

INTERNATIONAL TREATIES AND FIGHT AGAINST TERRORISM

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By S. Batsanov

INTRODUCTION

The current paper represents, in effect, a list of issues, comments and other points deemed to be relevant to the question of whether international treaties can play a role in the fight against terrorism (and, if the answer is positive, which role). To answer this question, it would be logical to look at which key activities and objectives, pertaining to the prevention of terrorism, can be seen as requiring broad international cooperation, at how better cooperation in these areas can be solidified, managed and sustained, and at what kind of treaties can be helpful in this regard. It would be also helpful to keep in mind that while in the past international treaties were mainly concluded to fight wars and establish conditions for peace, nowadays they cover a broad range of inter-related areas, as the interaction among states and groups of states (irrespective of whether its nature is friendly or competitive) has expanded dramatically, but that circumstances of such interaction also tend to evolve at a much faster pace due to a mix of political, social and technological factors. The list below is not exhaustive, since it is assumed that other participants of the round-table discussion would help make the picture complete.

COOPERATION AGAINST TERRORISM

1. It has been widely recognized by now that terrorism constitutes a global threat that cannot be addressed by states individually, irrespective of how strong they are or whether they face, at a given period of time, a particular threat of hostile terrorist activities. A relative might of a state, which in the past often served as a deterrent, protecting it from hostile acts by other states, today may well make it a more probable target; it is also quite possible that terrorist organizations might temporarily use the territories of some countries to prepare hostile actions against other nations, while avoiding problems with their "host states". **So, as a basic premise, serious international**

cooperation against terrorism is indispensable, which constitutes a strong argument, supporting the case that treaties have a big role to play here. This argument, however, is not sufficient for the final judgment, at least because treaties are just one form of international cooperative interaction.

2. There are several areas of international cooperation relevant to fight against terrorism, and, depending on the approach one takes, different ways of their categorization. Without prejudice to other approaches, it is suggested here to start with the more general and more “purpose-built” forms, like general cooperation against any kinds of terrorism. Given the multiplicity of tasks involved in the fight against terrorism, one can well imagine a series of bilateral treaties to this effect, but a global multilateral treaty in a following a traditional treaty model is something more difficult, not the least because of the difficulty of arriving at a definition of the subject matter that would be comprehensive and precise and be able to ensure long-lasting effect of the treaty. The obvious objective of generating over-all political commitment and a capability for action can be well achieved by a combination of several means, including the resolutions of the UNGA and the UNSC, declarations of G-8 and other fora, establishing specialized bodies within the UN (like the Counter-terrorism Cttee of the UNSC), regional and sub-regional organizations, etc. That notwithstanding, there is a place for treaties in this area, at least with the purpose of creating an international legal norm against terrorism or its particular types, and promote and facilitate national legislations against terrorism, while ensuring its consistency with principles of democracy, government accountability and protection of human rights and liberties.
3. Specific action-oriented cooperation aimed at preempting terrorist attacks, neutralizing terrorist organizations and structures – in other words, activities involving mostly intelligence, police and other specialized agencies. While this area is critical for successful fight against terrorism, and arrangements of this sort are already in force, this hardly an area where treaties could play a big role. However, there is another challenging question: how to facilitate broader and equitable interaction amongst those specialized agencies and a proper oversight over their activities. In this sense a possibility to conclude special protocols to more general treaties, not necessarily involving all Parties to the latter, might be of some use.

4. Treaty –type arrangements are in principle useful when it comes to another area of anti-terrorism activities – that of **legal assistance and cooperation, including extradition**. This is hardly a new area for treaties, but the problem with existing practice is that it had developed mostly on the bilateral basis and on the basis of reciprocity. Providing the existing network of bilateral arrangements with a multilateral dimension could be a useful addition, but, again, does not necessarily require a separate treaty.
5. Many areas of cooperation, relevant to protection against terrorism, have much wider *raison d'être*. For example, that **includes relief cooperation or assistance in the case of natural or technogenic disasters, epidemic prevention and control, etc.** Many mechanisms, other than treaties, are already in place, including programs of specialized international agencies or regional organizations, while the missing legal elements can be added through UNSC resolutions. There is some room for additional activities in this area, like the joint training of fire-fighting, first responders, medical and other similar services, as well as cooperation to increase the protection and safety of certain categories of facilities which may become targets of terrorist attacks with devastating consequences. This can be achieved by expanding relevant existing programs as well as through additional treaty-type arrangements, depending on circumstances.
6. It would be worth giving separate considerations to a role, that can be played **by treaties in the area of arms control and non-proliferation of weapons of mass destruction**. They all have a serious potential in several respects: excluding any unauthorized access to WMD or their components; stimulating the development or modernization, as the case may be, of national implementing legislation; improving national systems information databases; and upgrading national export control systems. All the above

objectives are relevant primarily to preventing terrorist access to weapons and related materials. Moreover, in spite of widely shared perceptions, these objectives are important for anti-terrorist protection in states irrespective of whether they possess WMD or not. Unfortunately, the above-mentioned treaties and the regimes established on their basis – all have certain lacunae, and several initiatives to bridge the gaps have been undertaken recently (again, not with the sole purpose of preventing terrorism with WMD, but of significant relevance to it). Proliferation Security Initiative is one example. It has been designed to prevent and, if necessary, to intercept illegal shipments of WMD and related materials. While politically and operationally this is a very useful addition to other elements of non-proliferation regimes, it lacks legal foundation. Hence, a provocative question: would it make sense for the current and future participating states (the numbers are growing rather fast) to conclude a special treaty on this subject? The question is provocative because the initiative itself has been proposed by the US as an alternative to treaty-based approach to non-proliferation. And this leads to the next stage in discussion: **what kind of treaties and with whom?**

WHAT KIND OF TREATIES AND WITH WHOM?

1. Broadly speaking, two categories of treaties can be identified as being relevant to the fight against terrorism: those specifically designed for this purpose and those concluded to address different or broader problems, but which contain elements that may be deemed important to the fight against terrorism. In the first case one could mention the recently concluded Convention against nuclear terrorism and the proposed over-arching convention against terrorism. In the second we may find various treaties

- regulating legal cooperation and assistance, visa issues, extradition, arms control and non-proliferation treaties, etc.
2. However, it appears necessary to ponder a bit on a model that a treaty based approach could follow in both cases. As a proposal for discussion, one could consider an idea of deviating from a familiar road of developing, through long and time consuming negotiations, of heavy detailed and comprehensive treaties which, in addition to other problems, run the risk of not being able to properly take into account specific situation and needs of one or another country as well as becoming outdated due to failure of Parties (or some of them) to adjust the treaty provisions to rapidly developing circumstances. Therefore the suggestion is to consider treaties which would reflect broad agreement on the need to fight terrorism and that could be supplemented by a series of more detailed protocols, not necessarily with the participation of all parties, perhaps of a relatively limited duration (but renewable), and with an adequate review mechanism, allowing states Parties to address issues of compliance, participation, changes to protocols, etc. **Thus a more mobile and flexible international legal system could be created, that would allow to keep basic obligations while adjusting as may be necessary the technicalities of implementation.**
 3. And the final, even more provocative question: everything what has been said above, relates to treaties between and among states. **One may wonder, whether treaties with non-state actors aimed at preventing or limiting the manifestations of terrorism are thinkable?**

Andalo, 09.01.2006