

[111] Text proposed by the member States of the Organization of the Islamic Conference (A/57/37, annex IV) in UNGA Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996 (8 to 12 April 2013) UN Doc A/68/37

[112] UNGA Sixth Committee Press Release Fight against International Terrorism Impeded by Stalemate on Comprehensive Convention, Sixth Committee Hears as Seventy-Third Session Begins (3 October 2018) UN Doc Ga/L/3566https://www.un.org/press/en/2018/gal3566.doc.htm accessed on 7 October 2018

[113] UNGA Sixth Committee (72nd Session) Summary record of the 28th meeting (3 November 2017) UN Doc A/C.6/72/SR.28 per Agenda item 109 at p.4 and see also UNGA Sixth Committee Press Release Fight against International Terrorism Impeded by Stalemate on Comprehensive Convention, Sixth Committee Hears as Seventy-Third Session Begins (3 October 2018) UN Doc Ga/L/3566 https://www.un.org/press/en/2018/gal3566.doc.htm accessed on 7 October 2018

[114] UNGA Sixth Committee Press Release Fight against International Terrorism Impeded by Stalemate on Comprehensive Convention, Sixth Committee Hears as Seventy-Third Session Begins (3 October 2018) UN Doc Ga/L/3566

[115] Ibid

effect the distinction has had on international law, in particular the progress on the draft UN comprehensive convention on international terrorism. The position of the other regional organisations is examined in detail below.

6.4.1 Organisation of American States (OAS)

The 1971 OAS Convention has been described as one of the most influential regional conventions.[116] It was adopted by a narrow majority because it focused on safeguarding certain protected persons.[117] Whilst it suffered from a lack of support because some of its members favoured a more comprehensive approach, it did however influence the subsequent 1973 UN Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons.[118] Its most important achievement has been identified as the imposition on state members not to allow their territory to be used for the preparation of terrorist acts to be carried out in another state.[119] The convention also varied the principle of *aut dedere aut judicare,* where instead of a case being submitted for prosecution irrespective of a prior request for extradition of the suspect, the obligation to submit a case for prosecution would only be considered when the request for extradition had been refused.[120] There was no reference to the 12 pre-existing UN counter-terrorism conventions. The scope was restricted to specific acts of:

> "kidnapping, murder and other assaults against the life or physical integrity of those persons to whom the state has the duty according to international law to give special protection, as well as extortion in connection with those crimes."[121]

The 2002 Inter-America Convention on Terrorism[122] changed this and was considered to be an instrument which was consistent with, and built upon the 12 pre-existing UN counter-terrorism conventions.[123] It followed the model in the Suppression of Terrorist Financing

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[116] Miko Sossai, 'The legal response of the Organisation of America States in combating terrorism' in Ben Saul, *Research Handbook on International Law and Terrorism* (Edward Elgar: Cheltenham 2014) 701-704

[117] R Brach, "The Inter-American Convention on the kidnapping of diplomats" (1971) 10 Columbia Journal of Transnational Law 392

[118] Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents (adopted 1 March 1991, entered into force 21 June 1998) 2122 UNTS 359. See also Mirko Sossai, 'The Organisation of America States' in Ben Saul, *Research Handbook on International Law and Terrorism* (Edward Elgar: Cheltenham 2014)

[119] The Organisation of America States, Convention to Prevent and Punish the Acts of Terrorism taking the form of Crimes Against the Persons and related Extortion that are of International Significance (2 February 1971) Articles 8(a) and (b)

[120] Ibid Article 3 and 5. See also M Cherif Bassiouni and Edward M Wise, *Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law* (Martinus Nijhoff, 1995) 18

[121] Convention to Prevent and Punish the Acts of Terrorism taking the form of Crimes Against the Persons (n119) Article 1

[122] Inter-American Convention Against Terrorism (adopted 3 June 2002) AG/RES. 1840 (XXXII-O/02)

[123] Nesi (n85) 149-150

Convention and defined the applicable offences as those falling within the scope of the 12 pre-existing UN counter-terrorism conventions listed in Article 2.[124] States that were not party to ten or more of the conventions listed in the article could make a statement declaring which specific instrument would not be deemed as included in Article 2.[125] Another significant difference in this convention was the commitment placed on state members to become party to the international instruments and to adopt the necessary measures to implement them.[126] This was seen by the CTC as reflecting the pragmatic approach taken by Resolution 1373:

> "South American States have made tangible progress in implementing a variety of counter-terrorism measures in compliance with resolution 1373 (2001). They have enacted counter-terrorism legislation, and most have ratified at least 12 of the international counter-terrorism instruments. Efforts have been made to further strengthen regional coordination and cooperation."[127]

6.4.2 Council of Europe and European Union

The European Convention on the Suppression of Terrorism was adopted in 1977 by the Council of Europe.[128] It has been described as modest in scope[129] and was not considered an effective regional counter-terrorism instrument.[130] It set out certain offences that related to aviation security, the protection of diplomats, kidnapping and the use of explosives, referring to the relevant UN counter-terrorism conventions that were in place at the time.[131] It focused on facilitating extradition amongst state members, but it did allow extradition to be refused on certain grounds which included where the person would be subjected to prejudicial treatment on political grounds.[132] This was long before the Treaty on the European Union in 1993, therefore at this stage there was limited formal cooperation between state members. After the adoption of Resolution 1373, when the EU had been

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[124] AG/RES. 1840 (XXXII-O/02) (n122) Article 2

[125] AG/RES. 1840 (XXXII-O/02) (n122) Article 2 (2): Upon depositing its instrument of ratification to this Convention, a state party that is not a party to one or more of the international instruments listed in paragraph 1 of this article may declare that, in application of this Convention to such state party, that particular instrument shall be deemed not to be included in that paragraph. The declaration shall cease to have effect as soon as that instrument enters into force for that state party, which shall notify the depositary of this fact.

[126] AG/RES. 1840 (XXXII-O/02) (n122) Article 3, This was qualified by the need for state to proceed in accordance with their respective constitutions.

[127] Global Survey of the Implementation of Security Council Resolution 1373 (2001) by Member States at 52

[128] European Convention on the Suppression of Terrorism 1977 CETS 090

[129] C Murphy, *EU Counter-Terrorism Law. Pre-emption and the rule of law* 2015 (Hart Publishing: Oxford and Portland Oregon 2015) 18

[130] Ibid

[131] European Convention on the Suppression of Terrorism 1977 Article 1: an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;

[132] European Convention on the Suppression of Terrorism 1977 CETS 090 Article 5

established for some time, it adopted the 2002 Framework Decision on Combating Terrorism[133] which included a general definition of the term "terrorism" and listed specific crimes.[134] The list differs from the acts found in the 12 pre-existing UN counter-terrorism conventions on the basis that the framework decision required a specific intention, unlike the UN conventions whereby such acts can be pursued regardless of the objectives the perpetrators seek to achieve.[135]

In 2003, the Council of Europe adopted a Protocol which amended the 1977 Convention,[136] and incorporated all the offences from the 12 pre-existing UN counter-terrorism conventions which were subject to *aut dedere aut judicare*. State members were subsequently obligated to criminalise the offences in the UN conventions in their national legal systems. The Protocol allowed for parties to reserve the right to refuse extradition in respect of any offence mentioned in Article 1 which is considered a political offence.[137] This was considered a compromise to allow state members to preserve their own legal principles and also to enable compliance with Resolution 1373.[138] In 2005, the Council of Europe adopted a second Convention on the Prevention of Terrorism,[139] which made reference to the 12 pre-existing UN counter-terrorism conventions.[140] It placed emphasis on preventive measures by not requiring an act of terrorism to take place for an offence to be committed.[141] An Additional Protocol to this convention was adopted in 2015[142] which the European Union signed the same year, along with the 2005 Convention.[143]

6.4.3 Asia and the Pacific

The response from the Asia-Pacific region include Central Asia, South Asia, Southeast Asia and Northeast Asia all of which are represented by regional organisations. The three main counter-terrorism conventions have come from the ASEAN, SAARC, and the SCO.

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[133] Council Framework Decision of 13 June 2002 on Combating Terrorism, 2002/475/JHA, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0475:EN:NOT

[134] Ibid Article 1 since repealed by Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

[135] Nesi (n85) 215

[136] Protocol Amending the European Convention on the Suppression of Terrorism 2003, CETS No. 190 https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/190

[137] Ibid Article 16

[138] Nesi (n85) 147

[139] Council of Europe Convention on the Prevention of Terrorism 2005 CETS No.196 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273291/6901.pdf

[140] Ibid Article 1(1)

[141] Council of Europe Convention on the Prevention of Terrorism 2005 (n139) Article 3

[142] Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism CETS No.217

[143] A European Agenda on Security: EU signs Convention on prevention of terrorism 22 October 2015 https://ec.europa.eu/home-affairs/what-is-new/news/news/2015/20151022_2_en accessed on 3 September 2017

The ASEAN Convention on Counter Terrorism was ratified in 2013,[144] and required state members to adhere to international counter-terrorism conventions. It also addressed issues such as the financing of terrorist acts.[145] The convention did not contain any enforcement mechanisms and some of the provisions had been designed to enabled state members to balance their sovereign prerogatives and regional security obligations. For example, Article III emphasised the principles of non-intervention and sovereignty, and Article XXII allowed state members to withdraw from the convention with a period of notice.[146] Terrorism was defined through an amalgamation of all the UN counter-terrorism conventions[147]

The SAARC adopted its convention on the Suppression of Terrorism in November 1987[148] which called up state members to cooperate on extradition, evidence sharing and exchanging information.[149] In January 2004 it adopted an Additional Protocol[150] which expanded the scope of the 1987 Convention in terms of meeting the obligations in Resolution 1373. It defined an offence within the scope of the Protocol as being defined by the treaties listed in the Annex which included ten UN counter-terrorism conventions.[151] It also set out practical measures for member states to take with regards to preventing and suppressing the financing of terrorism.[152]

The SCO Convention on Combating Terrorism, Separatism and Extremism was adopted in June 2001.[153] It was unique because it expanded the scope beyond acts of terrorism to separatism and extremism. The convention referred to the 12 pre-existing UN counter-terrorism conventions and identified the offences contained in them as acts of terrorism.[154]

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[144] ASEAN Convention on Counter-Terrorism (n15)
[145] ASEAN Convention on Counter-Terrorism (n15) Article II
[146] ASEAN Convention on Counter-Terrorism (n15) Article III: The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non- interference in the internal affairs of other Parties. Per Article XXII Any Party may withdraw from this Convention at any time after the date of the entry into force of this Convention for that Party.
2. The withdrawal shall be notified by an instrument of withdrawal to the Secretary- General of ASEAN.
3. The withdrawal shall take effect 180 (one hundred and eighty) days after the receipt of the instrument of withdrawal by the Secretary-General of ASEAN.
4. The Secretary-General of ASEAN shall promptly notify all the other Parties of any withdrawal.
[147] ASEAN Convention on Counter-Terrorism (n15) 7
[148] SAARC Regional Convention on the Suppression of Terrorism (n18)
[149] Ibid Article III re extradition, per Article VIII re evidence sharing an exchanging information
[150] Additional Protocol to the SAARC Regional Convention on the Suppression of Terrorism (adopted 1 June 2004, entered into force 1 December 2006)
[151] Ibid Article 3(1a)
[152] Ibid (n150) Article 6
[153] Shanghai Convention on Combating Terrorism, Separatism and Extremism (15 June 2001)
[154] Ibid Article 1 (a) any deed recognized as a crime in one of the treaties listed in the Annex to the present Convention (hereinafter referred to as Annex), and as it is defined in this treaty;

6.4.4 Commonwealth of Independent States

The CIS identified the 12 pre-existing UN counter-terrorism conventions within the definition of the term "terrorism" it had adopted.[155] Prior to the adoption of Resolution 1373 only eight state members had become signatories, however by June 2002, six of the twelve state members ratified the convention.[156]

6.5 Conclusion

The practice of three regional organisations in making a distinction between acts of self-determination and acts of terrorism has shaped the way international law has been used to respond to acts of terrorism. The distinction has limited attempts to create a single definition, which, in turn has stopped the adoption of the draft UN comprehensive convention on international terrorism. However, the regional organisations that had adopted conventions to tackle terrorism before Resolution 1373, had been successful in achieving a consensus amongst their regional members on how to define the term "terrorism". This is something which has not been achieved globally.

Distinguishing acts of self-determination has been significant regional practice that has become part of some state members national laws. This practice has developed into a regional norm on the basis that there is an expectation that all three regional organisations will continue to make the distinction as they have been doing for the past 20 years.[157] State practice and *opino juris* from UN meetings has provided evidence that state members to the relevant organisations consider it behaviour that ought to be followed in the determination of their interests.[158]

Through the lens of the conflicting practice and the practice of the three regions that implement the distinction between acts of self-determination and acts of terrorism, it is evident that the response to acts of terrorism in international law needs to be multifaceted.

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[155] Treaty on Cooperation amongst the States Members of the Commonwealth of Independent States in Combating Terrorism (adopted 4 June 1999, entered into force 4 June 1999) per Article 1: Other acts classified as terrorist under the national legislation of the Parties or under universally recognized international legal instruments aimed at combating terrorism.
[156] Commonwealth of Independent States (CIS) (October 2011) https://www.nti.org/learn/treaties-and-regimes/commonwealth-independent-states-cis/ accessed on 23 February 2019
[157] Arab Convention for the Suppression of Terrorism (n5)
[158] Ann Florini 'The evolution of international norms. International Studies' (1996) Quarterly, 40(3), 363-389.

Resolution 1373 has endorsed a response in criminal law,[159] as have the 13 pre -existing UN counter-terrorism conventions.[160] Where there is armed conflict, whether that is an IAC or a NIAC the response should be governed by the laws of armed conflict in the legal framework of IHL, and the same framework will deal with a breach of those rules. Where this distinction remains, a single definition of the term "terrorism" will never be achievable because such a position would predispose that the only response to acts of terrorism should be in criminal law. None of the conventions from any of the regional organisations authorise acts of terrorism to be committed in pursuit of self-determination, in fact most of the regional organisations condemn acts of terrorism in all its forms. This approach suggests that the distinction is concerned with preventing the principle of self-determination from being consumed by the system of criminal law. Where state members have declared that acts pursuant to self-determination have been excluded from the scope of some of the 12 pre-existing UN counter-terrorism conventions however, it is necessary to determine the extent to which this has been reflected in domestic laws. This will be done in the following chapters.

This idea that the distinction between acts of self-determination and acts of terrorism is about preserving the principle of self-determination, has been reinforced by the regional activity that has taken place after Resolution 1373 in the shape of the adoption of new conventions, protocols or updated positions. This has been indicative of a renewed enthusiasm to tackle acts of terrorism. The language in these instruments has been more forceful than that used in Resolution 1373 where the 12 pre-existing UN counter-terrorism conventions are concerned. These instruments have committed their members to implementing the conventions.

This chapter has demonstrated how the practice and policy of regional organisations has shaped the international response to acts of terrorism. By upholding the self-determination principle, any progress on a single definition of the term "terrorism" has been slowed, to the extent that it is probably not going to be achievable whilst the distinction remains. The extent to which this regional practice has affected the consolidation of Resolution 1373 will be explored in chapters 7, 8 and 9. It would be expected that the Member States which have

[159] UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373
[160] Acharya Upenda D, War on Terror as Terror Wars: The Problem in Defining Terrorism, 37 Denv. J. Int'l L. & Pol'y 653 2008-2009 at 660

already upheld the distinction between acts of self-determination and acts of terrorism would have continued to do so when implementing the three UN counter-terrorism conventions that will be used a case studies.

Part III

Summary of Parts I and II

Part I of this thesis has identified that the use of international law to prevent and suppress acts of terrorism before the adoption of Resolution 1373 was limited to the 12 pre-existing UN counter-terrorism conventions and some General Assembly resolutions which encouraged the implementation of the UN counter terrorism conventions. Each convention proscribed a specific act and used the principle *aut dedere aut judicare* to enable each state party to establish jurisdiction over each act. These conventions had not been implemented consistently however, and as a consequence, not all countries had criminalised the same acts of terrorism. This meant that perpetrators of these acts of terrorism could find safe havens where they could evade prosecution and extradition. Part I made it clear that before Resolution 1373 there was no collective action or international cooperation between Member States to prevent and suppress acts of terrorism using international law.

Part II highlighted that the absence of a single definition of the term "terrorism" in international law meant that there was no basis for any common practices to develop between Member States. Part II showed how the position adopted by three regional organisations of drawing a distinction between acts of terrorism and acts of self-determination, has underpinned why no single definition of the term "terrorism" can be agreed upon in international law. The thesis argues that the distinction seeks to preserve the principle of self-determination within the framework of IHL to be conducted in accordance with the rules of armed conflict. Acts of terrorism, therefore, are distinct from acts of self-determination and are subject to the sanction of national criminal law. All three regional organisations have condemned acts of terrorism in all its forms, which reinforces the fact that the distinction is concerned with preventing the right to self-determination from being consumed by criminal law. Other regional organisations have not recognised this distinction on the basis that it would place too much reliance on states evoking the rules of armed conflict. If they failed to do so it could potentially give perpetrators of acts of terrorism a space within which to operate unregulated and unpunished.

Resolution 1373 did not attempt to provide a definition of the term “terrorism”, instead it endorsed a response to acts of terrorism in criminal law using the 12 pre-existing UN counter-terrorism conventions. Part II showed how the resolution was designed to produce coordinated activity from Member States and to place international law at the forefront of tackling acts of terrorism. No Member State could be obliged to implement any of the 12 pre-existing UN counter-terrorism conventions, therefore, the increase in their implementation after the adoption of Resolution 1373 is both significant in terms of the change in state practice, but also in terms of how international law is now used to prevent and suppress acts of terrorism.

In terms of what Resolution 1373 has achieved, Part II showed how it has produced three elements common to all legal frameworks, indicating that it is a substantive basis for a developing legal framework to prevent and suppress acts of terrorism. It showed that a comprehensive convention is not required to bring together the 12 pre-existing UN counter-terrorism conventions, nor is a single definition of the term “terrorism” required. Resolution 1373 has led to the development of an international standard for the criminalisation of specific acts of terrorism; it has developed a process for implementing the measures contained in the resolution in particular paragraphs 3(d) and 3(e) which requested the implementation of the 12 pre-existing UN counter-terrorism conventions; and it has led to the creation of a network comprised of national, regional and international institutions through the work of the CTC and CTED in which the process of implementation has been invoked. Analysis of three elements common to all legal frameworks has shown how Resolution 1373 has formed the foundation for thirty-seven subsequent resolutions which continue to prevent and suppress acts of terrorism.

Part III will show the extent to which the behaviour of Member States has changed in terms of the prevention and suppression of acts of terrorism. Using three of the 12 pre-existing UN counter-terrorism conventions as case studies; the Convention against the Taking of Hostages, 1979, the Convention for the Suppression of Terrorist Bombings, 1997 and the Convention for the Suppression of the Financing of Terrorism, 1999, chapters 7, 8 and 9 will identify and discuss the relevant laws that Member States have implemented for each

of the conventions after the adoption of Resolution 1373.[1] Chapters 7, 8 and 9 will only contain data from Member States that became party to, and acceded to each of the three conventions mentioned above after the adoption of Resolution 1373. Chapter 10 will provide an analysis of the legislation that has been identified from the case studies. This will seek to show how the behaviour of Member States has changed following the adoption of Resolution 1373, but also show the effect this had on: a) the developing legal framework, b) how legitimate Member States perceived the measures to implement the 12 pre-existing UN counter-terrorism conventions to be and c) the international standard for the criminalisation of specific acts of terrorism. Conclusions will be drawn in chapter 11. By showing how Member States have adopted new laws and changed existing laws to meet the requirement of each convention after the adoption of Resolution 1373, Part III will confirm the international standard for the criminalisation of specific acts of terrorism. It will also determine the impact of Resolution 1373 in terms of how the standard has consolidated into a norm, on the basis that Member States perceived the request in paragraphs 3(d) and 3(e) of the resolution to be legitimate.

[1] Chapters 7, 8 and 9 are not intended to give a detailed description of the legislation adopted by Member States, therefore the legislation that is identified is not listed in the bibliography.

Chapter 7
Case Study: The International Convention against the Taking of Hostages, 1979

7. Introduction

The International Convention against the Taking of Hostages was adopted by a resolution of the General Assembly on 17 December 1979.[2] It was opened for signature on 18 December the same year and entered into force in June 1983. It was adopted following prominent hostage-taking situations which had threatened international peace and transnational relations.[3] Two examples were the hijacking of an aircraft at Entebbe airport in Uganda in June 1976[4] and the occupation of the United States Embassy in Tehran from November 1979 to January 1981.[5] The convention defined the conduct to be criminalised enabling state parties to establish jurisdiction over the offence. A key element of the offence is the compulsion of a third party to act or to abstain from acting, as a condition for release of the hostage;

> "in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition…"[6]

The use of the term hostage taking is wide enough to cover kidnapping, which normally seeks to compel third parties to do something such as pay a ransom. In most cases of kidnapping however, there is no international element because the purpose is not political. Whilst the act of hostage taking was already prohibited in IHL[7] there was no provision for the offence outside of armed conflict. The few conventions that existed at the time only dealt with the offence in the specific contexts of aircraft safety or harm to internationally protected persons,[8] there was no offence which applied irrespective of setting.

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[2] UNGA Res 34/146 containing the International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205

[3] UNGA Drafting of an International Convention Against the Taking of Hostages (28 September 1976) UN Doc A/31/242 [1]

[4] Joseph Lambert, *Terrorism and Hostages in International Law: A Commentary on the Hostages Convention 1979* (Cambridge, Grotius Publications, 1990) 2-3.

[5] *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment,* I.C.J. Reports 1980, p. 3.

[6] UNGA International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 Article 1

[7] Geneva Conventions of 1949 common Article 3, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 per Articles 34 and 147, and Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977 Article 75(2) and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 Article 4(2)(c)

[8] Convention for the Suppression of Unlawful Seizure of Aircraft (signed on 16 December 1970, entered into force 14 October 1971) 860 UNTS 105; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (concluded on 23 September 1971, entered into force 26 January 1973) 974 UNTS 177; Convention on the Prevention and Punishment of Crimes against

7.1 Criminalisation of the conduct defined as a punishable offence

The convention placed emphasis on international cooperation between Member States, requiring them to prosecute or extradite perpetrators, exchange information and ensure the offence was punishable in national law. The offences referred to in the convention are deemed to be extraditable offences between state parties under existing extradition treaties, and under the convention itself. They apply to hostage-taking which has a transnational element and does not apply to purely domestic acts as in Article 13 which shall not apply:

> "where the offence is committed within a single state, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State".

Article 1 of the Convention defined the offences of hostage-taking, attempted hostage-taking, and complicity in hostage-taking. There is, however, no offence of threatening to commit hostage-taking. According to article 1 (1) the offence of hostage-taking is committed by:

> Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage ...

There is no requirement that force be used to take hostages as long as force is threatened. Article 2 required state parties to make the above offences "punishable by appropriate penalties which take into account the grave nature of those offences". The majority of state parties to the convention have incorporated the offence into domestic law by amending their criminal code or by enacting specific counter-terrorism legislation.

Internationally Protected Persons including Diplomatic Agents (adopted 1 March 1991, entered into force 21 June 1998) 2122 UNTS 359

7.2 Regional Practice

Africa

North Africa: *(Algeria, Egypt, Libya, Mauritania, Morocco, Tunisia)*
All six states in this region have acceded to the convention, but Algeria, [9] Egypt,[10] Libya,[11] Mauritania[12] and Tunisia[13] did so prior to the adoption of Resolution 1373.

Morocco acceded without reservation or declaration in May 2007. It had, prior to implementing the resolution, said it used the state Penal Code to criminalise hostage-taking under Articles 436-441.[14] It has not been possible to identify whether the state modified this law to implement the offence in compliance with the convention.

East Africa: *(Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, South Sudan, Sudan, Uganda, United Republic of Tanzania)*
Of the eleven states Eritrea, Somalia, South Sudan had not acceded to the convention. Two states acceded prior to the adoption of Resolution 1373 namely Kenya[15] and Sudan. [16] It has not been possible to identify any implementing laws for Comoros despite it acceding to the convention in 2003.[17]

The following five states all acceded without entering reservations or declarations. Ethiopia acceded to the convention in April 2003. It criminalised the offence under s.5 Anti-Terrorism Proclamation (ATP), implemented in 2009, where hostage taking or kidnapping meant "seizing or detaining and threatening to kill, to injure or to continue to detain a person in order to compel the government to do something as a condition for the release of the hostage".[18] Rwanda acceded to the convention in May 2002. It criminalized the offence in

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[9] Acceded in November 1996
[10] Acceded in October 1981
[11] Acceded 2 September 2000
[12] Acceded in March 1998
[13] Acceded in June 1997
[14] UNSC CTC Report on the measures taken by the Government of the Kingdom of Morocco in implementation of Security Council resolution 1373 (2001) (27 December 2001) UN Doc S/2001/1288 at 8
[15] Acceded in December 1981
[16] Acceded in June 1990
[17] Acceding in September 2003
[18] Terrorism Proclamation (ATP), implemented in 2009, s.5 "hostage taking or kidnapping" means seizing or detaining and threatening to kill, to injure or to continue to detain a person in order to compel the government to do something as a condition for the release of the hostage; Part II s3. Terrorist Acts- Whosoever or a group intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country:
1/causes a person's death or serious bodily injury;
2/creates serious risk to the safety or health of the public or section of the public;

Law No.45/2008 on Counter-terrorism.[19] The offence was added to the Penal Code through Organic Law No.01/2012 of May 2012 in Articles 15 and 16 which implemented the taking of hostages convention.[20] Uganda acceded to the convention in November 2003, and used the Anti-Terrorism Act 2002 where s2(a) Part II s7(2e) provided for the offence of taking of hostage.[21] Djibouti acceded in 2003[22] as did the United Republic of Tanzania acceded in 2003.[23] Djibouti used its penal code to provide for the offence, but this only referred to kidnapping and abduction.[24] Tanzania had adopted the Prevention of Terrorism Act 2002 which referred to the offence of kidnapping a person.[25] It is not clear whether this has been amended.

Southern Africa: *(Botswana, Lesotho, Malawi, Mozambique, Namibia, Madagascar, Mauritius, Seychelles, South Africa, Swaziland, Zambia, Zimbabwe)*
Of the eleven states, only Zimbabwe had not acceded to the convention. Four states, Botswana, [26] Lesotho,[27] Malawi,[28] and Mauritius[29] acceded to the convention prior to Resolution 1373. Both Mozambique[30] and Madagascar[31] acceded to the convention in 2003. It has not been possible to identify the relevant laws for these states.

Namibia acceded in September 2016, criminalizing the offence in Act No. 4, 2014 Prevention and Combating of Terrorist and Proliferation Activities Act. [32] The Seychelles acceded to the convention in January 2003. It adopted the Prevention of Terrorism Act 2004, which identified what a terrorist act was but did not explicitly mention hostage taking.[33] South Africa acceded to the convention in September 2003 by way of s.7 of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004 where

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3/commits kidnapping or hostage taking;
[19] Rwanda: Law No. 45/2008 of 2008 on Counter-terrorism [Rwanda], 9 September 2008, Article 20 available at: http://www.refworld.org/docid/4a3f86af2.html accessed 13 August 2018
[20] Rwanda Organic Law No 01/2012/OL of 2/5/2012 Instituting the Penal Code http://itegeko.com/en/codes-lois/penal-code/ accessed on 7 August 2018
[21] Anti-Terrorism Act 2002 https://ulii.org/ug/legislation/act/2015/2002 accessed on 7 August 2018
[22] Acceding in June 2004
[23] Acceding in June 2003
[24] Chapter V Art 167 of the Penal Code provides for kidnapping and abduction
[25] Prevention of Terrorism Act 2002 Article 3(2)(c)(iii) kidnapping of a person
[26] Acceded in September 2000
[27] Acceded 5 November 1980
[28] Acceded in March 1986
[29] Acceded October 1980
[30] Acceded in January 2003
[31] Acceded in September 2003
[32] Act No. 4, 2014 Prevention and Combating of Terrorist and Proliferation Activities Act s.7 http://www.lac.org.na/laws/2014/5490.pdf accessed on 7 August 2018
[33] Prevention of Terrorism Act 2004 https://seylii.org/node/6432 accessed on 7 August 2018

offences related to taking a hostage.[34] Swaziland acceded to the convention in April 2003 implementing the offence in the Suppression of Terrorism Act 2008 under s.5 as a terrorist act.[35] Zambia acceded to the convention in December 2016, where the offence was incorporated into the Anti-Terrorism Act 2007.[36] None of these state entered a reservation which affected the scope of the convention.

West Africa: *(Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo)*
Ghana,[37] Cote d'Ivoire, [38] Mali,[39] Senegal, [40] and Togo[41] all acceded to the convention before the adoption of Resolution 1373. Gambia had yet to accede to the convention.[42]

Benin acceded in July 2003 criminalising the offence in its Penal Code.[43] Burkina Faso adopted a similar approach, acceding to the convention in October 2003 it put forward Article 356 in its Penal Code as implementing the offence.[44] Sierra Leon acceded in September 2003 and criminalised the offence as an act of terrorism, referring to the offences in the international counter-terrorism conventions in the Anti-Money Laundering and Combating of Financing of Terrorism Act 2012.[45] Cape Verde acceded in September 2002 and cited the Penal Code as containing elements of the offence under Article 138 which referred to abduction.[46] Guinea acceded in December 2004 and put forward Article 505 of the Penal Code as criminalising the offence.[47] Guinea-Bissau acceded in 2008, but its Penal

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[34] Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004 https://www.saps.gov.za/resource_centre/acts/downloads/juta/terrorism_act.pdf accessed on 7 August 2018
[35] Supplement to the Swaziland Gazette The Suppression of Terrorism Bill 2008 http://www.vertic.org/media/National%20Legislation/Swaziland/SZ_Suppression_Terrorism_Bill_2008.pdf accessed on 7 August 2018
[36] Anti-Terrorism Act 2007 No. 21 of 2007 where a terrorist act under s.2 was defined as any offence listed in the conventions in schedule 5 of the act. http://www.parliament.gov.zm/sites/default/files/documents/acts/Anti-Terrorism%20Act%2C%202007.pdf accessed on 7 August 2018
[37] Acceded in November 1987
[38] Acceded in August 1989
[39] Acceded in February 1990
[40] Acceded in March 1987
[41] Acceded in July 1986
[42] International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 status as of 7 August 2019 https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en#EndDec accessed on 7 August 2019
[43] UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (October 2008) Benin, where it set out that Article 90 of the new Penal Code listed kidnapping as a terrorist offence.
[44] ibid Burkino Faso Penal Code
[45] Anti-Money Laundering and Combating of Financing of Terrorism Act 2012 s.1 interpretation https://www.bsl.gov.sl/antimoney2012.pdf accessed on 7 August 2018
[46] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n39) Cape Verde Penal Code 45
[47] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n39) Guinea Penal Code 103 https://www.unodc.org/documents/terrorism/Publications/Review_West_African_CT_Legal_Regime/A_Review_of_the_Legal_Regime_Ag_Terr_in_W_and_C_Africa_V09837531.pdf accessed on 7 August 2018

Code of 1993 provided for the criminalization of the taking of hostages as an offence.[48] Liberia acceded in March 2003 but amended its Penal Code in 1995 to include the offence of 'Hijacking' which referred to taking people hostage.[49] Niger acceded in October 2004 and adopted a Counter-terrorism Law on 23 June 2008 which criminalized the taking of hostages.[50] Nigeria acceded in September 2013, and had criminalized hostage taking in its Criminal Code under s.365.[51] In 2011 it adopted the Terrorism (Prevention Act) where is defined the act of hostage taking as an offence.[52]
None of these states entered a reservation which affected the scope of the convention.

Central Africa: *(Angola, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Republic of the Congo, Sao Tome and Principe)*
In Central Africa, three states had not acceded to the convention, Angola, Burundi and the Congo. From those remaining, Cameroon acceded in March 1988 and the Democratic Republic of Congo became a signatory in July 1980 but has not yet acceded to the convention.

Cape Verde acceded in September 2002 as set out above. The Central African Republic acceded in July 2007 and inserted the offence into the state penal code under Article 311.[53] Chad acceded in November 2006 and used its Penal Code to criminalise the offence.[54] Equatorial Guinea acceded in February 2003 and put forward its Penal Code as able to prosecute the taking of hostages offence.[55] Gabon acceded in May 2005 and put forward a

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[48] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n39) Guinea-Bissau Article 204 of the Penal Code 113
[49] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n39) Liberia section 15.33 of the Penal Code p.118
[50] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n39) Niger 133
[51] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n39) Nigeria 140
[52] Terrorism (Prevention) Act, 2011 s.11.
Hostage taking:
(1) A person who knowingly—
(a) seizes, detains or attempts to seize or detain; or
(b) threatens to kill, injure or continue to detain another person in order to compel a third party to do, abstain from doing any act or gives an explicit or implicit condition for the release of the hostage, commits an offence under this Act and shall on conviction be liable to imprisonment for a maximum term of 10 years.
[53] Using an automatic translation tool Central African Republic Law No 10.001 Bearing Central African Criminal Code http://www.wipo.int/wipolex/en/text.jsp?file_id=195085 accessed on 9 September 2018
[54] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n39) Chad Penal Code Article 149 at 60 https://www.unodc.org/documents/terrorism/Publications/Review_West_African_CT_Legal_Regime/A_Review_of_the_Legal_Regime_Ag_Terr_in_W_and_C_Africa_V09837531.pdf accessed on 7 August 2018
[55] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n39) Equatorial Guinea Penal Code Article 480 82

similar approach by way of Article 250 of its Penal Code.[56] Sao Tome and Principe acceded in August 2006 and drafted a new Criminal Code in 2005 which criminalized all the offences established in the UN counter-terrorism conventions. [57] None of these states entered a reservation which affected the scope of the convention.

Asia

Pacific Islands: *(Fiji, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu)*

In this region four states had not acceded to the convention, these were Samoa, the Solomon Islands, Tuvalu and Vanuatu.[58] Papua New Guinea acceded in September 2003, but it has not been possible to find the laws which implemented the offence of hostage taking.

Fiji acceded in May 2008 and in 2017 amended The Public Order Act 1969 to include offences within the scope of the international counter-terrorism conventions to which it was a party, which included the offence of hostage taking.[59] Kiribati acceded in September 2005, implementing in s.33 of the Measures to Combat Terrorism and Transnational organized Crime Act 2005 the offence of hostage taking.[60] The Marshall Islands acceded in January 2003, and adopted the Marshall Islands Revised Code 2004 Title 15 Anti-Terrorism Laws, where Part IV provided for the offences against international conventions including hostage taking.[61] Micronesia acceded in July 2004, but did not adopt a law specifically to implement hostage taking as an act of terrorism. In the state's criminal code there are no counter-terrorism statutes, with the state preferring to invoke its laws against murder, attempted murder etc, in order to prosecute for a terrorist offence. [62] Nauru acceded in August 2005 and in the same year adopted the Counter-Terrorism and Transnational Organised Crime

[56] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n39) Gabon Penal Code Book III, 'Of Crimes against Persons'; Chapter VI, 'Arbitrary Arrests and Detention' Article 250 87

[57] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n39) Sao Tome and Principe new Criminal Code 152

[58] UNGA International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 status as of 7 August 2019 https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en#EndDec accessed on 7 August 2019

[59] The Public Order (Amendment) (No. 2) Act 2017 per s4 which inserted new section 12G the Offence of Hostage Taking http://www.parliament.gov.fj/wp-content/uploads/2017/03/Act-9-Public-Order-Amendment-No-2.pdf accessed on 8 August 2018

[60] Measures to Combat Terrorism and Transnational organized Crime Act 2005 http://www.parliament.gov.ki/acts-of-kiribati/ accessed on 8 August 2018

[61] Revised Code 2004 Title 15 Anti-Terrorism Laws Part IV Offences Against International Conventions, Division 1 β127 Hostage-taking offenses https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/xsp/.ibmmodres/domino/OpenAttachment/applic/ihl/ihl-nat.nsf/2AAF8A969EDF1735C1257C670037D430/TEXT/Marhall%20Islands%20-%20Counter-Terrorism%20Act%2C%202002.pdf. Accessed on 8 August 2018

[62] UNHR Country reports on terrorism- Federated States of Micronesia (2009) http://www.refworld.org/docid/4c63b633c.html accessed on 8 August 2018

Act 2004, where s. 47 provided for the offence of hostage taking in accordance with the convention.[63] Palau acceded in November 2001, and updated the criminal offences contained in the National Code in April 2013. This provided for the offence of kidnapping under Chapter 15 and offences of terrorism under Chapter 22.[64] It also enacted the Counter-terrorism Act 2001 to implement the UN counter-terrorism conventions and ss. 32-33 created offences relating to the taking of hostages.[65] Tonga acceded in December 2002 and referred to kidnapping a person in the state definition of terrorism,[66] until it adopted the Counter-terrorism and Transnational Organised Crime 2013 which fully implemented the offence in the convention.[67] None of these states entered a reservation which affected the scope of the convention.

South-east Asia: *(Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Timor-Leste, Thailand, Viet Nam)*
In this region there were two states, Brunei Darussalam[68] and the Philippines[69] which had acceded to the convention before the adoption of Resolution 1373. Indonesia has yet to accede to the convention, as had Timor-Leste.[70] Whilst both the Lao People's Democratic Republic acceded in August 2002 and Myanmar acceded in June 2004, it has not been possible to identify the implementing legislation for either of these states.

Cambodia acceded in July 2006. Its Law on Counter-terrorism 2007 implemented the convention in full under Chapter 5, and Art 34 provided for the offence of Taking a Hostage.[71] This updated the previous law of 1992, which did not reflect the convention

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[63] Division 5, s.47 http://ronlaw.gov.nr/nauru_lpms/files/acts/c8e398a13914e59966dc84578fe61057.pdf accessed on 14 August 2018
[64] Palau An Act to update criminal offenses contained in Title 17 of the Palau National Code by amending, repealing, and replacing specific Sections of Title 17, to amend 40 PNC § 1702, and for other related purposes. www.paclii.org/pw/legis/num_act/pcotroprn9212013343.rtf accessed on 8 August 2018
[65] Counter-terrorism Act 2001 Subchapter V Hostage Taking ss.32 and 33 http://www.paclii.org/pw/legis/num_act/cao2001r7282007313/ accessed on 14 August 2018
[66] Criminal Offence (Amendment) Act 2002 No. 24 of 2002. Section 78B defines terrorism it does not specifically mention hostage taking but s78B (iii) refers to kidnapping a person http://www.paclii.org/to/legis/num_act/coa2002237/index.html accessed on 2 November 2018.
[67] Counter-terrorism and Transnational Organised Crime Act (Act 23 of 2013) Division 5- Hostages .56 offences of taking hostages https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98656/117471/F-1641177339/TON98656.pdf accessed on 14 August 2018
[68] Acceded in October 1998
[69] Acceded in May 1980
[70] UNGA International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 status as of 7 August 2019 https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en#EndDec accessed on 8 August 2019
[71] Law on Counter-Terrorism 2007 (1) The purpose of this Law is to criminalise certain conduct, as required by: (a) the 13 United Nations counter-terrorism conventions and protocols listed in Annex 1 to this Law; Chapter 5 Taking of Hostages
Article 34 - Taking a hostage (1) Hostage taking is constituted by seizing or detaining a person with the threat to kill or to injure, or to continue to detain a hostage with the intention of compelling a legislative, executive or judicial institution in the Kingdom of Cambodia or in a foreign State, or an international intergovernmental organisation, or any other person or group of persons, to do or to refrain

because the state was not party to it at the time.[72] Malaysia acceded in May 2007, and the offence of hostage taking was added to the Penal Code under s.374A but it is unclear whether it incorporated the requisite intent.[73] Singapore acceded to the convention in October 2010, and it enacted the Hostage-Taking Act 2011 to implement the offence.[74] Thailand acceded in October 2007 using the Criminal Code to criminalise the offence of hostage taking, albeit without specifically referring to the specific act.[75] Viet Nam acceded in January 2014 by way of Law No. 28/2013/QH13 which came into effect in June 2013 where Art 3 (1e) provided for "other acts considered terrorism under international treaties which is the state is party to".[76] None of these states entered a reservation which affected the scope of the convention.

South Asia: *(Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka)*

Five states in South Asia had acceded to the convention prior to the adoption of Resolution 1373, there were Bhutan,[77] India,[78] Nepal,[79], Pakistan,[80] and Sri Lanka.[81] The Maldives has not acceded to the convention.[82]

Bangladesh acceded in May 2005 and implemented the Anti-Terrorism Act 2009, Act No. 16 of 2009 which incorporated the offence of kidnapping.[83] Although Afghanistan acceded

from doing any act as an explicit or implicit condition for the release of the hostage. (2) Acts of taking a hostage shall be punished to imprisonment for a period of between 20 years and 30 years or life imprisonment. https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=13FB5BE76BC7D035C1257D89003E5263&action=openDocument&xp_countrySelected=KH&xp_topicSelected=GVAL-992BU6&from=topic&SessionID=E1LXD9NI0E accessed of 15 August 2018

[72] Law of 1992 on Punishment of the Acts of Terrorism Article 2: Any person who kidnapped or detained illegally the persons aiming at creating a subversion, extorting for money, revenge, taking as hostage or for selling, and any person who committed other acts of terrorism, shall be subjected to punishment to imprisonment from 10 to 20 years.

[73] Laws of Malaysia Penal Code as at 1 January 2015, http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Penal%20Code%20%5BAct%20574%5D2.pdf accessed on 15 August 2018

[74] Hostage-Taking Act (CHAPTER 126C) (Original Enactment: Act 19 of 2010). Revised edition 2011 (31st December 2011) An Act to give effect to the International Convention against the Taking of Hostages and for matters connected therewith.

[75] Thailand Criminal Code Offence Relating to Terrorism, s.135/1 http://library.siam-legal.com/thai-law/criminal-code-offense-against-foreign-states-sections-135-1-135-4/ accessed on 8 August 2018

[76] Law No. 28/2013/QH13 The Anti-Terrorism Law Article 3 (1e) https://vanbanphapluat.co/law-no-28-2013-qh13-on-the-anti-terrorism accessed on 8 August 2018

[77] Acceded in August 1991

[78] Acceded in September 1994

[79] Acceded in March 1990

[80] Acceded in September 2000

[81] Acceded in September 2000

[82] International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 status as of 7 August 2019 https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en#EndDec accessed on 8 August 2019

[83] Anti-Terrorism Act 2009 Act No. 16 of 2009 per s.3 (3A) which referred to any act in a UN Convention which had been ratified by the state http://www.satp.org/satporgtp/countries/bangladesh/document/papers/AntiTerrorism_Act2009.pdf accessed on 8 August 2018

in September 2003 it has not been possible to find any implementing laws for this state. Neither of these states entered a reservation which affected the scope of the convention.

Central Asia and the Caucasus: *(Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan)*

There were four states which had acceded to the convention prior to the adoption of Resolution 1373, these included Azerbaijan,[84] Kazakhstan,[85] Turkmenistan,[86] and Uzbekistan.[87]

Of the remaining states, Armenia acceded to the convention in March 2004 utilising the Criminal Code to provide for the taking of hostages.[88] Georgia acceded in February 2004 amending its Criminal Code to incorporate the Seizure of Hostage of Terrorist Purposes under Art.329.[89] Kyrgyzstan acceded in October 2003 and adopted the Law of the Kyrgyz republic on Combating Terrorism which provided for the taking of hostages.[90] Tajikistan acceded to the convention in May 2002, using the Criminal Code to provide for the capture of hostages under Article 181.[91] None of these states entered a reservation which affected the scope of the convention.

Western Asia: *(Bahrain, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates, Yemen)*

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[84] Acceded in February 2000

[85] Acceded in February 1996, but fully incorporated the offence into its new Penal Code in 2014: The Code of the Republic of Kazakhstan of 3 July 2014 No. 266-V of the Law of the Republic of Kazakhstan https://www.unodc.org/res/cld/document/penal-code_html/New_penal_code.pdf accessed on 15 August 2018

[86] Acceded in June 1999

[87] Acceded in in December 1998

[88] Criminal Code of the Republic of Armenia 18 April 2003, Article 218 Taking Hostages https://www.unodc.org/res/cld/document/armenia_criminal_code_html/Armenia_Criminal_Code_of_the_Republic_of_Armenia_2009.pdf accessed on 8 August 2018

[89] Criminal Code of Georgia (1999, as amended 2011) Chapter XXXVIII Terrorism Article 329. Seizure of Hostage for Terrorist Purposes 1. Hostage - taking for terrorist purposes, i.e. to coerce the state authority or an international or religious organization to carry out or not to carry out a particular action by promising to release the hostage, - shall be punishable by prison sentences ranging from seven to thirteen years in length. https://www.legislationline.org/documents/id/4988 accessed on 8 August 2018

[90] Dated November 8, 2006, No. 178 The Law Of The Kyrgyz Republic
On Combating Terrorism. Terrorist act included the retention of hostages and hostage is an individual captured and/or being retained by terrorists in order to enforce the state, individuals or legal entities to execute or refrain from any action, as the condition of liberation of a person captured and/or being held; www.legislationline.org/documents/id/22040 accessed on 8 August 2018

[91] Criminal Code Article 181 Capture of Hostages
(1) Capture or keeping an individual as a hostage, committed with the goal of forcing the state (government), an organization, or a citizen to commit some action or refrain committing some action as a condition of release of a hostage is punishable by imprisonment for a period of 5 to 10 years.
https://www.legislationline.org/download/action/download/id/1707/file/207b8150765af2c85ad6f5bb8a44.htm/preview accessed on 8 August 2018

Six states acceded to the convention prior to the resolution including Jordan,[92] Kuwait,[93] Lebanon,[94] Oman,[95] Yemen,[96] and Saudi Arabia.[97] Syria has not acceded to the convention[98]. Although Iran acceded to the convention in November 2006 it has not been possible to identify the relevant law that implemented this offence. The state did, however, enter an interpretive declaration which declared that the exercise of self-determination should not be affected by the fight against terrorism.[99] Lebanon also entered a similar declaration.[100]

Qatar acceded in September 2012.[101] Law No (3) of 2004 had already provided for the act of kidnapping under Article 11,[102] in addition to Article 318 of the Penal Code which defined what kidnapping was.[103] In 2017 Qatar amended Law No. 11 of 2004 which provided for the definition of acts of terrorism.[104] Bahrain acceded in September 2005 and adopted Law No. 58 of 2006 with respect to the Protection of the Community Against Terrorist Acts,[105] which added to Article 358 of the Penal Code which provided for the offence of kidnapping.[106] Iraq acceded in August 2013, despite implementing the offence in Law Number 13 of 2005 which provided for the kidnapping or impeding the freedom of

[92] Acceded in February 1986
[93] Acceded in in February 1989
[94] Acceded in February 1997
[95] Acceded in in July 1998
[96] Acceded in July 2000
[97] Acceded in in January 1991
[98] International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 status as of 7 August 2019 https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en#EndDec accessed on 9 August 2019
[99] Declarations and reservations for the International Convention Against the Taking of Hostages, New York, 17 December 1979, per Iran's Interpretative declaration https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en accessed on 24 June 2019
[100] "The provisions of the Convention, and in particular those of its article 13, shall not affect the Lebanese Republic's stance of supporting the right of States and peoples to oppose and resist foreign occupation of their territories". UNGA International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 per Lebanon's declaration https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en accessed on 24 June 2017
[101] International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 status as of 7 August 2019 https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en#EndDec accessed on 9 August 2019
[102] Law No (3) of 2004 on Combatting Terrorism http://www.qfcra.com/en-us/legislation/Laws/Law%20No%20(3)%20of%202004%20on%20Combating%20Terrorism.pdf accessed on 9 August 2018
[103] Law No. 11 of 2004 Issuing the Penal Code 11/2004 https://www.unodc.org/res/cld/document/qat/penal-code_11_2004_html/2014_Penal_Code_Law_11_2004_26.pdf accessed on 9 August 2018
[104] Law No. 4 of 2017, amending Law No. 11 of 2004 http://www.loc.gov/law/foreign-news/article/qatar-anti-terror-legislation-amended/ accessed on 9 August 2018
[105] Law No. 58 of 2006 with respect to protection of the community against terrorist acts http://www.vertic.org/media/National%20Legislation/Bahrain/BH_Law_No_58_Protection_Community_against_Terrorist_Acts.pdf accessed on 9 August 2018
[106] Bahrain Penal Code 1976 https://www.unodc.org/res/cld/document/bhr/1976/bahrain_penal_code_html/Bahrain_Penal_Code_1976.pdf accessed on 9 August 2018

individuals for the purpose of threatening security or promoting terrorism.[107] The United Arab Emirates acceded in September 2003 and implemented Federal Law No. 7 of 2014 on Combating Terrorism Offences: Articles 5 and 13 provided for the offence of kidnapping for terrorist purposes or with terrorist intent.[108]

East Asia: *(China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea)*

All states in East Asia acceded to the convention before Resolution 1373 was adopted. China acceded in January 1993, the Democratic People's Republic of Korea acceded in January 2001, Japan in June 1987, Mongolia in June 1992 and the Republic of Korea acceded in June 1983.

Latin America

Central America: *(Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama)*

In Latin America four states had already acceded to the convention prior to 2001; El Salvador[109] Guatemala[110] Honduras[111] and Panama.[112] Nicaragua's accession was approved by Legislative Decree No. 3578, published in Official Gazette No. 118 of 25 June 2003.[113] It has not been possible to identify the relevant law which implemented the offence.

Mexico acceded in January 2003.[114] The state adopted the Inter-American Convention against Terrorism on 9 June 2003.[115] Under this convention Article 2 established the offences contained in the Taking of Hostages convention in additional to other UN counter-

[107] Number (13) for the Year 2005 Anti - Terrorism Law Article 2 (8) gjpi.org/wp-content/uploads/anti-terrorism-law-iraqi-no-13-2005.doc accessed on 9 August 2018
[108] Federal Law No. 7 of 2014 on Combating Terrorism Offences https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98658/117474/F399649256/LNME-FED-LAW-7-2014.pdf accessed on 2 November 2018
[109] Acceded in February 1981
[110] Acceded in March 1983
[111] Acceded in June 1981
[112] Acceded in August 1982
[113] Report of the Republic of Nicaragua dated 13 January 2004 S/2004/18 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/206/40/PDF/N0420640.pdf?OpenElement accessed on 17 August 2018
[114] The state entered a reservation concerning Article 6
[115] Published in *La Gaceta* No. 119 of June 21, 2005. OAS Inter-American Convention Against Terrorism March 2002 http://www.oas.org/juridico/english/sigs/a-66.html accessed on 17 August 2018

terrorism conventions.[116] Belize acceded in November 2001. In its third report to the CTC[117] it stated that all UN counter-terrorism conventions were implemented through the United Nations Resolutions and Conventions (Enforcement) Act 2003, which enabled the Minister of Foreign Affairs to make an Order containing such provisions as may be necessary to implement UN Security Council conventions, as well as resolutions which are passed in accordance with Chapter VII of the UN Charter.[118] Cost Rica[119] acceded in 2003 and adopted Law No. 8446 of May 24, 2005, which implemented the Inter-American Convention against Terrorism.[120] Under this convention Article 2 established the offences contained in the Taking of Hostages convention in additional to other UN counter-terrorism conventions.[121]

Caribbean: (*Antigua and Barbuda, Bahamas, Barbados, Cuba, Dominica, Dominican Republic, Grenada, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago*)

Nine states had acceded to the convention before the adoption of Resolution 1373. These were Antigua and Barbuda, [122] Bahamas, [123] Barbados, [124] Dominica,[125] Grenada,[126] Haiti,[127] Saint Kitts and Nevis,[128] Saint Vincent and the Grenadines[129] and Trinidad and Tobago.[130]

The Dominican Republic acceded in October 2007, Saint Lucia in October 2012 and Jamaica acceded in August 2005, but it has not been possible to find the relevant laws implementing this offence. Although Antigua and Barbuda acceded before Resolution 1373

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[116] Inter-American Convention Against Terrorism Article 2 http://www.oas.org/juridico/english/treaties/a-66.html accessed on 17 August 2018

[117] UNSC Information pertaining to Belize's report to the Counter-terrorism Committee pursuant to Resolution 1373 (25 April 2003) UN Doc S/2003/485

[118] Belize United Nations Resolutions and Conventions (Enforcement) Act 200 s.4 http://www.vertic.org/media/National%20Legislation/Belize/BZ_UN_Resolutions_and_Conventions_Enforcement_Act.pdf accessed on 9 August 2018

[119] Acceded in January 2003

[120] Published in *La Gaceta* No. 119 of June 21, 2005. OAS Inter-American Convention Against Terrorism March 2002 http://www.oas.org/juridico/english/sigs/a-66.html accessed on 17 August 2018

[121] Inter-American Convention Against Terrorism per Article 2 http://www.oas.org/juridico/english/treaties/a-66.html accessed on 17 August 2018

[122] Acceded in August 1986

[123] Acceded in June 1981

[124] Acceded in March 1981

[125] Acceded in September 1986 and made a reservation to Article 12

[126] Acceded in December 1990

[127] Acceded in May 1989

[128] Acceded in January 1991

[129] Acceded in September 2000

[130] Acceded in April 1981

it had implemented the offence in the Prevention of Terrorism Act 2005.[131] Cuba acceded in November 2001 and implemented the Law Against Acts of Terrorism where Article 14.1 provided for the offence of taking of hostages.[132]

South America: *(Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, Venezuela (Bolivarian Republic of)*

The following seven states acceded to the convention prior to resolution 1373; Argentina,[133] Brazil,[134] Chile,[135] Ecuador,[136] Peru,[137] Suriname,[138] and Venezuela.[139]

Bolivia acceded in January 2002 and the convention was promulgated as Act No. 2280 of 27 November 2001. [140] Columbia acceded in April 2005. Under section 906 of Colombia's Criminal Code, Article 343 provided for acts of terrorism which included endangering the freedom of persons. It did not specifically create an offence of hostage taking.[141] Guyana acceded in September 2007 and in the Anti-Terrorism and Terrorist Related Activities Act 2015 it incorporated the offence of hostage taking. [142] Paraguay acceded in September 2004, and although information indicates that Paraguay pursued individuals suspected of terrorist crimes under laws passed in 2010 and 2011[143] it has not been possible to find an official translation of these laws. Uruguay acceded in March 2003. The provisions of the Penal Code, Act 16,707 of 12 June 1995 did not define terrorism but the taking of hostages was a considered a terrorist act.[144]

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[131] Antigua and Barbuda No 12 of 2005 per Article 2 http://laws.gov.ag/acts/2005/a2005-12.pdf accessed on 17 August 2018

[132] Law No. 93 December 2001 per UNSC Report of the Republic of Cuba submitted pursuant to paragraph 6 of Resolution 1373 (2 January 2002) UN Doc S/2002/15 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/223/10/IMG/N0222310.pdf?OpenElement accessed on 9 August 2018

[133] Acceded in September 1991

[134] Acceded in March 2000 entering a reservation to Article 16(2)

[135] Acceded in January 2001 entering a reservation to Article 12

[136] Acceded in May 1988

[137] Acceded in July 2001

[138] Acceded in November 1981

[139] Acceded in December 1988 entering a reservation to Article 16(1)

[140] UNSC First report of the Government of the Republic of Bolivia to the Security Council Committee (4 January 2002) UN Doc S/2002/27 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/221/22/PDF/N0222122.pdf?OpenElement accessed on 1 September 2018

[141] Legal considerations concerning the scope and application of the principle of universal jurisdiction, Ministry of Foreign Affairs, Columbia 11 April 2011 which referred to and English translation of Article 343 http://www.un.org/en/ga/sixth/66/ScopeAppUniJuri_StatesComments/Colombia%20(S%20to%20E).pdf accessed on 11 August 2018

[142] Section 28 Offence based on the taking of hostages Anti-Terrorism and Terrorist related Activities Act 2015 Act No. 15 of 2015 https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/102173/123438/F1133388324/GUY102173.pdf accessed on 11 August 2018

[143] UNHCR, Country Reports on Terrorism 2015, Paraguay (2 June 2016) http://www.refworld.org/docid/57518d9412.html accessed on 11 August 2018

[144] Summary of legislation of Uruguay related to Terrorism 19 December 2001 http://legal.un.org/legislativeseries/documents/Book24/Book24_CXXVIII.pdf accessed on 11 August 2018

Europe and North America

Eastern Europe: (*Belarus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Republic of Moldova, Russian Federation, Slovakia, Ukraine)*

Eight states acceded to the convention prior to 2001, which were Belarus,[145] Czech Republic,[146] Hungary, [147]Lithuania, [148] Poland, [149] Russian Federation,[150] Slovakia, [151] and Ukraine.[152]

Estonia acceded in March 2002 and Article 135 of the Penal Code provided for the offence of hostage taking, although this was not linked to the definition of terrorism in Article 237 of same code.[153] Latvia acceded in November 2002 and incorporated into the Criminal Code the offence of hostage taking under s.88 concerning Terrorism.[154] The Republic of Moldova acceded in October 2002.[155] The Criminal Code of Moldova amended in 2009 implemented the offence of Taking Hostages in Article 280 which was considered an act of terrorism.[156]

Western European, North American and other States: *(Andorra, Australia, Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America)*

Twenty-four states acceded to the convention before the adoption of Resolution 1373. These included Australia, [157]Austria, [158] Belgium, [159] Canada, [160] Cyprus, [161] Denmark, [162] Finland,

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[145] Acceded in July 1987 entering a reservation to Article 16(1)
[146] Acceded in February 1993
[147] Acceded in September 1987 entering a reservation to Article 16(1)
[148] Acceded in February 2001
[149] Acceded in May 2000
[150] Acceded in June 1987
[151] Acceded in May 1993
[152] Acceded in June 1987
[153] Penal Code per Article 135 September 2002 https://www.riigiteataja.ee/en/eli/521082014001/consolide accessed on 9 August 2018
[154] Latvia Criminal Law s.88 Terrorism, as amended in December 2005 https://www.legislationline.org/documents/section/criminal-codes/country/19/Latvia/show accessed on 9 August 2018
[155] Entering a reservation to Article 16(1)
[156] The Criminal Code of the Republic of Moldova April 2002, https://www.legislationline.org/download/action/.../id/.../Criminal%20Code%20RM.pdf accessed on 9 August 2018
[157] Acceded in May 1990
[158] Acceded in August 1986
[159] Acceded in April 1999
[160] Acceded in December 1985
[161] Acceded in September 1991
[162] Acceded in August 1987

[163] France, [164] Germany, [165] Greece, [166] Iceland, [167] Italy, [168] Liechtenstein, [169] Luxembourg,[170] Netherlands, [171] New Zealand, [172] Norway, [173] Portugal, [174] Spain, [175] Sweden, [176] Switzerland, [177] Turkey, [178] United Kingdom and Northern Ireland, [179] and the United States of America. [180] Israel is a signatory to the convention but has not yet acceded to it.[181]

Andorra acceded in September 2004 and it adopted Qualified law 18/2012 of 11 October which amended the Criminal Code to extend the definition of a terrorist act to incorporate the relevant international conventions. Article 362(1) incorporated, as a terrorist offence, the taking of hostages as defined in the convention.[182] Ireland acceded in June 2005 and enacted the Criminal Justice (Terrorist Offences) Act 2005 which legislated for the provisions of this convention under Part 3, s.9.[183] Malta acceded in November 2001. The Criminal Code was amended in 2005[184] and under Art 328A (2) provided for the offence of taking away the liberty of a person as an act of terrorism, but not specifically the offence of hostage taking.[185] Monaco acceded in October 2001. In 2003 it published (in issue No. 7,586 of 14 February 2003 of the Journal de Monaco (the official journal)) the Sovereign Ordinance No. 15.655 of 7 February 2003 concerning implementation of various international treaties on counter terrorism. [186] San Marino acceded in December 2014. The

[163] Acceded in April 1983
[164] Acceded in June 2000
[165] Acceded in December 1980
[166] Acceded in June 1987
[167] Acceded in July 1981
[168] Acceded March 1986
[169] Acceded in November 1994
[170] Acceded in April 1991
[171] Acceded in December 1988
[172] Acceded in November 1985
[173] Acceded in July 1981
[174] Acceded in July 1984
[175] Acceded in March 1984
[176] Acceded in January 198
[177] Acceded in March 1985
[178] Acceded in August 1989 entering a reservation to Article 16(2)
[179] Acceded in December 1982
[180] Acceded in December 1984
[181] 19 Nov 1980
[182] Andorra Note Verbale, Andorra's Response to the Questionnaire on the Code of Conduct on Politico-Military Aspects of Security 23 April 2014 https://www.osce.org/fsc/119839?download=true accessed on 11 August 2018
[183] Criminal Justice (Terrorist Offences) Act 2005 Part 3, s.9 Offence of Hostage Taking http://www.irishstatutebook.ie/eli/2005/act/2/section/9/enacted/en/html#sec9 accessed on 11 August 2018
[184] Act VI of 2005
[185] Chapter 9 Criminal Code. Sub-title IV A, of Acts of Terrorism, funding of terrorism and ancillary offences Article 328 A(2) https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/6051b666d2bfffccc12570fb00518d43/$FILE/Malta_Criminal%20Code_amended_2010_en.pdf accessed on 11 August 2018
[186] Monaco Third reports to the Counter-terrorism Committee 15 September 2003 S/2003/984 [4] https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/521/64/PDF/N0352164.pdf?OpenElement accessed on 11 August 2018

conventions ratified by the Republic of San Marino were deemed to be part of domestic law, as established by Article 1 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order. [187] This meant that a violation of an international instrument would constitute a violation of domestic law.

South-East Europe: *(Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, Serbia, Slovenia, the former Yugoslav Republic of Macedonia)*
Six states had already acceded to the convention; Bosnia and Herzegovina, [188] Bulgaria, [189] Romania, [190] Serbia, [191] Slovenia, [192] and the former Yugoslav Republic of Macedonia.[193]

Albania acceded in January 2002, and the state's criminal code incorporated the offence of taking a hostage. [194] Croatia acceded in September 2003 and the Criminal Code provided for the offence of Taking of Hostages under Article 171. [195] Montenegro acceded in October 2006 entering a reservation to Article 9.[196] The Criminal Code of Montenegro implemented the offence of hostage taking. [197]

7.3 Concluding points

A total of 76 Member States acceded to this convention after the adoption of Resolution 1373 as shown in Appendix 2.[198] It has been possible to identify implementing laws for 68 of these states. Implementing the convention is a significant change in behaviour from a number of Member States for two reasons: First, because it meant they had chosen to implement the offence which had a specific terrorist motive instead of relying on their

[187] Decree N. 79 of 8 July 2002 http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan040713.pdf accessed on 11 August 2018
[188] Acceded in September 2003
[189] Acceded in March 1988 entering a reservation to Article 9
[190] Acceded in May 1990
[191] Acceded in March 2001 entering a reservation to Article 9
[192] Acceded in July 1992
[193] Acceded in March 1998
[194] Criminal Code of the Republic of Albania Law No. 7895 27 January 1995 Article 230 (g) http://rai-see.org/wp-content/uploads/2015/08/Criminal-Code-11-06-2015-EN.pdf accessed on 9 August 2018
[195] Criminal Code of Croatia, September 1997 http://europam.eu/data/mechanisms/PF/PF%20Laws/Croatia/Croatia_Criminal%20Code_ENG.pdf accessed on 9 August 2018
[196] UNGA International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 status as of 7 August 2018 https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en#EndDec accessed on 9 August 2018
[197] Criminal Code Article 447 (2) https://rm.coe.int/168064102b accessed on 9 August 2018
[198] Figures correct up until August 2019. International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 status as of 7 August 2019 https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en#EndDec accessed on 9 August 2019

existing criminal law. Second, the extent of new laws that have been enacted show how Member States were ensuring their implementation was compliant with the convention.

Chapter 8
Case Study: The International Convention for the Suppression of Terrorist Bombings 1997

8. Introduction

The International Convention for the Suppression of Terrorist Bombings was adopted on 15 December 1997[1] and it was modelled on the counter-terrorism conventions that had come before it. [2] Whilst it followed the same structure in defining conduct to be criminalised and creating jurisdiction over the offence, this convention has been described as innovative for the ambitious scope of the offences it covered.[3] It was drafted following the truck bombing attack on American military personnel in Dhahran, Saudi Arabia in June 1996.[4] Other attacks had taken place against other states, including bombings in Tel Aviv and Jerusalem in 1995[5] and Manchester, England in 1996.[6] The attacks highlighted that none of the existing UN counter-terrorism conventions dealt with attacks in public places and there was a need for an international convention to do so.[7] The subsequent International Convention for the Suppression of Terrorist Bombings addressed bombings of public buildings, destruction of infrastructure and attacks with toxic chemicals and biological agents.[8]

8.1 Criminalisation of the conduct defined as a punishable offence

The principal offence is found in Article 2(1):

> Any person commits and offence within the meaning of this Convention if that person unlawfully and intentionally delivers places, discharges or detonates an explosive or

[1] International Convention for the Suppression of Terrorist Bombings (adopted on 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256

[2] Convention for the Suppression of Unlawful Seizure of Aircraft (signed on 16 December 1970, entered into force 14 October 1971) 860 UNTS 105; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (concluded on 23 September 1971, entered into force 26 January 1973) 974 UNTS 177; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents (adopted 1 March 1991, entered into force 21 June 1998) 2122 UNTS 359

[3] Samuel Witten, "The International Convention for the Suppression of Terrorist Bombings" in Ben Saul, *Research Handbook on International Law and Terrorism*, (1st Ed, Edward Elgar 2014)

[4] The Khobar Towers Bombing-Saudi Arabia https://www.bbc.co.uk/programmes/p03z88lt accessed on 6 April 2019

[5] Israel's history of bomb blasts: July 24 Unidentified suicide bomber kills six passengers and himself on a bus outside Tel Aviv. 21 August Bomb on a Jerusalem bus kills five and wounds 69 http://news.bbc.co.uk/1/hi/world/middle_east/1160792.stm accessed on 6 April 2019

[6] US State Department, Patterns of Global Terrorism Report (1996), Appendix A: Chronology of Significant Terrorist Incidents: 15 June 1996 a truck bomb detonated at a Manchester shopping centre, wounding 206 persons, including two German tourists, and causing extensive property damage. The Irish Republican Army (IRA) claimed responsibility. https://1997-2001.state.gov/global/terrorism/1996Report/1996index.html#table accessed on 6 April 2019.

[7] Witten (n3)

[8] International Convention for the Suppression of Terrorist Bombings (n1) Article 3

> other lethal device in, into or against a pace of public use, a State of government facility, a public transportation system or an infrastructure facility:
> a) with intent to cause death or serious bodily injury; or
> b) with the intent to cause extensive destruction of such a place, facility or system where such destruction results in or is likely to result in major economic loss.

Unlawfully was inserted because in the discharge of their duties the police and armed forces have to use explosives and other lethal devices. The convention goes on to cover ancillary offences of attempting to commit an offence set down in paragraph 1,[9] participating as an accomplice in an offence under paragraph (1) or (2), organizes or directs another to commit such an offence, or in any other way contributes to the commission of one or more such offences by a group of persons acting with a common purpose.[10] The categories of locations mentioned in Article 2 are defined in Article 1[11] and were chosen in order to criminalise attacks in locations where they had taken place before and where attacks of this nature put the public at greatest risk. In order for an attack to fall within the scope of the convention it must be committed with an explosive or other lethal device as set out in Article 1(3).[12] These provisions only apply to conduct that has an international element and Article 3 provides that where an attack occurs in a single state the convention will generally not apply.[13] Article 19 of the convention sought to reinforce the distance between criminalising acts of terrorism and *jus in bello* applicable to armed conflict:

> "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 this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention."[14]

This provision was new and reflected the negotiations which had taken place about the extent to which armed forces would be subject to the convention.[15] The purpose of the first part of Article 19(2), was to remove the acts of armed forces carried out during an armed conflict from the scope of the convention, on the basis that unlawful acts by armed forces are governed by the Geneva Conventions. In this convention the use of the term "activities of the armed forces" was not qualified and therefore included those covered by Protocol 1

[9] International Convention for the Suppression of Terrorist Bombings (n1) Article 2(2)
[10] International Convention for the Suppression of Terrorist Bombings (n1) Article 2(3)
[11] International Convention for the Suppression of Terrorist Bombings (n1) Article 1(5)
[12] International Convention for the Suppression of Terrorist Bombings (n1) Article 1(3)
[13] International Convention for the Suppression of Terrorist Bombings (n1) Article 3
[14] International Convention for the Suppression of Terrorist Bombings (n1) Article 19
[15] See chapter 1 at p8 concerning the complexities around the distinction between acts of self-determination and acts of terrorism

of the Geneva Conventions which also applied to armed conflicts in which peoples fight against foreign occupation, and those covered by Protocol 2 which applied to internal armed conflicts.[16] The second part of the article was qualified, using "of a state", meaning that it only applied to armed forces of a state when they were not involved in armed conflict, but in the exercise of their official duties. This provision needed to be read alongside the conduct that was criminalised.[17]

8.2 Regional analysis

Africa

North Africa**:** *(Algeria, Egypt, Libya, Mauritania, Morocco, Tunisia)*

Only Libya had acceded to the convention before the adoption of Resolution 1373.[18]

Algeria acceded to the convention in November 2001. It amended the Penal Code in 2009 where Article 87a had been inserted which referred to acts concerning explosives.[19] Egypt acceded in August 2005. Article 102 of its Penal Code[20] concerned the use of explosives. The requisite intention was set down in the convention, but the law did not define the offence as it appeared in the convention. Mauritania acceded in April 2003. In 2005 it adopted Law 2005/047 of 2005 which identified acts of terrorism including the procurement of explosives.[21] This was repealed by Law No. 2010/035 of 2010, which provided a definition of terrorism. There is no translated version of this available, so it has not been possible to identify whether the offence in the convention has been fully implemented. Morocco acceded in May 2007 but, by way of Law No. 03-03 in May 28, 2003, had added Chapter 218-4 to the Penal Code, which could be used to prosecute an act of terrorist bombing.[22] Tunisia acceded in April 2005. It had previously amended its Penal Code to incorporate the

[16] Witten (n3)
[17] Witten (n3)
[18] Acceded on 22 September 2000
[19] Algeria Penal Code 2009, Part two Incriminations, Third Book Crime and Punishment, Title 1 Crimes against the state, Chapter 1 s.IVa Qualified crimes of terrorism or subversion http://www.wipo.int/wipolex/en/text.jsp?file_id=228301#LinkTarget_53581 accessed on 13 August 2018. Viewed using a translation tool to obtain clarity on the title otherwise the text would be in either Arabic or French.
[20] Egypt Penal Code Chapter II: Internal Crimes and Offences Against the Government Part II per Article 102a-d http://legal.un.org/legislativeseries/documents/Book22/Book22_XIII.pdf accessed on 12 August 2018
[21] UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (October 2008) Mauritania p.128
[22] Morocco Penal Code per Article 218 -1(6) Viewed using a translation tool to obtain clarity on the title otherwise the text would be Arabic.
http://www.wipo.int/wipolex/en/text.jsp?file_id=190564 accessed on 13 August 2018

use of explosives as a criminal offence,[23] but this did not set out the requisite intention from the offence contained in the convention. It was not until 2015 that Tunisia passed a law which defined the offences in the counter-terrorism conventions it had acceded to.[24]
None of these states entered a reservation that would limit the scope of the convention.

East Africa: *(Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, South Sudan, Sudan, Uganda, United Republic of Tanzania)*
Eritrea, Somalia and South Sudan have not acceded to the convention.[25] Sudan acceded in September 2000 prior to the adoption of Resolution 1373.[26] Comoros acceded in September 2003, but it has not been possible to find any of the relevant laws which may have implemented the offence.

Djibouti acceded in June 2004 and used Article 147 of the Penal Code to comply with the convention, which defined the offence of providing explosives.[27] Ethiopia acceded in April 2003. In its Penal Code, Articles 254-258 implemented the offence and the requisite intent.[28] Kenya acceded in November 2001 and in 2012 it adopted legislation which defined a terrorist act as involving the use of explosives.[29] It also referred to possession of an explosive device in places of worship or public places, as a separate offence.[30] Rwanda acceded in May 2002, and identified provisions in its Penal Code which incorporated the offence set out in the convention. Article 444 provided for acts committed by means of explosive or other lethal devices.[31] In 2008 it criminalised the offence in Law No.45/2008 on Counter-terrorism, where Article 83 provided for the illegal use of explosives, mirroring

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[23] International Centre for Not-For-Profit-Law, Excerpted from the Penal Code of the Tunisian Republic, Article 76 modified by Law No. 89-23 of 27 February 1989 http://www.icnl.org/research/library/files/Tunisia/Crim-En.pdf accessed on 13 August 2018
[24] Tunisia adopted the Law on Counter-terrorism and Suppression of Money Laundering in July 2015 and Article 13 set out a list of terrorist offences. It was not possible to obtain the official version of the law, but reference was made to it in the International Commission of Jurists 'Tunisia's Law on Counter-Terrorism in light of international law and standards' Position Paper (6 August 2015) found here https://www.icj.org/wp-content/uploads/2015/08/Tunisia-CT-position-paper-Advocacy-PP-2015-ENG-REV.pdf accessed on 13 August 2018
[25] International Convention for the Suppression of Terrorist Bombings (n1)
[26] Ibid
[27] Penal Code of Djibouti 1995. Google translate was used to identify that the use of the phrase explosive did refer to punishment for providing explosives https://acjr.org.za/resource-centre/penal-code-of-djibouti-1995/view accessed on 13 August 2018
[28] The Criminal Code of the Federal Republic of Ethiopia, Proclamation No.414/2004 http://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf accessed on 13 August 2018
[29] Prevention of Terrorism Act No.30 of 2012 http://www.kenyalaw.org/lex/actview.xql?actid=No.%2030%20of%202012 accessed on 13 August 2018
[30] Ibid
[31] UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (October 2008) Rwanda Penal Code Article 444 at .146 https://www.unodc.org/documents/terrorism/Publications/Review_West_African_CT_Legal_Regime/A_Review_of_the_Legal_Regime_Ag_Terr_in_W_and_C_Africa_V09837531.pdf accessed on 13 August 2018

the offence found in the convention. [32] Uganda acceded in November 2003 and implemented the Anti-Terrorism Act 2002 which incorporated the convention into law under Part II s.7 (2a and h). [33] The United Republic of Tanzania acceded in January 2003, but it had implemented the offence through the Prevention of Terrorism Act 2002 where s.4(3) provided for an act of terrorism involving firearms or explosives. [34] None of these states entered a reservation that would limit the scope of the convention.

Southern Africa: (*Botswana, Lesotho, Malawi, Mozambique, Namibia, Madagascar, Mauritius, Seychelles, South Africa, Swaziland, Zambia, Zimbabwe)*

Bostwana acceded to the convention before the adoption of Resolution 1373, [35] and Zimbabwe and Swaziland had yet to accede to it.[36] Lesotho acceded in November 2001,[37] and Malawi,[38] Madagascar[39] and Mauritius[40] acceded in 2003 but it has not been possible to obtain information as to the laws theses states had put in place to implement the offence.

Mozambique acceded in January 2003 and relied upon Act No. 19/91 (Law of crimes against the security of the state) of 16 August 1991, where Article 13 provided the definition of terrorism which included any explosive device.[41] Paragraph 2 of the same article provided for the import, manufacture, stockpiling, purchase, sale, disposal, use and bearing of explosives amongst other agents.[42] Namibia acceded in September 2016, but in 2014 it had enacted the Prevention and Combating of Terrorist and Proliferation Activities Act where

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[32] Rwanda: Law No. 45/2008 of 2008 on Counter-terrorism [Rwanda], 9 September 2008 per Article 20 available at: http://www.refworld.org/docid/4a3f86af2.html accessed 13 August 2018

[33] A person commits an act of terrorism who, for purposes of influencing the Government or intimidating the public or a section of the public and for a political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property, carries out all or any of the following acts—
(a) intentional and unlawful manufacture, delivery, placement, discharge or detonation of an explosive or other lethal device, whether attempted or actual, in, into or against a place of public use, a State or Government facility, a public transportation system or an infrastructure facility, with the intent to cause death or serious bodily injury, or extensive destruction likely to or actually resulting in major economic loss and h) unlawful importation, sale, making, manufacture or distribution of any firearms, explosive, ammunition or bomb;

[34] The Prevention of Terrorism Act 2002 Part II https://www.fiu.go.tz/POTA.pdf accessed on 2 September 2018

[35] Acceded in September 2000

[36] International Convention for the Suppression of Terrorist Bombings (n1)

[37] Acceded 12 November 20012

[38] Acceded in August 2003

[39] Acceded in September 2003

[40] Acceded 24 January 2003

[41] UNSC CTC Letter dated 27 December 2001 from the Permanent Representative of Mozambique to the United Nations addressed to the Chairman of the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism (9 January 2002) UN Doc S/2001/1319

[42] Ibid

s.16 provided for the offence in the convention.[43] Prior to the Seychelles accession in August 2003, s.84 of the state Penal Code provided for the offence of possession of explosives.[44] In 2004 the Prevention of Terrorism Act was adopted which defined a terrorist act by way of the use of explosives.[45] Zambia acceded in April 2017. It enacted the Anti-Terrorism Act 2007 which provided for the use an explosive device as an act of terrorism.[46] South Africa acceded in May 2003, and in 2004 it adopted the Protection of Constitutional Democracy Against Terrorist and Other Related Activities Act 33 of 2004 which implemented the offence.[47]
None of these states entered a reservation that would limit the scope of the convention.

West Africa: *(Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo)*
In this region, Gambia had not acceded to the convention. Guinea acceded prior to the adoption of Resolution 1373.[48] Niger acceded in October 2004. It enacted the Counter-Terrorism Law on 23 June 2008 (Law No. 2008-18) but it has not been possible to obtain information about whether this law implemented the convention.[49]

Benin acceded in July 2003. After 2007 the state adopted two new laws, which implemented a new Penal Code to criminalise an act of terrorism. It included the possession or acquisition of an explosive device,[50] however this was expanded in Articles 560-568 which gave effect

[43] Government Gazette of the Republic of Namibia, Prevention and Combating of Terrorist and Proliferation Activities Act No. 4 of 2014 http://www.lac.org.na/laws/2014/5490.pdf accessed on 13 August 2018
[44] Seychelles Penal Code http://legal.un.org/legislativeseries/documents/Book24/Book24_CVII.pdf accessed on 13 August 2018
[45] Act No. 7 of 1 December 2004 per s1(e) https://greybook.seylii.org/w/se/2004-7#!fragment/zoupio-_Toc452033553/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgBYBWAJgAYAzAK5cBASgA0ybKUIQAiokK4AntADk6iRDi5sAG30BhJGmgBCZNsJhcCRcrUAzOskxxXAc2u2EAZTxSACE1ACUAUQAZcIA1AEEAOSNwiVIwACNoCBs7EDExIA accessed on 13 August 2018
[46] Section 15 (1) A person who unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a Government facility, a public transportation system or an infrastructure facility with—
(a) intention to cause death or serious bodily harm; or
(b) intention to cause extensive destruction to the place, facility or system, where destruction results in or is likely to result in major economic loss;
commits an offence and is liable, upon conviction, to imprisonment for life.
[47] Per s.5 Offences relating to explosive or other lethal devices https://www.saps.gov.za/resource_centre/acts/downloads/juta/terrorism_act.pdf accessed on 3 September 2018
[48] International Convention for the Suppression of Terrorist Bombings (n1)
[49] UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (October 2008) Niger at p.133
[50] Article 90 Constitute acts of terrorism, when they are related to an individual or collective action for the purpose of either; forcing a person, a government, a national or international organization to act or to abstain from acting, or; seriously undermining public order through intimidation or terror: the offences set out at Articles 100; 392, 560-568 of the present Code, as well as any of the following offences:
1. Voluntary attacks on life, integrity of the person, abduction and kidnapping, hijacking of an aircraft, ship or any other means of transport;
2. Theft, extortion, destruction, degradation and damage, as well as computer-related offences;

to the convention.[51] Burkina Faso acceded in October 2003. Chapter I, Article 116 of the state Penal Code provided for acts committed by means of explosive or other lethal devices.[52] It had told the CTC that it planned to introduce new provisions into domestic legislation to address international terrorism.[53]

Cape Verde acceded in May 2002. In 2003 the state adopted a new Penal Code for the purpose of incorporating the offence from the international instruments it had become party to.[54] Article 294 prohibited weapons and explosive devices.[55] Cote d'Ivoire acceded in March 2002, where Article 423 of the Penal Code criminalised the "degradation and destruction by any means of a building, ship…which may partially be used to prosecute unlawful acts committed against civil aviation, maritime navigation and terrorist bombings…"[56]

Ghana acceded in September 2002. It adopted the Anti-Terrorism Bill into law in August 2008,[57] and under s.2 a terrorist act was defined by reference to the use of explosives. [58] Guinea Bissau acceded in August 2008. Article 206 of the Penal Code criminalised the illegal manufacturing, import, transport, selling or transfer of firearms, chemical weapons, ammunition or any form of explosives and establishes the appropriate penalty between 3 and 8 years imprisonment.[59] Liberia acceded in March 2003. In 1995 it amended the Penal Code to introduce a definition of terrorism which referred to "unlawfully, deliberately or intentionally attempts to discharge, or discharges firearm, grenade, bombs, time- bombs,

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3. The manufacture or possession of lethal or explosive machines or devices;
4. The production, sale, importation or exportation of explosive substances;
5. The acquisition, possession, transport or illicit carriage of explosives or explosive devices;
6. Possession, carriage or transport of weapons of war and munitions;
7. The development, manufacture, possession, stockpiling, acquisition and transfer of biological or toxic weapons.
8. The hijacking of aircraft, ships or any other means of transportation

[51] UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (October 2008) at 20
[52] UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (October 2008) at 26
[53] UNSC CTC Supplementary information for the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism (31 March 2003) UN Doc S/2003/385
[54] UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (October 2008) Cape Verde at 45
[55] Ibid
[56] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Cote d'Ivoire at 71
[57] The Law Library of Congress, Ghana Anti-Terrorism Bill (29 August 2008) http://www.loc.gov/law/foreign-news/article/ghana-anti-terrorism-bill/ accessed on 13 August 2018
[58] Anti-Terrorism Bill http://www.vertic.org/media/National%20Legislation/Ghana/GH_Anti-Terrorism_Bill.pdf accessed on 13 August 2018
[59] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Guinea Bissau at 113

missiles, explosives, or other lethal devices”. [60] Mali also took this approach and Law No. 08-025 of 23 July 2008 incorporated all the offences as set out by the UN counter-terrorism conventions, to which the state is party.[61] Nigeria acceded in September 2013. The state put forward the Explosives Act (Cap 117 of Laws of the Federation 1990) to govern the offence found in the convention.[62] Senegal acceded in October 2003. The state modified the Penal Code by way of Law No. 2007-01 which inserted Section VII entitled ‘Acts of Terrorism’ in Chapter IV of Book III.[63] Article 279-1 provided for:

> (5) acts of destruction, degradation or damage as set forth at Articles 406-409 of the present Code [through arson, mines, bombs or other explosive devices, causing damage to property or death].

Sierra Leone acceded in September 2003 and used the Malicious Damage Act 1861 alongside the Penal Code to criminalise the offence. Article 10 provided for acts committed by means of explosive or other lethal devices.[64] Togo acceded in March 2003 and put forward s.10 of the Penal Code which provided for acts of destruction and degradation that could be used to prosecute certain acts of terrorism.[65] None of these states entered a reservation that would limit the scope of the convention.

Central Africa: *(Angola, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Republic of the Congo, Sao Tome and Principe)*

Burundi has only become a signatory to the convention, it has yet to accede to it.[66] The Republic of the Congo had not yet acceded to the convention. Chad has not acceded to the convention, but in its Penal Code there was provision for acts committed by means of explosives or other lethal devices which could be used to prosecute the offence set down in the convention.[67] Angola had not acceded to the convention however, the 1978 *Law on*

[60] Liberian Penal Code s.14.54 amended by An Act Amendatory to an Act to Amend Chapters 14 and Subchapter (c), Title 26 of the Liberian Code of Laws, Known as the New Penal Law of 1976 in UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (October 2008) Liberia at 117

[61] Council of the European Union, The AU-EU Expert Report on the Principle of Universal Jurisdiction (16 April 2009) at 13 http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%208672%202009%20REV%201 accessed on 2 September 2018

[62] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Nigeria at 140

[63] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Senegal at 157

[64] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Sierra Leone at 163

[65] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Togo at 169 “Whoever has voluntarily destroyed, or attempted to destroy, to the prejudice of others, any buildings, ships, aircraft, stores, inhabited structures or those occupied by employees shall be punished: 1) to death, where the destruction was undertaken by means of fire or explosives; 2) to life imprisonment, where the destruction was undertaken by any other means”.

[66] International Convention for the Suppression of Terrorist Bombings (n1)

[67] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Chad at 59 Articles 337 and 338

Crimes against State Security did provide for prohibited devices and substances which could be used to prosecute acts of terrorist bombings under the convention.[68] Equatorial Guinea acceded in February 2003 but it has not been possible to identify the laws that have implemented the offence.

Cameroon acceded to the convention in March 2005 and used its Penal Code to implement the offence.[69] Cape Verde acceded in May 2002. In 2003 the state adopted a new Penal Code for the purpose of incorporating the offence from the international instruments to which it had become party: Article 294 prohibited weapons and explosive devices.[70] The Democratic Republic of the Congo acceded in June 2008. Act No. 04/016 of 19 July 2004 defined terrorism by reference to explosives devices under Article 3(8) (c).[71] The Central African Republic acceded in February 2008 and amended the Penal Code to incorporate an offence committed with explosives under Articles 313 and 314.[72] Gabon acceded in March 2005 and used the Penal Code to incorporate the offence.[73] Sao Tome and Principe acceded in April 2006, and drafted a new Criminal Code in 2005 which criminalized all the offences established in the international counter-terrorism conventions. [74]
None of these states entered a reservation that would limit the scope of the convention.

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[68] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Angola at 48 Articles 123 and 294
https://www.unodc.org/documents/terrorism/Publications/Review_West_African_CT_Legal_Regime/A_Review_of_the_Legal_Regime_Ag_Terr_in_W_and_C_Africa_V09837531.pdf

[69] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Cameroon Penal Code, Explosive substances at 38 Article 229

[70] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Cape Verde at 45

[71] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Democratic Republic of Congo at 76
https://www.unodc.org/documents/terrorism/Publications/Review_West_African_CT_Legal_Regime/A_Review_of_the_Legal_Regime_Ag_Terr_in_W_and_C_Africa_V09837531.pdf

[71] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Democratic Republic of the Congo at 76:
(8) the term 'terrorism' designates acts which are committed through an individual or joint enterprise and which aim to seriously undermine public order through intimidation or terror, such as:
(a)willful attacks on human life or physical integrity, abduction and confinement of persons and the hijacking of aircraft, ships or any other means of transport;
(b)theft, extortion, destruction, degradation and damage;
(c)the making, possessing, storing, acquiring and transferring lethal or explosive devices and appliances or other toxic biological weapons or weapons of war…

[72] Using an automatic translation tool for clarity of the title. Central African Republic Law No 10.001 Bearing Central African Criminal Code http://www.wipo.int/wipolex/en/text.jsp?file_id=195085
accessed on 9 September 2018

[73] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Gabon at 87 Acts committed by means of explosives or other lethal devices (Book V, 'Of Crimes against Property'; Chapter XV, 'Destruction and Degradation of Goods', Article 327 ss.) UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Gabon at 87

[74] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n51) Sao Tome and Principe new Criminal Code at 152

Asia

Pacific Islands: (*Fiji, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu)*

Samoa, Tuvalu and Vanuatu have not yet acceded to the convention, [75] but the remaining states have. Papua New Guinea acceded in September 2003, but it has not been possible to find information concerning the implementation of the offence.

Fiji acceded in May 2008 and in 2016 it enacted an Act to Amend the Public Order Act (Cap 20) where s.120 provided for Terrorist bombing offences.[76] Kiribati acceded in November 2005 and in the same year it enacted Measures to Combat Terrorism and Transnational Organised Crime Act in which s.39 specifically provided for the offences relating to terrorist bombings. [77] The Marshall Islands revised its Criminal Code in 2004, Chapter 1 Part IV provides for offences contravening international conventions and Article 128 provides for terrorist bombing offences.[78] The Federated States of Micronesia acceded in September 2002, but it did not adopt a law specifically to implement the offence of terrorist bombings. In the state's criminal code there were no counter-terrorism statutes, with the state preferring to invoke its laws against murder, attempted murder etc in order to prosecute for a terrorist offence. [79] Nauru acceded in August 2005 and adopted the Counter-Terrorism and Transnational Organised Crime Act 2004 which specifically implemented the offence contacted in the UN counter-terrorism conventions including that of terrorist bombing.[80] Palau acceded in November 2001. The state adopted the Counter-terrorism Act 2001 to give effect to the convention. [81] The Solomon Islands acceded in September 2009, adopting in the same year the Counter-terrorism Act 2009 where s.12 provided for offences relating to terrorist bombings.[82] Tongo acceded in December 2002. The Criminal Offences

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[75] International Convention for the Suppression of Terrorist Bombings (n1)

[76] Bill No. 23 of 2016 for An Act to Amend the Public Order Act http://www.parliament.gov.fj/wp-content/uploads/2017/03/Bill-No-23-Public-Order-Amendment_2.pdf assessed on 14 August 2018

[77] Measures to Combat Terrorism and Transnational Organised Crime Act 2005 per Division 6- Terrorist Bombing s.39 https://www.unodc.org/cld/document/kir/2004/measures_to_combat_terrorism_and_transnational_organised_crime_act_2005.html? accessed on 14 August 2018

[78] Marshall Islands Revised Code 2012, Title 15, Anti-Terrorism Laws, Chapter 1, Part IV Offences against international conventions. Division 6 - Terrorist Bombing §128. Terrorist Bombing Offenses http://www.paclii.org/mh/legis/consol_act_2012/ca2003236/ accessed on 23 July 2019

[79] United States Department of State, 2009 Country Reports on Terrorism - Micronesia, Federated States of, 5 August 2010, available at: https://www.refworld.org/docid/4c63b633c.html accessed 28 July 2019

[80] Division 8, s.54 http://ronlaw.gov.nr/nauru_lpms/files/acts/c8e398a13914e59966dc84578fe61057.pdf accessed on 14 August 2018

[81] Counter-terrorism Act 2001 Subchapter VII Terrorist Bombings s.34 http://www.paclii.org/pw/legis/num_act/cao2001r7282007313/ accessed on 14 August 2018

[82] Counter-terrorism Act 2012 (Act No 12 of 2012) s.12 Terrorist bombing and plastic explosive offences http://www.parliament.gov.sb/files/legislation/Acts/Counter%20Terrorism%20Act%202009.pdf accessed on 14 August 2018

(Amendment) Act 2002 subsequently gave effect to the convention: s.78B defined an act terrorism to include "the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons as well as research into, and development of biological and chemical weapons". It did not, however, create a specific separate offence.[83] In 2013 it adopted the Counter-Terrorism and Transnational Organised Crime 2013 which implemented the convention fully. [84] None of these states entered a reservation that would limit the scope of the convention.

South-East Asia: *(Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Timor-Leste, Thailand, Viet Nam)* Timor-Leste is the only state which has not acceded to the convention.[85] Lao People's Democratic Republic acceded in August 2002[86] but it has not been possible to identify the relevant law that implemented this convention. Myanmar acceded in November 2001, but it has not been possible to find an English translation of the relevant law.[87]

Brunei Darussalam acceded in March 2002, and fully implemented the offence when it adopted the Anti-Terrorism Order 2011 under s.18.[88] Cambodia enacted the Law on Counter-terrorism 2007 which criminalized certain conduct as required by the 13 United Nations counter-terrorism conventions and protocols listed in Annex 1.[89] Chapter 10 Articles 74 and 75 implemented the offence from the terrorist bombing convention.[90] Indonesia acceded in June 2006, but ahead of this it had already implemented the Law on Combating Criminal Acts of Terrorism (15/2003), where s.9 implemented the terrorist

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[83] Criminal Offences (Amendment) Act 2002 No. 24 of 2002 inserting s.74B http://www.paclii.org/to/legis/num_act/coa2002237/index.html accessed on 14 August 2018
[84] Counter-terrorism and Transnational Organised Crime Act (Act 23 of 2013) Division 9- Terrorist Bombings s.64 terrorist bombing offences https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98656/117471/F-1641177339/TON98656.pdf accessed on 14 August 2018
[85] International Convention for the Suppression of Terrorist Bombings (n1)
[86] The state entered a reservation on Article 20(1)
[87] The state entered a reservation concerning Article 20(1)
[88] Anti-Terrorism Order 1 August 2011 s.18 Terrorist Bombing http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2011/EN/s045.pdf accessed on 15 August 2018
[89] Law on Counter-Terrorism 2007 (1) The purpose of this Law is to criminalise certain conduct, as required by: (a) the 13 United Nations counter-terrorism conventions and protocols listed in Annex 1 to this Law. https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=13FB5BE76BC7D035C1257D89003E5263&action=openDocument&xp_countrySelected=KH&xp_topicSelected=GVAL-992BU6&from=topic&SessionID=E1LXD9NI0E accessed on 15 August 2018
[90] Article 75 - Delivering, placing discharging or detonating an explosive or lethal device in a public place etc
A penalty of imprisonment for a period between 20 years and 30 years, or life imprisonment shall be applied to a person who intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a public place, or a State or government facility, or a public transportation system, or an infrastructure facility with the intent to cause:
(a) death or serious bodily injury; or
(b) extensive destruction of the place, facility or system, if such destruction results in, or is likely to result in, serious economic loss.

bombing offence.[91] Malaysia acceded in September 2003[92] having inserted into the Penal Code under s.130B a definition of the term “explosives or other lethal devices” and the offence in the convention as a terrorist act.[93] Philippines acceded in January 2004 and in 2012 it incorporated all of the offences in the UN counter-terrorism conventions it had acceded to, including the terrorist bombing convention, into An Act defining the Crime of Financing of Terrorism, Providing Penalties Therefor and for Other Purposes.[94] Singapore acceded in December 2007,[95] and upon accession entered a reservation pertaining to Article 19 (2) excluding internal disturbances such as tension, riots, and isolated acts of sporadic violence from the scope of implementation of the convention.[96] In 2008, it enacted the terrorism (Suppression of Terrorist Bombings) Act to give effect to the convention, and articulated the exclusion in the legislation. [97]

Thailand acceded in June 2007. It appears it has not enacted specific laws to implement the offence, but in the Criminal Code it does incorporate the effect of the offence and the requisite intention into its definition of terrorism.[98] Viet Nam acceded in January 2014.[99] Law No. 28/2013/QH13 came into effect in June 2013 where Art 3 (1)(e) provided for “other acts considered terrorism under international treaties which is the state is party to.”[100] In the definition of terrorism there is also reference to the “manufacture, production and use of, or manufacturing, producing, storing, transporting, trading in, weapons, explosives.”[101]

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[91] Government Regulation in Lieu of Legislation of the Republic of Indonesia No 1/2002 on Combating Criminal Acts of Terrorism per s.9 http://www.vertic.org/media/National%20Legislation/Indonesia/ID_Law_Criminal_Act_Terrorism.pdf on 15 August 2018

[92] The state entered a reservation concerning Article 1(4), Article 8(1) and Article 20 (1)

[93] Laws of Malaysia Penal Code as at 1 January 2015, Chapter VI A - Offences relating to Terrorism http://www.vertic.org/media/National%20Legislation/Malaysia/MY_Penal_Code_Amendment_2007.pdf accessed on 2 November 2018

[94] Republic Act No. 10168 20 June 2012 per Section 3(j)(3i) https://www.lawphil.net/statutes/repacts/ra2012/ra_10168_2012.html accessed on 15 August 2018

[95] The state entered a reservation concerning Article 20(1)

[96] The Republic of Singapore understands that the term ‘armed conflict’ in Article19, paragraph 2, of the Convention does not include internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature.” International Convention for the Suppression of Terrorist Bombings (n1)

[97] An Act to suppress terrorist bombings, to give effect to the International Convention for the Suppression of Terrorist Bombings and for matters connected therewith (31 December 2008) per s.2 https://sso.agc.gov.sg/Act/TSBA2007 accessed on 15 August 2018

[98] Thailand Criminal Code Offence Relating to Terrorism, s.135/1 http://library.siam-legal.com/thai-law/criminal-code-offense-against-foreign-states-sections-135-1-135-4/ accessed on 8 August 2018

[99] The state entered a reservation concerning Article 20(1)

[100] Law No. 28/2013/QH13 The Anti-Terrorism Law per Article 3 (1e) https://vanbanphapluat.co/law-no-28-2013-qh13-on-the-anti-terrorism accessed on 8 August 2018

[101] Law No. 28/2013/QH13 The Anti-Terrorism Law per Article 3 (1c) https://vanbanphapluat.co/law-no-28-2013-qh13-on-the-anti-terrorism accessed on 8 August 2018

South Asia: (*Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka*)

India,[102] Maldives,[103] and Sri Lanka[104] have all acceded to the convention before the adoption of Resolution 1373. Bhutan has not yet acceded to the convention and neither has Nepal, which became a signatory in September 1999.[105]Afghanistan acceded in September 2003 but it has not been possible to obtain any information concerning the relevant law to implement the convention.

Bangladesh acceded in May 2005 and implemented the Anti-Terrorism Act 2009, Act No. 16 of 2009 which incorporated the offence in the convention.[106] Pakistan acceded in August 2002, and entered a declaration that nothing in the convention would be applicable to armed struggles pursuant to self -determination.[107] It went further and cited Article 53 of the Vienna Convention on the Law of Treaties "which provides that an agreement or treaty concluded in conflict with an existing *jus cogen* or pre-emptory norm of international law is void and, the right of self-determination is universally recognized as *a jus cogen* ."[108] It enacted the Antiterrorism Act (ATA) in 1997, and incorporated the offence by s.2 the Anti-terrorism (Second Amdt.) Act. 2013 (XX of 2013).[109]

Central Asia and the Caucasus*: (Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan)*

Azerbaijan, [110] Kyrgyzstan,[111] Turkmenistan,[112] and Uzbekistan [113] had all acceded to the convention before the adoption of Resolution 1373. Kazakhstan acceded in November 2002.

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[102] Acceded in September 1999 and entered a reservation concerning Article 20(2)
[103]Acceded in September 2000
[104] Acceded in March 1999
[105] International Convention for the Suppression of Terrorist Bombings (n1)
[106] Anti-Terrorism Act 2009 Act No. 16 of 2009 per s.3 (3A) which referred to any act in a UN convention which had been ratified by the state http://www.satp.org/satporgtp/countries/bangladesh/document/papers/AntiTerrorism_Act2009.pdf accessed on 8 August 2018
[107] "The Government of the Islamic Republic of Pakistan declares that nothing in this Convention shall be applicable to struggles, including armed struggle, for the realization of right of self-determination launched against any alien or foreign occupation or domination, in accordance with the rules of international law. This interpretation is consistent with Article 53 of the Vienna Convention on the Law of Treaties 1969 which provides that an agreement or treaty concluded in conflict with an existing jus cogen or preemptory norm of international law is void and, the right of self-determination is universally recognized as *a jus cogen*" . International Convention for the Suppression of Terrorist Bombings (adopted on 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256 https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-9&chapter=18&clang=_en accessed on 2 November 2018
[108] International Convention for the Suppression of Terrorist Bombings (n1)
[109] Per s.6 (2)(ee) http://www.molaw.gov.pk/molaw/userfiles1/file/Anti-Terrorism%20Act.pdf accessed on 2 September 2018
[110] Acceded in April 2001
[111] Acceded in May 2001
[112] Acceded in June 1999
[113] Acceded in November 1998 and declared that it had established jurisdiction over all the offences in Article 6(2)

It incorporated the offence as an act of terrorism in its new Penal Code in 2014 under Article 255.[114] Tajikistan acceded in July 2002 and used the Criminal Code to incorporate the offence into its definition of an act of terrorism.[115]

Armenia acceded in March 2004 and in Article 217 of its Criminal Code incorporated some aspects of the offence into its definition of terrorism.[116] Georgia acceded in February 2004 and amended its Criminal Code to incorporate the unlawful purchase, storage, carrying, manufacturing, transportation, transfer, sale or use of …explosives…for terrorist purposes under Art.323.[117] None of these states entered a reservation that would limit the scope of the convention.

Western Asia: *(Bahrain, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates, Yemen)*
The Islamic Republic of Iran has not yet acceded to the convention, neither have Jordan, Lebanon, Oman and the Syrian Arab Republic.[118] Yemen acceded in April 2001 before the adoption of Resolution 1373. Saudi Arabia acceded in October 2007,[119] but it has not been possible to find the implementing law.

Bahrain acceded in September 2004. In Law No. 58 of 2006 with respect to Protection of the Community Against Terrorist Acts, the state identified the offence as a terrorist act in Article 2, providing the requisite intent in the definition of terrorism in Article 1.[120] Iraq acceded in July 2013, but had already implemented the offence in Anti-Terrorism Law

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[114] The Code of the Republic of Kazakhstan of 3 July 2014 No. 266-V of the Law of the Republic of Kazakhstan https://www.unodc.org/res/cld/document/penal-code_html/New_penal_code.pdf accessed on 15 August 2018
[115] Criminal Code Article 179 Terrorism
(1) Terrorism, that is committing an explosion, arson, firing with firearms or other actions, which create the danger of destroy people, causing a substantial financial damage or coming other socially dangerous consequences, if these actions committed with the goal of violating public security, frightening the population or influencing the decision-making of the power organs, as well as threat of committing the mentioned actions with the same goals are punishable by imprisonment for a period of 5 to 10 years…
https://www.legislationline.org/download/action/download/id/1707/file/207b8150765af2c85ad6f5bb8a44.htm/preview accessed on 8 August 2018
[116] Criminal Code of the Republic of Armenia (18 April 2003) Article 217 Terrorism
https://www.unodc.org/res/cld/document/armenia_criminal_code_html/Armenia_Criminal_Code_of_the_Republic_of_Armenia_2009.pdf accessed on 8 August 2018
[117] Criminal Code of Georgia (1999, as amended 2011) Chapter XXXVIII Terrorism Article 323
https://www.legislationline.org/documents/id/4988 accessed on 8 August 2018
[118] International Convention for the Suppression of Terrorist Bombings (n1)
[119] The state declared it had established full jurisdiction over the offences set out in Article 6 and it also entered a reservation concerning Article 20
[120]Law No. 58 of 2006 with respect to Protection of the Community Against Terrorist Acts
http://www.vertic.org/media/National%20Legislation/Bahrain/BH_Law_No_58_Protection_Community_against_Terrorist_Acts.pdf accessed on 16 August 2018

Number (13) For the Year 2005.[121] Kuwait acceded in April 2004,[122] and prosecuted crimes involving terrorism using the state Penal Code, and for both terrorism and the use of explosives, Law No. 35 of 1985. [123] Qatar acceded in June 2008.[124] Whilst it has been publicised that the state issued Decree No. 4 of 2017 to amend Law No. 11 of 2004 on combating terrorism, which expanded the definition of acts of terrorism, [125] it has not been possible to identify the text of this law to determine whether it implemented the offence. The United Arab Emirates acceded in September 2005.[126] The Federal Law No. 7 of 2014 on Combating Terrorism Offences does not provide for anything specific but the elements of the offence could be covered within the scope of this law.[127] None of these states entered a reservation that would limit the scope of the convention.

East Asia: (*China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea*)

The Democratic People's Republic of Korea has not yet acceded to the convention,[128] and Mongolia acceded in September 2000 prior to the adoption of Resolution 1373. Japan acceded in November 2001 and it has not been possible to identify the implementing legislation.

China acceded in November 2001.[129] It passed the Counter-Terrorism Law of the People's Republic of China in 2015[130] where Article 3 incorporated conduct of a terrorist nature, including causing or attempting to cause casualties, grave property loss and damage to public facilities. These were within the scope of the principal offence found in the convention. The Republic of Korea acceded in February 2004. It enacted the Act on Anti-

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[121] www.vertic.org/media/National%20Legislation/Iraq/IQ_Anti-Terrorism_Law.pdf accessed on 16 August 2018
[122] The state entered a reservation concerning Article 20
[123] Summary of Legislation of Kuwait Related to Terrorism http://legal.un.org/legislativeseries/documents/Book23/Book23_LVII.pdf accessed on 3 September 2018
[124] The state entered a reservation concerning Article 20
[125] The Law Library of Congress Global Legal Monitor Qatar: Anti-Terrorism Legislation Amended (16 August 2017) https://www.loc.gov/law/foreign-news/article/qatar-anti-terror-legislation-amended/ accessed 16 August 2018
[126] The state declared it had established full jurisdiction over the offences set out in Article 6 and it also entered a reservation concerning Article 20
[127] Federal Law No. (7) of 2014 On Combating Terrorism Offence. For example, per Article 36 "Temporary imprisonment for no less than 5 years shall be imposed on whoever places or carries in public or private places models or structures having the forms of explosives or crackers or which appear as having such forms, for at terrorism purpose .https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98658/117474/F399649256/LNME-FED-LAW-7-2014.pdf accessed on 16 August 2018
[128] International Convention for the Suppression of Terrorist Bombings (n1)
[129] The state entered a reservation concerning Article 20
[130] Passed by the 18th Session of the Standing Committee of the 12th National People's Congress on December 27, 2015. Article 3: "Terrorism" as used in this Law refers to propositions and actions that create social panic, endanger public safety, violate person and property, or coerce national organs or international organizations, through methods such violence, destruction, intimidation, so as to achieve their political, ideological, or other objectives. http://en.pkulaw.cn/display.aspx?id=92bb5d4a2bc3fdd3bdfb&lib=law accessed on 17 August 2018

Terrorism for the Protection of Citizens and Public Security in 2016 which implemented the offence by way of Article 2(1)(d).[131] None of these states entered a reservation that would limit the scope of the convention.

Latin America

Central America: *(Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama)*

Panama acceded to the convention in March 1999, prior to the adoption of Resolution 1373. El Salvador acceded in May 2003,[132] Honduras acceded in March 2003, and Nicaragua acceded in January 2003. It has not been possible to find the relevant laws to see whether the offence has been implemented in these states.

Belize acceded in November 2001. In its third report to the CTC[133] it stated that all UN counter-terrorism conventions were implemented through the United Nations Resolutions and Conventions (Enforcement) Act 2003.[134] Costa Rica acceded in September 2001 and enacted Law No. 8446 of May 24, 2005, which implemented the Inter-American Convention against Terrorism.[135] Under this convention Article 2 established the offences contained in the Terrorist Bombing convention in additional to other UN counter-terrorism conventions.[136]

Guatemala acceded in February 2002. In its third report to the CTC, it put forward Chapter IV of the Penal Code which contained an offence against public order, which included acts of terrorism. [137]

[131] Act No. 14071, (3 March 2016) https://elaw.klri.re.kr/eng_service/lawView.do?lang=ENG&hseq=38450 accessed on 2 November 2018

[132] The state entered a reservation concerning Article 20 (1)

[133] UNSC CTC Information pertaining to Belize's report to the Counter-Terrorism Committee pursuant to UN Security Council resolution 1373 (25 April 2003) UN Doc S/2003/485

[134] Belize United Nations Resolutions and Conventions (Enforcement) Act 2003 s.4. This enabled the Minister of Foreign Affairs to make an Order containing such provisions as may be necessary to implement UN Security Council conventions, as well as resolutions which are passed in accordance with Chapter VII of the UN Charter. http://www.vertic.org/media/National%20Legislation/Belize/BZ_UN_Resolutions_and_Conventions_Enforcement_Act.pdf accessed on 9 August 2018

[135] OAS Inter-American Convention Against Terrorism (adopted 3 June 2002) AG/RES. 1840 (XXXII-O/02) http://www.oas.org/juridico/english/sigs/a-66.html accessed on 17 August 2018

[136] Ibid Article 2 http://www.oas.org/juridico/english/treaties/a-66.html accessed on 17 August 2018

[137] UNSC CTC Supplementary questions concerning the second report submitted by Guatemala pursuant to Resolution 1373 (2001) (25 March 2003) UN Doc S/2003/355 page 7

Mexico acceded in January 2003.[138] Mexico adopted the Inter-American Convention against Terrorism on 9 June 2003.[139] Under this convention Article 2 established the offences contained in the Terrorist Bombing convention in additional to other UN counter-terrorism conventions.[140] Mexico also reported to the CTC that its Penal Code contained a definition of terrorism which covered all he acts mentioned in the UN counter-terrorism treaties.[141]

None of these states entered a reservation that would limit the scope of the convention.

Caribbean: *(Antigua and Barbuda, Bahamas, Barbados, Cuba, Dominica, Dominican Republic, Grenada, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago)*
Trinidad and Tobago acceded in April 2001 before the adoption of Resolution 1373. Only Haiti has yet to accede to the convention. Dominica acceded in September 2004, Dominican Republic acceded in October 2008, and Saint Vincent and the Grenadines acceded in September 2005. It has not been possible to identify the implementing laws for these states.

Antigua and Barbuda acceded in September 2009, but had implemented the offence in the Prevention of Terrorism Act 2005.[142] The Bahamas acceded in May 2008[143] and enacted legislation which gave direct effect to all offences list in the counter-terrorism conventions of the UN.[144] Barbados acceded in September 2002 and criminalised the offence under the Barbados' Anti-Terrorism Act, Cap. 158. [145] Cuba acceded in November 2001,[146] and the Law Against Acts of Terrorism defined the offence of terrorism committed with an

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[138] The state entered a reservation concerning Article 6
[139] Inter-American Convention Against Terrorism (n135) http://www.oas.org/juridico/english/sigs/a-66.html accessed on 17 August 2018
[140] Inter-American Convention Against Terrorism (n135) Article 2 http://www.oas.org/juridico/english/treaties/a-66.html accessed on 17 August 2018
[141] Working paper for the elaboration of the third report of the Government of Mexico to the CTC dated 10 September 2003 S/2003/869 at page 10 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/495/65/PDF/N0349565.pdf?OpenElement accessed on 17 August 2018
[142] No 12 of 2005 Article 2 http://laws.gov.ag/acts/2005/a2005-12.pdf accessed on 17 August 2018
[143] The state entered a reservation concerning Article 20 (1)
[144] Chapter 107 Anti-Terrorism. An Act to implement the United Nations convention respecting the suppression of the financing of terrorism, the United Nations Security Council Resolution 1373 on terrorism and generally to make provision for preventing and combating terrorism. [Assent 31st December, 2004] [Commencement 31st December, 2004] 3. (1) A person who in or outside The Bahamas carries out — (a) an act that constitutes an offence under or defined in any of the treaties listed in the First Schedule; in which this convention is listed…
[145] UNSC CTC Fourth report of the Barbados Government pursuant to [6] of Security Council Resolution 1373 (2001) (26 August 2005) UN Doc S/2002/550
[146] The states entered a reservation concerning Article 20(1)

explosive in articles 10 and 11.[147] Grenada acceded in December 2001, but only criminalized the offence in the Terrorism Act No.16 of 2012.[148] Jamaica acceded in August 2005 and although the Terrorism Prevention Act was enacted in the same year it did not set out the offence in the terms provided by the convention.[149] Saints Kitts and Nevis acceded in November 2001. The state enacted the Anti-Terrorism Act (No. 21 of 2002) which defined the offence as an act of terrorism.[150] Saint Lucia acceded on October 2012,[151] and appears to have included the offence in its definition of terrorism in the Anti-Terrorism Act 2003.[152]

None of these states entered a reservation that would limit the scope of the convention.

South America: *(Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, Venezuela (Bolivarian Republic of)*

Suriname and Ecuador have not yet acceded to the convention. Argentina acceded in September 2003, Chile in November 2001 and Peru acceded in November 200. It has not been possible to identify the implementing laws for these states.

Bolivia (Plurinational State of) acceded in January 2002 and the convention was promulgated as Act No. 2287 of 5 December 2001.[153] Brazil acceded in August 2002 and referred to the use or threaten to use, keep, possession or bringing of explosives in the definition of terrorism.[154] Colombia acceded in September 2004 and the offence was included in Article 354 of the Penal Code.[155] Guyana acceded in September 2007, and the Anti-Terrorism and Terrorist Related Activities Act 2015 incorporated offences related to

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[147] Law No. 93 December 2001 per UNSC CTC Report of the Republic of Cuba submitted pursuant to paragraph 6 of Security Council Resolution 1373 (2 January 2002) UN Doc S/2002/15 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/223/10/IMG/N0222310.pdf?OpenElement accessed on 1 September 2018

[148]Terrorism Act, No. 16 of 2012. http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=98280&p_count=96679 accessed on 1 September 2018

[149] Terrorism Prevention Act 2005 http://moj.gov.jm/laws/terrorism-prevention-act accessed on 1 September 2018

[150] Anti -Terrorism Act No. 21 2002 https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/80866/87571/F147108263/KNA80866.pdf accessed on 17 August 2018

[151] The state entered a reservation concerning Article 20(1)

[152] It has not been possible to find the actual legislation, but the Anti-Terrorism (guidance Notes) Regulations SI 2010 No. 56 set out how terrorism is defined in the act http://slugovprintery.com/template/files/document_for_sale/laws/2725/S.I.%2056%20of%202010.pdf accessed on 17 August 2018

[153] UNSC CTC First report of the Government of the Republic of Bolivia to the Security Council Committee established pursuant to resolution 1373 (2001) of 28 September 2001 (4 January 2002) UN Doc S/2002.27

[154] Law No. 13,260 16 March 2016 http://www.loc.gov/law/foreign-news/article/brazil-new-anti-terrorism-law-enacted/ accessed on 1 September 2018

[155] UNSC CTC Report supplementary to the report submitted by Colombia on 11 July 2003 to the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001) (19 May 2004) UN Doc S/2004/203

terrorist bombings.[156] Paraguay acceded in September 2004 and although information indicated that Paraguay pursued individuals suspected of terrorist crimes under laws passed in 2010 and 2011[157] it has not been possible to find an official translation of these laws. Uruguay acceded in November 2001. The provisions of the Penal Code, Act 16,707 of 12 June 1995 did not define terrorism but the taking of hostages was a considered a terrorist act.[158] Venezuela (Bolivarian Republic of) acceded in September 2003. The Act which implemented the convention was published in the Official Gazette No 37,7373 of 8 July 2003. [159]

Europe and North America

Eastern Europe: *(Belarus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Republic of Moldova, Russian Federation, Slovakia, Ukraine)*

The Czech Republic acceded on 6 September 2000,[160] the Russian Federation acceded on 8 May 2001,[161] Slovakia acceded on 8 December 2000[162] all before the adoption of Resolution 1373. Poland acceded on 3 February 2004 but it has not been possible to identify the relevant implementing legislation.

Belarus acceded on 20 May 2005. The Law of The Republic of Belarus on the Fight Against Terrorism was adopted on 3 January 2002, and it defined terrorism to include:

> "perpetrating an explosion, arson attack or other actions which create the danger of the loss of human life, bodily harm, cause widespread damage or the onset of other serious consequences with the aim of causing public panic or exerting influence on decision-making by government bodies or hindering political or other public activity, and also threatening to carry out such activity with the same aims…".[163]

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[156] Anti-Terrorism and Terrorist related Activities Act 2015 Act No. 15 of 2015 per s.22(1) Offences related to terrorist bombings https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/102173/123438/F1133388324/GUY102173.pdf accessed on 11 August 2018

[157] United States Department of State, *Country Reports on Terrorism 2015 - Paraguay*, 2 June 2016, available at: https://www.refworld.org/docid/57518d9412.html accessed 28 July 2019

[158] Summary of legislation of Uruguay related to Terrorism 19 December 2001 http://legal.un.org/legislativeseries/documents/Book24/Book24_CXXVIII.pdf accessed on 11 August 2018

[159] UNSC CTC Supplementary report of the Government of Venezuela pursuant to Security Council resolution 1373 (2001))30 July 2003) UN Doc S/2003/774

[160] International Convention for the Suppression of Terrorist Bombings (n1)

[161] Ibid

[162] International Convention for the Suppression of Terrorist Bombings (n1)

[163] Law of The Republic of Belarus On The Fight Against Terrorism 3 January 2002 No.77-Ç https://www.legislationline.org/documents/action/popup/id/6415 accessed on 23 July 2019

Estonia acceded on 10 April 2002 and pursuant to §237 of the Penal Code, it identified the related offences from the convention.[164] Hungary acceded on 13 November 2001and s.314 (4)(f) of the Criminal Code incorporated the offence into domestic law.[165]

Latvia acceded in 25 November 2002 and Article 88(1) of the Latvian Criminal Code defined terrorism as the use of explosives amongst other things.[166] Lithuania acceded on 17 March 2004. Article 250 of the Criminal Code defined an act of terrorism in accordance with the offence set out in the convention.[167] The Republic of Moldova acceded on 10 October 2002. In defining an act of terrorism in the revised Criminal Code, the state extended the scope to "setting an explosion" or "any other action that creates the danger of causing death, bodily injury, damage to health, vital damage to property or to the environment... committed to intimidate the population etc".[168] Ukraine acceded on 26 March 2002. The 2003 Law on the Fight Against Terrorism" referred to explosives but did not expressly incorporate the offence from the convention. [169] None of these states entered a reservation that would limit the scope of the convention.

Western European, North American and other States: *(Andorra, Australia, Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America)*

Nine states had acceded to the convention before Resolution 1373 was adopted. Austria acceded on 6 September 2000, Cyprus acceded in January 2001, Denmark acceded in August 2001, France acceded in August 1999, Monaco and Sweden acceded on 6 September 2001. Norway acceded in September 1999, Spain acceded in April 1999, and the United

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[164] Penal Code 6 June 2001 Offences against state power https://www.riigiteataja.ee/en/eli/522012015002/consolide accessed on 1 September 2018

[165] Hungarian Legislation, Act C of 2012 on the Criminal Code https://www.unodc.org/res/cld/document/hun/1978/hungarian_criminal_code_html/Hungary_Criminal_Code_2012_Excerpts.pdf accessed on 1 September 2018

[166] CODEXTER Latvia Profile on Counter-Terrorism Capacity, October 2013 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064102a accessed on 1 September 2018

[167] Part 3 Lithuanian Criminal Code http://www.lithuanialaw.com/lithuanian-criminal-code-495 accessed on 1 September 2018

[168] Criminal Code of the Republic of Moldova 18.4.2002 per Article 278 https://www.legislationline.org/topics/country/14/topic/5 accessed o 6 September 2018

[169] Law on the Fight against Terrorism 2003 https://www.legislationline.org/topics/country/52/topic/5 accessed on 1 September 2018

Kingdom of Great Britain and Northern Ireland acceded in March 2001.[170] Turkey acceded in May 2002 [171] but it has not been possible to find the relevant implementing laws.

Andorra acceded on 23 September 2004.[172] Qualified Law 18/2012 of 11 October amended the Criminal Code to extend the definition of a terrorist act to incorporate the offences in the international conventions under Article 362.[173] Australia acceded in August 2002 and amended its Criminal Code to give effect to the convention under the Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002.[174] Although it did not enter a reservation, it did declare that it considered the declaration made by Pakistan to be a reservation which limited the scope of the convention and in doing so was contrary to the object and purpose of the convention.[175] Belgium acceded in May 2005. Since 19 December 2003 however the Terrorist Offences Act[176] has referred to making and the use of explosives for the purpose of committing a terrorist offence. Canada acceded on 3 April 2002. The state adopted the Anti-Terrorism Act 2001 where Part II.I 83.01 defined an act of terrorism and referred to the offences that implemented the Convention.[177] Finland acceded in May 2002 and entered a declaration objecting to Pakistan's declaration, identifying it as a reservation which limited the scope of the convention.[178] In 2003, Finland amended the Criminal Code and implemented the offence in Chapter 34a s.5 (2) and s.6 provided the requisite intent.[179] Germany acceded in April 2003, and in s.89a (2)(1) of the Criminal Code implemented the offence.[180] Greece acceded in May 2003. The Greek Criminal Code was amended to provide

[170] International Convention for the Suppression of Terrorist Bombings (n1)
[171] But entered a declaration concerning article 9, 19 and 12. Concerning Article 19, Turkey declared that "The first part of the second paragraph of the said article [Article 19] should not be interpreted as giving a different status to the armed forces and groups other than the armed forces of a state as currently understood and applied in international law and thereby as creating new obligations for Turkey
[172] International Convention for the Suppression of Terrorist Bombings (n1)
[173] Govern d'Andorra Note Verbale 1.2 What national legislation has been adopted in your State to implement the above-mentioned agreements and arrangements? https://www.osce.org/fsc/119839?download=true accessed on 2 September 2018
[174] Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002
No. 58, 2002 An Act to create offences relating to international terrorist activities using explosive or lethal devices, and for related purposes Criminal Code Act 1995 (Criminal Code). The Criminal Code contains a range of offences for terrorism and terrorism related acts, terrorist activities using explosive or lethal devices and gives effect to the International Convention for the Suppression of Terrorist Bombings.
[175] International Convention for the Suppression of Terrorist Bombings (n1) Australia status as at 29 August 2018 https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-9&chapter=18&clang=_en accessed on 1 September 2018
[176] Council of Europe CODEXTOR Profile on counter-terrorism capacity Belgium (February 2014). Published in the Moniteur Belge (official gazette) of 29 December 2003 per Articles 140 ter and 140 quarter https://www.legislationline.org/download/action/download/id/5402/file/Belgium_CODEXTER_Profile_2014.pdf accessed on 2 September 2018
[177] Statutes of Canada 2001 Chapter 41 18 December 2001 per subsection 7(3.72) http://laws-lois.justice.gc.ca/PDF/2001_41.pdf accessed on 2 September 2001
[178] International Convention for the Suppression of Terrorist Bombings (n1) Finland status as at 29 August 2018 https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-9&chapter=18&clang=_en accessed on 1 September 2018
[179] Finland Criminal Code 1889 https://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf accessed on 2 September 2018
[180] German Criminal Code Third Title Endangering the Democratic State Under the Rule of Law Section 89a Preparation of a serious violent offence endangering the state https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p0908 accessed on 2 September 2018

for terrorist acts under Article 187a, which included the offence found in the convention.[181] Iceland acceded in April 2002. It amended its Penal Code through Act No. 99/2002 to implement the convention. Article 100a listed the acts of terrorism which included bombings.[182] Ireland acceded in June 2005, and the Criminal Justice (Terrorist Offences) Act 2005 legislated for the provisions of this convention.[183]

Israel acceded in February 2003. Although Israel passed the Combatting Terrorism Law, 5776-2016[184] which defined a terrorist act as instilling fear and inflicting severe harm, it does not appear that this law incorporated the offence from the convention. It does not refer to the use of explosives in the definition of a terrorist act either, although arguably, the definition provided could be used to prosecute a perpetrator for the act. Italy acceded in April 2003 and adopted Executive Decree 144/2005 (Urgent Measures for Combating International Terrorism). Article 15 introduced new types of criminal activity which referred to explosives and weapons.[185] Liechtenstein acceded in November 2002 and s.278c (1) of the Criminal Code incorporated the offence. [186]Luxembourg acceded in February 2004. Where it has not been possible to find an English translated version of the Criminal Code, it has been possible to determine that it adapted its criminal law in August 2002 to introduce Article 135-1. This reproduced Article 1 of the Framework Decision which defined what amounted to a terrorist act, and incorporated the manufacture, possession, acquisition, transport, supply or use of explosives with the intention to cause death or extensive destruction.[187] Malta acceded in November 2001, and amended the Criminal Code to implement the convention in Article 328A (2)(d) and (f).[188] The Netherlands acceded in February 2002. It enacted the Terrorist Crimes Act in June 2004 where Articles 83 and 83a,

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[181] Greek Penal Code http://www.c00.org/p/greek-penal-code.html accessed on 2 September 2018

[182] CODEXTER Profile on Counter-Terrorism Capacity, Iceland April 2008 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064100e accessed on 2 September 2018

[183] Part 3, s.10 offence of terrorist bombing http://www.lawreform.ie/_fileupload/RevisedActs/WithAnnotations/HTML/en_act_2005_0002.htm accessed on 2 September 2018

[184] The Law Library of Congress Global Legal Monitor Israel http://www.loc.gov/law/foreign-news/article/israel-new-comprehensive-counterterrorism-legislation-adopted/ accessed on 6 September 2018

[185] Executive Decree 144/2005 ("Urgent Measures for Combating International Terrorism") accessed on 2 September 2018

[186] Criminal Code of 24 June 1987 s.278 c Terrorist Offences http://www.regierung.li/media/medienarchiv/311_0_11_07_2017_en.pdf accessed on 2 September 2018

187 Council Framework Decision of 13 June 2002 on combating terrorism, (2002/475/JHA) per Article 1 and see also European Union, Commission staff working document - Annex to the Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on Combating Terrorism (6 November 2011) Sec (2007) 1463 per Article 1 and Luxembourg https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007SC1463 accessed on 6 September 2018

[188] Chapter 9 of the Laws of Malta https://www.legislationline.org/documents/action/popup/id/15534 accessed on 2 September 2018

complied with Article 1 of the Framework Decision. Article 83a also defined "terrorist intention", following very closely the wording of Article 1(1) of the Framework Decision.[189]

New Zealand acceded in November 2002 and in the same year enacted the Terrorism Suppression Act which provided for the offence of terrorist bombing.[190] Portugal acceded in November 2001. Portuguese Criminal Law for terrorism offences has been managed by way of the 1982 Penal Code and Law 52/2003. [191] It has not been possible to find a translated version of the legislation.[192] San Marino acceded in March 2002. The conventions ratified by the Republic of San Marino were deemed to be part of domestic law, as established by Article 1 of the Declaration on the Citizens' Rights and Fundamental Principles of San Marino Constitutional Order. [193] This meant that a violation of an international instruments constituted a violation of domestic law.

Switzerland acceded in September 2003 but continued to deal with acts of terrorism through the Swiss Criminal Code where the relevant provisions govern offences of homicide and offence against life and limb.[194] The United States of America acceded in June 2002 and implemented the offence via the Act To implement the International Convention for the Suppression of Terrorist Bombings.[195]

South-East Europe: *(Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, Serbia, Slovenia, the former Yugoslav Republic of Macedonia)*
Bulgaria acceded in February 2001 before the adoption of the resolution.
Albania acceded in January 2002. Article 230 of the Criminal Code provided for violent acts against life and health of people but did not specifically adopt the terminology used in

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[189] Council Framework Decision of 13 June 2002 on combating terrorism, (2002/475/JHA) per Article 1 and see also European Union, Commission staff working document - Annex to the Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on Combating Terrorism (6 November 2011) Sec (2007) 1463 per Article 1 and The Netherlands https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007SC1463 accessed on 6 September 2018
[190] Part 2 Suppression of Terrorism s.7 http://www.legislation.govt.nz/act/public/2002/0034/55.0/DLM151491.html accessed on 2 September 2018
[191] CODEXTER Profile on Counter-Terrorism Capacity Portugal (June 2006) https://rm.coe.int/1680641022
[192] Lei n. 52/2003, de 22 de agosto https://www.bportugal.pt/legislacao/lei-no-522003-de-22-de-agosto accessed on 2 September 2018
[193] Decree N. 79 of 8 July 2002 http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan040713.pdf accessed on 11 August 2018
[194] CODEXTER Profile on Counter-Terrorist Capacity Switzerland (May 2014) https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680641034 accessed on 2 November 2018
[195] An Act To implement the International Convention for the Suppression of Terrorist Bombings to strengthen criminal laws relating to attacks on places of public use, to implement the International Convention of the Suppression of the Financing of Terrorism, to combat terrorism and defend the Nation against terrorist acts, and for other purposes. https://www.govinfo.gov/content/pkg/BILLS-107hr3275enr/pdf/BILLS-107hr3275enr.pdf accessed on 2 September 2018

the convention.[196] Bosnia and Herzegovina acceded in August 2003. The state defined a terrorist act in its Criminal Code referring to the requisite intent found in the convention, without specific reference to an explosive device.[197] Croatia acceded in June 2005. The offence is implemented by way of Criminal Code 2013 through Article 169.[198] Montenegro acceded in October 2006. The Criminal Code of Montenegro defined terrorism in article 447 which included "development, possession, procurement, transport, provision or use of weapons, explosives…"[199] Romania acceded in July 2004. Although Law No 535/2004 provided a National System for Preventing and Combatting Terrorism, it did not set out the required intent as it is found in the convention. It merely referred to the "…recruitment, instruction or training of terrorist entities with the view of using firearms, ammunition, explosives…"[200] Serbia acceded in July 2003 and Article 312 of the Penal Code defined terrorism with reference to causing an explosion, [201] and Article 391 defined international terrorism with reference to explosions.[202] Slovenia acceded in September 2003. Article 108 of the new Criminal Code which entered into force in 2008 defined the offence of terrorism and included "production, possession, purchase, transport, supply or use of weapons, explosives…"[203] The former Yugoslav Republic of Macedonia acceded in August 2004. The state Criminal Code 1996 was amended in 2006 so that Article 419 provided for international terrorism, defined by reference to an explosion amongst other activities.[204]

8.3 Concluding points

There have been 141 Member States which have acceded to the convention after the adoption of Resolution 1373 as shown in Appendix 3.[205] Of these, it has been possible to identify implementing legislation for 118 states. Although the convention came into force

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[196] Chapter VII Terrorist Acts per Article 230 http://www.wipo.int/edocs/lexdocs/laws/en/al/al037en.pdf accessed on 2 September 2018

[197] Bosnia and Herzegovina: Criminal Code of the Federation of Bosnia and Herzegovina (official Gazette of the FBiH 36/03) (2003) 28 June 2018 https://www.refworld.org/docid/5b349a864.html accessed on 28 July 2019

[198] Croatia Criminal Code Article 169 (1) Whoever, with intent to harm a foreign state or an international organization, causes an explosion or fire or, by some generally dangerous act or device, endangers people or property or kidnaps a person or commits some other act of violence shall be punished by imprisonment for not less than three years. https://www.unodc.org/res/cld/document/croatia-criminal-code_html/Croatia_Criminal_Code_1997.pdf accessed on 2 September 2018

[199] Council of Europe CODEXTER Profiles on Counter -Terrorist Capacity Montenegro (October 2013) https://rm.coe.int/168064102b accessed on 2 September 2018

[200] Article 33(1)(b) http://www.onpcsb.ro/pdf/Law%20535-2004.pdf accessed on 6 September 2018

[201] Criminal Code Article 312 https://www.osce.org/serbia/18244?download=true accessed on 6 September 2018

[202] Criminal Code Article 391 https://www.osce.org/serbia/18244?download=true accessed on 6 September 2018

[203] Criminal Code http://www.wipo.int/edocs/lexdocs/laws/en/si/si045en.pdf accessed on 2 September 2018

[204] Criminal Code of the former Yugoslav Republic of Macedonia http://rai-see.org/wp-content/uploads/2015/08/Criminal-Code-en.pdf accessed on 2 September 2018

[205] Figures correct up to August 2019. International Convention for the Suppression of Terrorist Bombings (adopted on 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256 https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-9&chapter=18&lang=en accessed August 2019

in May 2001, it was open for signatures from January 1998 but only had 58 signatories prior to the adoption of the resolution indicating that those Member States would commit to implementing it. Following the change in behaviour towards implementing the 12 pre-existing UN counter-terrorism conventions it is reasonable to suggest that without Resolution 1373, the implementation of this convention would not have been as extensive.

Chapter 9
Case Study: The International Convention for the Suppression of the Financing of Terrorism 1999

9. Introduction

The Convention for the Suppression of the Financing of Terrorism came into force in April 2002[1] and imposed various legal obligations on state parties to curtail terrorist funding.
It has been ratified by 180 Member States after the adoption of Resolution 1373. It did not follow the model of the 12 pre-existing UN counter-terrorism conventions because it was different by virtue of what is was criminalising. It was not concerned with acts of terrorism *per se*, but the financing of those acts, which in most Member States was not an existing criminal offence. Criminalising the financing of terrorism is required in order to disrupt and dismantle terrorist organisations so they cannot implement their deadly agenda. The convention did not define the term "terrorism" but it did refer to the acts of terrorism proscribed by the 12 pre-existing UN counter-terrorism conventions.[2] It also defined the requisite intent as:

> "Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act."

This drew a distinction between other crimes of violence.[3] What state parties were being asked to implement in this convention required much more collective action from government agencies and other institutions than previously required by the other 11 pre-existing UN counter-terrorism conventions.[4]

9.1 Criminalisation of the conduct defined as a punishable offence

The offence of financing terrorism was set out in Article 2 of the convention:

[1] International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197
[2] Article 2(a)
[3] Article 2(b). See also Anthony Aust, 'Counter-terrorism- A New Approach. The International Convention for the Suppression of the Financing of Terrorism' (2001) Max Planck Yearbook of United Nations Law, Volume 5, ,285-306, 298
[4] Ann L Clunan, The Fight against Terrorist Financing, Political Science Quarterly, (Winter 2006/2007) Vol 121 No 4, 569-596

> Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
> (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or
> (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

A key part of the offence is the term funds which is defined very broadly to include any tangible or intangible asset, which would include vehicles, animals or buildings for this purpose.[5] The offences defined in the convention have been described as creating a residual category, which could potentially catch any act of terrorism that is not defined by the other conventions listed in the annex. [6] The convention also requires state parties to prevent banks and other financial institutions from being used to finance acts of terrorism. One such way was to implement internal controls to prevent financial institutions from being able to transfer funds to terrorists. This resulted in the "know your customer" process.[7] Financial institutions became required to develop measures to identify their customers as well as the beneficial owners of the accounts they maintain. The objective of "know your customer" is to ensure that banks are not doing business with criminals and terrorists. State parties have a duty to impose legislation which requires financial institutions to report to the competent authorities any transactions suspected of being involved in the financing of terrorism and other criminal activities.[8]

The requirements in implementing this convention were more complex than those for the Taking of Hostages Convention and Suppression of Terrorist Bombings Convention. The guidance given to states by the FATF provided an outline of what was required from the

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[5] Article 1(1). "Funds" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.
[6] International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197 per the Annex
[7] Section 18(1)(b)(i) provides 'Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;'
[8] Section 18(1)(b)(iii) provides 'Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;'

perspective of drafting laws, in particular the notion of criminalising acts of terrorism.[9] In the convention these are set out as the offences in the pre-existing UN counter-terrorism conventions in line with Article 2(1)(a). In addition, Article 2(1)(b) required states to identify any other relevant acts carried out with the relevant intention, i.e. any act carried out for terrorist purposes which had not otherwise been captured by the treaty offences. Out of the two aforementioned conventions, only the Taking of Hostages required the prosecution to prove that it had been committed with a terrorist purpose, the intention to compel a third party to act or abstain from action.[10] In many ways, this convention underpinned the notion of ensuring that states criminalised acts of terrorism to not only reduce the ability for perpetrators to escape punishment, but to also start a movement for the global prevention of terrorism by cutting off funding to terrorists.

9.2 Regional practice

Africa

North Africa: *(Algeria, Egypt, Libya, Mauritania, Morocco, Tunisia)*

In North Africa, all the states acceded to the convention after the adoption of Resolution 1373.[11] Libya is the only state which had not implemented the offence, having drafted a new Penal Code where the offering, collection or provision of voluntary funds with the intention that they are to be used in order to carry out terrorist acts would constitute a terrorist act and would be criminalised in Libyan law.[12] In 2006, however, it reported that it had not been possible to adopt the new code.[13] All these states were members of the African Union,[14] which as discussed in chapter 6 was one of the regional organisations that had distinguished between acts of terrorism and acts of self-determination. Only Egypt however, had entered a reservation that it did not consider "acts of national resistance in all its forms, including armed resistance against foreign occupation and aggression with a view to liberation and

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[9] FATF *Guidance on the criminalisation of terrorist financing (Recommendation 5),* (October 2016) at 4

[10] International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 Article 1

[11] International Convention for the Suppression of the Financing of Terrorism (n1)

[12] UNSC CTC Report of the Great Socialist People's Libyan Arab Jamahiriya containing a reply to the letter of the Chairman of the Counter- Terrorism Committee dated 4 June 2004 relating to certain points contained in the Jamahiriya's third report, submitted to the Counter-Terrorism Committee on 30 July 2003 pursuant to paragraph 6 of Security Council resolution 1373 (2001) (19 April 2005) UN Doc S/2005/256 at 7 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/318/96/PDF/N0531896.pdf?OpenElement

[13] UNSC CTC Report of the Socialist People's Libyan Arab Jamahiriya containing a reply to the letter of the Chairman of the Counter-Terrorism Committee dated 24 February 2006 relating to some of the points in the Jamahiriya's report submitted to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001), (30 June 2006) UN Doc S/2006/471 at 1.1 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/420/55/PDF/N0642055.pdf?OpenElement

[14] African Union Member State Profiles https://au.int/memberstates accessed on 20 July 2018

self-determination, as terrorist acts within the meaning of article 2(1)(b)".[15] Egypt's initial definition of the offence in its Penal Code [16] failed to refer specifically to terrorist organisations or individual terrorists, it only referred to "… any one assuming leadership or command of their formations, or supplying them with physical or financial assistance…" [17] The 2014 follow- up report by the Middle East and North Africa Financial Action Task Force (MENA FATF), stated that Egypt had "criminalised the wilful collection and provision of funds, by any means, directly or indirectly, with the unlawful intention that they would be used or are to be used by a terrorist and / or for terrorist purposes,"[18] making it compliant with the requirements of the convention.

Both Mauritania and Tunisia's initial definition of financing terrorism met the requirements of the convention. In Mauritania article 3 of Law No. 2005-048 defined terrorist acts, and reference to article 3 of Law No. 2005-047:[19]

> "the financing by any person of a terrorist undertaking by providing, gathering, or managing funds, securities, or property of any kind, or by providing advice to that end, with the intent of having such funds, securities, or property used, or knowing that they are intended to be used, in whole or in part, to commit any of the acts of terrorism listed in the indented section of this article."

MENA FATF found that the definition of the financing of terrorism complied with article 2 of the Convention for the Suppression of Terrorist Financing. [20] The offence extended to any person who knowingly furnishes or gathers funds by any means, whether directly or indirectly, in the knowledge that they will be used in whole or in part to carry out a terrorist act, or by a terrorist organisation or a terrorist.[21] Tunisia's Law 2003-75 of 15 December 2003, criminalised the financing of terrorism in article 19 as "provides or collects assets, by

[15] International Convention for the Suppression of the Financing of Terrorism (n1)

[16] Anti-Money Laundering Law No. 80 of 2002 criminalised the financing of terrorism under Articles 86, 86 bis and 86 bis A of the Penal Code

[17] Law No. 58 01 The Year 1937 Promulgating the Penal Code at Article 86 bis https://www.unodc.org/res/cld/document/criminal_code_of_egypt_english_html/Egypt_Criminal_Code_English.pdf

[18] Middle East and North Africa Financial Acton Task Force, Mutual Evaluation Report 5th Follow-Up Report for Egypt, 19 November 2014 at 4 http://www.menafatf.org/sites/default/files/Egypt_Exit_FUR_EN.pdf

[19] Law No. 2005-047 on Combating Terrorism (26 July 2005). Middle East and North Africa Financial Acton Task Force, Mutual Evaluation Report Islamic Republic of Mauritania, May 2018 at 207 http://www.fatf-gafi.org/media/fatf/content/images/Mutual-Evaluation-Report-Mauritania-2018.pdf accessed on 28 July 2019

[20] Middle East and North Africa Financial Acton Task Force, (MENA FATF) Mutual Evaluation Report of The Islamic Republic of Mauritania On Anti-Money Laundering and Combating Financing of Terrorism (14 November 2004) http://www.menafatf.org/sites/default/files/MutulalEvaluationReportMauritaniaEng.pdf

[21] Middle East and North Africa Financial Acton Task Force, (MENA FATF) Mutual Evaluation Report of The Islamic Republic of Mauritania On Anti-Money Laundering and Combating Financing of Terrorism (14 November 2004) http://www.menafatf.org/sites/default/files/MutulalEvaluationReportMauritaniaEng.pdf

any means whatsoever, directly or indirectly, knowing them to be intended for the financing of persons, organizations, or activities related to terrorist offenses, regardless of the legitimate or illicit origin of the assets provided or collected." [22] This definition was consistent with article 2 of the Convention for the Suppression of Terrorist Financing, which focused on the intended, not the actual use of the funds.

Algeria, Egypt and Morocco had each created the offence of financing terrorism, but the definitions did not capture the criminalisation of terrorist funds by an individual terrorist or a terrorist organisation. For example, Algeria's Penal Code defined the offence of terrorist financing as:

> "any act committed by any person by any means, directly or indirectly, unlawfully and wilfully, by providing or collecting funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to commit the offences described as acts of terrorism or vandalism as stipulated and penalized in Articles 87/bis to 87/10 of the Penal Code".[23]

Whilst this was linked to acts of terrorism set out in the Penal Code it did not include funds which were used by a terrorist organisation or an individual terrorist.[24] Following recommendations by MENA FATF, Algeria amended its Penal Code so that the financing did not have to be connected with a specific purpose represented in committing a terrorist act.[25]

Morocco's initial definition did not explicitly define the offence of terrorist financing, and only criminalised certain forms of the activities considered as terrorist acts. It did not extend to funds used by a terrorist organization or an individual terrorist:

> "Carrying out by any means, directly or indirectly, the provision, collection or arrangement of funds, values or properties for the purpose of using these funds, or in the knowledge that are to be used, in full or in part to carry out a terrorist act, whether the said act takes place or not". [26]

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[22] MENA FATF Mutual Evaluation Report Tunisia (March 2016) http://www.menafatf.org/sites/default/files/Tunisia_MER_2016_FR%5B1%5D.pdf accessed on 2 November 2018

[23] Article 87(4) bis

[24] MENAFATF Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism: Algeria (1 December 2010) at 27

[25] Middle East and North Africa Financial Acton Task Force, Mutual Evaluation Report 7th Follow-Up Report for Algeria, 27 April 2016 p.5
There is no English version of the penal code but a French version can be found here: http://www.equalrightstrust.org/content/algeria-penal-code-code-pénale.

[26] Law No. 03-03 (28 May 2003) which added Chapter 218-4 to the Penal Code.

An amendment in January 2011 inserted into the offence “using funds by one person or many people, an organisation or an organised criminal group, to commit an act or acts of terrorism”[27] to make it compliant with the international requirements.

East Africa: *(Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, South Sudan, Sudan, Uganda, United Republic of Tanzania)*

Eight states in East Africa have criminalised the financing of terrorism. Eritrea and South Sudan have not ratified or acceded to the Convention for the Suppression of Terrorist Financing and Somalia is only party to it.[28] Although Djibouti had acceded to the convention, there was limited information available on the relevant laws for this state. Unlike in North Africa, the two main issues for states in East Africa were criminalising all the acts of terrorism listed in the annex to the Convention for the Suppression of Terrorist Financing , in addition to ensuring the offence captured all the relevant detail. Ethiopia was the only state where the legal framework implemented to criminalise the offence was found to be broadly compliant with the convention. [29]

Both Comoros and Rwanda failed to indicate whether the funds for the offence could be provided or collected directly or indirectly. Comoros in Article 1(d) of the 2009 Ordinance defined the criminalization of terrorist financing as:

> “any conduct that constitutes an act of terrorist financing or the attempt to commit terrorist financing as defined below is akin to money laundering: financing a terrorist enterprise by providing, obtaining, managing funds, assets, or property of any kind or by providing advice to that end, with the intent that these funds, assets, or property will be used or knowing that they are meant to be used, in whole or in part, for the purpose of committing a terrorist act, regardless of whether such act occurs”. [30]

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[27] Law No. 13.10, published in the Official Journal N° 5911 of January 24th, 2011, allowed to amend and complete certain provisions of the Criminal Code, the Criminal Procedure Code and Law N° 43.05 on the fight against money laundering. http://menafatf.org/sites/default/files/Moroccan_AMLCFT_system_law_13_10.pdf

[28] International Convention for the Suppression of the Financing of Terrorism (n1) the Annex

[29] Proc. No. 780/2013 entered into force on February 4, 2013, as the primary legal framework for the criminalisation of terrorist financing and addresses many of the material elements of the Terrorism Financing Convention. Specifically, terrorist financing is criminalized under Proc. No. 780/2013, Art. 31, as well as in a predecessor law, the Anti-Terrorism Proc. No.652/2009, Article 31. http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=103977&p_country=ETH&p_count=143&p_classification=01.04&p_classcount=6 accessed on 28 July 2019.

[30] Ordinance No. 9-002/PR on money laundering, financing of terrorism, confiscation, and international cooperation in relation to the proceeds of crime (2009 Ordinance) http://documents.worldbank.org/curated/pt/297031468032088981/pdf/707010ESW0P1160uation0Detail0Report.pdf accessed on 28 July 2019

This also did not include acts carried out by terrorist organisations and individual terrorists. In addition, the language used likened terrorist financing to money laundering. The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) carried out a mutual evaluation report on Comoros in 2010[31] and recommended that the definition was changed in order to be compliant with the convention. This was rectified by 2017.[32]

Rwanda's offence of financing terrorism,[33] had been found to be insufficiently broad, because it did not include the financing of terrorist organizations and individual terrorists, and "was not specific enough to establish whether they cover the direct and indirect provision and the collection of funds". [34] Furthermore, it did not incorporate the offences from the international treaties that were listed in the convention.[35] As of the last report in 2017, these remained issues that required attention.[36] The latter point was an issue with other states in the region, namely the United Republic of Tanzania. The Prevention of Terrorism Act, 2002 (Act No. 21 of 2002) established the offence of terrorist financing under s.13[37] and s.14 provided for the provision of collection of funds.[38] The term terrorist act was defined in s.3, however the state had not ratified all the relevant UN conventions and had not criminalised the acts they covered, therefore this fell short of the requirement in the convention. The state subsequently adopted a strategy for implementing the necessary standards required by the FATF.[39]

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[31] ESAAMLG Union of Comoros Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism (March 2010) http://esaamlg.org/reports/Comoros_Mutual_Evaluation_Detail_Report.pdf

[32] Comoros, Risk and Compliance Report (May 2017). The criminalization of the financing of terrorism is not in compliance with Article 2 of the International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197. There are no provisions allowing the Comorian authorities to freeze the assets of terrorists and other persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in application of Resolution S/RES/1267 (1999) and subsequent resolutions, and Resolution S/RES/1373 (2001) http://www.knowyourcountry.info/files/comorosamlaug2014_1.pdf accessed on 18 July 2018

[33] Chapter IV of the state's Penal Code of 2012 Law No 47/2008 of 9/9/2008 on prevention and penalising the crime of money laundering and financing terrorism, published in Official Gazette nº 12 bis of 23/03/2009

[34] ESAAMLG Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Rwanda (September 2014) 46-47

[35] Ibid

[36] ESAAMLG First Round Progress Rwanda, August 2016-July 2017 https://esaamlg.org/reports/RWANDA%20R%20-%20Copy%20III.pdf accessed September 2019

[37] Every person who provides, or collects by any means, directly or indirectly, any funds, intending, knowing or having reasonable grounds to believe that the funds will be used in full or in part to carry out a terrorist act commits an offence and shall on conviction be liable to imprisonment for term of fifteen years and not more than twenty years

[38] Every person who directly, collects property or provides, invites a person to provide, or makes available, property or financial or other related services:
(a) intending that they be used, in whole or in part, for the purpose of committing or facilitating the commission of, a terrorist act or for the purpose of benefiting any person who is committing or facilitating the commission of, a terrorist act, or
(b) knowing that in whole or part, they will be used by, or will benefit, a terrorist group;
commits an offence and shall on conviction, be liable to imprisonment for a term not less than twenty years and not more than twenty five years".

[39] Strategy for Anti-Money Laundering and Combating Terrorist Financing July 2010- June 2013 https://www.fiu.go.tz/TanzaniaNationalAML-CFTstrategy.pdf accessed on 18 July 2018

Other states struggled with the relevant characteristics of the offence. For example, in Kenya the Prevention of Terrorism Act 2012[40] defined the financing of terrorism in s.5 of the Act and referred to all of the offences listed in the annex of the Convention for the Suppression of Terrorist Financing. However, it only included acts carried out by individuals and not organisations.[41] Sudan's law [42] did not stipulate that the crime can occur by any means,[43] and there was also no reference to the offence being applicable in the same country, or a different country as the one which the terrorist or organisation reside or where the terrorist act will occur.[44] To remedy this Sudan adopted the Money Laundering and Finance of Terrorism (Combating) Act 2014 which satisfied the MENA FATF that it had become broadly compliant with what was required under the UN convention.[45] Uganda's Anti-Terrorism Act of 2002, as amended in June 2015, was criticised by the ESAAMLG in its mutual evaluation report in April 2016.[46] The definition of the offence had not criminalised acts of participation as an accomplice or commission of the offence. In May 2017, Uganda passed the Anti-Terrorism Amendment Act to define terrorist financing in accordance with what was required.[47]

Ethiopia was found to be largely compliant with the requirements of the convention through Proc. No. 780/2013, Article 31.[48] However, where it had not ratified or acceded to six of the 12 pre-existing UN counter terrorism conventions it had not designated all the relevant offences as acts of terrorism and therefore the provisions of Proc. No. 780/2013 would not apply. It is unclear whether the state has improved this situation as it has yet to receive a follow-up assessment.[49]

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[40] An Act of Parliament to provide measures for the detection and prevention of terrorist activities; to amend the Extradition (Commonwealth Countries) Act and the Extradition (Contiguous and Foreign Countries) Act; and for connected purposes. Act No.30 of 2012
http://www.kenyalaw.org/lex//actview.xql?actid=No.%2030%20of%202012 accessed on 8 June 2018

[41] "A person who, directly or indirectly, collects, attempts to collect…"

[42] Article 33 (2) of law no. 1 for 2010 as "any person collecting or providing funds directly or indirectly for the purpose of committing a terrorist act or to be used by a terrorist organization or individual shall be deemed a perpetrator of a terrorist financing crime. A terrorist act is every act criminalized in the terrorism combating law for 2001 or any substitute law or any act of terrorist nature criminalized by virtue of an international agreement that Sudan is party therein".

[43] MENAFATF Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Sudan (June 2009) 30

[44] Ibid 31

[45] MENAFATF Mutual Evaluation Report 3rd Follow-Up Report for Republic of Sudan Anti-Money Laundering and Combating the Financing of Terrorism (April 2016) http://www.menafatf.org/information-center/menafatf-publications/third-follow-report-sudan accessed on 8 June 2018

[46] ESAAMLG Mutual Evaluation Report Anti-money laundering and counter-terrorist financing measures Uganda (April 2016) 44-45

[47] The Anti-Terrorism Amendments Act 2017 http://www.mia.go.ug/sites/default/files/download/THE%20ANTI-TERRORISM%20%28AMMENDMENT%29%20ACT%2C%202017.pdf accessed on 8 June 2018

[48] ESAAMLG Mutual Evaluation Report Anti-money laundering and combating the financing of terrorism The Federal Democratic Republic of Ethiopia (May 2015) 41 https://esaamlg.org/reports/Ethiopia_AML-CFT_Assessment.pdf accessed on 8 June 2018

[49] The only other available document was the ESAAMLG 5th Enhanced Follow-Up and Technical Rating Report (September 2018) which did not determine how effective any improvements have been.

Southern Africa: *(Botswana, Lesotho, Malawi, Mozambique, Namibia, Madagascar, Mauritius, Seychelles, South Africa, Swaziland, Zambia, Zimbabwe)*

All 12 states are party to the Convention for the Suppression of Terrorist Financing and have ratified or acceded to it after the adoption of Resolution 1373.[50]

Zambia has been the most recent accession in April 2017, and it attempted to criminalise the financing of terrorism through the Anti-Terrorism Act 2007.[51] It was identified as inadequate the way in which it defined the term "funds" and also the state had not ratified most of the 12 pre-existing UN counter-terrorism conventions.[52] In a follow-up report in 2019 this was said to have been amended to satisfy the requirements of the convention.[53] Namibia[54] adopted the Prevention and Combating of Terrorist Activities Act, 2012 which sufficiently criminalised the financing of terrorism to the standard required for it to be removed from the FATF's monitoring process.[55]

South Africa criminalised terrorist financing in s.4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA).[56] This was found to meet the requirements of the convention, however, it was noted that the effectiveness of the law had not yet been tested because there had been no prosecutions using the provision.[57]

In 2007 Zimbabwe had not adequately criminalised terrorist financing.[58] In 2009, the state was found to have criminalised the offence of terrorist financing under s.9 of the Money Laundering and Proceeds of Crime Act 2013 (MLPC Act) in accordance with the convention.[59]

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[50] https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en accessed on 22 July 2018
[51] ESAAMLG Mutual Evaluation Report Republic of Zambia (August 2008) http://esaamlg.org/reports/Zambia_Mutual_Evalution_Report.pdf accessed on 18 July 2018
[52] Ibid
[53] ESAAMLG Mutual Evaluation Report Zambia (June 2019) https://esaamlg.org/reports/MER%20Zambia-June%202019.pdf accessed 2 September 2019
[54] Prevention and Combating of Terrorist Activities Act, 2012 (Act No. 12 of 2012) at s.2 http://www.lac.org.na/laws/2012/5095.pdf accessed on 8 June 2018
[55] Bank of Namibia Media Statement March 2015 https://www.bon.com.na/CMSTemplates/Bon/Files/bon.com.na/49/497497a3-5d18-4b11-b9b6-f9f9bb54bac8.pdf accessed on 21 July 2018
[56] ESAAMLG Mutual Evaluation Report South Africa (28 February 2009) https://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20South%20Africa%20full.pdf accessed on 28 July 2019
[57] ESAAMLG Mutual Evaluation Report South Africa (28 February 2009) 45
[58] ESAAMLG Mutual Evaluation Report Republic of Zimbabwe (August 2007) at 213 https://esaamlg.org/reports/Zimbabwe_detailed_report.pdf accessed on 28 July 2019
[59] ESAAMLG Mutual Evaluation report Second Round (September 2016) at 123 https://esaamlg.org/reports/2ND-ROUND-MUTUAL-EVALUATION-REPORT-OF-THE-REPUBLIC-OF-ZIMBABWE(1).pdf accessed on 28 July 2019

Madagascar criminalised the financing of acts of terrorism under Articles 11 and 12 of the Law no 2004-020.[60] Terrorist acts are defined in Articles 2 to 10[61], as well as in the general definition of terrorism provided for in Article 11 (1) of the Law No. 2014-005 of 28 May 2014.[62] Terrorist financing is defined on the basis of these acts, and in absence of a link to the acts the law does not mention either directly or indirectly the financing of individual terrorist or terrorist organisations. Neither did the law extend to the planning of acts of terrorism in another state or for acts of terrorism committed in another state. These issues had yet to be addressed.

The Seychelles adopted the Prevention of Terrorism Act 2004, which defined the offence of financing terrorism as it was set down in the convention.[63] Of the states that have implemented it only Mozambique entered a reservation declaring it would not extradite its citizens and would try and sentence them in national courts.[64] Both Mozambique[65] and Malawi[66] criminalised the financing of terrorism in accordance with the requirements under the Convention for the Suppression of Terrorist Financing .

Botswana implemented the offence in 2014,[67] but it was found to be deficient in criminalising individual terrorists. In April 2019 the relevant legislation was found to have been amended and met the requirements of the convention.[68] This was also the same for the laws adopted by Lesotho. The ESAAMLG criticised Lesotho because the offence of

[60] AW N° 2004-020 OF 19 August 2004 on Money Laundering, Tracing, Confiscation and International Cooperation with Regards to Crime (Gazette n°2939 of 08.11.04, p.4349)

[61] These cover the acts of terrorism set out in the nine of the pre-existing UN counter-terrorism conventions

[62] ESAAMLG Mutual Evaluation Report Second Round Madacasgar (September 2018) http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/ESAAMLG-MER-Madagascar-2018.pdf accessed 28 July 2019

[63] Act No. 7 of 1 December 2004 per ss. 5-7 and s.20 https://greybook.seylii.org/w/se/2004-7#!fragment/zoupio-_Toc452033553/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgBYBWAJgAYAzAK5cBASgA0ybKUIQAiokK4AntADk6iRDi5sAG30BhJGmgBCZNsJhcCRcrUAzOskxxXAc2u2EAZTxSACE1ACUAUQAZcIA1AEEAOSNwiVIwACNoCBs7EDExIA accessed on 13 August 2018

[64] International Convention for the Suppression of the Financing of Terrorism (n1) 49 https://www.unodc.org/documents/treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf accessed on 21 July 2018

[65] Law no. 14/2013 of 12 August was approved and published in the official journal of the Republic of Mozambique. The Law to Prevent and Combat Money Laundering and Financing of Terrorism defines the offence of terrorist financing as committed by "anyone who, by any means, directly or indirectly and intentionally supplies or receives funds with the intention they be used or knowing they will be used, in whole or in part, to carry out a terrorist act or by an individual terrorist or a terrorist organisation." GLM Mozambique 'The legal rules on prevention and combatting money laundering and financing of terrorism' December 2013 https://www.plmj.com/xms/files/newsletters/2013/Dezembro/THE_LEGAL_RULES_ON_PREVENTION_AND_COMBATTING_MONEY_LAUNDERING_AND_FINANCING_OF_TERRORISM_.pdf accessed on 8 June 2018

[66] ESAAMLG Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism, The Republic of Malawi (December 2008) at 2.2, The Money laundering Proceeds of Serious Crime and Terrorist Financing Act, 2006 (ML & TF Act) which was enacted in August 2006. Sections 36 and 76 criminalise the financing of terrorism as required under the convention

[67] Counter-terrorism Act 2014 s.5

[68] ESAAMLG First Enhanced Follow-up Report & Technical Compliance Re-Rating (April 2019) 9 https://esaamlg.org/reports/FUR%20Botswana-April%202019.pdf accessed on 1 September 2019

terrorist financing s criminalised in Part IV of the Money Laundering and Proceeds of Crime Act (MLPCA) 2009,[69] did not extend to individual terrorists.[70] In 2017, it was reported that the state was taking "significant steps" to implement the necessary requirements,[71] and by January 2018 is had enacted the Prevention and Suppression of Terrorism Act which satisfied the requirements of the convention.[72] Mauritius[73] faced similar criticism, in addition to a lack of adequate jurisdiction, where the offence is applicable regardless of whether the terrorist act was committed in Mauritius or another country.[74] As a committed member of the ESAAMLG however, it has worked to implement the recommendations.[75] Swaziland implemented the terrorist financing offence in the Suppression of Terrorism Act 2008 but it did not define the term "funds" so it is difficult to ascertain the extent to which it complied with the UN convention. [76]

West Africa: *(Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo)*

All the states in this region acceded to the convention after Resolution 1373 was adopted.[77] All the states were members of the African Union, but none entered any reservation concerning self-determination.[78] The majority had criminalised the financing of terrorism except Guinea,[79] and Guinea Bissau.[80] Guinea-Bissau drafted the Counter-terrorism Financing Act in 2012 but this has not yet been enacted.[81] Mali adopted Directive no.

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[69] ESAAMLG Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Kingdom of Lesotho (September 2011) at 43

[70] Ibid 44

[71] Lesotho Risk and Compliance report May 2017 http://www.knowyourcountry.info/files/lesothoamlaug14_1.pdf accessed on 18 July 2018

[72] ESAAMLG Post Evaluation Progress Report of Lesotho (August 2017 – July 2018) https://esaamlg.org/reports/Progress%20Report%20Lesotho-2018.pdf accessed on 1 September 2019

[73] Convention for the Suppression of the Financing of Terrorism Act (CSFT Act) was passed in 2003 "Any person who, by any means whatsoever wilfully and unlawfully, directly or indirectly, provides or collects funds with the intention or knowledge that it will be used, or having reasonable grounds to believe that they will used, in full or in part, to commits in Mauritius or abroad:
(a) an offense in breach of an enactment specified in the [Second] schedule; or
(b) an act of terrorism. commits an offense."

[74] ESAAMLG Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism, The Republic of Mauritius (December 2008) at 47

[75] Financial services Commission Mauritius https://www.fscmauritius.org/en/being-supervised/amlcft accessed on 18 July 2018

[76] ESAAMLG Mutual Evaluation Report Kingdom of Swaziland (February 2010) http://esaamlg.org/reports/Detailed-MER-for-the-Kingdom-of-Swaziland.pdf accessed on 18 July 2018

[77] International Convention for the Suppression of the Financing of Terrorism (n1)

[78] International Convention for the Suppression of the Financing of Terrorism (n1)

[79] GIABA Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Guinea (November 2012)

[80] Penal Code of Guinea-Bissau (13 October 1993) quoted in UNSC CTC Report of Guinea-Bissau on implementation of the provisions of Security Council resolution 1373 (2001) on counter-terrorism (28 April 2003) UN Doc S/2003/361 are as follow: Article 203, included within the Chapter on 'Crimes against Peace and Public Order', prohibits the promotion, establishment, financing and leading of a terrorist group or association and provides for a penalty of between 5 and 20 years imprisonment. In addition, 203(3) provides for a sentence of 3 to 15 years imprisonment for membership in terrorist groups or association or the commission or assistance in committing a terrorist act

[81] GIABA Guinea-Bissau https://www.giaba.org/member-states/guinea-bissau.html accessed on 21 July 2018

04/2007/CM/UEMOA which set out the future legal regime to tackle the financing of terrorism but did not criminalise the offence.[82] In 2016 it adopted a law to counter the financing of terrorism.[83] This however, has not been translated from French[84] and other Follow-Up reports by the GIABA have also been in French,[85] so it was not possible to ascertain the extent to which the law complied with the requirements in the convention.

Gambia had criminalised the offence before it ratified the Convention for the Suppression of Terrorist Financing. It enacted the Anti-Terrorism Act 2002, but did not accede to the convention until 2015.[86] The terrorist financing offence covered a person who, directly or indirectly, wilfully and without lawful justification or excuse, provides or collects property with the intent that it be used or knowing that it will be used in whole or in part, in order to carry out the acts listed under the relevant sections.[87] The law had incorporated the key elements required by the UN convention ahead of its ratification.[88] There have been three states where it has not been possible to confirm the legislation in place. One of these is Benin, and whilst it is possible that Benin adopted the draft law highlighted in the UNODC review document of the legal regime against terrorism in West and Central Africa, [89] this cannot be confirmed. Subsequent reports from the Inter-Governmental Action Group Against Money Laundering in West Africa (GIABA) which identified initially that no laws were in place, were only available in French. This was a similar situation for the analysis of laws in Burkina Faso and Cape Verde.[90] The GIABA had carried out mutual evaluation reports which set out that no laws were in place that provided for the offence of terrorist financing in either state. Subsequent follow-up reports were only available in French. [91]

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[82] GIABA Mutual Evaluation Report Mali (September 2008) https://www.giaba.org/media/f/252_MALI_word_MER_english[1].pdf accessed on 21 July 2018

[83] UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (October 2008) https://www.unodc.org/westandcentralafrica/en/2016-05-25---gpml---mali.html accessed on 22 July 2018

[84] loi n"2oi6- oo8/ du 17 mars 2016 piortant loi uniforme relative a la lutte contre le blanchiment de capitatx et le financement du terrorisme http://www.droit-afrique.com/uploads/Mali-Loi-2016-08-lutte-blanchiment-capitaux-financement-terrorisme.pdf accessed on 22 July 2018

[85] GIABA Mutual Evaluations and Follow-Up Reports https://www.giaba.org/reports/mutual-evaluation/Mali.html?lng=eng accessed on 22 July 2018

[86] International Convention for the Suppression of the Financing of Terrorism (n1)

[87] The Anti-Terrorism Act (AT Act) 2002 Sections 11 (2) and 12 (1) (a) & (b) (i) (ii)

[88] Inter-Governmental Action Group Against Money Laundering in West Africa Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Gambia (18 September 2008)

[89] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n83)

[90] GIABA Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Cape Verde (7 November 2007) at 40 set out that there was "no law criminalizing terrorism financing as an autonomous offence in accordance with the specific requirements of Article 2 of the referenced UN Convention."

[91] GIABA, Burkina Faso Mutual Evaluation and Follow Up Reports https://www.giaba.org/reports/mutual-evaluation/Burkina%20Faso.html accessed on 11 June 2018

Liberia criminalised the financing of terrorism in 2012 by way of Anti-Money Laundering and Terrorist Financing Act.[92] Although broadly compliant it required some amendments to ensure the terrorist financing was a predicate offence for money laundering.[93] Sierra Leone enacted the Anti-Money Laundering and Combating of Financing of Terrorism Act 2012 where s.15(1) defined the offence of terrorist financing.[94] This was understood to be broadly compliant with the international requirements.[95] The Cote d'Ivoire implemented the Suppression of Terrorist Financing Convention in July 2007, [96] but was required to ensure that it criminalised the financing of individual terrorists as well as terrorist organisations.[97] Senegal was in a similar situation when it adopted the Uniform Law 2009-16 on Terrorism Financing following a previous recommendation that it needed to refer to the existing conventions in order to define terrorist acts.[98] The subsequent follow-up reports are all in French therefore it has not been possible to determine whether the amended definition of the offence did sufficiently criminalise terrorist financing. Niger's law had a similar disparity.

Law 2008-18 of June 23, 2008 [99] made the financing of terrorism a criminal offence but the definition did not satisfy the requirements under the convention for the same reason that the financing of a terrorist organisation or individual terrorist had not been included in the definition of the financing of terrorism. In addition, the scope of what constituted a "terrorist act" was not broad enough with regards to the convention.[100] Niger subsequently prepared n draft law to amend this provision, but with subsequent reports only written in French this cannot be confirmed. In 2013, Nigeria enacted the Terrorism (Prevention) (Amendment) Act 2013 which amended the Terrorism (Prevention) Act No. 10, 2011 to strengthen terrorist financing offences and comply with the convention. [101] Togo's Uniform Law

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[92] GIABA Second Mutual Evaluation report Liberia (May 2013) https://www.giaba.org/reports/mutual-evaluation/Liberia.html accessed on 21 July 2018

[93] GIABA Fourth Follow Up Report Liberia (May 2015) https://www.giaba.org/media/f/929_4th%20FUR%20Liberia%20-%20English.pdf accessed on 21 July 2018

[94] GIABA Eighth Follow Up Report Sierra Leone (November 2012) https://www.giaba.org/media/f/844_7th%20FUR%20Sierra%20Leone%20-%20English.pdf accessed on 21 July 2018

[95] Ibid

[96] GIABA Mutual Evaluation Report Cote D'Ivoire (November 2013) p.50: Order n° 2009-367 of 12 November 2009 mentioned above (hereinafter CFT Order) transposes Directive n°04/2007/CM/ UEMOA of 4 July 2007, related to the same topic, thus implementing the International Convention for the Suppression of terrorist financing ratified by the State of Côte d'Ivoire on 13 March 2002.

[97] GIABA Mutual Evaluation Report Cote D'Ivoire (November 2013) at 50

[98] GIABA Mutual Evaluation Of Senegal (May 2008) https://www.giaba.org/media/f/312_MUTUALEVALUATION_Summary_Table_SENEGAL[1]__English[1].pdf accessed on 2 November 2018

[99] GIABA, Mutual Evaluation Report Niger (7 May 2009) at [149]-]165]

[100] Ibid

[101] GIABA Fifth Follow Up Mutual Evaluation Nigeria (May 2013) 20 https://www.giaba.org/media/f/832_5th%20FUR%20Nigeria%20-%20English.pdf

against the financing of terrorism also failed to criminalise funding by terrorist organisations, and also only referred to the offences from the conventions appended to the Suppression of Terrorist Financing Convention, and not nominal acts of terrorism, because the state's penal code did not criminalise terrorist acts. [102] Ghana acceded in September 2002 and adopted the Anti-Terrorism Act 2008. [103]

Central Africa: *(Angola, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Republic of the Congo, Sao Tome and Principe)*

In Central Africa it has only been possible to identify laws for Angola, Cameroon, Democratic Republic of the Congo and Chad, despite 9 states ratifying or acceding to the Convention for the Suppression of Terrorist Financing.[104] Only Burundi and Chad have yet to acceded to the convention. The five states where it has been difficult to identify laws concerning the financing of terrorism were all members of GABAC. The mutual evaluation reports have all been written in French and no official translation has been identified.

The Democratic Republic of the Congo acceded in April 2007. Act No. 04/016 of 19 July 2004 defined the offence of financing terrorism in Article 2. [105] Angola acceded to the convention in 2011.[106] It criminalised terrorist financing under Law 34/11, it did not however, criminalise conduct of mere financing of individual terrorists or terrorist organisations. [107] In February 2014, Angola enacted Law No. 3 in order to fully comply with the Convention for the Suppression of Terrorist Financing. It provided for jurisdiction over terrorist acts in the Angolan territory by nationals and non-nationals and defined the situations where the law is applicable to acts undertaken abroad.[108] Cameroon, having reformed its legislation following initial reliance on the state penal code adopted Law No. 2014/028 of 23 December 2014 where s.3 provided for the offence of financing acts of terrorism.[109] Chad criminalised terrorist financing in 2003 by enacting a anti-money

[102] GIABA Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism Togo (May 2011) 53

[103] GIABA Ghana Mutual Evaluation Report (May 2017) 53

[104] International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197 https://www.unodc.org/documents/treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf accessed on 21 July 2018

[105] A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (n83)

[106] International Convention for the Suppression of the Financing of Terrorism (n1)

[107] ESAAMLG Mutual Evaluation Report Republic of Angola (October 2012) 35-43

[108] Global Legal Monitor Angola (February 2014) http://www.loc.gov/law/foreign-news/article/angola-anti-terrorism-and-money-laundering-law/ accessed on 18 July 2018

[109] A Review of Legal Regime against Terrorism in West and Central Africa October 2008 (n83)

laundering/counterterrorist financing (AML/CFT) law drafted by the Economic and Monetary Community of Central Africa.[110] There is limited information available about this legislation, and there is no confirmation that Chad has signed or acceded to the Suppression of Suppression of Convention for the Suppression of Terrorist Financing .[111]

Asia

Pacific Islands: *(Fiji, Kiribati, Marshall Islands, Micronesia (Federated States of), Nauru, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu)*

As of January 2016, 11states in the Pacific Islands had criminalised the financing of acts of terrorism as a stand-alone offence. [112] It has not been possible to identify the relevant implementing law for the Federated States of Micronesia although it did accede to the convention in September 2002 [113] Tuvalu is not a signatory to the Convention for the Suppression of Terrorist Financing, but it has adopted laws on terrorist financing in Part 3 s.11 of the Counter-Terrorism and Transnational Organised Crime Act 2009[114]. The extent of its compliance with the convention is not clear because as a state it has not been evaluated by the FATF associated body.

The available information has showed that Fiji, Samoa, Tonga, Kiribati and Vanuatu all took steps to enhance their initial laws to ensure each fulfilled the requirements of the Convention for the Suppression of Terrorist Financing. For example, in Fiji the 2005 Proceeds of Crime Act created three offences of terrorist financing.[115] These measures did not meet the international standards because the law did not criminalise the providing and collecting of funds to terrorist groups or individual terrorists.[116] Fiji later adopted the Public Order (Amendment) (No. 2) Act 2017,[117] which, sufficiently criminalised the offence.

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[110] US Department of State Bureau of Counterterrorism and Countering Violent Extremism, Country Reports on Terrorism 2016 https://www.state.gov/j/ct/rls/crt/2016/272229.htm accessed on 22 July 2018

[111] International Convention for the Suppression of the Financing of Terrorism (n1)

[112] UNSC Global survey of the implementation by Member States of Security Council Resolution 1373 (2001) UN Doc S/2016/49

[113] International Convention for the Suppression of the Financing of Terrorism (n1)

[114] Counter-terrorism and Transnational Organised Crime Act 2009 https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=85519&p_country=TUV&p_count=50 accessed on 29 July 2019

[115] Section 70(A)(1) criminalized the financing of a terrorist act. Under this section, it is a criminal offence to "provide, collect or make available by any means directly or indirectly, any property intending, knowing or having grounds to believe that the property will be used in full or in part to carry out a terrorist act." Section 70A(2)(a) criminalized financing the commission or the facilitation of the commission of a terrorist act and financing any person who is committing or facilitating the commission of a terrorist act. The act of financing included providing or making available, directly or indirectly, financial or other related services. The Act did not define "financial and other related services." Section 70A(2)(b) criminalized financing "a terrorist group." Financing, as in s. 70A(2)(a), means *providing or making available, directly or indirectly, financial or other related services.*

[116] APG Mutual Evaluation Report Fiji (July 2006) 31 http://www.apgml.org/documents/default.aspx?s=date&c=7&pcPage=8 accessed on 21 July 2018

[117] APG Follow Up Mutual Evaluation of Fiji (September 2018)

Samoa enacted the Prevention and Suppression of Terrorism Act 2002.[118] This did not criminalise the collection or provision of funds used by an individual terrorist or terrorist organisation, nor did it criminalise the *attempted* provision or collection of funds.[119] The state subsequently enacted the Counter-terrorism Act 2014 and s.24 provided for attempted, participation in financing and support for terrorist acts, along with s.25 which provided for the provision of property or services to a terrorist group.[120]

Tonga criminalised terrorist financing under Part II of the Transnational Crimes Act 2005. This legislation, however, did not provide for the provision or collection of funds (property) for use by a terrorist organization or by an individual terrorist. In 2013 it adopted the Counter-Terrorism and Transnational Organised Crime 2013 where Part 3 s.10 enhanced the provision to meet the necessary requirements. [121]

Kiribati initially adopted legislation entitled Measures to Combat terrorism and Transnational Organised Crime Act in 2005. [122] Section 10 provided that:

> "Any person who provides or collects, by any means, directly or indirectly, any property, intending, knowing or having reasonable grounds to believe that the property will be used in full or in part to carry out a terrorist act commits an offence and is liable upon conviction to imprisonment for life."[123]

An amendment to the Act was adopted in 2008, which repealed and replaced this definition with:

> "A person must not provide or collect, by any means, directly or

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[118] Section 20 "Every person who, by any means, directly or indirectly, knowingly or without due inquiry, provides or collects funds or proceeds with the intention that such funds or proceeds be used, or in the knowledge that such funds or proceeds are to be used, in full or in part, to:
a) carry out an act which constitutes an offence under the Prevention and Suppression of Terrorism Act, or
b) carry out any other act intended to cause death or bodily injury to any person not taking an active part in the hostilities of armed conflict, where the purpose of such act, by its nature or context, is intended to intimidate a population, or to compel a State or Government or an International Organization to do or to abstain from doing an act.
http://www.vertic.org/media/National%20Legislation/Samoa/WS_Prevention_Terrorism_Act_2002.pdf accessed on 22 June 2018

[119] APG Mutual Evaluation Report Samoa (4 July 2006)

[120] Counter-terrorism Act 2014 http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=98692&p_classification=01.04 accessed on 22 June 2018

[121] Counter-terrorism and Transnational Organised Crime Act (Act 23 of 2013) https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98656/117471/F-1641177339/TON98656.pdf accessed on 14 August 2018

[122] Measures to Combat terrorism and Transnational Organised Crime Act in 2005 https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84052&p_country=KIR&p_count=62 accessed on 2 November 2018

[123] Measures to Combat terrorism and Transnational Organised Crime Act in 2005 https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84052&p_country=KIR&p_count=62 accessed on 2 November 2018

> indirectly any property intending, knowing or having reasonable grounds to believe that they will benefit an entity that the person knows is a specified entity."[124]

This subsequently ensured that the collection of property and funding to terrorist organisations was criminalised.

Vanuatu's terrorist financing offences were contained in s.6 of the Counter-Terrorism and Transnational Organised Crime Act, (CTTOCA). In 2014 this was amended to capture the financing of an individual terrorist. [125]

The Marshall Islands criminalised the financing of terrorism in s.120 of the Counter-Terrorism Act 2002.[126] This definition was a modified version of that found in the Convention for the Suppression of Terrorist Financing, albeit it had used the word "knowingly" to replace "unlawfully and wilfully". There was also no inclusion of an attempted offence, which was required by the convention.[127] There is no further information available as to whether this has been changed. Nauru adopted the Counter-Terrorism and Transnational Organised Crimes Act 2004 which provided for offences of terrorist financing under s.10. [128] This did not however, criminalise the funding of terrorist organisations or individual terrorists, except for those prescribed by the Minister. [129] The state amended the Act in 2008 to incorporate this element.[130]

Palau initially adopted the Counter-terrorism Act 2001 to implement the Convention for the Suppression of Terrorist Financing.[131] It strengthened the measures by enacting the Counter-

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[124] Republic of Kiribati Measures to Combat Terrorism and Transnational Organised Crime (Amendment) Act 2008 http://www.paclii.org/ki/legis/num_act/mtctatoca2008683/ accessed on 22 June 2018

[125] Counter-terrorism And Transnational Organised Crime [CAP. 313] 24 February 2006 https://sherloc.unodc.org/res/cld/document/vut/2006/counter_terrorism_and_transnational_organised_crime_act_html/Vanuatu_Counter_Terrorism_and_Transnational_Organised_Crime_Act.pdf accessed on 2 November 2018

[126] Any person who knowingly, by any means, directly or indirectly, solicits, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part:
(a)for terrorism;
(b) for the benefit of persons who engage in terrorism, or for the benefit of entities owned or controlled, directly or indirectly, by persons who engage in terrorism; or
(c) for the benefit of persons and entities acting on behalf of or at the direction of any person referred to in subsection 1(b); commits a crime punishable by the penalties established by section 107 (1) (a) of this Act.

[127] APG Mutual Evaluation Report: Republic of the Marshall Islands (July 2011) at 38http://www.apgml.org/documents/default.aspx?s=date&c=7&pcPage=5 accessed September 2019

[128] Part 3 Offence s.10 Terrorist Financing http://ronlaw.gov.nr/nauru_lpms/files/acts/c8e398a13914e59966dc84578fe61057.pdf

[129] APG Mutual Evaluation Report Republic of Nauru (July 2012) 38

[130] Counter-terrorism and Transnational Organised Crime (amendment) Act 2008 http://ronlaw.gov.nr/nauru_lpms/files/acts/807035f28e52a82b260aeeedc07630af.pdf accessed on 14 August 2018

[131] Counter-terrorism Act 2001 Subchapter II Suppression of Financing of Terrorism http://www.paclii.org/pw/legis/num_act/cao2001r7282007313/ accessed on 14 August 2018

Terrorism Act of 2007, but the definition of terrorist financing did not extend to legitimate or illegitimate funds and all assets representing financial value. [132] Papua New Guinea used the Internal Security Act 1993, where ss. 2, 3 and 6 were relevant to the financing of terrorism and terrorist organizations. This definition did not criminalise providing support to an individual terrorist, nor did the definition of a terrorist act explicitly incorporate the acts listed in the annex to the Convention for the Suppression of Terrorist Financing .[133] It adopted the Anti-Money Laundering and Counter Terrorist Financing Act 2015 to further strengthen its laws pertaining to terrorist financing.[134]

The Solomon Islands[135] referred to the acts of terrorism in the pre-existing UN counter-terrorism conventions.[136] The law adopted by the Solomon Islands criminalises the offence of terrorist financing in accordance with the convention.

South-east Asia: *(Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Timor-Leste, Thailand, Viet Nam)*
All the states in this region had acceded to the convention after the adoption of Resolution 1373.[137] Viet Nam was the only state in this region that had not criminalised the financing of terrorism.[138] The state had suggested an amendment to its Penal Code to incorporate the offence,[139] but no further detail is available to understand whether this took place.

Two states had to take steps to remedy the lack of laws in place for the terrorist financing offence. The Lao People's Democratic Republic had not criminalised terrorism at all, but it adopted the Law on Anti-Money Laundering and Counter-Financing of Terrorism in 2014.[140] It was evident that meeting the international requirements not only for the Convention for the Suppression of Terrorist Financing , but also for Resolution 1373, was an ongoing process from a state which previously did not have any counter-terrorism laws.

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[132] Palau: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism January 2009 33
[133] APG Mutual Evaluation Report Papua New Guinea (July 2011) 42
[134] Anti-Money Laundering and Counter Terrorist Financing Act 2015https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/105162/128532/F837668775/PNG105162.pdf accessed on 14 August 2018
[135] Counter-Terrorism Act 2009, s.6 criminalises the financing of terrorism http://www.apgml.org/documents/default.aspx?s=title&pcPage=24 accessed on 29 July 2019
[136] Counter-terrorism and Transnational Organised Crime Act 2009 Part 6
[137] International Convention for the Suppression of the Financing of Terrorism (n1)
[138] APG Mutual Evaluation Report Vietnam (July 2009) 51
[139] Ibid
[140] The Law on Anti-Money Laundering and Counter-Financing of Terrorism http://laoofficialgazette.gov.la/kcfinder/upload/files/Anti-Money%20Laundering%20and%20Counter-Financing%20of%20Terrorism%20Law%20.pdf accessed on 25 June 2018

Myanmar was in a similar position when it enacted the Control of Money Laundering Law in 2002, but this did not criminalise the financing of terrorism.[141] In 2016 the UNODC initiated a project to assist the country with its capacity to counter terrorist financing.[142]

Out of the remaining eight states which have all adopted laws to criminalise the financing of terrorism, there are five which have amended their initial legislation to ensure full compliance with the convention. Brunei Darussalam enacted the Anti-Terrorism (Financial and Other Measures) Act in 2002 (revised 2008), which narrowly defined funds to include "includes cheques, bank deposits and other financial resources".[143] In addition, the definition of the offence also did not criminalise clearly the collection of funds for organisations and individuals.[144] In August 2011 the Anti -Terrorism Order 2011 was enacted which revised the definition of property to fall within the scope of the Convention for the Suppression of Terrorist Financing. [145] It also clearly stated that the provisions of the collection of funds by organisations and individuals is prohibited.[146] Cambodia criminalised the financing of terrorism in 2013 through the Law on Counter-terrorism and Law on Amendment by way of Articles 3, 29 and 30.[147] This has been understood to comply with the UN convention.[148] In Indonesia, the financing of terrorist was addressed in Law Number 15 Year 2003 Concerning Stipulation of Government Regulation in Lieu of Law Number 1 Year 2002 Concerning Combating Criminal Acts of Terrorism.[149] The offence required expansion to provide for the direct and indirect collection of funds, funding to individual terrorists, provisions of assets to organisations, and also address all the acts of terrorism as set out in the Convention for the Suppression of Terrorist Financing .[150] Upon accession the

[141] APG Mutual Evaluation Report Myanmar (July 2008) 48
[142] https://www.unodc.org/southeastasiaandpacific/en/myanmar/2016/06/counter-terrorist-financing-capacity/story.html accessed on 26 June 2018
[143] Section 2(1) Anti-Terrorism (Financial and Other Measures) Act (ATA) 2002 (revised 2008)
[144] Prohibition against provision or collection of funds for terrorists. S.3. No person shall in Brunei Darussalam, and no citizen of Brunei Darussalam and no company incorporated or registered under the Companies Act (Chapter 39) shall outside Brunei Darussalam, — (a) provide funds to any person by any means, directly or indirectly; or (b) collect funds for any person by any means, directly or indirectly, if he knows or there are reasonable grounds for him to suspect that the funds will be used to commit any terrorist act or facilitate the commission of any terrorist act. Anti-Terrorism (Financial and Other Measures) Act (ATA) 2002 (revised 2008)
[145] Anti Terrorism Order (ATO) 2011 "property" means -
(a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit
[146] Section 4 and 5 Anti -Terrorism Order (ATO) 2011
http://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2011/EN/s045.pdf accessed on 25 June 2018
[147] Cambodia Financial Intelligence Unit , laws and prakas https://www.nbc.org.kh/cafiu/laws_and_prakas.html accessed on 25 June 2018
[148] APG Mutual Evaluation Report Cambodia (September 2017)
[149] Law Number 15 Year 2003 Concerning Stipulation of Government Regulation in Lieu of Law Number 1 Year 2002 Concerning Combating Criminal Acts of Terrorism.
http://www.vertic.org/media/National%20Legislation/Indonesia/ID_Law_Criminal_Act_Terrorism.pdf accessed 25 June 2018
[150] http://www.vertic.org/media/National%20Legislation/Indonesia/ID_Law_Criminal_Act_Terrorism.pdf accessed 25 June 2018

state had entered a reservation declaring five treaties not deemed to be included in the annex to the Convention for the Suppression of Terrorist Financing .[151] In 2013 the state enacted Law No. 9/2013 regarding the Prevention and Eradication of Anti-Terrorist Financing. This expanded the offence in the original legislation and criminalised the financing of terrorism as an independent crime,[152] the state had yet to accede to all the conventions required by the international standard.[153]

In March 2007, Malaysia enacted a legislative package that was designed to implement the country's obligations under the Convention for the Suppression of Terrorist Financing and Resolution 1373. The Anti-Money Laundering Act Amendment Part V (Suppression of Terrorist Financing Offences and Freezing and Forfeiture of Terrorist Property) created new terrorist financing offences which were broadly compliant with the convention. Timor-Leste criminalised the financing of terrorism through its Penal Code in 2009.[154] Whilst it was broadly complaint it was recommended that the state broaden the offence to include funding of individual terrorists.[155]

The Philippines had initially suggested that someone who financed terrorism could be prosecuted under s.5 of the Human Security Act.[156] This, however, did not satisfy the convention on the basis that there was a requirement for a connection to a specific act which would allow for the financing of an individual terrorist or a terrorist organisation to be criminalised.[157] More importantly, if it was an autonomous offence, the collection or provision of funds with the mere intention that they be used for an unspecified terrorist act would be sufficient for a finding of guilt. In 2012 the country adopted "An Act Defining the Crime of Financing of Terrorism…" and s.4 defined the offence in accordance with the

[151] UN Treaty Collection, The Convention for the Suppression of the Financing of Terrorism, status as of 21 July 2018 https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en accessed on 22 July 2018
[152] Counter-terrorism Action Plan Indonesia January 2013 http://webcache.googleusercontent.com/search?q=cache:q7vBbKswiXAJ:m.apec.org/Home/Groups/~/~/~/media/Files/Groups/CTAPs/2013/2013_cttf1_009_Indonesia.pdf+&cd=25&hl=en&ct=clnk&gl=uk&client=safari accessed on 22 July 2018
[153] Counter-terrorism Action Plan Indonesia January 2013 http://webcache.googleusercontent.com/search?q=cache:q7vBbKswiXAJ:m.apec.org/Home/Groups/~/~/~/media/Files/Groups/CTAPs/2013/2013_cttf1_009_Indonesia.pdf+&cd=25&hl=en&ct=clnk&gl=uk&client=safari accessed on 22 July 2018
[154] Any person who, by whatever means, directly or indirectly and with intent, supplies, collects or holds funds or assets of any type, as well as products or rights that may be converted into funds and attempts to do so, with a view to be used or knowing that they may be used, totally or partially, in the planning, preparation or commission of the acts referred to in sub-Article 131.1, or commits such acts with the intent referred to in sub-Article 132.1, shall be punishable with 12 to 25 years imprisonment.
[155] APG Mutual Evaluation Report Timor- Leste (June 2012) http://www.apgml.org/mutual-evaluations/documents/default.aspx?pcPage=4 accessed on 18 July 2018
[156] APG Mutual Evaluation Report Philippines (30 June 2009) http://www.apgml.org/documents/default.aspx?s=date&c=7&pcPage=6 accessed on 22 July 20
[157] APG Mutual Evaluation Report The Philippines (30 June 2009) http://www.apgml.org/documents/default.aspx?s=date&c=7&pcPage=6 accessed on 22 July 2018

international requirements.[158] The Philippines also acceded to all the 12 pre-existing UN counter-terrorism conventions in 2004 and included them in 2012 legislation under s.3.[159]

Singapore criminalised terrorist financing offences under the Terrorism (Suppression of Financing) Act 2003. [160] This did not extend, however, to the terrorist acts contained in the pre-existing UN counter-terrorism conventions listed in the annex to the Suppression of Terrorist Financing Convention.[161] In a subsequent report in 2016, this situation appeared to have been rectified.[162] Thailand's laws faced a similar challenge, where the offence of financing terrorism was provided for by two Emergency Decrees in 2003, one of which amended s.135 of the Penal Code. [163]

South Asia: *(Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka)*

Seven states in South Asia have acceded to or ratified the Convention for the Suppression of Terrorist Financing after the adoption of Resolution 1373.[164] Sri Lanka acceded prior to the adoption of Resolution 1373 and criminalised terrorist financing by the Convention on the Suppression of Terrorist Financing Act No. 25 of 2005 (as amended) in accordance with the convention standards.

Bhutan, by 2016 had not criminalised the financing of terrorism.[165] The Anti-Money Laundering and Countering of Financing of Terrorism Bill[166] was drafted in 2017 but it is unclear as to whether this has become law as yet. Other states have adopted laws which criminalise terrorist financing, most of which are compliant with the convention. For example, in Pakistan, the Anti-Terrorism Act 1997 as amended in 2001 was broadly compliant with the requirements in the convention.[167] It adopted the Anti-Terrorism (Second

[158] An Act Defining the Crime of Financing of Terrorism Providing Penalties therefore and for other purposes Section 4 http://www.sec.gov.ph/wp-content/uploads/2016/02/RA-10168.pdf accessed 26 June 2018

[159] Republic Act No. 10168 (20 June 2012)
An Act Defining the Crime of Financing of Terrorism Providing Penalties therefore and for other purposes https://www.lawphil.net/statutes/repacts/ra2012/ra_10168_2012.html accessed on 22 July 2018

[160] Section 3-5

[161] APG Mutual Evaluation Report Singapore (February 2008) 42

[162] APG Mutual Evaluation Report Singapore (September 2016) http://www.apgml.org/documents/default.aspx?s=date&c=7&pcPage=3 accessed on 1 September 2019

[163] Ibid at.54

[164] International Convention for the Suppression of the Financing of Terrorism (n1)

[165] APG Mutual Evaluation Report Bhutan (October 2016)

[166]Anti-Money Laundering and Countering of Financing of Terrorism Bill 2017
http://www.nab.gov.bt/assets/uploads/docs/bills/2017/Darft_AMLCFT_Bill_2017.pdf accessed 28 June 2018

[167] APG Mutual Evaluation Report Pakistan (June 2009)

Amendment) Act in 2014, which strengthened the provisions of the offence.[168] India criminalised the financing of terrorism in the Unlawful Activities (Prevention) Act, 1967 (UAPA) as amended by the Unlawful Activities (Prevention) Amendment Act, 2004 and the Unlawful Activities (Prevention) Amendment Act, 2008. The relevant sections of the UAPA were s.15, s.17 and s.40.[169] These are understood to be complaint with the requirements of the convention.[170]

Bangladesh, the Maldives and Nepal all implemented legislation which was subsequently amended. For example, Bangladesh adopted the Anti-terrorism Ordinance in 2008 which criminalised the financing of terrorism and defined a terrorist act. It was broadly compliant but needed to criminalise the provision or collection of funds with the intention that they should be used, or are to be used, by a terrorist organisation or terrorist individual, and include in the definition of property "legal documents or instruments".[171] In 2009 the Anti -Terrorism Act was enacted which, brought the offence of terrorist financing in line with the requirements of the convention.[172]

In 2011 the Maldives was advised by the APG to criminalise the financing of terrorism as a separate autonomous offence, where it had currently relied upon the Prevention of Terrorism Act (Act No. 10/1990) which criminalised the aiding and abetting through finance or property of a terrorist act.[173] In 2014 it adopted the Prevention of Money Laundering and Financing of Terrorism Act (Law no. 10/2014). An unofficial translation of the Act indicated it was broadly compliant with the international requirements, it did not however refer to the acts listed in the annex of the Convention for the Suppression of Terrorist Financing.[174]

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[168] Anti-terrorism (Second Amendment) Act 2014 http://www.na.gov.pk/uploads/documents/1397721355_605.pdf accessed 28 June 2018

[169] Unlawful Activities (Prevention) Amendment Act, 2004 http://www.satp.org/satporgtp/countries/india/document/actandordinances/the_unlawful_activities__amendord2004.htm accessed 28 June 2018

[170] APG Eighth Follow-Up report India (June 2013)

[171] APG Mutual Evaluation Report Bangladesh (July 2009)

[172] Anti -Terrorism Act 2009 http://www.satp.org/satporgtp/countries/bangladesh/document/papers/AntiTerrorism_Act2009.pdf accessed on 28 June 2018

[173] Section 3

[174] Prevention of Money Laundering And Financing of Terrorism Act Law no. 10/2014 (An Unofficial English translation) http://www.mma.gov.mv/documents/Laws/Prevention%20of%20Money%20Laundering%20and%20Terrorism%20Financing%20Act%20(english).pdf accessed 28 June 2018

As of 2011 Nepal did not have a separate offence for terrorist financing and it had not acceded to the Convention for the Suppression of Terrorist Financing .[175] It did provide a clarification clause in its money laundering law which noted the offence of financing terrorism, but this in itself did not criminalise the act because it provided for no form of punishment and was also set in vague terms.[176] It is unclear what law has been adopted to meet the requirements of the convention, but it acceded to the convention in June 2011, and the United States of America Country Report on Terrorism in 2017 indicated that Nepal had now criminalised terrorist financing.[177]

Finally, Afghanistan criminalised the financing of terrorism in Article 3 of the "Law on Combating the Financing of Terrorism" Law No 839 of 20 October 2004. The law was drafted when there was no Parliament in place. It was signed by the President on October 20, 2004 Article 2004 and was submitted to Parliament as required by the Constitution. It had still not been ratified in 2011 but, has since been completed. [178] In 2016 the state remained on the FATF list of jurisdictions with strategic deficiencies.[179]

Central Asia and the Caucasus: *(Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan)*

Of the 8 states, seven of them acceded to the Convention for the Suppression of Terrorist Financing after the adoption of Resolution 1373. [180] Uzbekistan acceded in July 2001[181] and criminalized the financing of terrorism in accordance with article 155 of the Criminal Code of Uzbekistan, which in general, reflected the requirements of Article 2 of the Terrorism Financing convention. [182]

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[175] International Convention for the Suppression of the Financing of Terrorism (n1)

[176] APG Mutual Evaluation Report Nepal (June 2011)

[177] United States Bureau of Counterterrorism, Country Reports on Terrorism 2016 is submitted in compliance with Title 22 of the United States Code, Section 2656f (the "Act"), which requires the Department of State to provide to Congress a full and complete annual report on terrorism for those countries and groups meeting the criteria of the Act https://www.state.gov/documents/organization/272488.pdf accessed 28 June 2018

[178] APG Islamic Republic of Afghanistan Mutual Evaluation Report (July 2011) at 51 http://www.apgml.org/members-and-observers/members/member-documents.aspx?m=69810087-f8c2-47b2-b027-63ad5f6470c1 accessed on 28 July 2019

[179] United States Bureau of Counterterrorism, Country Reports on Terrorism 2016 is submitted in compliance with Title 22 of the United States Code, Section 2656f (the "Act"), which requires the Department of State to provide to Congress a full and complete annual report on terrorism for those countries and groups meeting the criteria of the Act. https://www.state.gov/documents/organization/272488.pdf accessed on 28 June 2018

[180] International Convention for the Suppression of the Financing of Terrorism (n1)

[181] Ibid

[182] EAG Mutual Evaluation Report Uzbekistan (June 2010) https://eurasiangroup.org/en/respublika-uzbekistan accessed on 29 June 2018

The remaining states have criminalised the financing of terrorism to varying degrees. Armenia used the definition set down in the Convention for the Suppression of Terrorist Financing in its Criminal Code. [183] Azerbaijan initially criminalised the financing of terrorism through Article 214-1 of the Criminal Code.[184] In 2009 its enacted the law of the Republic of Azerbaijan on the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism. Section 1.0.4 [185] reflected the offence found in the convention more explicitly.

Georgia introduced the offence of financing of terrorism in July 2006, in Chapter XXXVIII of the Criminal Code of Georgia, which made it an autonomous offence under Article 331/1. The Code has been amended twice to extend the scope of the offence the financing of individual terrorists. [186]

The following five states are all members of the EAG, which has supported the development of terrorist financing laws. Kazakhstan criminalised terrorist financing in the Anti-Money Laundering and Anti-Terrorist Financing Law, which entered into force on March 9 2010. Kyrgyzstan adopted the Law on Combating Money Laundering and Terrorism Financing in November 2006. In 2008-2009 a number of amendments to this Act were adopted in accordance with the FATF's Recommendations.[187] Tajikistan's Law on Anti-Money Laundering and Anti-Terrorist Financing entered into force on March 9, 2010. It was found to require a number of improvements but was deemed to be "largely compliant" in 2014. [188] Turkmenistan implemented the offence of financing terrorism in its Criminal Code (articles 179, 179.1, and 35-37,) in addition to the Law on Combating Terrorism (article 10, 26 and 27).[189] Whilst these were broadly complaint with the convention, some recommendations have been made to improve it.[190]

[183] Article 217
[184] Council of Europe Mutual Evaluation Report Azerbaijan (December 2008) 46 [146]
[185] ..'wilful provision or collection funds or other property by any means, in full or in part, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used in order to finance the preparation, organisation or carrying out by a person or by a group (organisation, community) of persons of an act which constitutes a crime within the scope and as defined in the articles 102, 214, 215, 219, 219-1, 277, 278, 279, 280, 282 of the Criminal Code of the Republic of Azerbaijan, or by an individual terrorist or by a terrorist organisation..'
[186] Council of Europe MONEYVAL Report on Fourth Assessment visit, Georgia (July 2012) https://www.fms.gov.ge/Uploads/files/GEO4_MER_MONEYVAL(2012)18_en.pdf accessed on 2 July 2018
[187] EAG Mutual Evaluation Report Kyrgyzstan (June 2007) https://eurasiangroup.org/ru_img/news/eagkyrgyz.pdf accessed on 29 June 2018
[188] EAG Eleventh Follow Up Report Tajikistan (2014) https://eurasiangroup.org/en/mutual-evaluation-reports accessed on 29 June 2018
[189] EAG Eleventh Follow Up Report Tajikistan (2014) https://eurasiangroup.org/en/mutual-evaluation-reports accessed on 29 June 2018
[190] These included:

Western Asia: *(Bahrain, Iran (Islamic Republic of), Iraq, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates, Yemen)*

In Western Asia, eleven states had acceded to the Convention for the Suppression of Terrorist Financing after Resolution 1373. Iran is currently the only state which has not acceded to the convention. Lebanon is the state which most recently acceded to the convention on 29 August 2019.[191]

Two states were broadly compliant with the necessary international requirements; Kuwait which adopted the Anti-Money Laundering and Combating the Financing of Terrorism Law No. (106), 2013,[192] and the United Arab Emirates.[193] Although Syria, Kuwait and Iraq distinguished between terrorist acts and the legitimate struggle against foreign occupation in their domestic law,[194] only Syria and Kuwait declared their position upon acceding to the convention. The former stated that it "considers that acts of resistance to foreign occupation are not included under acts of terrorism…"[195] Kuwait's declaration stated:

> "The commitment of the State of Kuwait to the Convention is without prejudice to its Arab and Islamic obligations in respect of the definition of terrorism and the distinction between terrorism and legitimate national struggle against occupation".[196]

Bahrain has also previously supported this distinction[197] but it did not declare this upon accession to the convention.

Amend article 179.1 of the Criminal Code and/or other relevant provisions to ensure that criminal offence of financing of terrorism applies also to founding of individual terrorists.
Amend article 179.1 of the Criminal Code and/or other relevant provisions to ensure that financing of terrorism applies to both the wilful "provision" and "collection" of funds.
Amend article 179.1 of the Criminal Code and/or other relevant provisions to ensure that financing of terrorism offence includes "funds", as defined in article 1 of the International Convention for the Suppression of the Financing of Terrorism.
http://documents.worldbank.org/curated/en/607221468339669270/pdf/697410ESW0P1050ML0CFT0December02008.pdf accessed on 29 June 2018

[191] International Convention for the Suppression of the Financing of Terrorism (n1)

[192] MENA FATF Third Follow up Kuwait (April 2015) http://www.menafatf.org/sites/default/files/Newsletter/Kuwait_Exit_FUR_ENG.pdf accessed on 2 July 2018

[193] Federal Law 1/2004 MENA FATF Mutual Evaluation Report United Arab Emirates (April 2008) http://www.menafatf.org/sites/default/files/UAEoptimized.pdf accessed on 2 July 2018

[194] See chapter 6 for a more in-depth discussion on this p100-101

[195] International Convention for the Suppression of the Financing of Terrorism (n1)

[196] International Convention for the Suppression of the Financing of Terrorism (n1) Kuwait https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en accessed on 22 July 2018

[197] UNSC 4710th mtg (20 February 2003) S/PV.4710 p.14. See also UNSC CTC Supplementary Report of the Kingdom of Bahrain of 6 March 2003 pursuant to [6] of Security Council Resolution 1373 2001 (6 March 2003) UN Doc S/2003/268 at 6.3.4 set out in chapter 6

The Syrian Arab Republic criminalised the financing of terrorism by way of Legislative Decree No 33 of 2005, which was consistent with the definition in the Convention for the Suppression of Terrorist Financing. It overlooked however, the intention that the funds should be used or in the knowledge that they are to be used in full or in part, by a terrorist organization or by an individual terrorist.[198] In order to remedy this, the state issued Legislative Decree No. 27 for 2011, which included forms of collecting or providing funds, whether directly or indirectly, from legal or illegal sources with intention of using them, totally or partially, in committing a terrorist act or financing terrorist organisations or terrorists.[199]

Iraq's legal framework for terrorist financing was based on an anti-money laundering law, the Anti-Terrorism Law No. 13 of November 7, 2005 and the Penal Code. For the Kurdistan region, the Kurdistan Regional Government issued the Anti-terrorism Law in Kurdistan Region (Law No. 3 of 2006). Both definitions of the offence were not consistent with the requirements of the UN convention.[200] In 2015, Iraq adopted the Anti-Money Laundering/Counter Financing of Terrorism Law No. (39) to address these definitional deficiencies. [201] The new legislation criminalised all forms of raising and providing funds to a terrorist organization, group or individual, even if such funds were from legitimate sources, in addition to defining what is meant by the term "funds," all of which meet the international standard. [202]

Bahrain took until 2017 to implement the offence of terrorist financing, adopting the language used in the convention:

> "…anyone collecting, contributing or allocating property, funds or the proceeds thereof for an individual or a group of individuals inside or outside the country, that engages in terrorist activity, or carrying out any operation on the behalf of any of them, or providing any of them with support or funding by any means, with the knowledge that they engage in terrorist activity… anyone who obtains, directly or

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[198] MENA FATF Mutual Evaluation Report The Syrian Arab Republic (November 2006) http://www.menafatf.org/sites/default/files/documents/MutualEvaluationReportofSyria.pdf accessed on 2 July 2018

[199] MENAFATF Thirteenth Follow Up- Report The Syrian Arab Republic (May 2018) http://www.menafatf.org/sites/default/files/Newsletter/Syria%20Exit%20FUR_En.pdf accessed on 2 July 2018

[200] MENA FATF Mutual Evaluation Report Iraq (November 2012) 35- 41 http://www.menafatf.org/sites/default/files/MER_Iraq_English.pdf accessed on 2 July 2018

[201] MENA FATF Ninth Follow Up Report Iraq (May 2018) http://www.menafatf.org/sites/default/files/Newsletter/Iraq%20Exit%20FUR_En.pdf accessed on 2 July 2018

[202] MENA FATF Ninth Follow Up Report Iraq (May 2018) http://www.menafatf.org/sites/default/files/Newsletter/Iraq%20Exit%20FUR_En.pdf accessed on 2 July 2018

> indirectly by any means, property or funds of any kind from any such individuals or parties for safekeeping or for using to the interest of any of them."[203]

Previous laws had focused on the prohibition and prevention of money laundering.[204]

Jordan put forward article 3 of the Terrorism Prevention Law no. (46) of 2007 as criminalising the financing of terrorism. This, however, did not meet the requirements of an autonomous offence which is required by the convention.[205] The law was subsequently amended by provisional Law No. (8) for 2010, and provisional Law No. (31) for 2010 which created an independent offence of financing terrorism. It also defined the notion of funds, and criminalised the collecting, providing or facilitating the access to funds for a terrorist individual or terrorist organization.[206]

Before Lebanon had acceded to the convention, the state had criminalised terrorist financing pursuant to Law No. 553/2003. Article 316 (bis) was added to the Lebanese Penal Code. This was amended by Law No 44 of November 24 2015 entitled Fighting Money Laundering and Terrorist Financing,[207] which was found to be compliant with the relevant international standards.

Oman initially issued by Royal Decree No. 8/2007 dated 22 January 2007 the Terrorism Combating Law, which operated alongside the Penal Code. This was amended by Royal Decree 30/2016 promulgating the Law on Combating Money Laundering and Terrorism Financing.[208]

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[203] Decree Law no (36) / 2017 Amending article (3) of Decree Law No. (4) of 2001
With Respect to the Prevention and Prohibition of Money Laundering and Terrorist Financing We decreed by Law the following:
Article (1) The text of paragraph (1-3) of Article (3) of Decree Law (4) of 2001 on the prohibition and suppression of money laundering and terrorist financing, shall be replaced with the following text:
Article (3) paragraph (1-3) …. http://www.cbb.gov.bh/assets/AML%20CFT/Decree%20Law%20no%2036-2017-amending%20article%203%20of%20decree%20law%20no%204%20of%202001-money%20laundering.pdf accessed on 30 April 2018

[204] Decree Law No. 4 of 2001 with Respect to the Prevention and Prohibition of the Laundering of Money; Decree Law No. 54 of 2006 with Respect to Amending Certain Provisions of Legislative Decree No. 4 of 2001 with Respect to the Prevention and Prohibition of the Laundering of Money and Decree Law no 25 of 2013 amending certain provisions of legislative decree law no 4 of 2001 with Respect to the Prevention and Prohibition of the Laundering of Money http://www.cbb.gov.bh/page-p-aml_cft.htm accessed on 30 April 2018

[205] MENA FATF Mutual Evaluation Report Jordan (May 2009) 40
http://www.menafatf.org/sites/default/files/MER_Hashemite_Kingdom_of_Jordan.pdf accessed 2 July 2018

[206]MENA FATF Third Follow Up Report Jordan (April 2013) http://www.menafatf.org/sites/default/files/JordanFUR3_E.pdf accessed on 2 July 2018

[207] Fighting Money Laundering and Terrorist Financing Law No 44 (24 November 2015)
http://www.bdl.gov.lb/files/laws/Law44_en[3].pdf accessed on 2 July 2018

[208] Royal Decree No. 30/2016 Promulgating the Law on Combating Money Laundering and Terrorism Financing
http://www.fiu.gov.om/files/English/Anti-money%20Laundering%20&%20Terrorism%20Financing/Oman%20AMLCFT%20law%20final-ENG%20revised%20on%208%209%2016.pdf accessed on 2 July 2018

In Qatar, Law Nos. 11 of 2004 on combating terrorism, criminalised the financing of terrorism. This did not meet the relevant international standard.[209] An amendment was made on 20 July 2017 by Decree No. 4 of 2017 which modified the definition of acts of terrorism, extending it to: Destroying a special message or cable addressed to another individual; Electronically eavesdropping on a phone call or, wiretapping; Recording or transferring conversations held in a private place, by means of a device of any kind; and
Capturing or transferring pictures or videos of an individual or individuals in a private place, by means of a device of any kind.[210]

Saudi Arabia initially criminalised terrorist financing under *Shari'ah*[211] where the financing of terrorism did not make a legal or conceptual distinction between the terrorist and his financier. In 2013, the Law of Terrorism Crimes and Terrorism Financing was issued which included criminalising the collection and submission of funds to terrorist acts, terrorist organisations and individual terrorists, by any means, whether funds from licit or illicit sources and imposing sanctions related thereto, extending the criminal liability to natural and legal persons. It defined funds as required by the convention. This was updated in 2015.[212]

Yemen did not criminalise the financing of terrorism until 2010, when it adopted Law No (1) of 2010. This was subsequently amended by Law No. (17) of 2013, which criminalised the:

> "collecting, providing, securing access to, or transferring funds with the intention of using it or with the knowledge that they will be used by a terrorist or terrorist organisation or to commit a terrorist act".[213]

This was found to be consistent with the requirements of the convention.

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[209] MENA FATF Mutual Evaluation Report Qatar (April 2008) p.42 http://www.menafatf.org/sites/default/files/QatarMER1.pdf accessed on 2 July 2018
[210] Global Legal Monitor Qatar (August 2017) http://www.loc.gov/law/foreign-news/article/qatar-anti-terror-legislation-amended/ accessed on 18 July 2018
[211] *Qur'an*: "The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land"
[212] Saudi Arabia and Counter-terrorism report April 2017 https://saudiembassyuk.co.uk/wp-content/uploads/2017/09/Counterterrorism-White-Paper-Final_UK_Single.pdf accessed on 22 July 2018
[213] MEN FATF Seventh Follow-Up Report Yemen (June 2014) http://www.menafatf.org/sites/default/files/Yemen_Exit_FUR_EN.pdf accessed on 2 July 2018

East Asia: *(China, Democratic People's Republic of Korea, Japan, Mongolia, Republic of Korea)*

East Asia consists of five states, four of which have criminalised the offence, but all five have acceded to the convention.[214] It has not been possible to identify the relevant laws for the Democratic People's Republic of Korea.

The Republic of Korea enacted the Prohibition of Financing for Offences of Public Intimidation Act (PFOPIA) on 21 December 2007 and came into force 22 December 2008.[215] Prior to 22 December 2008, there was no offence of financing terrorism. In May 2014 it enacted the Act on Prohibition Against the Financing of Terrorism. [216]

China created the financing of terrorism offence in Article 120bis of its Penal Code, which was introduced on 29 December 2001. This was criticised for not defining all of the terrorist activities set down in the UN counter-terrorism conventions,[217] but it had declared it was not party to three of them. [218] In October 2011, China enacted the Decision of the Standing Committee of the National People's Congress on Strengthening Counter-Terrorism Work (the Decision), which enhanced the definition of terrorist activities for this purpose.[219]

Japan adopted the Act on the Punishment of Financing of Offences of Public Intimidation (Act No. 67 of 2002)[220]. It was amended in 2014 to ensure compliance with the international standard which had previously had not criminalised the collection of funds and other assets by non-terrorists for terrorist organizations or individual terrorists.[221]

Mongolia adopted the Law of Mongolia On Combating Money Laundering and Terrorist Financing 2006, inserting the offence into the Criminal Code of Mongolia 2002. This was

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[214] UN Treaty Collection, The Convention for the Suppression of the Financing of Terrorism, status as of 21 July 2018 https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en accessed on 22 July 2018

[215] FATF Mutual Evaluation Report Eighth Follow-Up Report (June 2014) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR-Korea-2014.pdf accessed on 28 July 2019

[216] Ibid at 7 http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR-Korea-2014.pdf accessed on 28 July 2019

[217] FATF-GAFI Mutual Evaluation Report China (June 2007) http://www.fatf-gafi.org/countries/a-c/china/documents/mutualevaluationofchina.html accessed on 18 July 2018

[218] International Convention for the Suppression of the Financing of Terrorism (n1) China https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en accessed on 22 July 2018

[219] FATF Mutual Evaluation Report Eighth Follow-Up report China (February 2012) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/Follow%20Up%20MER%20China.pdf accessed on 18 July 2018

[220] FATF GAFI Third Mutual Evaluation Report Japan (17 October 2008) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Japan%20full.pdf accessed on 28 July 2019

[221]Outcomes of the Plenary meeting of the FATF, Paris, 22-24 October 2014 http://www.fatf-gafi.org/countries/a-c/australia/documents/plenary-outcomes-october-2014.html accessed on 28 July 2019

amended in 2013 to meet the requirement of the convention, [222] by covering all elements of terrorist financing, the offences applied regardless of geographical location,[223] and the offence did not require the funds to be actually used to carry out a terrorist act or linked to a specific terrorist act.[224]

Latin America

Central America: *(Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama)*

All these states have acceded to the convention.[225] Six states amended their initial laws to comply with the requirements of the Convention for the Suppression of Terrorist Financing.

Belize criminalised terrorist financing through s.68 (1) of the Money Laundering and Terrorist Prevention Act 2004. The state then adopted Act 4 of 2013, the Money Laundering and Terrorist (Prevention) (Amendment) Act in order to ensure the relevant international requirements were satisfied. These included the term funds being extended to the scope of any form and enabling the prosecution of an individual who commits ancillary offences in another jurisdiction. [226]

Costa Rica criminalised the offence in Art. 69 bis of Law 8204 but this did not include the financing of an individual terrorist, nor did it criminalise conduct by any means, or the direct or indirect provision or collection of funds.[227] Subsequently, Law no. 9387 was passed in 2016, which amended s. 69 bis of Law no. 8204, to ensure compliance with these requirements.[228] El Salvador enacted the Special Law Against Terrorism Acts approved in legislative Decree No 108 dated 21/9/06.[229] It amended this in Decree 342 of the Legislative

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[222] APG Mutual Evaluation Report Mongolia (July 2007) http://www.apgml.org/documents/default.aspx?s=date&c=7&pcPage=7 accessed on 18 July 2018

[223] Articles 13 and 14 CCM

[224] APG Mutual Evaluation Report Mongolia (September 2017) http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Mongolia%20MER%202017%20-%20published%20version.pdf accessed on 18 July 2018

[225] International Convention for the Suppression of the Financing of Terrorism (n1)

[226] CFATC Sixth Follow-Up Report Belize (May 2014) https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/belize-1 accessed on 19 July 2018

[227] GAFILAT Mutual Evaluation Report Costa Rica (2015) http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Mutual%20Evaluation%20Report%20Costa%20Rica%202015.pdf accessed on 3 July 2018

[228] GAFILAT Technical Analysis of FATF Recommendations Rerating Costa Rica (October 2016) http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/1stFollowUp-CostaRica.pdf accessed on 3 July 2018

[229] CFATF Mutual Evaluation Report (6 September 2010) at 2.2 http://www.fatf-gafi.org/countries/d-i/elsalvador/documents/mutualevaluationofelsalvador.html accessed on 28 July 2019

Assembly, June 7, 2010 indicating deficiencies had been identified.[230] Mexico criminalised the financing of terrorism in Article 148 *bis* of the Código Penal Federal in 2008, but was found to not to be fully consistent with Article 2 of the Convention in that it focused on what was used to carry out the act and not the intention to cause death or serious bodily injuries.[231] The definition also failed to extend the financing conduct to all the acts of terrorism listed in the pre-existing UN counter-terrorism conventions.[232] In 2014 this was addressed by a bill of decree which made changes to the criminalisation of terrorism and the financing of terrorism.[233] Terrorist financing was made a criminal offence in Nicaragua in 2017, but GAFILAT recommended development in order for it to be compliant with the requirements of the resolution.[234] The suggestions included, criminalising all the acts listed in the pre-existing UN counter-terrorism conventions, extending the scope of the offence to cover the funding of an individual terrorist, and also extending the scope of the offence to cover ancilliary offences such as travelling to another stated for planning preparing or participating in a terrorist act.[235]

In 2015, Panama amended its criminal code, and passed a new Anti-money Laundering and Counter Financing of Terrorism law to enhance the framework for international cooperation and criminalise the financing of terrorism.[236] It was found to be broadly compliant with the international requirements and incorporated the Convention for the Suppression of Terrorist Financing into Panamanian law.

Two states met the requirements of the convention for the laws they adopted. Guatemala criminalised the offence in Article 2 (1, 2, 3,4 and 5) of the International Convention for the Repression of the Financing of Terrorism. It was recommended that the terrorist financing

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[230] CFATF Second Follow-Up Report El-Salvador (June 2012) https://www.cfatf-gafic.org/member-countries/el-salvador accessed on 28 July 2019

[231] FATF-GAFI Mutual Evaluation Report Mexico (October 2008) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Mexico%20ful.pdf accessed on 19 July 2018

[232] Ibid

[233] IMF Country Report Mexico, Detailed Assessment Report- Anti-Money Laundering and Combating the Financing of Terrorism, December 2017 https://www.imf.org/en/Publications/CR/Issues/2018/01/03/Mexico-Detailed-Assessment-Report-Anti-Money-Laundering-and-Combating-the-Financing-of-45525 accessed on 28 July 2019

[234] GAFILAT Mutual Evaluation Report Nicaragua (October 2017) http://www.fatf-gafi.org/media/fatf/content/images/GAFILAT-MER-Nicaragua-2017.pdf accessed 3 July 2018

[235] Ibid

[236] Bureau of International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report (2016) https://www.state.gov/j/inl/rls/nrcrpt/2016/vol2/253424.htm accessed 3 July 2018

offence be incorporated into the state criminal code.[237] Honduras issued Decree no. 241-2010 in December 2010, which criminalised the Financing of Terrorism. This was understood to be complaint with the international recommendations.[238]

Caribbean: *(Antigua and Barbuda, Bahamas, Barbados, Cuba, Dominica, Dominican Republic, Grenada, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago)*

All of the states in the Caribbean have acceded to the Convention for the Suppression of Terrorist Financing and criminalised the financing of terrorism following the adoption of Resolution 1373.[239] Only two states were found to be compliant following the original laws they had adopted. Barbados, which adopted the Anti-Terrorism Act, Cap. 158, 2002-6,[240] and Jamaica which enacted the Terrorism Prevention Act 2005 that in addition to criminalising terrorist financing, substantially implemented Resolution 1373.[241]

The remaining states developed their laws to the standard required. For example, Antigua and Barbuda adopted the Prevention of Terrorism Act 2005 to address the provision or collection of funds to commit terrorist acts.[242] It was amended in 2017 and s.6 of the original act was repealed and replaced with the offence as it appeared in the UN convention.[243] The previous terminology had separated the offences into "provision or collection of funds to commit terrorist acts, [244] collection of property and services for commission of terrorist acts[245] and use of property for commission of terrorist acts."[246]

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[237] CFATF Mutual Evaluation Report Guatemala (November 2010) https://www.cfatf-gafic.org/index.php/documents/cfatf-mutual-evaluation-reports/guatemala-1 accessed 3 July 2018

[238] GAFILAT Mutual Evaluation Report Honduras (October 2016) http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GAFILAT-MER-Honduras-2016-English.pdf accessed 3 July 2018

[239] International Convention for the Suppression of the Financing of Terrorism (n1)

[240] CFATF Mutual Evaluation Report Barbados (June 2008) page 32

[241] FATF-GAFI Mutual Evaluation Report Jamaica (October 2005) http://www.fatf-gafi.org/countries/j-m/jamaica/documents/mutualevaluationofjamaica.html accessed on 4 July 2018

[242]Prevention of Terrorism Act 2005 (No. 12 of 2005) http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84847&p_country=ATG&p_count=215

[243] Prevention of Terrorism Act 2005 http://laws.gov.ag/acts/2005/a2005-12.pdf accessed on 2 November 2018

[244] Part III Offences section 6: Every person who — (a) provides; or (b) collects,
by any means, directly or indirectly, any funds, intending, knowing or having reasonable grounds to believe that the funds will be used in full or in part to carry out a terrorist act commits an offence and shall on conviction on indictment be liable to a term of imprisonment not exceeding twenty-five years.

[245] Part III Offences section 7. Every person who, directly of indirectly, provides or makes available, financial or other related services —
(a) intending that they be used, in whole or in part, for the purpose of committing or facilitating the commission of, a terrorist act or for the purpose of benefiting any person who is committing or facilitating the commission of, a terrorist act; or
(b) knowing that in whole or in part, they will be used by, or will benefit, a terrorist group, commits an offence and on conviction on indictment, is liable to imprisonment for a term not exceeding twenty-five years.

[246] Part III Offences section 8. Every person who —

The Bahamas adopted the Anti-Terrorism Act 2004 but the offence under s.5(1) did not extend to all of those listed in the annex to the Convention for the Suppression of Terrorist Financing. The Anti-Terrorism (Amendment) Act 2008 (Statutory Instrument No. 52 of 2008) amended the 2004 Act to incorporate all of the conventions and protocols referred to in the annex.[247] Cuba criminalised the financing of terrorism under ss. 25 and 26 of Law 93/2001, and on 7 December 2013 under Decree Law 316/2013 the offence was amended to comply with the requirement in the convention which included extending the scope of the offence to cover all the conduct in the pre-existing UN counter-terrorism conventions annexed to the Convention for the Suppression of Terrorist Financing.[248] The Dominican Republic initially adopted the Anti-Money Laundering Act 72-02 in June 2002, and in 2017 enacted the Anti-money Laundering and Terrorist Financing Act 155-17 ("New Law") to "bring the legal framework up to date," although no further information is available about what needed to be changed. [249]

Grenada initially criminalised terrorist financing through the Terrorism Act 2003, but this did not define funds in accordance with the convention, and also the terrorist financing offence of fund-raising was not subject to any sanctions.[250] It subsequently adopted amendments to the Act in 2013251 along with additional legislation to ensure compliance.[252] In 2008 Haiti had no legislation that defined or criminalised terrorist financing. [253] In 2013 it adopted the Law Sanctioning Money Laundering and Terrorist Financing.[254] This was subsequently amended in 2016 to provide full compliance with the

(a) uses property, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act; or
(b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act,
commits an offence and on conviction on indictment, is liable to imprisonment for a term not exceeding twenty-five years.

[247] CFATF Eighth follow-up report Bahamas (November 2015) at 12 https://cfatf-gafic.org/index.php/documents/follow-up-reports-2/the-bahamas/6267-the-bahamas-8th-follow-up-report-1 accessed on 4 July 2018

[248] GAFILAT Mutual Evaluation Report Cuba (2015) http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MER-CUBA-2015-Eng.pdf accessed on 4 July 2018

[249] 'The Dominican Republic's New Anti-Money Laundering and Terrorist Financing Act' (23 June 2017) https://www.latlegal.com/2017/06/the-dominican-republics-new-anti-money-laundering-and-terrorist-financing-act/

[250] FATF-GAFI Mutual Evaluation Report Granada (June 2009) http://www.fatf-gafi.org/countries/d-i/grenada/documents/mutualevaluationofgrenada.html accessed on 19 July 2018

[251] Terrorism (Amendment) (No 2) Act, 2013 (TAA No 2, 2013)

[252] The Proceeds of Crime Anti-Money Laundering and Terrorist Financing (Amendment) Guidelines, 2013 (POCAMLTFA Guidelines 2013) Proceeds of Crime (Anti-Money Laundering and Terrorist Financing) (Amendment) Regulations

[253] FATF-GAFI Mutual Evaluation Report Haiti (June 2008) http://www.fatf-gafi.org/countries/d-i/haiti/documents/mutualevaluationofhaiti.html accessed on 4 July 2018

[254] CFATF Tenth Follow-Up Report Haiti (June 2016) https://www.cfatf-gafic.org/cfatf-documents/follow-up-reports-2/haiti-1 accessed on 28 July 2019

international norms, which included the required definition of the term funds. [255] Dominica criminalised the financing of terrorism by way of s.4 of the Suppression of the Financing of Terrorism Act, 31 of 2003, which has been identified as consistent with the requirements of the convention.[256]

Saint Kitts and Nevis implemented s.12 of the Anti-Terrorism Act No. 21 of 2002 (ATA) which created the offence of financing of terrorism. Whilst this was broadly compliant with the international standards, it was amended in 2009[257] to ensure the maximum penalties for perpetrators was in line with the international requirement.[258] Saint Lucia included offences of terrorism and financing of terrorism in the list of "prescribed offences" in the First Schedule of the Money Laundering Prevention Act (Amendment 2004). However, there was no independent offence of financing of terrorism. [259] On the 26th May 2010, the Anti-Terrorism (Guidance Notes) Regulations was published by virtue of SI 56 of 2010. These reflected international good practice and was aimed at financial institutions.[260] In 2014 Saint Vincent and the Grenadines did not have any legislation which criminalised the financing of terrorism. The Anti-Terrorist Financing and Proliferation Act No. 14 of 2015 created the autonomous offence of financing of terrorism.[261]

Trinidad and Tobago criminalised the financing of terrorism in 2010 when the state adopted s.22 (1-4) of the Anti-Terrorism (Amendment) Act 2010 which made the financing of terrorism an offence.[262]

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[255]CFATF Public Statement on Haiti, Suriname and Guyana http://www.fatf-gafi.org/countries/d-i/guyana/documents/cfatf-public-statement-haiti-suriname-guyana-nov2016.html accessed 4 July 2018

[256] CFATF Mutual Evaluation Report Dominica (July 2009) p.38 http://www.fatf-gafi.org/countries/d-i/dominica/documents/mutualevaluationofdominica.html accessed on 4 July 2018

[257] Anti-Terrorism (Amendment) Act, 2009 (No 13 of 2009)

[258] CFATF First Follow Up St. Kitts and Nevis (April 2010) https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/saint-kitts-and-nevis accessed 4 July 2018

[259] FATF-GAFI Mutual Evaluation Report St Lucia (November 2008) http://www.fatf-gafi.org/countries/s-t/saintlucia/documents/mutualevaluationofsaintlucia.html accessed on 4 July 2018

[260] CFATF Fourth Follow Up St Lucia (November 2011) https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/saint-lucia accessed on 4 July 2018

[261]Anti-Terrorist Financing and Proliferation Act No. 14 of 2015 http://svgfiu.com/images/pdf/legislation/Anti-Terrorist_Financing_and_Proliferation_Act_2015.pdf accessed on 1 September 2019

[262]Anti-Terrorism (Amendment) Act 2010 http://www.ttparliament.org/legislations/a2010-02.pdf accessed on 1 September 2019

South America: *(Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay, Venezuela (Bolivarian Republic of)*

All of these states have acceded to the Convention for the Suppression of Terrorist Financing. It has been possible to identify six states in South America which have criminalised the financing of terrorism, but it has not been possible to determine the implementing legislation for Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay. All of these states were members of GAFILAT the Financial Action Task Force on Money Laundering in South America, which carried out mutual evaluation reports on each of them but only published them in Spanish. There have not been any unofficial translations of the laws relating to terrorist financing for these states.

The states where it has been possible to identify laws include Argentina, which amended its Criminal Code by way of Law 26 268 of July 2007 which added Chapter VI to the Title VIII of Book 2 of the code called Terrorist Criminal Association and Financing of Terrorism. The latter was limited because it did not cover all the acts listed in the UN counter-terrorism conventions, and it did not specifically criminalise the collection or provisions of funds for an individual or terrorist organisation.[263] Law 26 734 of December 2011 was subsequently adopted to remedy the deficiencies.[264]

Bolivia (Plurinational State of) had not criminalised the financing of terrorism by 2010.[265] In September 2011 Bolivia enacted Law 170 that added to the Penal Code criminal sanctions for terrorism financing.[266] Brazil initially relied on Law7170/1983 which defined crimes against national security, political and social order, and a range of terrorism offences.[267]

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[263] FATF-GAFI Mutual Evaluation Report Argentina (October 2010) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Argentina.pdf accessed on 6 July 2018

[264] FATF-GAFI Eleventh Follow-Up Report Argentina (June 2014) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR%20Argentina_reduced.pdf accessed on 6 July 2018

[265] United States Department of State, *Country Reports on Terrorism 2015 – Bolivia,* 18 August 2011 http://www.refworld.org/docid/4e5248352d.html accessed on 28 July 2019

[266] Estado Plurinacional de Bolivia http://www.economiayfinanzas.gob.bo/index.php?id_idioma=2&opcion=com_prensa&ver=prensa&id=2284&seccion=308&categoria=6 accessed on 19 July 2018

[267] FATF-GAFI Mutual Evaluation Report Brazil (June 2010) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Brazil%20full.pdf accessed on 19 July 2018

Law No. 13,260 was adopted by Brazil on March 2016, which created an offence of terrorist financing, but required some alteration to reach the necessary international standards.[268]

In Guyana the financing of terrorism was criminalised in s.68 of the Anti-Money Laundering and Countering the Financing of Terrorism Act 2010. This needed some amendments to be fully compliant with the international requirements.[269] In 2015, it adopted the Anti-Terrorism and Terrorist Related Activities Act which expanded the scope of the definition of financing terrorism and improved on the previous laws.[270] These were still in the process of being worked on at the time of the Second Follow-Up report in 2012 by the CFATF.[271]

Suriname drafted legislation to criminalise terrorist financing in November of 2008 which was sent to the National Assembly (parliament) of Suriname for discussion and adoption. In 2011 the Counter Financing of Terrorism legislation (O.G. 2011 no. 96) was adopted. By 2017, this legislation was implemented to the required international standard.[272] Venezuela (Bolivarian Republic of)) criminalised the financing of terrorism in Article 7 of the Organic Law against Organised Crime 2005. It adopted the Organic Law Against Organised Crime and Terrorist Financing published on April 30, 2012, which provided a better definition of the offence. [273]

Europe and North America

Eastern Europe: *(Belarus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Republic of Moldova, Russian Federation, Slovakia, Ukraine)*

All the states in Eastern Europe have acceded to the convention following the adoption of Resolution 1373. Each state has criminalised the financing of terrorism. Belarus criminalised the financing of terrorism under Article 290-1 of the Criminal Code, which

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[268]Global Legal Monitor Brazil https://www.loc.gov/law/foreign-news/article/brazil-new-anti-terrorism-law-enacted/ accessed on 28 July 2019

[269] FATF-GAFI Mutual Evaluation Report Guyana (July 2011) http://www.fatf-gafi.org/countries/d-i/guyana/documents/mutualevaluationofguyana.html accessed on 8 July 2018.

[270]Anti-Terrorism and Terrorist related Activities Act 2015 Act No. 15 of 2015 s.4-8 https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/102173/123438/F1133388324/GUY102173.pdf accessed on 11 August 2018

[271] FATF-GAFI Second Follow-Up Report Guyana (May 2012) http://www.fatf-gafi.org/countries/d-i/guyana/documents/mutualevaluationofguyana.html accessed on 7 July 2018

[272] CFTAF Eleventh Follow-Up report Suriname (May 2017) https://www.cfatf-gafic.org/index.php/cfatf-documents/cfatf-follow-up-reports/suriname accessed on 7 July 2018

[273] FATF-GAFI Eighth Follow Up Report Venezuela (June 2014) http://www.fatf-gafi.org/countries/u-z/venezuela/documents/follow-upreportstothemutualevaluationofvenezuela.html accessed 7 July 2018

broadly complied with the requirement in article 2 of the UN Convention.[274] The Czech Republic amended its Criminal Code in 2010 to give effect to the convention.[275] Estonia ratified the convention in June 2002 and the Penal Code was amended in 2007 which introduced the financing of terrorism as a distinct offence.[276] Whilst this was broadly compliant it did not criminalise acts of terrorism which constituted an offence under the pre-existing UN counter-terrorism conventions.[277] Hungary criminalised the offence in its Criminal Code by way of Act CXXXVI 2007 on the Prevention and Combating Money Laundering and Terrorist Financing. This implemented the third European Union AML/CFT Directive, which subsequently implemented the international standards.[278] Latvia criminalised the offence in s.88 of the Latvian Criminal Law, which entered into force on the 1st June 2005. Shortly after acceding to the Convention for the Suppression of Terrorist Financing it acceded to five of the 12 pre-existing UN counter-terrorism conventions.[279] There were some elements that were not included in this law such as the concept of "wilful collection or provision of funds". In addition, the offence does not extend to any funds whether from legitimate or illegitimate sources. [280] To help rectify these issues, the Law on the Prevention of Money Laundering and Terrorism Financing was adopted in 2008.[281] Lithuania amended the 2007 Law on the Prevention of Money Laundering and Terrorist Financing in November 2013. [282] Poland adopted the Act on the Prevention of Money Laundering Practices and Financing of Terrorism in 2009, but the offence did not criminalise the finding of individual terrorists.[283] There is no further information which

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[274] EAG Mutual Evaluation Report Belarus (December 2008) https://eurasiangroup.org/en/mutual-evaluation-reports accessed on 7 July 2018

[275] Criminal Procedure Code (Act No. 141/1961 Coll., as amended). On the 1st January 2010, the act No. 40/2009 Coll., the Criminal Code, came into effect .

[276] Council of Europe Mutual Evaluation Report Estonia (December 2008) [193-914] https://rm.coe.int/european-committee-on-crime-problems-cdpc-comitee-of-experts-on-the-ev/1680716032 accessed on 7 July 2018

[277] Council of Europe Fourth Round Follow-Up Report Estonia (September 2014) https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/168071601f accessed on 7 July 2018

[278] Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing http://alk.mnb.hu/data/cms2408286/Act_CXXXVI_2007_AML.pdf accessed on 7 July 2018

[279] International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 19 status as of 21 July 2018 https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en accessed on 22 July 2018

[280] Council of Europe Report on Fourth Assessment Latvia (July 2012). Such as the wilful provision or collection of funds with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out a terrorist act(s); by a terrorist organisation or by an individual terrorist should be clearly mentioned as required by Essential Criterion II.1 and Article 2 (1) of the TF Convention https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/1680716b9f accessed on 7 July 2018

[281] http://www.fktk.lv/en/law/general/laws/4260-2010-04-01-law-on-the-prevention-of.html accessed on 7 July 2018

[282] Money laundering and terrorist financing prevention activities of the financial crime investigation service in 2014 https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=89x1tiz6w&documentId=14c7101020e111e79f4996496b137f39&category=TAD accessed on 7 July 2018

[283] Ministry of Foreign Affairs Republic of Poland "Combating terrorism financing" https://www.msz.gov.pl/en/foreign_policy/security_policy/international_terrorism/combating_terrorist_financing/?channel=www accessed on 7 July 2018

provides an update as to whether the law was amended. The Republic of Moldova criminalised terrorist financing in Art 279 of the Criminal Code, which was substantially amended to ensure compliance with the international requirements by Law NO. 136-XVI of 19 June 2008.[284] The language of the offence now followed the requirement set by the Convention for the Suppression of Terrorist Financing , in addition to extending the offence to criminalise the funding of all the terrorist acts listed in the pre-existing UN counter-terrorism conventions.[285]

Russia criminalised the offence in Article 205.1 of its Law Contributing to Terrorist Activity as part of the ratification of the convention in November 2002.[286] Although this was found to be broadly compliant, Russia continued to update its legal framework.[287] Slovakia created an offence of financing terrorism in 2011 by way of s.419 of the Criminal Code. Act No. 576/2009 Coll. This amended the Criminal Code and entered into force on 1 January 2010, changing the wording of s. 419 to make it compliant with the convention.[288] In 2009 Ukraine was required to criminalise the financing of terrorism as a stand-alone offence. The Criminal Code was amended in 2010 to achieve this under Art 258. [289] In 2014 it adopted the Law of Ukraine on preventing and counteracting to legalisation (laundering) of the proceeds of crime, terrorist financing, and financing proliferation of weapons of mass destruction.[290] This law criminalised the financing of terrorism as an autonomous offence and extended the scope to material support to a terrorist or terrorist group.[291]

Western European, North American and other States: *(Andorra, Australia, Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand,*

[284] Council of Europe Report on Fourth Assessment Visit Republic of Moldova (December 2012) https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/1680716bd1 accessed on 7 July 2018
[285] Council of Europe Report on Fourth Assessment Poland (April 2013) https://rm.coe.int/report-on-fourth-assessment-visit-executive-summary-anti-money-launder/1680716517 accessed on 19 July 2018
[286] EAG Mutual Evaluation Report Russian Federation (June 2008), https://eurasiangroup.org/en/mutual-evaluation-reports accessed 7 July 2018
[287] EAG Sixth Follow-Up Report Russian Federation (October 2013) https://eurasiangroup.org/files/documents/Otchet_Rossiya.pdf accessed on 7 July 2018
[288] Council of Europe Report on the Fourth Assessment Visit Slovak Republic (September 2011) https://rm.coe.int/report-on-fourth-assessment-visit-executive-summary-anti-money-launder/1680715cbf accessed on 7 July 2018
[289] Council of Europe Fifth Round Mutual Evaluation Report Ukraine (December 2017) https://rm.coe.int/fifth-round-mutual-evaluation-report-on-ukraine/1680782396 accessed 7 July 2018
[290] http://www.sdfm.gov.ua/content/file/Site_docs/2017/20170203/LAW%20OF%20UKRAINE.pdf accessed on 7 July 2018
[291] Council of Europe Fifth Round Mutual Evaluation Report Ukraine (December 2017) http://www.fatf-gafi.org/media/fatf/content/images/MER-MONEYVAL-Ukraine-Dec-2017.pdf accessed on 19 July 2018

Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America)
The United Kingdom of Great Britain and Northern Ireland acceded to the convention in March 2001[292] and criminalised the offence through Part III of the Terrorism Act 2000 which was compliant with the convention.[293] The majority of states in this region criminalised the financing of terrorism soon after ratifying the Convention for the Suppression of Terrorist Financing. For example, Australia acceded to the convention in 2002, and incorporated the offence into its Criminal Code shortly afterwards.[294] The offence did not provide for the collection of funds for a terrorist organisation and the collection or provision of funds for an individual terrorist.[295] In a subsequent follow-up report by the APG, this situation was said to have been corrected and changes in the law had now met the requirements of the convention.[296]

Monaco acceded to the convention in November 2001. It adopted the Sovereign Ordinance No. 15.655 of 7 February 2003 which concerned the implementation of various international treaties on counter terrorism; [297] paragraph 8 dealt with the offences found in the Convention for the Suppression of Terrorist Financing. The mutual evaluation reports have only been made available in French, so it has not been possible to identify the issues with this law.[298] In July 2018, however, it adopted Law No.1,462 on the fight against money laundering, terrorist financing and corruption,[299] which implied it was required to improve its implementation of the offence.

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[292] International Convention for the Suppression of the Financing of Terrorism (n1)
[293] FATF-GAFI Mutual Evaluation Report United Kingdom and Northern Ireland (June 2007) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20UK%20FULL.pdf accessed on 15 July 2018
[294] Australia Division 103 of the *Criminal Code* contains two financing of terrorism offences. It is an offence to intentionally provide or collect funds where the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act;intentionally makes funds available to another person (whether directly or indirectly); or collect funds for or on behalf of another person (directly or indirectly) where the person is reckless as to whether the other person will use the funds to facilitate or engage in a terrorist act
[295] APG Mutual Evaluation Report Australia (April 2015) at 141 http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Australia-2015.pdf accessed August 2018
[296] FATF Third Enhanced Follow-Up Report and Technical Compliance Report Australia November 2018) 4 http://www.fatf-gafi.org/media/fatf/documents/reports/fur/FUR-Australia-2018.pdf accessed September 2019
[297] Published in issue No. 7,586 of 14 February 2003 of the Journal de Monaco (the official journal). UNSC CTC Second supplementary report submitted by the Principality of Monaco to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (15 September 2003) UN Doc S/2003/984, [4] https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/521/64/PDF/N0352164.pdf?OpenElement accessed on 11 August 2018
[298] Council of Europe Mutual Evaluation Reports Monaco (October 2002 – November 2012) https://www.coe.int/en/web/moneyval/jurisdictions/monaco accessed on 11 August 2018
[299] Monaco: Law Strengthening the Mechanism for Combating Money Laundering and Terrorism Financing Comes into Force https://paymentscompliance.com/premium-content/research_report/monaco-law-strengthening-mechanism-combating-money-laundering-and accessed on 11 August 2018

Austria acceded to the convention in 2002, and in the same year criminalised the financing of terrorism by Article 278d of the Criminal Code, in order to meet the requirements of the convention. The Criminal Code was amended in 2013 to extend the criminalisation of the financing of terrorism to terrorist organisations and individual terrorists.[300] Belgium took a similar approach and after acceding to the convention in 2004, it incorporated the offence into the Penal Code in the same year. [301] At the time of its accession to the convention it declared it was not party to five of the pre-existing UN counter-terrorism conventions, but this did not stop the FATF deeming the state compliant with the relevant standard required to criminalise the financing of terrorism.[302]

Canada criminalised the financing of terrorism, and reflected the language used in the Convention for the Suppression of Terrorist Financing:

> "Everyone who, directly or indirectly, wilfully and without lawful justification or excuse, provides or collects property intending that it be used or knowing that it will be used, in whole or in part, in order to carry out
> a) an act or omission that constitutes an offence referred to in subparagraphs (a)(i) to (ix) of the definition of terrorist activity in subsection 83.01(1), or
> b) any other act or omission intended to cause death or serious bodily harm to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of that act or omission, by its nature or context, is to intimidate the public, or to compel a government or an international organization to do or refrain from doing any act…"

Terrorist activity was defined by way of the offences contained in the pre-existing UN counter-terrorism conventions.[303]

Cyprus, Finland and France all criminalised the offence through their Criminal or Penal Codes. France implemented the convention through the Ordonnance No. 2009-104 of 30

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[300] FATF-GAFI Third Follow-Up Report Austria (February 2014) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR%20Austria.pdf accessed 7 July 2018

[301] Art 140(1) of the Belgian Penal Code. FATF-GAFI Mutual Evaluation Report Fourth Round Belgium (April 2015) http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/4-Terrorist-Financing-and-financing-proliferation-Mutual-Evaluation-Belgium-2015.pdf accessed on 7 July 2018

[302] FATF-GAFI Mutual Evaluation Report Fourth Round Belgium (April 2015) http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Belgium-2015.pdf accessed on 22 July 2018

[303] 83.01 (1) The following definitions apply in this Part ... Terrorist activity means:
a) an act or omission that is committed in or outside Canada and that, if committed in Canada, is one of the following offences [lists the nine conventions and the Terrorist Financing convention]…

January 2009.[304] Finland used its Criminal Code to criminalise the financing of terrorism.[305] It developed its compliance with the convention through the adoption of Act on Preventing and Clearing Money Laundering and Terrorist Financing (503/2008) which came into force on 1 August 2008.[306] Whilst is was largely compliant, there were some shortcomings including the fact that the offence requires, in relation to an individual terrorist, for the funds to be used to finance a specific terrorist offence.[307] Cyprus defined the offence to the exclusion of offences committed by Cyprus citizens on Cyprus territory and the collection of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist.[308] Cyprus also enacted Law No. 18(III) 2005 which amended ss. 4 and 8 of the Law no. 29 (III) of 2001 concerning the financing of terrorism.[309]

Denmark initially criminalised terrorist financing through its Criminal Code,[310] but in 2006 it adopted the Act on Measures to Prevent Money Laundering and the Financing of Terrorism despite being identified fully compliant with the convention.[311]

Germany created the offence through the Criminal Code which was amended by the Act on the Prosecution of the Preparation of Serious Violent Acts Endangering the State 2009. There were some deficiencies in the law, which the state had rectified by the end of 2014. [312] Both Greece and Iceland also had to remedy some deficiencies in the laws they had initially adopted. In Greece, the scope of the offence inserted into the Penal Code by Article

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[304] FATF-GAFI Mutual Evaluation Report (25 February 2011) http://www.fatf-gafi.org/countries/#France accessed on 28 July 2019

[305] Chapter 34(a) s.5(1) which is consistent with Article 2 of the International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 19. FATF Mutual Evaluation Report Finland (April 2019) http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Finland-2019.pdf accessed on 28 July 2019

[306] FATF Mutual Evaluation Report Finland (April 2019) http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Finland-2019.pdf accessed on 28 July 2019

[307] FATF Mutual Evaluation Report Finland (April 2019) http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Finland-2019.pdf accessed on 28 July 2019

[308] Cyprus: Report on the Observance of Standards and Codes-FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism (February 2007)

[309] FATF Mutual Evaluation Report Cyprus (September 2011) http://www.law.gov.cy/law/mokas/mokas.nsf/99C7BBAB7610163EC2257B6E002AA836/$file/MONEYVAL(2011)%20-%20Fourth%20Round%20Evaluation.pdf accessed on 18 July 2018

[310] FATF-GAFI Third Mutual Evaluation Report Denmark (June 2006) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Denmark%20full.pdf accessed 7 July 2018

[311] FATF-GAFI Third Follow Up Report Denmark (October 2010) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FoR%20Denmark.pdf accessed on 7 July 2018

[312] The definition of serious violent act endangering the state is not fully consistent with the CFT Convention as it does not extend to all acts that constitute offenses within the scope of, and as defined in the treaties annexed to the CFT Convention and it does not cover serious bodily injuries.

The definition of the term funds in connection with the financing of a terrorist act or individual terrorist is not fully in line with the requirements of the CFT Convention, as it imposes a requirement for the funds to be of a certain minimum value (i.e., not merely insubstantial).

The financing to carry out a terrorist act and the financing of an individual terrorist are not fully consistent with the CFT Convention. FATF Third Follow-Up Report Germany (June 2014) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR-Germany-2014.pdf accessed on 8 July 2018

40 of Law 3251/2004 on “the European Warrant Arrest,”[313] was found to be too narrow [314] but this was rectified in 2011.[315] Iceland criminalised terrorist financing by way of s.100(b) and 100(c) respectively. These were introduced in the Penal Code, along with s.100(a), by Act 99/2002. This Act primarily aimed to implement Resolution 1373 and fulfil the obligations set out in the Terrorist Bombings Convention and the Convention for the Suppression of Terrorist Financing.[316] The offence was not, however, fully consistent with the international requirements. This was rectified in 2013 by enacting Law Nos 6415 on the Prevention of the Financing of Terrorism, which better defined acts of terrorism, and explicitly addressed the financing of a terrorist act.[317]

After Ireland’s initial attempt at criminalising terrorist financing through s.13 of the Criminal Justice (Terrorist Offences) Act (2005), it adopted the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 and the Criminal Justice Act 2013,[318] to extend coverage to the provision of funds to a single terrorist or to two terrorists acting in concert. [319]

Italy’s initial financing of terrorism offence was not compliant with the UN Convention because the offence did not extend to financing individual terrorists.[320] These deficiencies were addressed in Decree-Law n. 144 of July 27, 2005 converted into Law No. 144 31.7.2005 and via Legal Decree n.109/2007 of June 2007.[321] Liechtenstein adopted Law of 11 December 2008 on Professional Due Diligence for the Prevention of Money Laundering, Organised Crime and Financing of Terrorism (Due Diligence Act; SPG).[322] This was

[313] FATF-GAFI Mutual Evaluation Report Greece (June 2007) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Greece.pdf accessed on 8 July 2018
[314] FATF-GAFI Mutual Evaluation Report Greece (June 2007) para 2.2.2 http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Greece.pdf accessed on 8 July 2018
[315] FATF-GAFI Tenth Follow-Up report Greece (October 2011) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FoR%20Greece.pdf accessed on 8 July 2018
[316] FATF-GAFI Third Mutual Evaluation Report Iceland (October 2006) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Iceland%20full.pdf accessed on 8 July 2018
[317] FATF-GAFI Mutual Evaluation Report Iceland (April 2018) http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Iceland.pdf accessed on 8 July 2018
[318] FAFT-GAFI Eleventh Follow-Up Report Ireland (June 2013) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/Ireland-FUR-2013.pdf accessed on 8 July 2018
[319] FATF -GAFI Mutual Evaluation Report Ireland (February 2006) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Ireland%20full.pdf accessed on 8 July 2018
[320] FATF-GAFI Mutual Evaluation Report Italy (February 2016) at 131 http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pdf accessed on 11 July 2018
[321] Ibid
[322] Translation of Liechtenstein Law http://www.regierung.li/media/medienarchiv/952_1_01_06_2017_en.pdf?t=2 accessed on 11 July 2018, non- official translation

subsequently amended in 2012 to ensure better compliance with the international requirements.[323]

In Spain, the financing of terrorism was punished as an offence of belonging to a terrorist group in the Penal Code when it is a continuous activity,[324] and punished as collaboration when it is occasional.[325] Financing terrorism was listed as a collaborative act,[326] but this was amended in the Penal Code, enacted on 22 June 2010 through Organic Law 5/2010. The amended text explicitly criminalised the provision or collection of funds with the intention that they should be used or in the knowledge that they are to be used by a terrorist group or to commit a terrorist act.[327]

Sweden updated the offence for terrorist financing in 2002 because the previous law did not cover the collection or provision of funds in the knowledge that they could be used for any purpose, e.g. by a terrorist organisation or an individual terrorist. [328] Portugal was also required to update its terrorist financing offence found in Law 52/2003 because it did not extend to the provision or collection of funds for the benefit of an individual terrorist.[329] Turkey criminalised the financing of terrorism in Article 1 of the Anti-Terror Law, 3713 of 12 April 1991, which was amended in July 2006 to widen the scope of the offence and to create a separate offence of terrorist financing. [330] Turkey is a member of the OIC, and as such declared upon accession to the convention that "Paragraph 1(b) of Article (2) of the Convention does not necessarily indicate the existence of an armed conflict and the term "armed conflict", whether it is organised or not, describes a situation different from the commitment of acts that constitute the crime of terrorism within the scope of criminal

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[323] Counter-terrorism Liechtenstein http://www.legislationline.org/topics/country/18/topic/5 accessed on 11 July 2018
[324] Article 515.2
[325] Article 576
[326] Article 576
[327] FATF-GAFI Fourth Follow-Up Report Spain (October 2010) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FoR%20Spain.pdf accessed on 15 July 2018. See also Law 2/2005, 22 June, Amendment Of The Criminal Code https://www.global-regulation.com/translation/spain/1447355/law-2-2005%252c-22-june%252c-amendment-of-the-criminal-code.html accessed on 15 July 2018
[328] Section 3 of the Act on Criminal Responsibility for the Financing of Particularly Serious Crime in some cases (2002:444) FATF-GAFI Mutual Evaluation Report Sweden (February 2006) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Sweden%20full.pdf accessed on 15 July 2018
[329] FATF-GAFI Third Mutual Evaluation Report Portugal (October 2006) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Portugal%20full.pdf accessed on 12 July 2018
[330] FATF-GAFI Mutual Evaluation Report Turkey (February 2007) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Turkey%20full.pdf accessed on 15 July 2018

law".[331] This supported the OIC position that the definition of the offence on the convention did not permit acts of self-determination to be an exception.[332]

For three states, there was a gap between acceding to the Convention for the Suppression of Terrorist Financing and enacting the necessary laws. Andorra, despite acceding to the convention in 2008 amended its Criminal Code in 2015 to include the offence of terrorist financing.[333] San Marino fully criminalised the financing of terrorism in 2010. In 2008 it introduced Law no. 92/2008 which amended the Criminal Code, to incorporate Article 337ter on Financing of Terrorism. Law no. 6 of 21 January 2010 set out the measures and sanctions for the administrative liability of legal persons for offences under 337 ter of the Criminal Code.[334] The Netherlands took until September 2013 to amend its Penal Code to introduce an autonomous offence of financing acts of terrorism under Article 421(1).[335]

Seven states adopted laws which were deemed to be fully compliant with the requirements of the Convention for the Suppression of Terrorist Financing. These included Israel where s.4 of the Prevention of Terrorism Ordinance 1948 provided that a person who gives money or money's worth for the benefit of a terrorist organisation commits an offence. Section 148 of the Penal Law criminalised the payment of membership to an unlawful organisation, and the Prohibition of Terrorist Financing Law 2005 created the offence of terrorist financing, all of which were found to be compliant;[336] Luxembourg's law is in direct accordance with Article 2(1)(a) of the UN convention. [337] In Malta, the Maltese authorities adopted Act VI of 2005 which introduced a new sub-title in the Criminal Code that dealt with "Acts of Terrorism, Funding of Terrorism and Ancillary Offences".[338] This was broadly compliant with the international requirement. New Zealand adopted the Terrorism Suppression Act

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[331] UN Treaty Collection, The Convention for the Suppression of the Financing of Terrorism, status as of 21 July 2018 https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en accessed on 22 July 2018

[332] Report of the AD-Hoc Committee on the draft of an International Convention Against the Taking of Hostages, General Assembly 32nd session New York 1977, A/32/39 accessed on 20 January 2017 p.27 per Jordan, and p. 38 per Egypt see also A/AC.188/L.9 working paper submitted by Syria A/AX.188/L10 and L11. See also Chapter 4 p.13

[333] Criminal Code per Article 366 bis Terrorist financing. Note Verbale, Andorra's Response to the Questionnaire on the Code of Conduct on Politico-Military Aspects of Security 23 April 2014 https://www.osce.org/fsc/119839?download=true accessed on 11 August 2018

[334] Council of Europe Report on Fourth Assessment Visit San Marino (September 2011) https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/168071604a accessed on 12 July 2018

[335] FATF-GAFI Second Follow-Up Report The Netherlands (February 2014) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR-Netherlands-2014.pdf accessed on 12 July 2018

[336] Council of Europe Mutual Evaluation Report Israel (August 2008) https://rm.coe.int/european-comittee-on-crime-problems-cdpc-comittee-of-experts-on-the-ev/168071644f accessed on 8 July 2018

[337] FATF Guidance on Criminalising Terrorist Financing (Recommendation 5) (October 2016) at 6 http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-Criminalising-Terrorist-Financing.pdf p

[338] Council of Europe Third round detailed assessment on Malta (September 2007) https://rm.coe.int/european-committee-on-crime-problems-cdpc-committee-of-experts-on-the-/16807168b8 accessed on 11 July 2018

2002, where the offence under ss.8 and 10, has been described as "robust" in the context of fulfilling the international requirements.[339] Switzerland criminalised terrorist financing in the Penal Code.[340] Norway incorporated the offence into its Penal Code in June 2002 under s.147b. [341] This was considered to be broadly compliant with the international requirements. The United States of America created four federal offences to deal with terrorist financing. These were: 18 USC 2339A (enacted in September 1994 and came into effect in April 1996)–providing material support for commission of certain offenses; 18 USC 2339B (enacted by Congress and signed by the President in April 1996, and implemented with State Department designations of FTOs on 8 October 1997) – providing material support or resources to designated FTOs; 18 USC 2339C(a) (enacted 25 June 2002) – providing or collecting terrorist funds and 18 USC 2339C(c) (enacted 25 June 2002) – concealing or disguising either material support to FTOs or funds used or to be used for terrorist acts. All these offences were found to be fully compliant with the requirements of the convention.[342]

South-East Europe: *(Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, Serbia, Slovenia, the former Yugoslav Republic of Macedonia)*

All the states in south-east Europe have acceded to the convention after the adoption of Resolution 1373. These states have criminalised terrorist financing, with many amending legislation to ensure compliance with the requirements of the convention. The main issues in this region were for states to create an independent offence for the crime, and also ensure that the offence covered terrorist organisations and individual terrorists.

Albania amended its Criminal Code in 2003 which provided a full definition of the term funds as it appears in the convention, but it omitted the definition of intention, preferring instead for it to be "derived from the objective factual circumstances".[343] Bosnia and Herzegovina used four Criminal Codes to deal with the financing of terrorism.[344] These however, fell short of the required standard and had still to be rectified in 2016. Bulgaria

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[339] FATF Asia-Pacific Group on Money Laundering (FATF-APG) Mutual Evaluation Report New Zealand (October 2009) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20New%20Zealand%20ful.pdf accessed on 12 July 2018

[340] FATF Mutual Evaluation Switzerland (December 2016) https://www.fatf-gafi.org/media/fatf/content/images/mer-switzerland-2016.pdf accessed on 28 July 2019

[341] FATF-GAFI Mutual Evaluation Report Norway (June 2005) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Norway%20full.pdf accessed on 12 July 2018

[342] FATF-GAFI Mutual Evaluation Report United States of America (June 2006) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf accessed on 15 July 2018

[343] Article 230a Financing of Terrorism

[344] Council of Europe Fourth Assessment Visit Bosnia and Herzegovina (September 2015) https://rm.coe.int/0900001680715b44 accessed on 15 July 2018

criminalised terrorist financing in the Criminal Code at the same time the Law for the Measures against Financing Terrorism was adopted, which entered into force in February 2003.[345] Croatia created the offence in 2013 through a new Criminal Code which created an autonomous offence of terrorist financing [346] where there had not been one previously.[347]

Montenegro criminalised terrorist financing in article 449 of the Criminal Code of Montenegro, but this did not cover all the offences in the UN counter-terrorism conventions, and the scope of the offence needed to extend to individual terrorists and terrorists organisations.[348] In 2014 Montenegro enacted the Law on Prevention of Money Laundering and Terrorist Financing Official Gazette of Montenegro No 33/14 of 04.08.2014, which helped to develop the legal framework and rectify the deficiencies. [349]

Romania, Law 535/2004 on Preventing and Fighting Terrorism (Law on Terrorism) criminalised the financing of terrorism in article 36(1), but this limited the scope of the term "funds".[350] Law 187/2012 subsequently amended the definition of the term funds, reflecting the meaning in the Convention for the Suppression of Terrorist Financing .[351] Serbia criminalised the financing of terrorism as an autonomous offence in article 393 of the Criminal Code. [352] The offence however needed to criminalise the financing of terrorist organisations and individual terrorists, define the term "funds", in addition to extending the criminalisation to the acts set down in the Convention for the Suppression of Terrorist Financing .[353] In December 2017, the state enacted the Law on the Prevention of Money Laundering and the Financing of Terrorism [354] to ensure compliance with the UN convention.

Slovenia in Article 109 Criminal Code regulated the offence of financing of terrorism, but this was not as broad as the requirements in the Convention for the Suppression of Terrorist

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[345] Council of Europe Third Round Evaluation report Bulgaria (April 2008) https://rm.coe.int/168071f7ef accessed on 16 July 2018
[346] Article 98 https://rm.coe.int/168064100f accessed on 16 July 2018
[347] Council of Europe Third round assessment report Croatia (April 2008) https://rm.coe.int/european-comitee-on-crime-problems-cdpc-comitee-of-experts-on-the-eval/1680715c98 accessed on 19 July 2018
[348] https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/16807165d6 accessed on 19 July 2018
[349] www.aspn.gov.me/ResourceManager/FileDownload.aspx?rId=177785&rType=2 accessed on 19 July 2018
[350] Council of Europe Report on Fourth Assessment Romania (April 2014) https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/1680716481 accessed on 19 July 2018
[351] Ibid
[352] Council of Europe Mutual Evaluation Report Serbia (December 2009) https://rm.coe.int/mutual-evaluation-report-anti-money-laundering-and-combating-the-finan/1680715f86 accessed on 19 July 2018
[353] Ibid
[354] Official Gazette of the Republic of Serbia, No 113/17 (17 December 2017) https://www.nbs.rs/internet/english/20/laws/law_money_laundering.pdf accessed on 19 July 2019

Financing .[355] In 2007 it adopted the Law on the Prevention of Money Laundering and Terrorist Financing[356] which sought to raise the definition of the offence to the international standard.

The former Yugoslav Republic of Macedonia used its Criminal Code to address the financing of terrorism.[357] This was not an independent autonomous offence however, and did not include some elements found in the UN convention, such as the financing of an individual terrorist and the perpetration of a terrorist act. [358] The state subsequently enacted the Law on Changes and Amendments to the Criminal Code ("Official Gazette of the Republic of Macedonia" No. 7/2008), which created a separate offence of financing terrorism in the Criminal Code. Further amendments were made by way of the Law on Changes and Amendments of the Criminal Code ("Official Gazette of the Republic of Macedonia" No.55/2013), which extended the scope of the offence to cover the financing of terrorist organisations and individual terrorists. [359] The only shortcoming in these laws remained the scope of the terrorist financing offence extending to the *all* terrorist acts listed in UN counter-terrorism conventions.[360]

Non-Member and Observer States to the United Nations

The Cook Islands was allowed to participate in specialised UN agencies but is not a member state to the UN. The Cook Islands criminalised the financing of terrorism in the Terrorism Suppression Act 2004 as amended by the Terrorism Suppression Amendment Act 2007 under s. 11 (1). It broadly complied with the convention requirements. Sub-section 4(2)(c) imposed an additional requirement that the conduct: "must be made for the purpose of advancing a political, ideological or religious cause." This was criticised as potentially limiting the effectiveness of the terrorist financing offences.[361] The Holy See was granted permanent observer status to the UN in 1964. It criminalised the terrorist financing offence

[355] Council of Europe Fourth assessment report Slovenia (March 2010) https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/1680715bf3 accessed on 19 July 2019
[356] Published in the Official Gazette of the Republic of Slovenia, No. 60 of 6 July 2007, 8332 http://www.uppd.gov.si/fileadmin/uppd.gov.si/pageuploads/zakonodaja/ZPPDFT_ang_10_09.pdf accessed on 19 July 2018
[357] Council of Europe Third Round Assessment Report The former Yugoslav Republic of Macedonia (July 2008) https://rm.coe.int/european-committee-on-crime-problems-cdpc-committee-of-experts-on-the-/1680715b0e accessed on 20 July 2018
[358] Council of Europe Third Round Assessment Report The former Yugoslav Republic of Macedonia (July 2008) https://rm.coe.int/european-committee-on-crime-problems-cdpc-committee-of-experts-on-the-/1680715b0e accessed on 20 July 2018
[359] Council of Europe Report on Fourth Assessment of the former Yugoslav Republic of Macedonia (April 2014) https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/1680715adc accessed on 20 July 2018
[360] Council of Europe Report on Fourth Assessment of the former Yugoslav Republic of Macedonia (April 2014) https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/1680715adc accessed on 20 July 2018
[361] APG Mutual Evaluation Report The Cook Islands (July 2009) http://www.apgml.org/documents/default.aspx?s=date&c=7&pcPage=6 accessed on 22 July 2018

in the Criminal Code [362] and drafted Act No. CXXVII of December 2010 which added to it, "other measures to prevent and counter the financing of terrorism". The Holy See did not actually accede to the Convention for the Suppression of Terrorist Financing until 2012.[363] The definition of the terms "funds" and "assets" followed that set down in the Convention for the Suppression of Terrorist Financing, showing that although it was not bound by it, it did influence its laws pertaining to the offence. It was not party to any of the 12 pre-existing UN counter-terrorism conventions at the time of accession, which limited the scope of the offence to extend to the proscribed terrorist acts.[364]

9.3 Concluding points

A total of 183 Member States became party to this convention after the adoption of Resolution 1373 as shown in Appendix 4.[365] It has been possible to identify implementing legislation for 155 of these states. There was a large increase in the number of states acceding to the convention, when compared to only 3 in June 2001[366] and 39 in June 2002.[367] Resolution 1373 was a significant contributing factor to the implementation of this convention which introduced new offences. Member States also showed their commitment to the implementation of the resolution by altering their legislation to ensure compliance with the convention.

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[362] Article 138 *ter* (1)

[363] Council of Europe Evaluation Report Holy See (July 2012) https://rm.coe.int/mutual-evaluation-report-anti-money-laundering-and-combating-the-finan/16807160fa accessed on 22 July 2019

[364] Ibid

[365] Figures correct up until August 2019. International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&clang=_en accessed August 2019

[366] Measures to Eliminate International Terrorism Report of the Secretary-General, UNGA Res 46/160 (3 July 2001) UN Doc A/56/160, 19

[367] Measures to Eliminate International Terrorism Report of the Secretary-General, UNGA Res 57/183 (2 July 2002) UN Doc A/57/183, 37

Chapter 10: The Implementation of Resolution 1373 and the Consolidation of State Practice

10. Introduction

The data collected in chapters 7, 8 and 9 examined the implementation of three of the 12 pre-existing UN counter-terrorism conventions, resulting from the request in paragraph 3(d) and 3(e) of Resolution 1373. These chapters demonstrate the significant change in state practice from that which was outlined in chapter 1 concerning the implementation of these conventions.

The extensive change in their behaviour confirms that the international standard for the criminalisation of specific acts of terrorism has been established. The extent to which Member States have either amended existing laws or adopted new laws indicates the transition of the standard into an international norm where the majority of Member States have criminalised specific acts of terrorism and have established jurisdiction over these acts in order to prosecute or extradite the perpetrators. This chapter will demonstrate the consolidation of state practice and how it has transitioned the standard to a norm by showing; a) how Member States have changed their behaviour by acceding to the pre-existing UN counter terrorism conventions, b) how Member States adopted new laws in their national legal systems and c) how Member States consolidated their practice in order to comply with the requirements of the conventions and Resolution 1373. The discussion will draw these three points together to show how they relate to the three elements of an international legal framework:

1. Standards and norms in international law
2. The process of implementation/compliance and
3. International, regional and national institutions: forming a global network.[1]

This will answer the core research question; whether Resolution 1373 constitutes a substantive basis for a developing international legal framework for the suppression and prevention of acts of terrorism. The case studies will be discussed separately, region by region in order to review the most prominent themes that have developed in state practice.

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[1] A Philip, *Non-State Actors and Human Rights*, (1st Ed OUP 2005) 39

10.1 Consolidating the international standard for the criminalisation of specific acts of terrorism into a norm

The change in state practice has emerged from the implementation of paragraphs 3(d) and 3(e) of Resolution 1373. Chapter 5 identified that paragraph 3(d) of the resolution could only *call upon* members to:

> "Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999"[2]

And paragraph 3(e) *called upon* states to:

> "Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001)".[3]

From the analysis in chapter 5, the phrase "calls upon" in the context of paragraphs 3(d) and 3(e) encouraged Member States to establish jurisdiction over acts of terrorism as per the 12 pre-existing UN counter-terrorism conventions in order to prosecute and punish the perpetrators. The significance of the change in behaviour of Member States arising out of these two paragraphs, is that they were not binding on Member States, on the basis that to compel states to ratify these conventions would have been in breach of the Law of Treaties,[4] as already pointed out in chapters, 1, 4 and 5. The literature reviewed in chapter 2 concerning standards and norms identified that standards seek to convince rather than coerce,[5] in that they indicate the behaviour that is expected for states.[6] The increase in ratification and accession of the 12 pre-existing UN counter terrorism conventions that followed the adoption of Resolution 1373, is indicative of states being convinced [7] that the criminalisation of the acts of terrorism set out in these conventions is the minimum required level of behaviour that is expected from them all.[8]

[2] UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373 [3(d)]
[3] UN Doc S/RES/1373 (n1) [3(e)]
[4] Vienna Convention on the Law of Treaties (adopted on 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331
[5] Dieter Kerwer, *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 18, No. 4, October 2005, 611–632
[6] Herbert V Morais, 'The Quest for International Standards: Global Governance vs. Sovereignty' (2002) 50(4) U Kan L Rev 779
[7] Kerwer (n5)
[8] Harvard Law Review Association, "Standards in International Law" *Harvard Law Review*, vol. 34, no. 7, 1921

In terms of the standard acquiring legitimacy and transitioning into a norm, this takes place when states determine it is behaviour that they ought to follow,[9] as a reasonable response "to the environmental conditions facing members of the community".[10] The notion of compliance being consensual and increasing [11] leads to consolidation of the norm where it transitions from being a conscious approach to implementation, to implementation being intrinsic.[12] The data collected in chapters 7, 8 and 9 have demonstrated the increased compliance from Member States in an area in which they could not be forced to comply. This indicates that they have followed the standard of behaviour because they consider it to be legitimate, and the consolidation of state practice shows the transition to intrinsic implementation of the acts of terrorism as offences in national law.

As identified in chapter 6, a few Member States have entered a declaration or reservation to minimise the scope of some of the pre-existing UN counter-terrorism conventions[13] in order to retain the distinction between acts of terrorism and acts of self-determination, in line with the regional conventions they subscribe to. If a state has entered a declaration or reservation concerning the aforementioned distinction this indicates they feel bound by it. National laws that proclaim to implement the conventions but limit their application in some way, in line with a declaration or reservation would not reflect a general consensus as to the legitimacy of the standard. Following the interpretation of the literature in chapter 2, the notion of general consensus is indicative of the transition from a standard into a norm.

10.2 The Convention against the Taking of Hostages, 1979

Although a number of states had already acceded to this convention prior to the adoption of Resolution 1373, the 76 which acceded following the adoption of the resolution has been significant (shown in Appendix 2).[14] The offence of hostage- taking had already been prohibited during armed conflict, and aside from specific contexts in relation to aircraft

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[9] Thomas Buergenthal, 'Evolution of International Human Rights', (1997) Human Rights Quarterly 19 (1997) 703-723 at 708

[10] Ann Florini, 'The evolution of international norms' International Studies Quarterly, (1996) 40(3), 363-389 see also Andrew P. Cortell and James W. Davis Jr, Understanding the Domestic Impact of International Norms: A Research Agenda International Studies review, Vol 2. No. 1 (Spring 2000) 65-87 at 69

[11] Thomas M Franck, 'The Power of Legitimacy and The Legitimacy of Power: International Law in the Age of Power Disequilibrium' (2006) 100 Am. J. Int'l L. 88 at 93

[12] Lisbeth Segerlund, *Making Corporate Social Responsibility a Global Concern: Norm Construction in a Globalizing World*, (Routledge 2016) per "the Norma Cycle Model" and see also Thomas Buergenthal (n8) 705

[13] This was particularly evident in chapter 6 concerning the regional positions in support of self-determination

[14] See chapter 7. See also UNGA International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 status as of 7 August 2019 https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en#EndDec accessed on 9 August 2019

safety,[15] there was no international convention which dealt with the offence irrespective of where the act took place.[16] The offence of kidnapping would already have been a crime in the domestic law of most states, but the convention required states to give effect to the international element of the offence of hostage taking, namely to "compel a state, an international intergovernmental organisation… [etc] to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage…" This meant Member States had to either alter their criminal codes or enact a specific law.

Africa

In Africa, 28 out of 52 states acceded to the convention after the adoption of Resolution 1373, and the data showed that 25 of those states implemented the offence in national law. Some states in Africa[17] appeared to use their existing criminal code to satisfy the requirement of implementing the offence after acceding to the convention. This approach, however, did not provide the same motive as that which was in the convention. It is not clear whether the states that did use their existing criminal codes have been updated to fully reflect the offence and comply with the convention. In North Africa, all five states acceded to the convention, but Mauritania, Algeria, Tunisia and Egypt did so before the adoption of the resolution, leaving Morocco which implemented it after Resolution 1373. Morocco was one of those states that said the offence was criminalised in its existing penal code. In East Africa, five out of the 11 states implemented the convention after the adoption of Resolution 1373. Ethiopia adopted the Terrorism Proclamation 2009 where hostage taking was defined under s.5.[18] The United Republic of Tanzania,[19] referred to kidnapping either for terrorist purposes or with terrorist intention. In Southern Africa, seven of the 12 states acceded to the convention after the adoption of Resolution 1373, and the data shows five states have

[15] Convention for the Suppression of Unlawful Seizure of Aircraft (signed on 16 December 1970, entered into force 14 October 1971) 860 UNTS 105; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (concluded on 23 September 1971, entered into force 26 January 1973) 974 UNTS 177; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents (adopted 1 March 1991, entered into force 21 June 1998) 2122 UNTS 359

[16] Chapter 7 introduction

[17] Morocco, Djibouti, Tanzania, Benin, Burkino Faso, Cape Verde, Guinea, Liberia, Central African Republic, Chad, Equitorial Guinea, Gabon, Sao Tome and Principe all used their criminal codes

[18] Terrorism Proclamation (ATP), implemented in 2009. Section 5) hostage taking or kidnapping" means seizing or detaining and threatening to kill, to injure or to continue to detain a person in order to compel the government to do something as a condition for the release of the hostage; Part II s3. Terrorist Acts- Whosoever or a group intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country:
1/causes a person's death or serious bodily injury;
2/creates serious risk to the safety or health of the public or section of the public;
3/commits kidnapping or hostage taking;

[19] Prevention of Terrorism Act 2002 per Art 3(2)(c) (iii) kidnapping of a person

implemented it. All of these states adopted new legislation to give effect to the offence. In West Africa, nine states implemented the convention after the adoption of Resolution 1373. Nigeria adopted the Terrorism (Prevention Act) 2011 where hostage-taking was defined as an offence.[20] The majority of states[21] used their existing penal codes to give effect to the convention, some of which did not meet the necessary requirements such as Liberia and Guinea-Bissau. In Central Africa, six out of the 11 states implemented the convention after the adoption of Resolution 1373, all of which used their existing penal codes[22] or drafted new criminal codes[23] to criminalise the offence.

Asia

In Asia, 26 out of 56 states acceded to the convention after Resolution 1373, and it has been possible to identify laws for 24 of those states. In the Pacific Island, eight states had acceded to the convention but only laws for seven of those states could be identified. The Marshall Islands revised its criminal code in 2004,[24] and Palau updated its criminal code in 2013 to incorporate the offence.[25] In South-East Asia, seven out of 12 states implemented the convention, but only laws for five of those could be identified as having implemented the convention. In South Asia there were only two states out of eight that implemented the convention after the adoption of Resolution 1373. In Central Asia and the Caucasus four out of eight states implemented the convention, for example Azerbaijan in 2015 set out hostage-taking as one of the acts of terrorism it had criminalised in its in main legal framework.[26] In Western Asia, five out of 12 states acceded to the convention. Iraq created the offence of kidnapping for terrorist purposes. Legislation referred to "Kidnap[ping] or impede[ing] the freedoms of individuals or detain them either for financial blackmailing for political, sectarian, national, religious or racially beneficial purposes that threaten security and

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[20] Terrorism (Prevention) Act, 2011 per 11. Hostage taking.
(1) A person who knowingly—
(a) seizes, detains or attempts to seize or detain; or
(b) threatens to kill, injure or continue to detain another person in order to compel a third party to do, abstain from doing any act or gives an explicit or implicit condition for the release of the hostage, commits an offence under this Act and shall on conviction be liable to imprisonment for a maximum term of 10 years.

[21] Burkino Faso, Cape Verde, Guinea, Guinea-Bissau,

[22] Cape Verde, Central African Republic, Chad, Gabon

[23] Sao Tome and Principe

[24] Revised Code 2004 Title 15 Anti-Terrorism Laws Part IV Offences Against International Conventions, Division 1 β127 Hostage-taking offenses https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/xsp/.ibmmodres/domino/OpenAttachment/applic/ihl/ihl-nat.nsf/2AAF8A969EDF1735C1257C670037D430/TEXT/Marhall%20Islands%20-%20Counter-Terrorism%20Act%2C%202002.pdf. Accessed on 8 August 2018

[25] Palau An Act to update criminal offenses contained in Title 17 of the Palau National Code by amending, repealing, and replacing specific Sections of Title 17, to amend 40 PNC § 1702, and for other related purposes. www.paclii.org/pw/legis/num_act/pcotroprn9212013343.rtf accessed on 8 August 2018

[26] UNGA Measures to Eliminate International Terrorism Report of the Secretary-General (26 July 2015) UN Doc A/70/211 paragraph 8 https://undocs.org/A/70/211 accessed on 12 October 2018

national unity and promote terrorism."[27] The United Arab Emirates, [28] like the United Republic of Tanzania, referred to kidnapping either for terrorist purposes or with terrorist intention. Only the Islamic Republic of Iran entered a declaration upon accession concerning self-determination, stating that:

> "…fighting terrorism should not affect the legitimate struggle of peoples under colonial domination and foreign occupation in the exercise of their right of self-determination…"[29]

It has not been possible to identify the relevant law in Iran's national legal system that has implemented this offence. To do so would help to determine whether this declaration did limit the scope of the implementing law. All the states in East Asia had acceded to the convention before the adoption of Resolution 1373.

Latin America

In Latin America, 13 out of 33 states had implemented the convention after the adoption of Resolution 1373.[30] In Central America, four out of eight states implemented the convention with all four states implementing new laws to give effect to the offence.[31] Both Mexico and Costa Rica implemented the OAS Inter-American Convention against Terrorism which gave effect to the offence contained in the convention.

In the Caribbean, four out of thirteen states acceded to the convention, but it has only been possible to identify laws for Cuba.[32] In South America, five out of 13 states implemented the convention.[33] Bolivia and Guyana adopted new laws which gave effect to the offence in the convention. Columbia, Paraguay and Uruguay all used their criminal codes, but Columbia's did not specifically create an offence of hostage taking.

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[27] Number (13) for the Year 2005 Anti - Terrorism Law

[28] Federal Law No. 7 of 2014 on Combating Terrorism Offences per Art 5 and Art 13 which provides for the offence of kidnapping for terrorist purposes https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98658/117474/F399649256/LNME-FED-LAW-7-2014.pdf accessed on 2 November 2018

[29] International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 per Iran's Interpretative declaration https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en accessed on 24 June 2017

[30] Mexico, Belize, Costa Rica, Nicaragua, The Dominican Republic, Saint Lucia, Jamaica, Cuba, Bolivia, Columbia, Guyana, Paraguay, Uruguay

[31] Mexico, Belize, Nicaragua and Costa Rica

[32] Law Against Acts of Terrorism 2001

[33] Bolivia, Columbia, Guyana, Paraguay and Uruguay

Europe and North America

In Europe and North America, 11 out of 50 Member States acceded to the convention after the adoption of Resolution 1373. It has been possible to find implementing laws for 10 of those states. In Eastern Europe, eight states had already implemented the convention[34], and the remaining three did so through their criminal codes.[35] Moldova amended its criminal code to give effect to the offence, as did Latvia. In Western Europe and North America, five Member States acceded to the convention after the adoption of Resolution 1373, and 24 states had implemented the convention before the adoption of the resolution. Israel has yet to accede to the convention. Most states adopted new legislation. Two examples are; Andorra, which, amended its Criminal Code to extend the definition of a terrorist act to incorporate the relevant international conventions,[36] and Ireland, which enacted the Criminal Justice (Terrorist Offences) Act 2005.[37] In South-East Europe, three of nine states implemented the convention with the remaining six having acceded to it already.

It has not been possible to determine the extent of the recommendations given to Member States in the context of whether they have improved their laws to incorporate this offence into national legal systems. These discussions would have taken place in country reports to the CTC, and they stopped being published in 2007, as discussed in chapter 3. However, where some states amended their criminal codes or adopted new laws this is indicative of a general consensus of the legitimacy of the request in paragraphs 3(d) and 3(e) of Resolution 1373 to implement the Convention Against the Taking of Hostages.

10.3 The Convention for the Suppression of Terrorist Bombings, 1997

This convention responded to the widespread use of bombs in terrorist attacks. [38] The intention required for the offence was to cause death or serious bodily injury, there was no specific terrorist motive, and it would have been reasonable for Member States to rely on their existing criminal law and prosecute any acts involving explosives through the existing offence of murder (if that were the resulting situation) or other crimes of violence. For example, this was the approach taken by the Federated States of Micronesia, where the state

[34] Belarus, Czech Republic, Hungary, Lithuania, Poland, Russian Federation, Slovakia and Ukraine
[35] Estonia, Latvia and the Republic of Moldova
[36] Qualified law 18/2012 of 11 October amended the Criminal Code to extend the definition of a terrorist act to incorporate the relevant international conventions. Art 362(1) of the Criminal Code incorporates as a terrorist offence the taking of hostages as defined in the convention under part A.
[37] Criminal Justice (Terrorist Offences) Act 2005 Part 3, s.9 Offence of Hostage Taking http://www.irishstatutebook.ie/eli/2005/act/2/section/9/enacted/en/html#sec9 accessed on 11 August 2018
[38] See introduction to chapter 8 pp129-130

had not drafted specific counter-terrorism laws, and instead invoked laws for the offences of murder to prosecute for any act of terrorism.[39] It is significant therefore, that 141 Member States acceded to this convention after the adoption of Resolution 1373 (shown in Appendix 3). It has been possible to identify implementing laws for 118 states. The result of the offence, to cause death or serious injury, would already have been a crime in all domestic jurisdictions, so where Member States have made specific changes to their laws, it has demonstrated not only the extent of state practice but also a significant change in state practice when compared to the situation before Resolution 1373.

Africa

In the region of Africa, 41 out of 52 states acceded to the convention after the adoption of Resolution 1373. Ten states from East Africa, Southern Africa, West and Central Africa had not yet acceded to the convention; Eritrea, Somalia, South Sudan, Zimbabwe, Swaziland, Gambia, Burundi, the Republic of Congo, Chad and Angola. In North Africa, whilst all states had acceded to the convention it was evident that some of the states either did not define the offence as was required[40] or they struggled to identify the requisite intention[41]. In East Africa, Djibouti, Ethiopia, Kenya, Rwanda, Uganda and the Republic of Tanzania all implemented the convention to the required standard. In Southern Africa, Botswana acceded to the convention before 2001 and it was only possible to identify implementing laws for the remaining five out of 12 states.[42] The Seychelles updated its implementing law to ensure it met the requirement of the convention. Initially it had used its Penal Code before adopting the Prevention of Terrorism Act 2004.[43] In West Africa, 13 out of 15 states acceded to the convention after the adoption of Resolution 1373. Benin,[44] Burkina Faso,[45] Mali,[46] and Senegal[47] were amongst the states which modified their existing penal codes to implement the offence. In Central Africa, six states implemented the

[39] United States Department of State, 2009 Country Reports on Terrorism - Micronesia, Federated States of, 5 August 2010
[40] Re Algeria
[41] Re Tunisia
[42] Namibia, Madagascar, South Africa, Seychelles and Zambia
[43] Act No 7 of 1 December 2004
[44] Article 90 Constitute acts of terrorism, when they are related to an individual or collective action for the purpose of either; forcing a person, a government, a national or international organization to act or to abstain from acting, or; seriously undermining public order through intimidation or terror: the offences set out at Articles 100; 392, 560-568 of the Code. The state then expanded the definition in Articles 560-568 see UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (October 2008) 20
[45] UNSC CTC Supplementary information for the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism (31 March 2003) UN Doc S/2003/385
[46] Law No. 08-025 of 23 July 2008
[47] UNODC A Review of the Legal Regime Against Terrorism in West and Central Africa Working Document (October 2008) Senegal at 157

convention after the adoption of Resolution 1373. Sao Tome and Principe[48] and Cape Verde[49] both states adopted laws which implemented all the UN counter-terrorism conventions that each state was party to. Whilst Angola and Chad had yet to accede to the convention, both states had created laws which could be used to prosecute perpetrators of terrorist bombings.[50]

Asia

In Asia, 35 out of 56 states had implemented the convention after the adoption of Resolution 1373. Amongst the nine states in the Pacific Islands that had implemented the convention, five had enacted specific legislation to implement the offence including Kiribati,[51]Nauru,[52] Solomon Islands,[53] and Palau.[54] Micronesia was the only state that did not have any counter-terrorism laws and instead invoked laws against murder and attempted murder to give effect to the convention.[55] This did not meet the requirements of the convention. In South-East Asia, 10 states acceded to the convention with eight implementing it. This included Indonesia[56] and Viet Nam[57] which implemented the offence ahead of acceding to the convention. One state, Singapore entered a reservation to the convention excluding tensions, riots, and isolated acts of sporadic violence from the scope of the offence in the convention.[58] In South Asia, three states acceded to the convention; Bangladesh[59], Afghanistan[60] and Pakistan. Pakistan entered a declaration which limited the scope of the convention to exclude acts of self-determination.[61] The offence it implemented however, did not specifically exclude individuals engaged in acts of self-determination from any of

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[48] Criminal Code 2005

[49] Cape Verde Penal Code

[50] See chapter 8, 142

[51] Measures to Combat Terrorism and Transnational Organised Crime Act 2005 per Division 6- Terrorist Bombing s.39 https://www.unodc.org/cld/document/kir/2004/measures_to_combat_terrorism_and_transnational_organised_crime_act_2005.html? accessed on 14 August 2018

[52] Division 8, s.54 http://ronlaw.gov.nr/nauru_lpms/files/acts/c8e398a13914e59966dc84578fe61057.pdf accessed on 14 August 2018.

[53] Counter-terrorism Act 2009

[54] Counter-terrorism Act 2001

[55] United States Department of State, 2009 Country Reports on Terrorism - Micronesia, Federated States of, 5 August 2010, available at: https://www.refworld.org/docid/4c63b633c.html accessed 28 July 2019

[56] Law on Combating Criminal Acts of Terrorism (15/2003)

[57] Law No.28/2013/QH13

[58] The reservation concerned Article 19 (2)

[59] The Anti-Terrorism Act 2009

[60] Acceded in 2003 but it has not been possible to identify any implementing laws.

[61] "The Government of the Islamic Republic of Pakistan declares that nothing in this Convention shall be applicable to struggles, including armed struggle, for the realization of right of self-determination launched against any alien or foreign occupation or domination, in accordance with the rules of international law. This interpretation is consistent with Article 53 of the Vienna Convention on the Law of Treaties 1969 which provides that an agreement or treaty concluded in conflict with an existing jus cogen or preemptory norm of international law is void and, the right of self-determination is universally recognized as *a jus cogen"* . International Convention for the Suppression of Terrorist Bombings (adopted on 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256 https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-9&chapter=18&clang=_en accessed on 2 November 2018

the terrorist offences.[62] The declaration indicates that they felt bound by the distinction between acts of terrorism and acts of self-determination. In Central Asia and the Caucasus four states acceded to the convention after the adoption of Resolution 1373. In Western Asia, six states acceded to the convention and it was possible to identify implementing laws for five states. Iraq had already criminalised the offence in a law adopted in 2005 but acceded to the convention in 2013.[63] In East Asia, both China[64] and the Republic of Korea[65] implemented new legislation to give effect to the offence with a total of three states implementing the convention.

Latin America

In Latin America, 28 out of 33 states had implemented the convention after the adoption of Resolution 1373. In Central America, four states implemented the convention. Costa Rica implemented Law No. 8446 which gave effect to the Inter-American Convention against Terrorism, and also implemented the pre-existing UN counter-terrorism conventions by virtue of Article 2. Mexico also adopted the Inter-American Convention against Terrorism and was able to implement the UN counter-terrorism conventions.[66] This was an example of a regional convention having significantly influenced the implementation of the 12 pre-existing UN counter-terrorism conventions. In the Caribbean, 11 states acceded to the convention, but it was only possible to find implementing laws for eight states. The Bahamas enacted legislation that gave effect to the offences in all the 12 pre-existing UN counter-terrorism conventions.[67] In South America, 10 states implemented the convention, including Guyana[68] and Venezuela[69] which adopted new legislation to give effect to the convention. Brazil incorporated the offence into its definition of terrorism.[70]

Europe and North America

In Europe and North America, 37 out of 50 states had acceded to the convention after the adoption of Resolution 1373. It has been possible to identify implementing laws for 35 of those states. In Eastern Europe seven states implemented the convention, and then in

[62] Per s.6 (2)(ee) http://www.molaw.gov.pk/molaw/userfiles1/file/Anti-Terrorism%20Act.pdf accessed on 7 April 2019
[63] Anti-Terrorism Law Number (13) For the Year 2005 www.vertic.org/media/National%20Legislation/Iraq/IQ_Anti-Terrorism_Law.pdf accessed on 16 August 2018
[64] Counter-terrorism Law of the People's Republic of China 2015
[65] Act on Anti-Terrorism for the Protection of Citizens and Public Security 2016
[66] OAS Inter-American Convention Against Terrorism (adopted 3 June 2002) AG/RES. 1840 (XXXII-O/02) http://www.oas.org/juridico/english/sigs/a-66.html accessed on 17 August 2018
[67] Anti-Terrorism Act 2004
[68] Anti-Terrorism and Terrorist Related Activities Act 2015
[69] Act No. 37,7373 8 July 2003
[70] Law No. 13,260 16 March 2016

Western Europe 21 states acceded to the convention, with 20 of those states implementing the offence. In South-East Europe eight states acceded to the convention and it was possible to find implementing laws for all of them. From Eastern, Western Europe and North America and South-East Europe a number of states incorporated the offence from the convention directly into their domestic definition of the term "terrorism". These included, Latvia,[71] Lithuania,[72] Montenegro,[73] Saint Lucia, [74] Brazil, [75] Canada, [76] Antigua and Barbuda,[77] and Belarus.[78]

The limited access to country reports has made it difficult to identify the extent to which Member States have improved their laws to comply with the convention. The significant number of accessions however, after the adoption of Resolution 1373 does show a change in the behaviour of Member States. The implementation of specific laws to meet the requirements of this convention, and also to some of the other 12 pre-existing UN counter terrorism conventions is evidence that the request in paragraphs 3(d) and 3(e) of Resolution 1373, has been considered legitimate by Member States.

10.4 The Convention for the Suppression of the Financing of Terrorism 1999

The implementation of the Convention for the Suppression of Terrorist Financing improved significantly after the adoption of Resolution 1373. Not only have Member States adopted laws which provide for the new offence of financing terrorism, but they have continued to change and amend them in order to comply with the international requirement of the convention and Resolution 1373. Furthermore, two states which were not bound by the convention or indeed were not members of the UN, were sufficiently influenced by it to follow the language and definitions of the offence in their domestic laws (see Appendix 4).

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[71] CODEXTER Latvia Profile on Counter-Terrorism Capacity, October 2013 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064102a accessed on 1 September 2018

[72] Part 3 Lithuanian Criminal Code http://www.lithuanialaw.com/lithuanian-criminal-code-495 accessed on 1 September 2018

[73] Council of Europe CODEXTER Profiles on Counter -Terrorist Capacity Montenegro (October 2013) https://rm.coe.int/168064102b accessed on 2 September 2018

[74] It has not been possible to find the actual legislation, but the Anti-Terrorism (guidance Notes) Regulations SI 2010 No. 56 set out how terrorism is defined in the act http://slugovprintery.com/template/files/document_for_sale/laws/2725/S.I.%2056%20of%202010.pdf accessed on 17 August 2018

[75] Law No. 13,260 16 March 2016 http://www.loc.gov/law/foreign-news/article/brazil-new-anti-terrorism-law-enacted/ accessed on 1 September 2018

[76] Statutes of Canada 2001 Chapter 41 18 December 2001 per subsection 7(3.72) http://laws-lois.justice.gc.ca/PDF/2001_41.pdf accessed on 2 September 2001

[77] No 12 of 2005 per Article 2 http://laws.gov.ag/acts/2005/a2005-12.pdf accessed on 17 August 2018

[78] Penal Code 6 June 2001 Offences against state power https://www.riigiteataja.ee/en/eli/522012015002/consolide accessed on 1 September 2018

In 2007, six years after the adoption of Resolution 1373, 117 Member States had criminalised the financing of terrorism.[79] By 2019, the data collection has shown that 183 Member States have acceded to the convention (show in Appendix 4) and 155 Member States have criminalised the financing of terrorism.[80]

Africa

In Africa, it has been possible to identify implementing laws for 27 out of the 52 states, with 49 states acceding to the Convention for the Suppression of Terrorist Financing after the adoption of Resolution 1373. Although not all states had acceded to or ratified the convention, some of those had implemented laws that met the requirements of the convention. Chad criminalised the offence without acceding to the convention.[81] Gambia and Zambia also criminalised the offence before they ratified the convention.[82] Some states in East Africa struggled with the character of the offence initially, but adopted new laws to ensure compliance with the convention.[83] Despite all the states in Southern Africa acceding to the convention, implementation of the offences varied. At least one state has yet to implement the offence as required by the convention.[84] In West Africa, despite all the states being members of the AU, none entered any declarations or reservations concerning self-determination,[85] with all 15 states in this region having acceded to the convention. Most of the states that received recommendations to amend their laws to ensure they were compliant with the convention did so. Limited information as to the implementing laws for all but four states in Central Africa has prevented a better analysis of their practice. For the Democratic Republic of Congo, Angola, Cameroon and Chad there is evidence that each state improved their laws after receiving recommendations. For example, Cameroon initially relied on the state penal code but then enacted legislation to meet the requirements of the convention.[86] Chad enacted a law which criminalised the financing of terrorism, but there is no indication that the state had acceded to the convention. This supports the idea of a general consensus

[79] International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197 https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en accessed on 2 November 2018

[80] See chapter 9 p199

[81] US Department of State Bureau of Counterterrorism and Countering Violent Extremism, Country Reports on Terrorism 2016 https://www.state.gov/j/ct/rls/crt/2016/272229.htm accessed on 22 July 2018

[82] Gambia acceded in 2015 and Zambia in April 2017 International Convention for the Suppression of the Financing of Terrorism (adopted 9 December 1999, entered into force 10 April 2002) 2178 UNTS 197 https://www.unodc.org/documents/treaties/Special/1999%20International%20Convention%20for%20the%20Suppression%20of%20the%20Financing%20of%20Terrorism.pdf accessed on 21 July 2018

[83] Kenya, Sudan and Uganda

[84] Swaziland

[85] See chapter 9, p169

[86] Law No. 2014/028 of 23 December 2014

by Member States to comply with the implementation of the 12 pre-existing UN counter terrorism conventions, which had arisen from the request in paragraphs 3(d) and 3(e) of Resolution 1373. Not only has this behaviour (a Member State not party to a convention implementing the offence) led to the development of the international standard for the criminalisation of specific acts of terrorism, it shows that the request in Resolution 1373 was perceived as legitimate.

Asia

For the region of Asia, 52 out of 56 states had acceded to the convention after the adoption of Resolution 1373. It has been possible to identify implementing laws for 40 of those states. As a result of Resolution 1373 three states, Myanmar, Bhutan and the Lao People's Democratic Republic took steps to create the necessary offence where one did not previously exist.[87] The main issue in the Pacific Islands, South-east Asia, South Asia, and Western Asia was for states to ensure that the funding of terrorist organisations and individual terrorists had been criminalised instead of only criminalising one or the other. Another theme running throughout this region was the problem in defining the meaning of "funds" to ensure it was sufficiently broad to include any tangible or intangible asset. The Pacific Islands, South East Asia and Western Asia all had states which changed their laws to ensure the meaning of the term funds met the international requirement in the convention.[88]

There were states in this region that were members of both the OIC and Arab League, however only Kuwait and Syria entered reservations upon accession to the convention, concerning the distinction between acts of terrorism and acts of self-determination. Lebanon, a member of the Arab League, was not party to the convention but it criminalised the financing of terrorism to the met the requirement.[89] Many of the states in Asia took steps to ensure their laws complied with the requirements of the convention, even if this meant having to amend them.

[87] See chapter 9 Bhutan 179, Myanmar and Lao People's Democratic Republic 175-176

[88] For the Pacific Island this included Fiji, Samoa. For South East Asia this included Timor Leste and for South Asia this included Bangladesh.

[89] Fighting Money Laundering and Terrorist Financing Law No 44 (24 November 2015) http://www.bdl.gov.lb/files/laws/Law44_en[3].pdf accessed on 2 July 2018

Latin America

In the region of Latin America 33 Member States had acceded to the convention. It has been possible to identify implementing laws for 27 of those states. Eight Member States in Central America had acceded to the convention, with six changing their initial laws to ensure these complied with the convention.[90] Criminalising the collection or provision of funds for an individual or terrorist organisation was problematic for some states, as was ensuring that the offence extended to all the terrorist acts contained in the UN counter-terrorism conventions.[91] Some states had not acceded to a number of the relevant conventions listed in the annex to the Suppression of the Financing of Terrorism Convention,[92] which meant that they could not extend the scope of the offence to those acts of terrorism.

In the Caribbean all 13 states had acceded to the convention and it was possible to identify the relevant implementing laws for them all. Eleven of the states had to develop their initial laws to ensure they had implemented the convention properly and information suggests that most of the states did achieve this. All the states in this region adopted legislation to create the relevant offence in domestic law.

In South America all 12 states had acceded to the convention, but it was only possible to identify the implementing laws for six states. Of these states, a number of them received recommendations to modify their laws in order to comply with the convention, and they all took action to do so. For example, Argentina had to enact a second law in 2011 to remedy the deficiencies found in its initial law in 2007.[93] Guyana found itself in a similar situation when it adopted a law in 2015 to expand the definition of the offence having initially adopted a law in 2010.[94]

Europe and North America

In Europe and North America, 49 Member States had acceded to the convention after the adoption of Resolution 1373. It has been possible to find implementing laws for all of these

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[90] Belize, Costa Rica, El Salvador, Mexico, Nicaragua and Panama

[91] For example, see discussion about Nicaragua and Grenada in chapter 9

[92] These states included Bahamas, El Slavador, Nicaragua, St Lucia, St Vincent and the Grenadines, Suriname, Venezuela, International Convention for the Suppression of the Financing of Terrorism (n78)

[93] Law 26 734 of December 2011 FATF-GAFI Eleventh Follow-Up Report Argentina (June 2014) http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR%20Argentina_reduced.pdf accessed on 6 July 2018

[94] Anti-Terrorism and Terrorist related Activities Act 2015 Act No. 15 of 2015, s.4-8 https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/102173/123438/F1133388324/GUY102173.pdf accessed on 11 August 2018

states. There was a mix of states whose initial laws were deemed to be compliant with the international requirement, and some which received recommendations to update their laws to improve compliance with the convention. In Eastern Europe all 11 states had acceded to the convention. The implementing laws ranged from modification of state penal codes to the adoption of specific legislation. States were prepared to rectify any shortfalls in their initial laws, and Latvia[95] and the Republic of Moldova[96] specifically, carried out fairly extensive amendments to their laws to ensure compliance. All 30 states in Western Europe had acceded to the convention, but the United Kingdom acceded before the adoption of Resolution 1373 with the remaining 29 states acceding after the resolution. The majority of states implemented the offence fairly quickly in their domestic law and only three states left a gap before implementation.[97] Seven states adopted laws which were fully compliant.[98] Turkey was the only state that made a declaration concerning self-determination.[99] The offence it implemented was criticised for being limited to acts of terrorism that involved Turkish interests and only covering very specific acts.[100] It was recommended that the state broaden the offence to include any act of terrorism in any jurisdiction, which it did in 2006.[101] All nine states in South-East Europe had acceded to the convention.[102] Some states found it difficult to create an autonomous offence including Croatia and Bulgaria, whilst others struggled to ensure the offence covered terrorist organisations and individual terrorists, including Serbia, the former Yugoslav Republic of Macedonia and Montenegro.[103]

10.5 A developing legal framework: Changing the behaviour of Member States

The analysis above has shown the action taken collectively by Member States to incorporate specific acts of terrorism as offences into their national legal systems. Member States demonstrated that they have changed their behaviour by acceding to the three conventions used as case studies which is shown in Appendices 2,3 and 4. The majority of Member

[95] See chapter 9 p194
[96] See chapter 9 p195
[97] Andorra, San Marino and The Netherlands
[98] Israel, Luxembourg, Malta, New Zealand, Switzerland, Norway, the United Kingdom of Great Britain and Northern Ireland.
[99] "Paragraph 1(b) of Article (2) of the Convention does not necessarily indicate the existence of an armed conflict and the term "armed conflict", whether it is organized or not, describes a situation different from the commitment of acts that constitute the crime of terrorism within the scope of criminal law".
[100] FATF GAFI Mutual Evaluation Report Turkey February 2007 http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Turkey%20full.pdf accessed on 15 July 2018 at .34
[101] Ibid
[102] See chapter 9 p196
[103] See chapter 9 pp197-198

States that have acceded to the conventions have adopted new laws in their national legal systems and consolidated their practice through the global network in order to comply with the requirements of the conventions. These three points relate closely to the three elements of an international legal framework which were examined in chapter 4.

The first element is standards in international law. The data collection and analysis has demonstrated the existence of the international standard for the criminalisation of specific acts of terrorism in two ways. First there has been a clear increase in Member State's accession to all three conventions after the adoption of Resolution 1373, which is discussed in chapters 7, 8 and 9 and shown in the tables in Appendices 2, 3 and 4. This is evidence of a clear change in the behaviour of Member States from before the adoption of Resolution 1373. It shows that the institutions of these Member States have been convinced that the request made to them in paragraphs 3(d) and 3(e) of Resolution 1373, provided a guide for the behaviour expected of them. Secondly, whilst accession shows an intention to be bound by each convention, it is the implementation of the offences that underpins the change in behaviour from Member States. The data collection shows the extent that Member States have adopted new laws or changed their existing criminal codes to give effect to the offences proscribed by each of the three conventions. None of the Member States could be forced to become party to or implement the conventions, in accordance with the Vienna Convention on the Laws of Treaties, which is why the change in behaviour is so significant. In total, there have been 400 accessions across all three of the conventions used as case studies after the adoption of Resolution 1373. Only three Member States; Eritrea, Tuvalu and South Sudan have not acceded to any of the conventions used in the case study.[104] Approximately 341 laws have been identified as implemented in national legal systems to criminalise the offences proscribed by each of the conventions. Member State's compliance with each convention was not because of social coercion as described by one scholar in chapter 2,[105] on the basis that the reports from the CTC were not made public after 2007.[106] The extent that Member States implemented new laws and amended existing ones to comply with the conventions, implies a general consensus that criminalising the acts of terrorism proscribed

[104] See Appendices 2, 3 and 4 for these highlighted in red.

[105] J Craig Barker "The Politics of International Law Making: Constructing Security in Response to Global Terrorism" *Journal of International Law and International Relations* (Spring 2007) Vol 3 (1) at 19

[106] Counter-terrorism Committee's Updated Working Methods, 17 October 2006 https://www.un.org/sc/ctc/wp-content/uploads/2016/09/workingmethods-2006-10-17.pdf accessed on 1 April 2017

by each convention was an accepted canon of behaviour for Member States. This developed the international standard for the criminalisation of specific acts of terrorism.

Only six Member States entered a declaration or reservation upon accession to the three UN counter-terrorism conventions that were examined. Iran and Lebanon were identified in chapters four and five as having entered declarations upon accession to the International Convention against the Taking of Hostages 1979.[107] Chapters 6 and 8 identified Pakistan as having entered a declaration upon accession to the International Convention for the Suppression of Terrorist Bombings 1997.[108] Finally, chapters 6 and 9 identified Egypt,[109] Kuwait[110] and Syria[111] as entering a reservation upon accession to the Convention for the Suppression of the Financing of Terrorism 1999. There was no reference in the implementing laws of these states that explicitly excluded acts of self-determination from their scope. For example, both Egypt and Syria updated their implementing laws to ensure they articulated the relevant intention that the funds should be used or in the knowledge that they are to be used, in full or in part, by a terrorist organisation or by an individual terrorist.[112] This made them both fully compliant with the Convention for the Suppression of the Financing of Terrorism, and indicated a general consensus that this act of terrorism needed to be criminalised. Pakistan's reservation only applied to the Convention for the Suppression of Terrorist Bombings, but its implementing law was fully compliant with what was required, and it did not seek to explicitly exclude acts of self-determination from its scope. Whilst it is accepted that in entering a reservation or declaration concerning acts of self-determination these states felt bound by the principle, the lack of limitation in the laws

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[107]Declarations and reservations for the International Convention Against the Taking of Hostages, New York, 17 December 1979, per Iran's Interpretative declaration and per Lebanon's declaration https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en accessed on 24 June 2017

[108] "The Government of the Islamic Republic of Pakistan declares that nothing in this Convention shall be applicable to struggles, including armed struggle, for the realization of right of self-determination launched against any alien or foreign occupation or domination, in accordance with the rules of international law. This interpretation is consistent with Article 53 of the Vienna Convention on the Law of Treaties 1969 which provides that an agreement or treaty concluded in conflict with an existing jus cogen or preemptory norm of international law is void and, the right of self-determination is universally recognized as *a jus cogen"* . International Convention for the Suppression of Terrorist Bombings (adopted on 15 December 1997, entered into force 23 May 2001) 2149 UNTS 256 https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-9&chapter=18&clang=_en accessed on 2 November 2018

[109] International Convention for the Suppression of the Financing of Terrorism (n79)

[110] Ibid Kuwait

[111] International Convention for the Suppression of the Financing of Terrorism (n79)

[112] MENAFATF Thirteenth Follow Up- Report The Syrian Arab Republic (May 2018) http://www.menafatf.org/sites/default/files/Newsletter/Syria%20Exit%20FUR_En.pdf accessed on 2 July 2018; Middle East and North Africa Financial Acton Task Force, Mutual Evaluation Report 5th Follow-Up Report for Egypt, 19 November 2014 at 4 http://www.menafatf.org/sites/default/files/Egypt_Exit_FUR_EN.pdf

can be perceived as evidence as to a general consensus that criminalising the acts of terrorism proscribed by each convention was an accepted canon of behaviour for Member States.

The second element of an international legal framework is the process of implementation and compliance. It is evident that the process of implementation has underpinned the transition of the international standard for the criminalisation of specific acts of terrorism into a norm. The process of complying with the requirements of the conventions as a result of the request in paragraphs 3(d) and 3(e) of Resolution 1373 has meant that specific acts of terrorism are now criminalised by the majority of Member States. The offences created by the conventions now form an intrinsic part of national legal systems where the perpetrators of these acts can be prosecuted for their actions by national courts. Whilst there remains some Member States that have not acceded to the Convention for the Taking of Hostages or the Convention for the Suppression of Terrorist Bombings, the majority of Member States, as well as two non-Member States have acceded to the Convention for the Suppression of Terrorist Financing. This is of the most significance. As set out in chapter 9, Article 2(1)(a) of the Convention for the Suppression of Terrorist Financing provides for the offence of financing acts of terrorism, which, required Member States to have criminalised the acts defined as offences in the pre-existing UN counter terrorism conventions as follows:

> "Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:
> (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex;

Where 183 Member States have acceded to this convention after the adoption of Resolution 1373, there is evidence (illustrated in Appendix 4) that 155 of these states have implemented the offence and many of these have enacted completely new laws and/or amended them upon receipt of recommendations.

The third element of the international legal framework is the global network that has been formed from international, regional and national institutions. This network invokes the process of implementing Resolution 1373, and subsequent resolutions highlighted in

chapter 4, which includes making recommendations to Member States to improve their laws. For the Convention for the Suppression of the Financing of Terrorism the process of implementation has been supported by the international FATF and its associate bodies. FATF Recommendation 5 provides for states to "comprehensively criminalise terrorist financing as a distinct offence."[113] In particular, the FATF Anti-Money Laundering and Combating the Financing of Terrorism Mutual Evaluations Program (MEP) initially mentioned in chapter 1, has been used to provide a mechanism to assess the conformity of national legislation against the FATF recommendations. Chapter 9 shows how every region is supported by the FATF or one of its associate bodies; in North Africa the MENA FATF was instrumental in providing recommendations to Member States as to how their implementing laws could be compliant with the convention. In East and South Africa, the ESAAMLG provided recommendations where laws fell below what was required, for example when Uganda failed to criminalise acts of participation in its definition of the offence.[114] West Africa was supported by the GIABA and Central Africa was supported by GABAC. The APG and EAG supported the majority of Asia, with the exception being in Western Asia where the MENA FATF provided support and in China where the FATF did so. The GAFILAT supported Central America along with the FATF, and CFTAF supported the Caribbean and South America. In Europe support was provided by the FATF and the Council of Europe. The FATF and its associate bodies conduct a process of Mutual Evaluation Reports which have been referred to as a "peer pressure mechanism."[115] Chapter 9, however, shows active engagement with the FATF and its associate bodies in working on the recommendations to improve national laws. This supports the notion of a general consensus amongst Member States that they considered the international standard for the criminalisation of specific acts of terrorism to be legitimate behaviour they ought to follow. If Member States did not consider the standard to be legitimate then they would not pull together to comply with the recommendations, and ultimately, the requirements of the convention. The fact that many Member States amended their laws demonstrates how intrinsic the offences have become to national legal systems.

[113] FATF Guidance, Criminalising Terrorist Financing (Recommendation 5), October 2016 at [1-2]http://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Terrorist-Financing-Strategy.pdf accessed on 20 April 2019

[114] ESAAMLG Mutual Evaluation Report Anti-money laundering and counter-terrorist financing measures Uganda (April 2016)

[115] Memorandum by the Financial Action Task Force Secretariat 2009, https://publications.parliament.uk/pa/ld200809/ldselect/ldeucom/132/132we08.htm accessed on 20 April 2019

10.6 Conclusion

Chapter 1 and chapter 3[116] showed the limited accession by Member States to the Convention for the Suppression of Terrorist Bombings, Convention against the Taking of Hostages and Convention for the Suppression of the Financing of Terrorism before the adoption of Resolution 1373. The Convention for the Suppression of Terrorist Bombings had only come into force four months before the adoption of the resolution, and the Convention for the Suppression of the Financing of Terrorism had not yet come into force. The Convention Against the Taking of Hostages, however, was adopted in the 1970s, yet by June 2001 it had not been ratified by the majority of Member States. There was very little international cooperation between Member States towards what these conventions were trying to achieve, which was to provide states with the ability to establish criminal jurisdiction over specific acts of terrorism. The behaviour of Member States changed this situation significantly as a result of the adoption of Resolution 1373.

The language used in Resolution 1373 did not compel Member States to implement the pre-existing UN counter terrorism conventions. The Security Council could not "decide" that Member States would accede to, and ultimately implement any conventions. The fact that Member States chose to do so in such large numbers has shown that they identified the criminalisation of acts of terrorism in the pre-existing UN counter terrorism conventions as being intrinsic to the prevention and suppression of acts of terrorism. Member States could have carried on using their existing criminal laws for the offences which resulted in death or serious injury or amounted to kidnapping and hostage taking. Instead, they introduced new laws or changed existing ones to incorporate the offences from these conventions. Whether it has been defining the term funds, or the incorporation of specific terrorist intent, it has not been a simple process for Member States. They have shown a willingness to comply with the requirements provided by the conventions, in particular the Convention for the Suppression of the Financing of Terrorism. Member States have changed laws based on recommendations from the CTC, CTED and the FATF and its associate bodies. The Convention for the Suppression of the Financing of Terrorism created an entirely new offence which was not a feature of national legal systems. For Member States to implement it they needed new laws and had to ensure they implemented the offence in its entirety. As the data in chapter 9 showed this was a complex process, but Member States continued to change and update their laws in order to be compliant with the convention. This is also true

[116] See p 39

of Member States which had not ratified the convention yet chose to criminalise the act, as well as non-Member States which did the same. The level of engagement by Member States with the FATF and its associate bodies, along with engagement with the CTC and CTED, has demonstrated the strength of the global network. The implementation process has been successfully invoked within this network.

It is evident from the data collection, that Member States consider the criminalisation of specific acts of terrorism contained in the 12 pre-existing UN counter-terrorism conventions to be a standard of behaviour which is expected from them all.[117] Member States, and non-Member States have taken collective action and accepted the need to criminalise specific acts of terrorism as offences into their national legal systems. In addition to this, Member States have demonstrated that despite the declarations and reservations that support the distinction between acts of terrorism and acts of self-determination, they have sought to comply with the pre-existing UN counter-terrorism conventions when implementing them. This is indicative of a general consensus that these specific acts of terrorism should be criminalised in all Member States and that they then have an obligation to prosecute or extradite the perpetrators of those proscribed acts. The practice of enacting new laws and amending them to comply with the requirements of the convention has demonstrated the legitimacy of the standard for the criminalisation of specific acts of terrorism. The ongoing engagement with the process of implementation and compliance, invoked through the global network has consolidated the standard into an international norm for criminalising specific acts of terrorism.

[117] Standards in International Law." *Harvard Law Review*, vol. 34, no. 7, 1921, pp. 776–779. *JSTOR*, www.jstor.org/stable/1329232

PART IV

Chapter 11: Conclusions

Overview of the thesis

Before Resolution 1373, the use of international law to tackle acts of terrorism was limited to 12 pre-existing UN counter-terrorism conventions. The individual conventions required states to become party to each one in order to establish jurisdiction over each proscribed act, so that domestic courts could prosecute the perpetrator. Each convention also provided the legal basis for granting extradition, so if a prosecution could not be achieved then extradition to a state which could prosecute for the act could take place. The absence of an agreed single definition for the term "terrorism" meant that the draft UN comprehensive convention on international terrorism has struggled to progress, despite being initiated in 1996, five years before the adoption of Resolution 1373. Although there were 12 pre-existing UN counter-terrorism conventions before the adoption of Resolution 1373 there was no mandate for Member States to become party to, ratify and implement any of them, let alone all of them. The Vienna Convention of the Law of Treaties provides that Member States can choose which conventions they became party to. In the absence of any UN institution to oversee the implementation of the 12 pre-existing UN counter-terrorism conventions, by June 1999 only 45 out of 193 Member States had ratified seven or more of the conventions. As a consequence, not all Member States had criminalised the same acts of terrorism, which meant that perpetrators of these acts could find safe havens where they could escape prosecution and evade extradition. There was no international cooperation between Member States in implementing these conventions.

In addition, the UN Security Council was struggling to identify perpetrators of acts of terrorism as falling within the scope of its responsibility, in the sense of finding the acts a threat to international peace and security under Article 39 of the UN Charter. Where the perpetrators of these acts were individuals or groups, they were considered non-state actors and not subjects of international law. During the 1970s and early 1980s the groups committing acts of terrorism were identified as national liberation movements by some Member States that justified their actions on the basis that their actions were acts of self-determination. This position was reflected by three regional organisations; the African Union, the Arab League and the OIC, all of which made a distinction in their regional

counter-terrorism conventions between acts of terrorism and acts of self-determination, excluding national liberation movements from being identified as terrorists. It is this distinction that has predominantly stopped the agreement over a single definition of the term "terrorism" and continues to do so to the present day.

Prior to the adoption of Resolution 1373 on 28 September 2001, the Security Council had hinted at its willingness to identify acts of terrorism as a threat to international peace and security. The Council adopted resolutions against Libya, Sudan and Afghanistan between 1992 and 1998. Although none of the acts of terrorism that lead to the resolutions were identified as a threat under Article 39, each resolution noted that the suppression of international acts of terrorism was essential to the maintenance of international peace and security. This statement implied that global implementation of the 12 pre-existing UN counter-terrorism conventions- 11 of which suppressed, and one prevented specific acts of terrorism- were an essential part of this process. This premise was reinforced in Resolution 1373 which called upon all states to become parties to the relevant international conventions, and also required Member States to "take the necessary steps to prevent the commission of terrorist acts". The creation of the CTC in Resolution 1373 led to the development of CTED, as the body which coordinates the process of monitoring the implementation of Resolution 1373. The process contemplated responses from Member States, as well as regional organisations.

This thesis aimed to determine whether Resolution 1373 has formed the substantive basis for a developing legal framework for the prevention and suppression of acts of terrorism. In answering this, the research has identified that paragraphs 3(d) and 3(e) of the resolution requested Member States to become party to and to implement the 12 pre-existing UN counter terrorism conventions. The thesis has shown the consequence this has had in international law in terms of the extent to which Resolution 1373 has changed the use of international law to support Member States to not only suppress acts of terrorism, but to also prevent acts of terrorism. It has demonstrated how the behaviour of Member States has changed towards the implementation of the 12 pre-existing UN counter-terrorism conventions as a result of the adoption of Resolution 1373. The data collection and subsequent analysis has shown the effect this change in behaviour has had on a) the developing legal framework, b) how legitimate Member States perceived paragraphs 3(d) and 3(e) of Resolution 1373 to be and c) the international standard for the criminalisation

of specific acts of terrorism. This thesis has examined what has prevented agreement of the single definition of the term "terrorism," and also questioned whether a single definition remains necessary in order to prevent and suppress acts of terrorism.

In this chapter the main findings with regards to the research questions are summarised and conclusions based on these findings are described. The chapter will also identify the recommendations for further research. The conclusions are discussed in three parts to be consistent with the presentation of the thesis.

11.1 The findings

Part I of this thesis set out the scope of the research and exposed the gaps that existed before the adoption of Resolution 1373. It examined whether the resolution could be a substantive basis for a developing legal framework through the lens of three elements that are common to all legal frameworks. It identified the nature of the measures contained in the resolution and examined the distinction between acts of terrorism and acts of self-determination to demonstrate the impact this has had on the draft UN comprehensive convention on international terrorism, in particular the agreement over a single definition of the term "terrorism".

Chapter 1 shows that whilst the 12 pre-existing UN counter-terrorism conventions were in place before the adoption of Resolution 1373, there was no international standard for the criminalisation of specific acts of terrorism. The lack of international cooperation between Member States in establishing jurisdiction over every act of terrorism contained in all 12 pre-existing UN counter-terrorism conventions, meant that there were no generally accepted canons of behaviour in terms of the criminalisation of these acts of terrorism. In the absence of any coercive rule to mandate implementation of the conventions (on the basis that the Vienna Convention of the Law of Treaties prevents this) there was no expectation on Member States to use international law to prevent and suppress acts of terrorism. The limited number of Member States that had signed and ratified the three conventions used as case studies prior to the adoption of Resolution 1373 reinforces this argument. To reiterate, the Convention for the Suppression of Terrorist Bombings was open for signature between 12 January 1998 and 31 December 1999 before it came into force on 23 May 2001. As of

13 June 2001, it had 59 signatures and only 24 Member States had ratified it.[1] The Convention for the Suppression of the Financing of Terrorism was opened for signature between 19 January 2000 and 31 December 2001and came into force in April 2002. By June 2001 it had 43 signatures and 3 Member States had ratified it. [2] The Taking of Hostages Convention came into force in June 1983 and by July 2001 only 92 Member States had ratified it.[3] These numbers underpin the notion that Member States did not consider the implementation of the 12 pre-existing UN counter-terrorism conventions to be behaviour that they should follow in response to the numerous acts of terrorism taking place before the adoption of Resolution 1373.

Chapter 1 also showed that this situation was compounded by having no UN institution or process to coordinate the implementation of the 12 pre-existing UN counter-terrorism conventions between Member States. Despite repeated requests from the General Assembly, Member States were not forthcoming as to which of the conventions they had implemented and how they had implemented them. Regional organisations were actively encouraging their state members to tackle acts of terrorism by adopting regional conventions. Chapter 1 indicates how influential the organisations were, specifically concerning the distinction made by three regional organisations between acts of terrorism and acts of self-determination. Some state members to these regional organisations reflected the same position in their national laws. This distinction influenced the drafting of two of the pre-existing UN counter-terrorism conventions, namely the Convention for the Suppression of Terrorist Bombings 1997 and Convention for the Suppression of the Financing of Terrorism 1999. The strength of the distinction between acts of terrorism and acts of self-determination has also stalled the completion of the draft comprehensive convention on international terrorism. None of the 12 pre-existing UN counter-terrorism conventions sought to provide a single definition of the term "terrorism" because it avoided the issue of including acts of self-determination from within its scope.

[1] UNGA Measures to Eliminate International Terrorism Report of the Secretary-General, 56th session (3 July 2001) UN Doc A/56/160 at 19

[2] Measures to Eliminate International Terrorism Report of the Secretary-General (n1)

[3] International Convention against the Taking of Hostages (adopted 17 December 1979 entered into force 3 June 1983) 1316 UNTS 205 status as of 7 August 2019 https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-5&chapter=18&lang=en#EndDec accessed on 9 August 2019

Chapter 1 exposed the gaps that existed before the adoption of Resolution 1373. Defining the term "terrorism" had become such a controversial issue, that proscribing specific acts of terrorism was the only way forward in terms of gaining agreement and cooperation between Member States. Member States identified the need to suppress these acts and to stop them from happening, yet they chose not to implement all 12 of the pre-existing UN counter terrorism conventions, which left perpetrators able to evade prosecution and punishment for their actions. This meant that the12 pre-existing UN counter-terrorism conventions were linked only by the fact that the each criminalised a specific act of terrorism. Essentially, they were individual stand -alone conventions that had no UN institution providing oversight as to their implementation. As a result, there was very limited use of international law by Member States to prevent or suppress acts of terrorism. The international standard for the criminalisation of specific acts of terrorism did not exist.

Chapter 2 contained the scholarly literature. It examined literature concerning Resolution 1373 and the use of Chapter VII of the UN Charter, as well as literature that examined the implementation of the resolution and the language it used. A review of the literature as to how the term "terrorism" was defined included the issue of creating a single definition. The literature concerning international legal frameworks identified three elements that were adopted to be used as a lens through which to examine what constitutes a legal framework in international law. They were; standards in international law, the process of implementation and compliance, and network which invokes the process of implementation and compliance. The chapter then reviewed the literature for each of these three elements. This scholarly literature review helped to shape the research questions which were set out at the end of this chapter. The terminology and method is set out in chapter 3.

Chapter 4 examined whether Resolution 1373 has formed the substantive basis for a developing legal framework to prevent and suppress acts of terrorism. This took place through the reinterpretation of a legal framework in international law using three elements identified in the literature review in chapter 2. This allowed the examination to go beyond the traditional perspective that international cooperation concerning acts of terrorism can only be achieved through a comprehensive or framework convention that brings the 12 pre-existing UN counter-terrorism conventions together and defines the term "terrorism".

The first element to be examined was standards in international law. This advanced the idea that as a result of Resolution 1373 Member States have changed their behaviour to implement the 12 pre-existing UN counter-terrorism conventions. This has developed an international standard for the criminalisation of specific acts of terrorism. Using UNCLOS as an example of framework convention which had developed around a shared understanding of the Law of the Sea, this chapter was able to expand on the points made in chapter 1. It examined one aspect of why there weren't any shared common practices between Member States and showed how state behaviour in terms of cooperation and collective action in international law was limited. The chapter was able to expand on the gaps exposed in chapter 1 and identify that whilst each of the 12 pre-existing UN counter-terrorism conventions provided a set of legal rules and a mechanism for cooperation through the principle *aut dedere aut judicare*, they only bound the respective states that were party to each convention. The Vienna Convention on the Law of Treaties meant there was no obligation for Member States to implement any or all of the pre-existing UN counter terrorism conventions.

The second element that was examined was the process of implementation and compliance. The chapter expanded on the introduction of the CTC and CTED in chapter 1 and showed the impact that the Security Council had in adopting the resolution under Chapter VII of the UN Charter; connecting acts of terrorism to the maintenance of international peace and security. In dismissing the idea that Resolution 1373 was legislative, the chapter noted the level of compliance from Member States, although due to the nature of the language used in the resolution, reporting to the CTC and subsequently CTED was a request. Member States compliance with the process has demonstrated how legitimate they perceive it to be. Initially the country reporting could be described as a type of social coercion[4], on the basis that the reports from each country were published on the CTC website and other Member States could see what each had implemented. After the publication of the reports ended, that fact that Member States have continued to work with the CTC, CTED and FATF to strengthening institutional mechanisms to improve their capacity to combat terrorism,[5]demonstrates how legitimate they understood the process to be.

[4] J Craig Barker "The Politics of International Law Making: Constructing Security in Response to Global Terrorism" *Journal of International Law and International Relations* (Spring 2007) Vol 3 (1) at 19
[5] UNSC 4688th mtg (20 January 2003) UN Doc S/PV.4688 at p.3 per the Secretary General

The third element was the network which invokes the process of implementation and compliance. The chapter identified the three layers of this network- national, regional and international-to show how at an international level the CTC, CTED and FATF provided the process that Member States complied with through their implementation of paragraphs 3(d) and 3(e) of Resolution 1373, supported at a regional level by the FATF associate bodies, and regional organisations.

In terms of how these three elements support a developing legal framework, the chapter highlighted how the remit of the CTC, CTED and FATF has developed to include the implementation of subsequent resolutions such as Resolution 2178, which sought to tackle foreign terrorist fighters. The network has developed to include educational institutions and local communities. Without this network, there would not be a process for implementation extending to these subsequent resolutions. The significance of Member States engagement with the CTC, CTED and FATF is analysed in chapter 9, where the continued improvement of national laws has been driven by these international institutions. The network has continued to develop through the implementation of 37 subsequent resolutions for which Resolution 1373 was the foundation.

In conclusion, this chapter showed how Resolution 1373 has developed the three elements: It led to the development of the international standard for the criminalisation of specific acts of terrorism; which developed from the process of implementation and compliance provided by the resolution, invoked through a global network which has developed to support the implementation of subsequent resolutions.

Next, chapter 5 examined the nature and elements of Resolution 1373 with the purpose of determining the consequence of its adoption for the use of international law to prevent and suppress acts of terrorism. The nature of the resolution is much more complex than the existing literature has discussed. The thesis shows that the language used in Resolution 1373 and the measures it contained were aimed at generating international cooperation between Member States. Following the 9/11 attacks, the UN Security Council wanted to generate a global response to acts of terrorism. Far from being legislative, an issue that was discussed, addressed and dismissed in chapter 4, Resolution 1373 was designed to produce coordinated activity from Member States.

The thesis shows that only the language in the first two paragraphs could be interpreted as creating binding obligations. Paragraph one, in obliging Member States to criminalise the financing of terrorism, went beyond that of the Convention for the Suppression of the Financing of Terrorism. This element filled a gap left by the convention, and obliged states to prohibit the placing of funds or financial services at the disposal of terrorists to all those involved in financial transactions would have penalties imposed on them, not only financial institutions. Paragraph two required states to suppress the recruitment of terrorist groups and prevent the supply of weapons in order to prevent acts of terrorism. It is here that states were obliged to cooperate in the exchange of information concerning the prosecution of perpetrators of terrorist acts. The obligation existed in the 12 pre-existing UN counter-terrorism conventions, but the limited ratification meant that international cooperation was not forthcoming. Chapter 5 showed the two aspects to paragraph three; the first elaborated the means necessary for states to accomplish the mandatory obligations placed on them in paragraph two,[6] specifically, to deny a safe haven to terrorists;[7] and ensure those who participate in or support the financing, preparation or planning of terrorist acts are brought to justice;[8] affording one another the greatest of assistance in criminal investigations and proceedings relating to financing or supporting acts of terrorism including to obtain evidence as was necessary for such proceedings,[9] and exchanging information.[10] The second aspect was that the measures in paragraph two sought to ensure that states established jurisdiction over acts of terrorism, which is why paragraph 3(d) "called upon "states to become party to the 12 pre-existing UN counter-terrorism conventions, and paragraph 3(e) "called upon" states to fully implement them but to compel states to do both these things would have been a breach of the Law of Treaties. The subsequent increase in the implementation of the 12 pre-existing UN counter-terrorism conventions which is identified in Part II, is significant, not only in terms of demonstrating the change in state practice, but also in terms of how international law is now used, where it was not before, to prevent and suppress acts of terrorism. The absence of a single definition of the term "terrorism" did not limit the reach of the obligations in Resolution 1373.

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[6] States had been obliged to exchange information with each other; denying a safe haven to terrorists; ensuring those who participate in or support the financing, preparation or planning of terrorist acts are brought to justice and affording one another the greatest of assistance in criminal investigations and proceedings relating to financing or supporting terrorism including to obtain evidence as was necessary for such proceedings.

[7] UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373 [2(c)]

[8] Ibid [2(e)]

[9] UN Doc S/RES/1373 (n7) [2(f)]

[10] UN Doc S/RES/1373 (n7) [2(b)]

Chapter 6 examined how Resolution 1373 acknowledged the important role of regional organisations, which had for years before the adoption of the resolution, been condemning acts of terrorism and promoting cooperation amongst their state members. This thesis examined these regional approaches and showed how the distinction between acts of terrorism and acts of self-determination has shaped how international law responds to acts of terrorism. Two key points were made. The first concerned the issue of a single definition of the term "terrorism". Although discussed briefly in chapter 4 this was revisited in chapter 6 in the context of the distinction made between acts of terrorism and acts of self-determination. The African Union, the Arab League and the OIC have all adopted the position that the peoples struggle for self-determination should fall within the classification of IHL, and thus be carried out in accordance with the rules of armed conflict. This is distinct from acts of terrorism which are subject to the sanction of criminal law and will therefore fall within the scope of the 12 pre-existing UN counter-terrorism conventions. Many state members to these regional organisations have supported this distinction in meetings of UN organs to the extent that it has become the main issue to overcome in order to reach an agreement about a single definition of the term "terrorism". Such has been the strength of the position by these three regions, that it has prevented agreement over the draft comprehensive convention on international terrorism. The three organisations remain committed to the distinction and have been clear that the language of the comprehensive convention should not deny peoples their right to self-determination. At the same time the conventions condemned all acts of terrorism, indicating that the issue was to prevent the self-determination principle from being consumed by another area of international law. The distinction between acts of self-determination and acts of terrorism underpinned why Resolution 1373 and the 12 pre-existing UN counter-terrorism conventions did not attempt to provide any single definition of the term "terrorism". It each had attempted to provide a single definition they would have almost certainly faced the same struggle to be accepted as the draft UN comprehensive convention on international terrorism.

Chapter 6 made it clear that recognition of the distinction between acts of terrorism and acts of self-determination could leave a gap between IHL and domestic criminal law. Relying upon states to recognise IHL in the context of invoking the rules of armed conflict potentially gives perpetrators of acts of terrorism a space within which to operate unregulated and unpunished. This is indicative as to why the other regional organisations

emphasise criminal law as the response to acts of terrorism. Although Resolution 1373 did not include a definition of the term "terrorism", this should not be taken as recognition that IHL was the preferred legal framework to deal with acts of self-determination. It was more likely that the Security Council simply wanted to avoid an impasse over the issue of a single definition, the absence of which has not limited the development of the international standard of counter-terrorism law. If anything, this discussion has shown that the response to acts of terrorism in international law is multifaceted, but it clearly shows that Resolution 1373 has endorsed a response through criminal law using the 12 pre-existing UN counter-terrorism conventions.

The second point made in chapter 6 concerned how the self-determination distinction has manifested as a regional norm. There is a clear expectation that these three regional organisations will continue to apply the distinction between acts of self-determination and acts of terrorism, not because they have to, but because they consider it in their interests to do so. Despite conflicting practice from other regional organisations, the strength of the exclusion has been evident in how it has shaped international law by limiting how it has responded to acts of terrorism. It has all but stopped progress of the draft UN comprehensive convention on international terrorism, leaving Resolution 1373 to form the foundation of subsequent action which is set out in chapter 4. The distinction has not, however, stopped regional organisations from encouraging their state members to prevent and suppress acts of terrorism or to implement Resolution 1373 through the 12 pre-existing UN counter-terrorism conventions.

Part III of the thesis examined the change in the behaviour of Member States through case studies using three of the 12 pre-existing UN counter-terrorism conventions. These were: The Convention against the Taking of Hostages, 1979, the Convention for the Suppression of Terrorist Bombings, 1997 and the Convention for the Suppression of the Financing of Terrorism, 1999. Chapters 7, 8 and 9 identified and set out the relevant laws implemented by Member States to meet the requirement of each convention after the adoption of Resolution 1373. It confirmed the existence of the international standard for the criminalisation of specific acts of terrorism. Chapter 7 identified laws for 68 Member States to show they had implemented the Convention against the Taking of Hostages after the adoption of Resolution 1373. Seventy-six Member States had acceded to the convention after the adoption of Resolution 1373 which is set out in Appendix 2. The offence of

kidnapping would already have been a crime in the domestic law of most states, but the convention required states to give effect to the international element of the offence of hostage taking. This chapter showed the extent of the change in practice by Member States who developed new laws and amended existing ones to comply with the convention. The examination of state practice in chapter 8 concerned the implementation of the Convention for the Suppression of Terrorist Bombings. The thesis showed that 141 Member States had acceded to the convention after the adoption of Resolution 1373 which is set out in Appendix 3. It identified laws for 118 of these states a number of which had been amended following the adoption of Resolution 1373 in order to ensure compliance with the convention. Chapter 9 examined the implementation of the Convention for the Suppression of the Financing of Terrorism. The thesis showed that 183 Member States had acceded to this convention after the adoption of Resolution 1373, set out in Appendix 4. Identifying laws for 155 of those states, this chapter showed the extent of state practice in implementing an entirely new offence which was not criminalised in domestic jurisdictions before, and which required new legislative machinery in order to achieve compliance with the convention.

Chapter 10 provided an analysis of the data collected in chapters 7, 8 and 9. It identified three points which related to the three elements of the legal framework international law. These not only identified how the behaviour of Member States had changed following the adoption of Resolution 1373, but they also showed the effect this had on: a) the developing legal framework, b) how legitimate Member States perceived the measures to implement the 12 pre-existing UN counter-terrorism conventions to be and c) the international standard for the criminalisation of specific acts of terrorism.

The first point related to the first element of standards in international law. A total of 400 accessions after the adoption of Resolution 1373 from Member States to the three pre-existing UN counter terrorism conventions (see Appendices 2-4) is evidence of a change in behaviour when compared to before the adoption of the resolution. Only three Member States; Eritrea, Tuvalu and South Sudan have not acceded to all three of the conventions used as case studies.[11] Member States had been convinced that the request made to them in paragraphs 3(d) and 3(e) of Resolution 1373 was behaviour that was expected from them

[11] Shown in the tables in Appendices 2,3 and 4

all. The implementation of the offences in the three conventions was extensive. Approximately 341 laws have been identified as implemented in national legal systems to criminalise the offences proscribed by all three of the conventions. Member States adopted new laws and amended them to give effect to the three conventions, because they chose to, not because they were forced to, in accordance with the Vienna Convention on the Laws of Treaties. This makes the change in behaviour significant. Six Member States entered a declaration or reservation upon accession to the three UN counter-terrorism conventions (concerning the exclusion of acts of self-determination from the scope of the laws they implemented). It is accepted that in entering a reservation or declaration concerning acts of self-determination the states felt bound by the principle, but all the implementing laws were compliant with the conventions. The extent of the implementation and compliance amongst not only these six Member States, but the other Member States implies a general consensus that criminalising the acts of terrorism proscribed by each convention is an accepted canon of behaviour. This has resulted in the international standard for the criminalisation of specific acts of terrorism.

The second point related to the second element of the international legal framework which was the process of implementation and compliance. The process of implementing paragraphs 3(d) and 3(e) of Resolution 1373 supported the transition of the international standard for the criminalisation of specific acts of terrorism into a norm. Criminalising the acts of terrorism in the pre-existing UN counter terrorism conventions is now an intrinsic part of national legal systems, meaning that perpetrators of these acts can be prosecuted for their actions by national courts. The majority of Member States, as well as two non-Member States have acceded to the Convention for the Suppression of Terrorist Financing. This convention required Member States to have criminalised the acts defined as offences in the pre-existing UN counter terrorism conventions. Therefore, whilst there are still some states that have not acceded to the Convention against the Taking of Hostages 1979, and the Convention for the Suppression of Terrorist Bombings 1997, they have demonstrated an intention to do so by acceding to the Convention for the Suppression of Terrorist Financing.

The third point concerns the third element of the international legal framework; the global network that has been formed from international, regional and national institutions. This thesis has demonstrated how this network led by the CTC and CTED has activated the process of implementing Resolution 1373, and the 12 pre-existing UN counter-terrorism

conventions. The process of implementation is activated by Member States within the network, through the ongoing communication between the international and regional institutions. The request in paragraphs 3(d) and 3(e) of Resolution 1373 to implement the 12 pre-existing UN counter-terrorism conventions has been considered legitimate by Member States. The paragraphs in Resolution 1373 prescribe actions in a situation of choice,[12] and Member States have pulled together towards consensual compliance. [13] Through the process of implementation and compliance invoked by the network the standard for the criminalisation of specific acts of terrorism has transitioned from being a conscious approach by states, to an intrinsic part of their national legal systems.[14] This chapter shows that despite the declarations and reservations that support the distinction between acts of terrorism and acts of self-determination, Member States have complied with the UN counter-terrorism conventions. The extent of compliance in terms of states re-drafting national laws to meet the requirements of not only paragraphs 3(d) and 3(e) of Resolution 1373, and also the 12 pre-existing UN counter-terrorism conventions demonstrates a consolidation of state practice and the transition of the international standard for the criminalisation of specific acts of terrorism into a norm. Member States, and non-Member States have established jurisdiction over the specific acts of terrorism and are obliged to prosecute or extradite the perpetrators of those acts. This behaviour is a significant change from that which existed before Resolution 1373.

The final conclusions of this thesis are:

- Prior to the adoption of Resolution 1373, there was no international standard for the criminalisation of specific acts of terrorism. The limited number of Member States becoming party to and implementing the 12 pre-existing UN counter terrorism conventions, showed that Member States did not consider establishing jurisdiction over all the acts of terrorism proscribed by conventions to be behaviour they should follow.

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[12] Andrew P. Cortell and James W. Davis jr, Understanding the Domestic Impact of International Norms: A Research Agenda International Studies review, Vol 2. No. 1 (Spring 2000) 65-87 at 69

[13] Thomas M Franck, 'The Power of Legitimacy and The Legitimacy of Power: International Law in the Age of Power Disequilibrium' (2006) 100 Am. J. Int'l L. 88 at 93

[14] Lisbeth Segerlund, *Making Corporate Social Responsibility a Global Concern: Norm Construction in a Globalizing World*, (Routledge 2016) per "the Norma Cycle Model" and see also Thomas Buergenthal, Evolution of International Human Rights, *Human Rights Quarterly* 19 (1997) 703-723 at 705

- In line with the Vienna Convention on the Law of Treaties there was no rule that mandated implementation of the 12 pre-existing UN counter terrorism conventions. Prior to the adoption of Resolution 1373, there was also no process that supported and coordinated the implementation of the 12 pre-existing UN counter terrorism conventions. Before Resolution 1373, they were separate conventions linked only through each criminalising a specific act of terrorism.

- Defining the term "terrorism" had become so controversial because of the distinction made between acts of terrorism and acts of self-determination by three regional organisations- the Arab League, the AU and the OIC- in their regional counter terrorism conventions. These organisations and their state members sough to exclude acts of self-determination from the scope of a single definition of the term "terrorism." Not only has this distinction influenced the drafting of the Convention for the Suppression of Terrorist Bombing 1997 and the Convention for the Suppression of the Financing of Terrorism, but it has also stalled the completion of the draft comprehensive convention on international terrorism. Therefore, adopting conventions which criminalised specific acts of terrorism was a way forward in terms of gaining agreement between Member States.

- It is highly unlikely that a single definition will ever be agreed upon because of the division between Member States in recognising the distinction between acts of terrorism and acts of self-determination. The practice of three regional organisations in recognising and upholding the self -determination distinction, despite other regional organisations not recognising it, has shown that it is a regional norm. There is a clear expectation that the three regional organisations will continue to apply the distinction not because they have to, but because it is in their interests to uphold the principle of self-determination in IHL.

- Before Resolution 1373, the focus was on suppressing acts of terrorism using the 12 pre-existing UN counter terrorism conventions, but at the same time their weakness was acknowledged in terms of Member States being able to pick and choose which of the conventions they became party to. The overarching view is that in order to achieve global cooperation on tackling acts of terrorism, a comprehensive

convention is required which defines the term "terrorism" and brings together the 12 pre-existing UN counter-terrorism conventions. Unsurprisingly, scholars accept that legal frameworks in international law are constructed from the sources of international law found in Article 38(1) of the Statute of the ICJ. This supported the need for a single definition of the term "terrorism" and a comprehensive convention.

- The UN Security Council in adopting Resolution 1373 generated a global response to acts of terrorism. The resolution has led to a change in the behaviour of Member States concerning the implementation of the 12 pre-existing UN counter-terrorism conventions, as a result of paragraphs 3(d) and 3(e) of the resolution.

- The significance in the change of behaviour of Member States and some non-Member States, is that as a result of the implementation of paragraphs 3(d) and 3 (e) of Resolution 1373 they have chosen to criminalise the acts proscribed by the 12 pre-existing UN counter-terrorism conventions. They could not be obliged to do so, and their collective action is significantly different from that which existed before the adoption of Resolution 1373.

- Resolution 1373 refers to multiple sources of law in the form of Member States implementing new laws in their national legal systems, which required multiple actors to monitor the process of implementation and compliance; at a national level state governments and national institutions concerning education and local communities, at a regional level regional organisations including the associate bodies of the FATF, and at an international level the CTC, CTED and FATF. Whilst these sources sit outside of those contained in Article 38(1) Statute of the ICJ, the three elements Resolution 1373 has created are common to all legal frameworks.

- The three elements created by Resolution 1373 are: the standard for the criminalisation of specific acts of terrorism, a process for implementation/compliance and a global network within which the process of implementation and compliance is invoked. Resolution 1373 does not contain a legal framework *per se*. It is clearly not a comprehensive convention, nor is it a framework document. What is has led to however, shows that a single definition of the term

"terrorism" in a comprehensive convention may not be required to achieve international cooperation between Member States for the prevention and suppression of acts of terrorism.

- Paragraph three of Resolution 1373, elaborated the necessary means by which Member States could meet the obligations in paragraph two, but it could only "call upon" Member States to establish jurisdiction over the specific acts of terrorism contained in the 12 pre-existing UN counter terrorism conventions. The resolution could not compel states to implement the conventions. The increase in accessions to the pre-existing UN counter terrorism conventions as well as the implementation of new laws to meet the requirements of the conventions is significant, in terms of the change in behaviour arising from a request, which Member States did not have to act upon.

- As a result of implementing paragraphs 3(d) and 3 (e) in Resolution 1373, Member States increased their accession to the 12 pre-existing UN counter terrorism conventions. This thesis has shown that a total of 400 accessions have been made to the three pre-existing UN counter terrorism conventions used as case studies after the adoption of Resolution 1373. Member States have demonstrated that they were convinced that the request made in paragraphs 3(d) and 3 (e) of Resolution 1373 was behaviour expected by them all. Approximately 341 laws have been identified as implemented in national legal systems to criminalise the offences proscribed by the three conventions used as case studies. Member States adopted new laws and modified them after receiving recommendations, to ensure compliance with the requirements of the convention. Even the six states that entered a declaration or reservation upon accession to the three UN counter terrorism conventions used as case studies, enacted laws that were compliant with the conventions. This is evidence of a general consensus between Member States that criminalising the specific acts of terrorism is an accepted canon of behaviour. This developed the international standard for the criminalisation of acts of terrorism.

- The need for a single definition of the term "terrorism" has been reduced because of the development of the international standard for the criminalisation of specific acts

of terrorism. The absence of a single definition has not stopped the development of the international standard. Where neither Resolution 1373 nor the 12 pre-existing UN counter-terrorism conventions have attempted to define the term “terrorism”, this has led states to the consensual compliance necessary to recognise that criminalising the specific acts of terrorism is the required behavioural response following the attacks of 9/11.

- The process of implementation is driven by a global network that is led internationally by the CTC, CTED and the FATF. At a regional level it is driven by regional organisations and the FATF’s associate bodies, and at a national level it is the institutions of Member States which respond to the process. It is this process that has supported the transition of the standard into a norm. Resolution 1373 has been the foundation for 37 subsequent resolutions, which include Resolution 1624 which prohibits the incitement to commit terrorist acts,[15] and Resolution 2178 which tackles foreign terrorist fighters.[16] The global network has been extended to non-state actors such as local community institutions to support the implementation of these subsequent resolutions. This is a recognition by states as to the legitimacy of the implementation process created by Resolution 1373, and also of the request set down in paragraphs 3(d) and (e) to become party to and implement the 12 pre-existing UN counter-terrorism conventions.

- The change in Member States behaviour towards implementing the 12 pre-existing UN counter terrorism conventions is significant. There is clear evidence shown in the data collection that they have pulled together towards consensual compliance that the acts of terrorism proscribed by the conventions are now intrinsic to national legal systems. Some Member States implemented the acts of terrorist financing from the Convention for the Suppression of the Financing of Terrorism 1999 before acceding to it. Both Member States and non-Member States have enacted new laws as well as amending them, after receiving recommendations from the FATF and its associate bodies. This behaviour has occurred because Member States considered the standard to be a legitimate response to the situation they were facing following

[15] UNSC Res 1624 (14 September 2005) UN Doc S/RES/1624 Threats to international peace and security (Security Council Summit 2005)
[16] UNSC Res 2178 (24 September 2014) UN Doc S/RES/2178 Threats to international peace and security caused by terrorist acts

the attacks of 9/11. The extensive consolidation of state practice indicates that the international standard for the criminalisation of specific acts of terrorism has transitioned into an international norm.

- As a result of this change in behaviour there is now international cooperation over the acts of terrorism in the 12 pre-existing UN counter terrorism conventions which did not exist before the adoption of Resolution 1373. International law is now used to prevent and suppress acts of terrorism, where it was used sparingly before the adoption of Resolution 1373. The international standard for the criminalisation of specific acts of terrorism developed as a result of the adoption of Resolution 1373 and has consolidated into an international norm as a result of the process of implementation and compliance invoked through the global network. Member States have been shaped by the capacity of the standard to pull them towards consensual compliance on the basis that do so was a legitimate response to acts of terrorism after the attacks of 9/11. This has made Resolution 1373 the foundation for 37 subsequent resolutions that tackle new acts of terrorism and new threats posed by terrorists. It is clear, that Resolution 1373 forms a substantive basis for a developing legal framework for the prevention and suppression of acts of terrorism.

11.2 Recommendations for future research

Future research will examine the efficiency of Resolution 1373 as a substantive basis for a developing legal framework for the prevention and suppression of acts of terrorism. This will be done through an examination of the implementation of subsequent UN Security Council resolutions for which Resolution 1373 formed for the basis. Two specific resolutions; Resolution 2178 which was adopted to tackle the threat posed by foreign terrorist fighters and Resolution 1624 which prohibits the incitement to commit terrorist acts[17] have both been identified in this thesis. The CTC, CTED and the FATF have extended their remit to include the implementation of these resolutions. An examination as to how these resolutions have been implemented would test how efficient the developing legal framework for the prevention and suppression of acts of terrorism is.

[17] UNSC Res 1624 (14 September 2005) UN Doc S/RES/1624 Threats to international peace and security (Security Council Summit 2005)

Closely linked to this is the examination of the extent to which the distinction between acts of terrorism and acts of self-determination has been upheld when applying the laws that have been implemented to meet the requirements of the three case studies. The six Member States that entered a declaration or reservation concerning the distinction were Iran, Lebanon, Pakistan, Egypt, Kuwait and Syria. Future research will examine the application of the six states implementing laws to show whether each has felt sufficiently bound to follow the distinction in practice. This would examine whether the distinction between acts of terrorism and acts of self-determination has an effect on a practical application of the implementing laws of these states.

This thesis has also highlighted a research interest concerning the offence of financing of acts of terrorism and its connection with human trafficking in terms of the latter being identified as a predicate offence to counter the financing of terrorist acts. Some of the Resolutions that have their foundation rooted in Resolution 1373 deal with human trafficking as a terrorist tactic and it would be interesting to explore the extent to which the offence of financing acts of terrorism could prevent the offence of human trafficking.

The voluntarist nature of international law was touched on briefly in the context of the principle *pacta sunt servanda* from the Vienna Convention on the Law of Treaties 1969.
A further study could look at the correlation between states that are not party to the Vienna Convention and whether the same states implemented paragraphs 3(d) and 3(e) of Resolution 1373.

11.3 In conclusion

This thesis has shown how Resolution 1373 has produced three elements that are common to international legal frameworks; an international standard; a process for implementation and compliance and a global network which invokes this process. Subsequent resolutions that have their foundation in Resolution 1373 are implemented through the process, invoked by the global network which has extended beyond the CTC, CTED and governments of Member States to educational institutions and local community groups for youth and women. This is a demonstration of how this legal framework has developed and can continue to develop. Resolution 1373 has changed the use of international law for the

prevention and suppression of acts of terrorism, by creating the standard for the criminalisation of specific acts of terrorism, which, through the consolidation of state practice has transitioned into a norm. Not only this, but the process of implementation and compliance invoked through a global network of institutions has established Resolution 1373 as a substantive basis for a developing legal framework to prevent and suppress acts of terrorism.

Appendix 1: 12 pre-existing UN counter terrorism conventions

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft signed at Tokyo on 14 September 1963 (entered into force on 4 December 1969);
2. Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16 December 1970 (entered into force on 14 October 1971);
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23 September 1971 (entered into force on 26 January 1973;
4. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973 adopted by the General Assembly of the United Nations on 14 December 1973 (entered into force on 20 February 1977)
5. International Convention against the Taking of Hostages adopted by the General Assembly of the United Nations on 17 December 1979 (entered into force on 3 June 1983)
6. Convention on the Physical Protection of Nuclear Material signed at Vienna on 3 March 1980 (entered into force on 8 February 1987);
7. 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, signed at Montreal on 24 February 1988 (entered into force on 6 August 1989);
8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation done at Rome on 10 March 1988 (entered into force on 1 March 1992)
9. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988 (entered into force on 1 March 1992)
10. Convention on the Marking of Plastic Explosives for the Purpose of Detection signed at Montreal on 1 March 1991 (entered into force on 21 June 1998);
11. International Convention for the Suppression of Terrorist Bombings adopted by the General Assembly of the United Nations on 15 December 1997 (opened for signature on 12 January 1998 until 31 December 1999);

12. International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on 9 December 1999 (opened for signature on 10 January 2000 until 31 December 2001)

Appendix 2: Convention for the Taking of Hostages 1979

(Red indicates a state which has not become party to the convention at all)

International Convention for the Taking of Hostages 1979	**Acceded to Convention after Resolution 1373 Y/N**
North Africa	
Algeria	N
Egypt	N
Libya	N
Mauritania	N
Morocco	Y
Tunisia	N
East Africa	
Comoros	Y
Djibouti	Y
Eritrea	N
Ethiopia	Y
Kenya	N
Rwanda	Y
Somalia	N
South Sudan	N
Sudan	N
Uganda	Y
Tanzania	N
Southern Africa	
Botswana	N
Lesotho	N
Malawi	N
Mozambique	Y
Namibia	Y
Madagascar	Y
Mauritius	N
Seychelles	Y
South Africa	Y
Swaziland	N
Zambia	Y
Zimbabwe	N

West Africa	
Benin	Y
Burkina Faso	Y
Cape Verde	Y
Cote d'ivoire	N
Gambia	N
Ghana	N
Guinea	Y
Guinea-Bissau	Y
Liberia	Y
Mali	N
Niger	Y
Nigeria	Y
Senegal	N
Sierra Leone	Y
Togo	N
Central Africa	
Angola	N
Burundi	N
Cameroon	N
Central African Republic	Y
Chad	Y
Dem Republic of Congo	N
Equatorial Guinea	Y
Gabon	Y
Republic of the Congo	N
Sao Tome and Principe	Y
Asia **Pacific Islands**	
Fiji	Y
Kiribati	Y
Marshall Islands	Y
Micronesia	Y
Nauru	Y
Palau	Y
Papua New Guinea	Y
Samoa	N
Solomon Islands	N
Tonga	Y
Tuvalu	N
Vanuatu	N

South-East Asia	
Brunei	N
Cambodia	Y
Indonesia	N
Lao People's Dem.Republic	Y
Malaysia	Y
Myanmar	Y
Philippines	N
Singapore	Y
Timor-leste	N
Thailand	Y
Vietnam	Y
South Asia	
Afghanistan	Y
Bangladesh	Y
Bhutan	N
India	N
Maldives	N
Nepal	N
Pakistan	N
Sri Lanka	N
Central Asia and the Caucasus	
Armenia	Y
Azerbaijan	N
Georgia	Y
Kazakhstan	N
Kyrgyzstan	Y
Tajikistan	Y
Turkmenistan	N
Uzbekistan	N
Western Asia	
Bahrain	Y
Islamic Republic of Iran	Y
Iraq	Y
Jordan	N
Kuwait	N
Lebanon	N
Oman	N
Qatar	Y
Saudi Arabia	N
Syrian Arab Republic	N
United Arab Emirates	Y

Yeman	N
East Asia	
China	N
Dem Peoples Republic of Korea	Y
Japan	N
Mongolia	N
Republic of Korea	N
Latin America **Central America**	
Belize	Y
Costa Rica	Y
El Salvador	N
Guatemala	N
Honduras	N
Mexico	N
Nicaragua	Y
Panama	N
Caribbean	
Antigua and Barbuda	N
Bahamas	N
Barbados	N
Cuba	Y
Dominica	N
Dominican Republic	Y
Grenada	N
Haiti	N
Jamaica	Y
Saint Kitts and Nevis	N
Saint Lucia	Y
Saint Vincent and Grenadines	N
Trinidad and Tobago	N
South America	
Argentina	N
Bolivia	Y
Brazil	N
Chile	N
Colombia	Y
Ecuador	N
Guyana	Y
Paraguay	Y

Peru	N
Suriname	N
Uruguay	Y
Venezuela	N
Europe and North America **Eastern Europe**	
Belarus	N
Czech Republic	N
Estonia	Y
Hungary	N
Latvia	Y
Lithuania	N
Poland	N
Republic of Moldova	Y
Russian Federation	N
Slovakia	N
Ukraine	N
Western Europe, North America and other states	
Andorra	Y
Australia	N
Austria	N
Belgium	N
Canada	N
Cyprus	N
Denmark	N
Finland	N
France	N
Germany	N
Greece	N
Iceland	N
Ireland	Y
Israel	N
Italy	N
Liechtenstein	N
Luxembourg	N
Malta	Y
Monaco	Y
Netherlands	N
New Zealand	N
Norway	N
Portugal	N
San Marino	Y
Spain	N

Sweden	N
Switzerland	N
Turkey	N
United Kingdom and Northern Ireland	N
United States of America	N
South-East Europe	
Albania	Y
Bosnia and Herzegovina	N
Bulgaria	N
Croatia	Y
Montenegro	Y
Romania	N
Serbia	N
Slovenia	N
The former Yugoslav Republic of Macedonia	N

Appendix 3: Convention for the Suppression of Terrorist Bombings 1997

(Red indicates a state which has not become party to the convention at all)

International Convention for the Suppression of Terrorist Bombings 1997	Acceded to Convention after Resolution 1373 Y/N
North Africa	
Algeria	Y
Egypt	Y
Libya	N
Mauritania	Y
Morocco	Y
Tunisia	Y
East Africa	
Comoros	Y
Djibouti	Y
Eritrea	N
Ethiopia	Y
Kenya	Y
Rwanda	Y
Somalia	N
South Sudan	N
Sudan	N
Uganda	Y
Tanzania	N
Southern Africa	
Botswana	N
Lesotho	Y
Malawi	Y
Mozambique	Y
Namibia	Y
Madagascar	Y
Mauritius	Y
Seychelles	Y
South Africa	Y
Swaziland	N
Zambia	Y
Zimbabwe	N
West Africa	

Benin	Y
Burkina Faso	Y
Cape Verde	Y
Cote d'ivoire	Y
Gambia	N
Ghana	Y
Guinea	N
Guinea-Bissau	Y
Liberia	Y
Mali	Y
Niger	Y
Nigeria	Y
Senegal	Y
Sierra Leone	Y
Togo	Y
Central Africa	
Angola	N
Burundi	N
Cameroon	Y
Central African Republic	Y
Chad	N
Dem Republic of Congo	Y
Equatorial Guinea	Y
Gabon	Y
Republic of the Congo	N
Sao Tome and Principe	Y
Asia **Pacific Islands**	
Fiji	Y
Kiribati	Y
Marshall islands	Y
Micronesia	Y
Nauru	Y
Palau	Y
Papua New Guinea	Y
Samoa	N
Solomon Islands	Y
Tonga	Y
Tuvalu	N
Vanuatu	N
South-East Asia	
Brunei	Y

Cambodia	Y
Indonesia	Y
Lao People's Dem.Republic	Y
Malaysia	Y
Myanmar	Y
Philippines	Y
Singapore	Y
Timor-leste	N
Thailand	Y
Vietnam	Y
South Asia	
Afghanistan	Y
Bangladesh	Y
Bhutan	N
India	N
Maldives	N
Nepal	N
Pakistan	Y
Sri Lanka	N
Central Asia and the Caucasus	
Armenia	Y
Azerbaijan	N
Georgia	Y
Kazakhstan	Y
Kyrgyzstan	N
Tajikistan	Y
Turkmenistan	Y
Uzbekistan	N
Western Asia	
Bahrain	Y
Islamic Republic of Iran	N
Iraq	Y
Jordan	N
Kuwait	Y
Lebanon	N
Oman	N
Qatar	Y
Saudi Arabia	Y
Syrian Arab Republic	N
United Arab Emirates	Y
Yeman	N

East Asia	
China	Y
Dem Peoples Republic of Korea	N
Japan	Y
Mongolia	N
Republic of Korea	Y
Latin America **Central America**	
Belize	Y
Costa Rica	Y
El Salvador	Y
Guatemala	Y
Honduras	Y
Mexico	Y
Nicaragua	Y
Panama	N
Caribbean	
Antigua and Barbuda	Y
Bahamas	Y
Barbados	Y
Cuba	Y
Dominica	Y
Dominican Republic	Y
Grenada	Y
Haiti	N
Jamaica	Y
Saint Kitts and Nevis	Y
Saint Lucia	Y
Saint Vincent and Grenadines	Y
Trinidad and Tobago	N
South America	
Argentina	Y
Bolivia	Y
Brazil	Y
Chile	Y
Colombia	Y
Ecuador	N
Guyana	Y
Paraguay	Y
Peru	Y
Suriname	N

Uruguay	Y
Venezuela	Y
Europe and North America **Eastern Europe**	
Belarus	Y
Czech Republic	N
Estonia	Y
Hungary	Y
Latvia	Y
Lithuania	Y
Poland	Y
Republic of Moldova	Y
Russian Federation	N
Slovakia	N
Ukraine	Y
Western Europe, North America and other states	
Andorra	Y
Australia	Y
Austria	N
Belgium	Y
Canada	Y
Cyprus	N
Denmark	N
Finland	Y
France	N
Germany	Y
Greece	Y
Iceland	Y
Ireland	Y
Israel	Y
Italy	Y
Liechtenstein	Y
Luxembourg	Y
Malta	Y
Monaco	N
Netherlands	Y
New Zealand	Y
Norway	N
Portugal	Y
San Marino	Y
Spain	N
Sweden	N
Switzerland	Y

Turkey	Y
United Kingdom and Northern Ireland	N
United States of America	Y
South-East Europe	
Albania	Y
Bosnia and Herzegovina	Y
Bulgaria	N
Croatia	Y
Montenegro	Y
Romania	Y
Serbia	Y
Slovenia	Y
The former Yugoslav Republic of Macedonia	Y

Appendix 4: Convention for the Suppression for the Financing of Terrorism 1999

(Red indicates a state which has not become party to the convention at all)

International Convention for the Suppression for the Financing of Terrorism 1999	**Acceded to Convention after Resolution 1373 Y/N**	**Initial offence amended following recommendations Y/N or not required**
North Africa		
Algeria	Y	Yes
Egypt	Y	Yes
Libya	Y	No
Mauritania	Y	not required
Morocco	Y	Yes
Tunisia	Y	not required
East Africa		
Comoros	Y	Yes
Djibouti	Y	No information available
Eritrea	N	
Ethiopia	Y	No information available
Kenya	Y	No information available
Rwanda	Y	No
Somalia	N	
South Sudan	N	
Sudan	Y	Yes
Uganda	Y	Yes
Tanzania	Y	Action plan accepted
Southern Africa		
Botswana	Y	yes
Lesotho	Y	Yes
Malawi	Y	Yes
Mozambique	Y	not required
Namibia	Y	Yes
Madagascar	Y	No
Mauritius	Y	yes
Seychelles	Y	not required
South Africa	Y	not required
Swaziland	Y	no information available
Zambia	Y	yes
Zimbabwe	Y	yes

West Africa		
Benin	Y	**no information available**
Burkina Faso	Y	**no information available**
Cape Verde	Y	**no information available**
Cote d'ivoire	Y	**yes**
Gambia	Y	**not required**
Ghana	Y	**no information available**
Guinea	Y	**No**
Guinea-Bissau	Y	**No**
Liberia	Y	**Yes**
Mali	Y	**Yes**
Niger	Y	**Yes**
Nigeria	Y	**yes**
Senegal	Y	**no information available**
Sierra Leone	Y	**not required**
Togo	Y	**no information available**
Central Africa		
Angola	Y	yes
Burundi	N	
Cameroon	Y	yes
Central African Republic	Y	no information available
Chad	N	Law in place
Dem Republic of Congo	Y	no information available
Equatorial Guinea	Y	no information available
Gabon	Y	no information available
Republic of the Congo	Y	no information available
Sao Tome and Principe	Y	no information available
Asia **Pacific Islands**		
Fiji+	Y	yes
Kiribati	Y	yes

Marshall islands	Y	no information available
Micronesia	Y	no information available
Nauru	Y	Yes
Palau	Y	Yes
Papua New Guinea	Y	not required
Samoa	Y	yes
Solomon Islands	Y	not required
Tonga	Y	yes
Tuvalu	N	Laws adopted
Vanuatu	Y	yes
South-East Asia		
Brunei	Y	yes
Cambodia	Y	yes
Indonesia	Y	yes
Lao People's Dem.Republic	Y	yes
Malaysia	Y	yes
Myanmar	Y	yes
Philippines	Y	yes
Singapore	Y	yes
Timor-leste	Y	no information available
Thailand	Y	yes
Vietnam	Y	no information available
South Asia		
Afghanistan	Y	yes
Bangladesh	Y	yes
Bhutan	Y	no information available
India	Y	not required
Maldives	Y	yes
Nepal	Y	yes
Pakistan	Y	not required
Sri Lanka	N	not required
Central Asia and the Caucasus		
Armenia	Y	not required
Azerbaijan	Y	yes
Georgia	Y	yes
Kazakhstan	Y	not required
Kyrgyzstan	Y	yes

Tajikistan	Y	yes
Turkmenistan	Y	yes
Uzbekistan	N	not required
Western Asia		
Bahrain	Y	not required
Islamic Republic of Iran	N	
Iraq	Y	yes
Jordan	Y	yes
Kuwait	Y	not required
Lebanon	Y	yes
Oman	Y	yes
Qatar	Y	yes
Saudi Arabia	Y	yes
Syrian Arab Republic	Y	yes
United Arab Emirates	Y	not required
Yeman	Y	yes
East Asia		
China	Y	yes
Dem Peoples republic of Korea	Y	no information available
Japan	Y	yes
Mongolia	Y	yes
Republic of Korea	Y	yes
Latin America **Central America**		
Belize	Y	yes
Costa Rica	Y	yes
El Salvador	Y	yes
Guatemala	Y	not required
Honduras	Y	not required
Mexico	Y	yes
Nicaragua	Y	yes
Panama	Y	not required
Caribbean		
Antigua and Barbuda	Y	yes
Bahamas	Y	yes
Barbados	Y	not required
Cuba	Y	yes
Dominica	Y	not required

Dominican Republic	Y	no information available
Grenada	Y	yes
Haiti	Y	yes
Jamaica	Y	not required
Saint Kitts and Nevis	Y	yes
Saint Lucia	Y	yes
Saint Vincent and Grenadines	Y	yes
Trinidad and Tobago	Y	not required
South America		
Argentina	Y	yes
Bolivia	Y	yes
Brazil	Y	yes
Chile	Y	no information available
Colombia	Y	no information available
Ecuador	Y	no information available
Guyana	Y	yes
Paraguay	Y	no information available
Peru	Y	no information available
Suriname	Y	yes
Uruguay	Y	no information available
Venezuela	Y	yes
Europe and North America **Eastern Europe**		
Belarus	Y	not required
Czech Republic	Y	yes
Estonia	Y	yes
Hungary	Y	not required
Latvia	Y	yes
Lithuania	Y	yes
Poland	Y	no information available
Republic of Moldova	Y	yes
Russian Federation	Y	yes
Slovakia	Y	yes
Ukraine	Y	yes

Western Europe, North America and other states		
Andorra	Y	yes
Australia	Y	Yes
Austria	Y	yes
Belgium	Y	not required
Canada	Y	not required
Cyprus	Y	yes
Denmark	Y	yes
Finland	Y	yes
France	Y	not required
Germany	Y	yes
Greece	Y	yes
Iceland	Y	yes
Ireland	Y	yes
Israel	Y	not required
Italy	Y	yes
Liechtenstein	Y	yes
Luxembourg	Y	not required
Malta	Y	not required
Monaco	Y	yes
Netherlands	Y	yes
New Zealand	Y	not required
Norway	Y	not required
Portugal	Y	yes
San Marino	Y	yes
Spain	Y	yes
Sweden	Y	yes
Switzerland	Y	not required
Turkey	Y	yes
United Kingdom and Northern Ireland	N	
United States of America	Y	not required
South-East Europe		
Albania	Y	yes
Bosnia and Herzegovina	Y	yes
Bulgaria	Y	not required
Croatia	Y	yes
Montenegro	Y	yes
Romania	Y	yes
Serbia	Y	yes
Slovenia	Y	yes
The former Yugoslav Republic of Macedonia	Y	yes
Non-Member States		

The Cook Islands	NA	yes
The Holy See	NA	yes

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