

The Evolution of UN Anti-Terrorist Conventions towards the Universal Treaty-Based Model of Combating Terrorism

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Abstract

Adopted in Montreal in 2014, the Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft is the nineteenth international legal instrument in the *acquis* of the United Nations ('UN') and its related organisations devoted to prevention and suppression of terrorism. Considering the first of such instruments – the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft ('the Tokyo Convention') – was adopted in 1963, it may be assumed that throughout the period of 55 years the UN has succeeded in solving the specific model of combating international terrorism. Although the existing and binding international conventions on suppression of terrorism do not form a uniform group and differ in terms of material scope of offences described therein, it is still possible to indicate one significant feature common to all conventions, and that is a set of legal measures and remedies available at the international level which guarantee an effective fight against terrorism. The above-mentioned set of regulatory measures – including, *inter alia*, jurisdictional clauses – constitutes a consistent collection of rules to be applied in cases of the majority of terrorist activities. The aforesaid model is based on the principle of *aut dedere aut judicare* supplemented with a rational control of extradition and jurisdictional issues. This model is also enriched with rules concerning other forms of co-operation such as mutual legal assistance, exchange of information and preventive measures. The rationale for the above-referred measures is to ensure that perpetrators of specific international terrorist offences shall be prosecuted regardless of their place of residence or motives that triggered such action. International anti-terrorist conventions adopted under auspices of the UN help to achieve this goal, confronting the internationalisation of terrorism with internationalisation of means and methods of combating this dangerous phenomenon.

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Introduction

Since 1963, when the Tokyo Convention was adopted under the auspices of the International Civil Aviation Organisation (ICAO), the UN and its specialised agencies have been working on the gradual development of treaty law within the scope of prevention and combating international terrorism. So far the number of UN conventions and protocols on the suppression of this criminal phenomenon has equalled nineteen, seventeen of which have already entered into force.¹ Although these agreements are not a homogenous group and they differ as far as the subject matter relating to the categories of crimes referred to therein is concerned, a crucial common feature combining these conventions may be indicated, namely a certain set of international legal measures which are supposed to guarantee effective prevention and combat international terrorism. This specific set of regulatory measures is composed of a relatively concise set of principles applicable to most of the forms of terrorist activity.² Among these measures is principle of *aut dedere aut judicare* accompanied by an appropriate regulation of extradition and jurisdictional issues as well as rules concerning other forms of co-operation, such as mutual legal assistance, exchange of information and preventive measures.

This article contains the evaluation of these measures regarding their use and effectiveness in the suppression of the phenomenon in question. Nevertheless, the main purpose of the analysis conducted below is to demonstrate whether international legal counter-terrorism measures provided for in the UN conventions form a fairly coherent and uniform system which could be referred to as a model of combating terrorism within the frames of the UN. Moreover, a question the author attempts to answer is whether a universal model of combating terrorism in international law is also being developed on the basis of solutions adopted in the foregoing UN conventions. However, such a model would require a significant initial assumption, namely the obligation to treat terrorist crimes like any common crime of serious nature. In other words, an approach formulated in the UN Declaration on Measures to Eliminate International Terrorism of 1994³ should be adopted, according to which all acts, methods and practices of terrorism are criminal and unjustifiable, wherever and by whomever they are committed.⁴ Furthermore, if such acts are intended or calculated to provoke 'a state of terror in the general public, a group of persons or particular persons for political purposes', they cannot be justified in any circumstances, irrespective of considerations of a political, philosophical ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.⁵ The purpose of the adopted legal instruments is to thoroughly prevent the perpetrators of certain terrorist crimes – considered

¹ See UN Office of Counter-Terrorism, 'International Legal Instruments' <<http://www.un.org/en/counterterrorism/legal-instruments.shtml>> accessed 28 December 2017; OSCE Transnational Threats Department, 'Status of the Universal Anti-Terrorism Conventions and Protocols as well as other International and Regional Legal Instruments related to Terrorism and Co-operation in Criminal Matters in the OSCE Area', p. 4–5 <<https://www.osce.org/atu/17138?download=true>> accessed 28 December 2017.

² Bianchi, A, 'Enforcing International Law Norms Against Terrorism: Achievements and Prospects' in Bianchi, A and Naqvi, Y, eds, *Enforcing International Law Norms Against Terrorism* (Hart Publishing, Oxford 2004) 494.

³ UNGA Res 49/60 (9 December 1994) UN Doc A/RES/49/60, Annex.

⁴ *Ibid*, pt I, para 1.

⁵ *Ibid*, pt I, para 3.

by the international community as particularly dangerous – from avoiding punishment, regardless of their place of residence or motivation of actions.⁶

The UN conventions on preventing and suppressing terrorist acts, discussed in this article, are universal and 'sectoral'. This means that they are international legal instruments with a global scope of application, and the subject matter of each of them concerns a specific form of terrorist activity. These instruments may be classified as follows:

- instruments regarding civil aviation;⁷
- instrument regarding the protection of international staff;⁸
- instrument regarding the taking of hostages;⁹
- instruments regarding the nuclear material;¹⁰
- instruments regarding the maritime navigation;¹¹
- instrument regarding explosive materials;¹²

⁶ Cf. B Wierzbicki, 'Model zwalczania terroryzmu międzynarodowego w umowach wielostronnych o charakterze uniwersalnym [The Model of Combating International Terrorism in Multilateral Agreements of Universal Character]' (1983) 11 *Państwo i Prawo* 81, 89.

⁷ Convention on Offences and Certain Other Acts Committed On Board Aircraft, signed at Tokyo on 14 September 1963, 704 UNTS 10106 (hereinafter Tokyo Convention of 1963); Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, 860 UNTS 12325 (hereinafter The Hague Convention of 1970); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971, 974 UNTS 14118 (hereinafter Montreal Convention of 1971); Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988, 1589 UNTS A-1418 (hereinafter Airport Protocol of 1988); Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, signed at Beijing on 10 September 2010, 50 ILM 144, (2011) (hereinafter Beijing Convention of 2010 – not yet in force); Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at Beijing on 10 September 2010, 50 ILM 153 (2011) (hereinafter Beijing Protocol of 2010); Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Montreal on 4 April 2014, ICAO Doc 10034, 2014 (hereinafter Montreal Protocol of 2014 – not yet in force).

⁸ Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the UN General Assembly on 14 December 1973, 1035 UNTS 15410 (hereinafter Diplomatic Agents Convention of 1973).

⁹ International Convention against the Taking of Hostages, adopted by the UN General Assembly on 17 December 1979, 1316 UNTS 21931 (hereinafter Hostages Convention of 1979).

¹⁰ Convention on the Physical Protection of Nuclear Material, signed at Vienna and at New York on 3 March 1980, 1456 UNTS 24631 (hereinafter Vienna Convention of 1980); Amendment to the Convention on the Physical Protection of Nuclear Material, signed at Vienna on 8 July 2005, IAEA International Law Series, No. 2, 2006 (the Amendment entered into force on 8 May 2016 and replaced the title of the Vienna Convention with the title 'Convention on the Physical Protection of Nuclear Material and Nuclear Facilities').

¹¹ Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, signed at Rome on 10 March 1988, 1678 UNTS 29004 (hereinafter Rome Convention of 1988); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, signed at Rome on 10 March 1988, 1678 UNTS I-29004 (hereinafter Rome Protocol of 1988); Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, signed at London on 14 October 2005, IMO LEG/CONF.15/21, 1 November 2005 (hereinafter London Protocol of 2005); Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, signed at London on 14 October 2005, IMO LEG/CONF.15/22, 1 November 2005 (hereinafter Fixed Platforms Protocol of 2005).

¹² Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991, 2122 UNTS 36984 (hereinafter Plastic Explosives Convention of 1991).

- instrument regarding terrorist bombings;¹³
- instrument regarding the financing of terrorism;¹⁴
- instrument regarding nuclear terrorism.¹⁵

Reference should also be made to the work on the text of the general, comprehensive convention devoted to the fight against terrorism. This work is being carried out by the Ad Hoc Committee on International Terrorism, established by the UN General Assembly in 1996.¹⁶ This convention is to be an ‘umbrella treaty’ that will combine a series of existing anti-terrorist agreements that address specific aspects of the phenomenon, such as aerial terrorism, hostage-taking or financing of terrorist activities. The convention will also include a general definition of terrorism and terrorist offences, which will fill the gaps left by the ‘sectoral’ conventions. Obviously, these conventions will not lose their binding force, nor will they be rendered useless. The ‘thematic’ definitions of terrorist offences adopted in them will simply continue to serve as models for national legislators when implementing relevant legal instruments.¹⁷ The comprehensive convention, on the other hand, will apply to cases not regulated by the ‘sectoral’ conventions,¹⁸ which – paraphrasing one of the paragraphs of the preamble of the draft of this convention – will guarantee that no terrorist will escape prosecution and punishment.

I. The Principle of *Aut Dedere Aut Judicare*

The issue of bringing to justice someone who commits an international crime is inextricably connected with the possibility to extradite the person. In such a case, international law applies the principle of ‘extradite or prosecute’, derived from the concept conceived by Hugo Grotius in 1625 – *aut dedere aut punire* (‘either extradite or punish’) – which has contemporarily assumed the form of adage *aut dedere aut judicare*. This expression is commonly used with reference to the alternative obligation imposed on States regarding the extradition or trial of a perpetrator of a certain crime and included in a number of multilateral treaties regarding international co-operation in combating certain forms of criminal activity. The foregoing obligation is formulated differently in various agreements;

¹³ International Convention for the Suppression of Terrorist Bombings, adopted by the UN General Assembly on 15 December 1997, UNGA Res 52/164 (15 December 1997) UN Doc A/RES/52/164, Annex (hereinafter Terrorist Bombing Convention of 1997).

¹⁴ International Convention for the Suppression of the Financing of Terrorism, adopted by the UN General Assembly on 9 December 1999, UNGA Res 54/109 (9 December 1999) UN Doc A/RES/54/109, Annex (hereinafter Terrorist Financing Convention of 1999).

¹⁵ International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the UN General Assembly on 13 April 2005, UNGA Res 59/290 (13 April 2005) UN Doc A/RES/59/290 (hereinafter Nuclear Terrorism Convention of 2005).

¹⁶ The text of the draft comprehensive convention – see UNGA ‘Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996’ (28 January – 1 February 2002) 6th Session (2002) UN Doc Supp No 37 (A/57/37, Annex I–III).

¹⁷ Cf. Röben, V, “The Role of International Conventions and General International Law in the Fight against International Terrorism” in Walter, C and others, eds, *Terrorism as a Challenge for National and International Law: Security versus Liberty?* (Springer, Berlin 2004) 816.

¹⁸ According to Article 2 *bis* of the draft comprehensive convention, ‘[w]here this Convention and a treaty dealing with a specific category of terrorist offence would be applicable in relation to the same act as between States that are parties to both treaties, the provisions of the latter shall prevail’, *supra* nt 16, Annex II, 7.

however, it generally demands that a State detaining someone who committed a crime of an international nature should either extradite the person to a State seeking to judge the person or undertake appropriate measures with the aim of bringing said person before the State's own relevant legal authority in order to settle the issue of criminal responsibility.¹⁹

Despite the widespread application of the *aut dedere aut judicare* principle in contemporary international agreements, its international legal status – and particularly its status as a norm of customary international law – is not evident. Undoubtedly, this principle is adopted in international conventions concerning a specific type of crime, such as terrorist acts. Its increasingly frequent occurrence in – already multiple – multilateral treaties raises the question whether the *aut dedere aut judicare* principle can now be regarded as an emerging principle of customary international law; this is at least in relation to international crimes, for which it applies even without the need to refer to the specific convention in which it was formulated.²⁰ In the doctrine of international law, however, there is an ambiguous answer to this question. This dilemma was being analysed by the International Law Commission. However, in its Final Report on the obligation to extradite or prosecute (*aut dedere aut judicare*) of 2014,²¹ the Commission underlined

‘general disagreement with the conclusion that the customary nature of the obligation to extradite or prosecute could be inferred from the existence of customary rules proscribing specific international crimes’.²² The Commission also noted that ‘the scope of the obligation to extradite or prosecute under the relevant conventions should be analysed on a case-by-case basis’.²³

The uncertainty as to the status of the discussed principle in international law affects, unfortunately, both the scope of its application and its effectiveness. Practically speaking, an alternative State obligation, i.e. either to extradite a person or prosecute him or her, exists only to the extent that it has been literally expressed in an international treaty or, exceptionally, in domestic legislation. It can even be said that in extradition law, it is the *aut dedere aut judicare* principle that has become the formulating rule which is introduced into agreements, in particular in cases of a refusal by the State requested to the rendition of its own citizens.²⁴ This solution is also recommended in Article 4 of the Model Treaty on Extradition, elaborated by the UN General Assembly in 1990.²⁵

As regards the formulation of the principle of *aut dedere aut judicare* in contemporary international treaties, one can notice a general tendency to repeat the phrase used in Article

¹⁹ See Cherif Bassiouni, M and Wise, EM, *Aut Dedere Aut Judicare: The Duty to Extradite or Prosecute in International Law* (Martinus Nijhoff Publishers, Dordrecht 1995) 3. The nature of the obligation to ‘either extradite or prosecute’ is ‘alternative’ in the sense that a State subjected to this obligation must decide on one of two above-referred possible solutions: it must extradite the perpetrator if it does not intend to prosecute him or her, or prosecute the perpetrator if it does not intend to extradite him or her (*Ibid*). Cf. *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (Judgment) [2012] ICJ Rep 422, at 443, para 50.

²⁰ Cherif Bassiouni and Wise, *supra* nt 19, 5.

²¹ ILC, “The obligation of extradite or prosecute (*aut dedere aut judicare*) – Final Report” (2014) Yearbook of the ILC vol. II (Part Two).

²² *Ibid*, para (51).

²³ *Ibid*, para (13).

²⁴ Płachta, M, *Kidnapping międzynarodowy w służbie prawa* [International Kidnapping in the Service of Law] (Dom Wydawniczy ABC, Warszawa 2000) 47–48.

²⁵ UNGA, “Model Treaty on Extradition” UNGA Res 45/116 (14 December 1990), UN Doc A/RES/45/116 – Annex.

7 of the Hague Convention of 1970.²⁶ The Convention stipulates in the above-mentioned Article that

‘[t]he Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution’.

This ‘Hague formula’ has served as a model for several subsequent conventions aimed at the suppression of specific offences, principally in the fight against terrorism.²⁷ Therefore, it is assumed that the conventions that incorporated this formula are based on the principle of *aut dedere aut judicare*.²⁸

Nevertheless, the use of the expression *aut dedere aut judicare* with reference to the obligation established in Article 7 of the Hague Convention of 1970 is a solecism. The word *judicare* means ‘to judge’ or ‘to conduct legal proceedings’ which would suggest carrying out the whole trial before the court. However, the Hague Convention does not actually formulate the obligation of trial instead of extradition. It merely requires the requested State to take appropriate measures in order to punish the perpetrator of a certain crime.²⁹ Similarly, the verb *dedere* does not literally mean ‘to extradite’, but rather ‘to surrender’ or ‘to provide’. However, it is one of several imprecise terms used formerly to describe an activity presently referred to as ‘extradition’.³⁰

The formula adopted in Article 7 of the Hague Convention of 1970 was a result of the compromise achieved at the end of negotiations regarding the contents of the treaty. The drafters of the foregoing convention intended to prevent hijackers, in the widest scope possible, from being provided a ‘safe haven’. A possible way of achieving that objective could be to enunciate an absolute obligation to extradite perpetrators of crimes to a State where the aircraft was registered (or another State having particular jurisdictional interest). Although the proposal was presented, it was not sufficiently supported since it involved a potential obligation to extradite their own citizens, which is deemed unacceptable by many States. It also excluded the possibility of granting political asylum even where granting such asylum could be justified. Therefore, the focus of the attempts made by the drafters of the Hague Convention of 1970 was to establish an obligation to prosecute if extradition is denied. However, an absolute obligation to bring a hijacker before the State’s own competent authorities proved unacceptable as well. A proposal according to which the parties must submit the case to competent authorities in order to conduct a criminal prosecution was too demanding. All in all, the States who negotiated the text of the Convention agreed on the alternative obligation to extradite or refer the case (‘without exception whatsoever’) to competent authorities on the condition that the authorities took

²⁶ The Hague Convention of 1970, *supra* nt 7.

²⁷ ILC, *supra* nt 21, para (10).

²⁸ Cherif Bassiouni and Wise, *supra* nt 19, 3.

²⁹ Cf. Guillaume, G, “Terrorisme et droit international” (1989) 215 *Recueil des Cours de l’Académie de Droit International* 371.

³⁰ Cherif Bassiouni and Wise, *supra* nt 19, 4.

decisions in the same manner as in the case of any ordinary offence of a serious nature, according to *lex loci deprehensionis*.³¹

As mentioned above, the structure of the obligation set out in Article 7 of the Hague Convention of 1970 has been included in all UN sectoral conventions against international terrorism concluded since 1970.³² Thus, the principle of *aut dedere aut judicare* in the 'Hague formula' has been adopted in: the Montreal Convention of 1971 (Article 7), the Diplomatic Agents Convention of 1973 (Article 7), the Hostages Convention of 1979 (Article 8(1)), the Vienna Convention of 1980 (Article 10), the Rome Convention of 1988 (Article 10), the Terrorist Bombing Convention of 1997 (Article 8(1)), the Terrorist Financing Convention of 1999 (Article 10(1)), the Nuclear Terrorism Convention of 2005 (Article 11(1)), and the Beijing Convention of 2010 (Article 10). Each of these conventions, following the formula applied in Article 7 of the Hague Convention of 1970, make the State Parties obliged to prosecute the perpetrator of the crime specified therein, or to extradite him or her in order to conduct a criminal prosecution.

The fundamental formula (either 'extradite' or 'refer the case to your own competent authorities in order to conduct a criminal prosecution') proved fairly permanent throughout nearly fifty years. Moreover, the wording of *aut dedere aut judicare* principle, adopted in the Hague Convention of 1970, appears in the same manner not only in international anti-terrorist conventions, but also in almost every multilateral treaty adopted since 1970 concerning the fight against international crimes. This fact may be a crucial argument in a discussion on whether the approval of the obligation to extradite or to prosecute is wide enough to start constituting a rule of customary international law.³³

Furthermore, the fulfilment of the obligations resulting from the *aut dedere aut judicare* principle creates other liabilities. A State that adopts a decision to 'prosecute' must undertake appropriate measures which guarantee the appearance of the alleged perpetrator before the appropriate authorities; any and all analysed anti-terrorist conventions contain provisions which refer to this issue.³⁴ Decisions on the employment of detention, or other measures intended to guarantee the person's presence at the time of extradition or the criminal procedure, has been left at the State's discretion in the area of which the alleged perpetrator is staying.³⁵ A person detained in such a way is entitled to immediate contact with an appropriate representative of the State of which that person is a national. Moreover, a party to the convention ought to ensure all facilities necessary to exercise this right are made available to the detained.³⁶ Finally, the provisions of international conventions leave

³¹ *Ibid*, 16–17. Cf. Tuerk, H, "Combating Terrorism at Sea – The Suppression Of Unlawful Acts Against The Safety Of Maritime Navigation" (2008) 15 *University of Miami International and Comparative Law Review* 337, 349.

³² ILC, *supra* nt 21, para (1).

³³ Cherif Bassiouni and Wise, *supra* nt 19, 18–19.

³⁴ See, eg, Article 6(1) of the Hague Convention of 1970; Article 6(1) of the Montreal Convention of 1971; Article 6(1) of the Diplomatic Agents Convention of 1973; Article 6(1) of the Hostages Convention of 1979; Article 7(2) of the Terrorist Bombing Convention of 1997.

³⁵ Wierzbicki, *supra* nt 6, 89.

³⁶ See, eg, Article 6(3) of the Hague Convention of 1970; Article 6(3) of the Montreal Convention of 1971; Article 7(3)(a) of the Terrorist Bombing Convention of 1997; Article 9(3)(a) of the Terrorist Financing Convention of 1999.

several issues regarding the punishment for terrorist offences to be regulated by the national legislation of the State Parties to these conventions.³⁷

II. The Question of Extradition

Apart from the rules of jurisdiction, the extradition of a person suspected (or accused) of committing a terrorist offence is one of international legal measures that was quite uniformly elaborated in the current *acquis* of anti-terrorist conventions. Extradition is almost commonly considered to be the most appropriate instrument in the fight against terrorism, is necessary to prevent the impunity of terrorists and, consequently, is the trigger to weakening and limiting its scope. Extradition is a legal process based on either a treaty, reciprocity or national law, in which one State transfers to another State a person accused or convicted of committing a crime infringing either the law of the requesting State, or international criminal law, in order to conduct a judicial prosecution or to serve the sentence in the requesting State for the crime referred.³⁸

Extradition warrants do not exist in general international law. To an appreciable extent they are regulated by bilateral or regional agreements. Provisions regarding extradition also constitute parts of national legislation, yet many countries do not have such regulations. Moreover, national legislation differs considerably between States as far as the scope and details of the extradition law are concerned. What most States require for extradition purposes is, excluding the national regulations, the application of an appropriate treaty. Furthermore, it must be remembered that crucial differences regarding the issue of extradition also refer to the administrative and judicial practice of individual States. Nevertheless, both treaties and national legislation contain similar substantive requirements and similar grounds concerning the denial of extradition.³⁹

A. Principles of extradition

Extradition is possible only following the formal request of the other party of the extradition treaty. However, extradition treaties are prepared based on rules which may be treated as customary international law norms. Therefore, an offence someone is prosecuted for must be punishable both in the State requesting to extradite the person, and in the State requested to extradite the person; this is the so-called principle of dual criminality. Significantly, the exclusion of extradition is possible in the case of certain offences, for example, those committed out of political reasons, especially when a person subject to surrender was threatened by death penalty or inhuman treatment in the requesting State. Furthermore, most extradition agreements are based on the principle of speciality, by virtue of which extradition is possible provided that the surrendered person is prosecuted and punished only for the crime for which extradition was granted.⁴⁰

However, although both the principle of dual criminality and the principle of speciality are present in the extradition law of almost all States and are included in almost

³⁷ See, eg, Articles 3 and 10(1) of the Montreal Convention of 1971; Article 5 of the Rome Convention of 1988; Article 5 of the Nuclear Terrorism Convention of 2005.

³⁸ Cherif Bassiouni, M, "Reflections on International Extradition" in Schmoller, K, ed, *Festschrift für Otto Triffler zum 65. Geburtstag* (Springer, Wien–New York 1996) 715.

³⁹ Cherif Bassiouni, M, *Introduction to International Criminal Law* (International Criminal Law Series vol. 1, 2nd rev edn, Martinus Nijhoff Publishers, Leiden 2013) 500–501.

⁴⁰ *Ibid*, 501.

every extradition treaty, the judicial practice of their application in individual States may vary. With respect to the principle of dual criminality, some States require that crimes in both legal systems be identical, while others are content when the evaluation of existing facts according to the law of the requesting State warrants prosecution. As regards the principle of speciality, some States enable the surrendered persons to voluntarily undertake appropriate steps in so far as the requesting State departs in the conducted criminal proceedings from charges presented in the extradition request. Other States require that the requested State files a protest with the requesting State.⁴¹

The inefficiency of the extradition system is due to it being bureaucratically overloaded. In practice, the extradition procedure is highly formalised whilst also being complicated, lengthy and expensive. Finally, it does not always guarantee the success understood as the actual surrender of a wanted person. The reason for this is created by the common conviction that the delivery of a person is an act of a sovereign State.⁴² It must be remembered that the sovereign rights of a State are not subject to any customary restrictions, and all international obligations in this respect may result only from international conventions ratified by the States; what is significant in this respect is also national regulations. Moreover, irrespective of the above specified scope of obligations regarding extradition, such obligations are subject to considerable limitations included both in extradition agreements and domestic regulations. Most commonly applied rules, reinforced by treaty and legislative practice, are the so-called obstacles to extradition.⁴³ These obstacles involve an exception related to a political offence (excluding extradition provided that an offence to which the request refers, is considered a 'political offence'), as well as the prohibition of extradition of the State's own citizens.

The denial of extradition of a State's own citizens is the most crucial and many States decided to incorporate this rule in their own constitutional order. It is widely assumed that the requested State may extradite the requesting State's, or a third State's, citizen. When it comes to its own citizens, two other practices may be pointed out. According to the common law tradition, the principle of territorial jurisdiction prevails over the principle of nationality. Therefore, the State requested to extradite is obliged to surrender the perpetrators to the State on which they committed the crime, even if they are citizens of the requested State and assuming that both concerned States have ratified extradition treaty. On the other hand, continental law does not form a hierarchy of the foregoing rules on jurisdiction and States may attempt to prosecute perpetrators who are their citizens before their own courts even if a given crime had been committed abroad.⁴⁴

B. Extradition and the political offence exception

Considering the subject matter of the present article, the extraordinarily important obstacle to extradition is the political offence exception. Attempts were made in some conventions to prevent the use of this exception by introducing a special clause according to which an offence under a given agreement shall not be considered a political offence. This type of formula ('offence "x" shall not be treated as a political offence') is derived from standard

⁴¹ *Ibid.*

⁴² Płachta, *supra* nt 24, 15. Cf. Cherif Bassiouni, *supra* nt 39, 504.

⁴³ Galicki, ZW, *Terroryzm lotniczy w świetle prawa międzynarodowego* [Aerial Terrorism in the light of International Law] (Wydawnictwa Uniwersytetu Warszawskiego, Warszawa 1981) 29–30.

⁴⁴ Gal-Or, N, *International Co-operation to Suppress Terrorism* (Croom Helm Ltd, London 1985) 128.

provisions contained in bilateral extradition treaties in order to ensure that, for example, an assassination of the head of State shall not be deemed a political offence. Unfortunately, for many years States have accepted the view that, in the case of terrorist offences, they could refuse extradition due to the political nature of terrorism. However, in the face of the refusal to surrender the perpetrator, States were still obliged to conduct criminal proceedings on their own.⁴⁵

Since this is in terms of the fight against terrorism, which is an obstacle to extradition related to the political nature of an offence, it is of particular importance and is worth having a closer look at it. The legal framework offers a variety of approaches to the concept of a political offence. It is seen by both law theoreticians and practitioners as an ordinary offence which prejudices the interests of the State, its government or its political system. In other words, it is a criminal act according to the national law of a State and is of political nature. The word 'political' is, however, very flexible and depends on various factors. The scope of this term changed along with historic events, political systems, ideologies and interests of which it was supposed to serve. Therefore, it is construed differently, similar to the concept of a political offence.⁴⁶

The very concept of a political offence underwent a boom in the 19th century with the wave of various revolutionary movements including the propagation of human rights' doctrines, according to which all human beings are vested with an inalienable right to oppose authoritarian regimes which violate the fundamental rules such as democracy, justice and morality. Although the concept was universally acknowledged, it provoked scepticism and numerous problems. It was intended to protect individuals fighting in the name of liberal rules of democracy against severe punishments which could be expected to be administered for their political activity; nevertheless, it was also being gradually applied – in an unchanged form – in cases of insurgents fighting against democracy. The core of the problem concerns the definition of a 'political offence'. Essentially, this concept may guarantee protection in cases of terrorists, provided that their actions are motivated by political reasons. This conclusion, however, is erroneous because it is based on a flawed assumption that every act motivated by political reasons, including an act of terrorism, should automatically be regarded as a political offence.⁴⁷

The doctrine differentiates between two types of political offences: a typical political offence understood as a violation of law aiming exclusively at the State, and political offences of relative nature which also prejudice individual welfare and bring harm to persons. Contrary to the above-mentioned typical political offence they involve, and are classified, as an ordinary offence.⁴⁸

A political offence may be *sensu stricto* or of relative nature. Strictly political offences are defined as any behaviour perceived as a threat to the State's sovereignty or its political foundations, devoid of, however, elements of an ordinary offence. These offences aim only at the political order, not against the society, and include high treason, espionage, spreading subversive propaganda, electoral frauds, and establishing or becoming a member of a

⁴⁵ Cf. Cherif Bassiouni and Wise, *supra* nt 19, 10–11.

⁴⁶ Gal-Or, *supra* nt 44, 131–132.

⁴⁷ Arnold, R., *The ICC as a New Instrument for Repressing Terrorism* (Transnational Publishers, Ardsley 2004) 36. More on the historical evolution of political offence – see Baudouin, J-L, "Les délits politiques et leurs modes de répression législative" in Baudouin, J-L, Fortin, J and Szabo, D, eds, *Terrorisme et justice: entre la liberté et l'ordre – le crime politique* (Editions du Jour, Montréal 1970) 24–37.

⁴⁸ Gal-Or, *supra* nt 44, 132.

prohibited political party.⁴⁹ Political offences of relative nature constitute a hybrid of some sort and are a combination of an ordinary offence with a *sensu stricto* political offence or, even more often, constitute offences committed out of political reasons.⁵⁰ With regard to extradition, political offences of relative nature constitute a serious problem as the extradition request usually refers to an ordinary offence, for example a murder, whereas such a crime may be political due to underlying motives and objectives.⁵¹

In order to determine whether an ordinary offence is of political nature it is necessary to take into account three alternative factors:

- 1) a degree of political involvement of a perpetrator in a political movement on behalf of which he or she has committed an ordinary offence;
- 2) a connection between an ordinary offence and political objectives;
- 3) proportionality of applied measures to assumed goals.⁵²

These factors are evaluated differently by the judicial authorities of each State, even if a political element seems to prevail over an intent to commit an ordinary offence. Consequently, there is a lack of uniformity in the treatment of offences of political nature by States which results in absence of common agreement regarding the definition of a 'political offence'. This situation is dangerous because it allows offenders, especially terrorists, to conduct their criminal activity under the guise of various and incomplete *ad hoc* definitions.⁵³

One difference between a political offence and terrorism has been described in an interesting way by Nicholas Kittrie, according to whom the former is mostly an offence aiming at the political regime regardless of whether it is good or bad. Therefore, it is *mala prohibita* – the prohibited evil. A political offence does not, however, constitute an evil in itself; it is prohibited since a regime desires to oppose any such behaviour. Terrorism is something completely different. By definition, it is an act of violence and, though intended to target and harm a specific regime and its institutions, it also causes damage to the society and among its victims are often innocents. Consequently, terrorism is, from an ethical point of view, more difficult to justify than a political offence since it is an act of violence that does not consider who falls victim; it constitutes *mala in se* – evil in itself which is contradiction of fundamental social and humanitarian rules.⁵⁴

C. Solutions adopted in UN anti-terrorist conventions

In the case of terrorist crimes, the surrender and delivery of perpetrators for such acts generally boils down to extradition agreements existing and in force between parties thereof or to be concluded in the future. Generally speaking, in conventions adopted under the auspices of the UN, offences covered by the scope of analysed treaties are to be incorporated

⁴⁹ Phillips, RS, "The Political Offence Exception and Terrorism: Its Place in the Current Extradition Scheme and Proposals for Its Future" (1997) 15 *Dickinson Journal of International Law* 337, 341.

⁵⁰ *Ibid.*, 342.

⁵¹ Arnold, *supra* nt 47, 37.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ Kittrie, NN, "Comments: Panel on Terrorism and Political Crimes in International Law" (1973) 67 *AJIL* 104.

in the future and are deemed to be incorporated to existing extradition agreements.⁵⁵ Only in the absence of any such agreements may the very conventions constitute a basis, although purely optional, for the surrender and delivery of perpetrators. However, conditions and rules of surrender must, in such circumstances, comply with legal provisions of the State requested to extradite.⁵⁶ Moreover, for the purpose of extradition, offences covered by the scope of anti-terrorist conventions are to be treated by the parties as committed not only in the place of the actual offence but also on the territory of the States obliged to establish their jurisdiction.⁵⁷

Thus, according to anti-terrorist conventions, the alleged perpetrator of the offence, detained in the territory of the State-party, should be either surrendered to the State requesting their extradition, or – ‘without exception whatsoever and whether or not the offence was committed in [the requested State’s] territory’ – handed over to the competent authorities of the requested State for the purpose of prosecution. It appears that, under the conventions referred to above, extradition is not perceived as an obligatory measure but considered as one of the possible solutions. The obligation to extradite is, therefore, conditioned on a negative decision regarding the conduct of criminal proceedings. It should also be noted that anti-terrorist conventions do not attempt to establish a priority pattern with regard to extradition. In such cases it would be advisable to determine the competent jurisdiction on a neutral forum; ultimately, the UN Security Council may be addressed. Legal precedents do exist; one relates to the *Lockerbie* case,⁵⁸ the other concerns the sentence passed by the United States to target Osama bin Laden where the Security Council, acting pursuant to Chapter VII of the UN Charter, demanded that the Taliban regime immediately surrenders the leader of al-Qaeda.⁵⁹

The adoption of the solution, according to which crimes included in the UN anti-terrorist conventions are to be regarded as subject to extradition pursuant to the existing extradition treaties in force,⁶⁰ to a certain extent, modifies previous extradition treaties within the range of their application by *lex posterior* principle. Moreover, the conventions provide that they may serve as the extradition title in the absence of a relevant extradition treaty between the States concerned and when such deficiency could preclude extradition. What is important, however, is the fact that the foregoing provision is not of an obligatory nature.⁶¹

International anti-terrorist conventions also contain regulations referring to the ‘political nature’ of the phenomenon of terrorism. What is crucial is that, at the universal

⁵⁵ See, eg, Article 8 of the Hague Convention of 1970; Article 8 of the Montreal Convention of 1971; Article 8 of the Diplomatic Agents Convention of 1973; Article 11(1) of the Terrorist Financing Convention of 1999; Article 10(1) of the London Protocol of 2005.

⁵⁶ Galicki, *supra* nt 43, 29.

⁵⁷ See, eg, Article 8 of the Hague Convention of 1970; Article 8 of the Diplomatic Agents Convention of 1973; Article 9(4) of the Terrorist Bombing Convention of 1997; Article 13(4) of the Nuclear Terrorism Convention of 2005; Article 12(4) of the Beijing Convention of 2010.

⁵⁸ See UNSC Res 731 (1992) (21 January 1992) UN Doc S/RES/731 (1992); UNSC Res 748 (1992) (31 March 1992) UN Doc S/RES/748 (1992).

⁵⁹ See UNSC Res 1267 (1999) (15 October 1999) UN Doc S/RES/1267 (1999).

⁶⁰ See, eg, Article 8(1) of the Montreal Convention of 1971; Article 11(1) of the Rome Convention of 1988; Article 9(1) of the Terrorist Bombing Convention of 1997; Article 11(1) of the Terrorist Financing Convention of 1999.

⁶¹ Kolb, R, “The Exercise of Criminal Jurisdiction over International Terrorists” in Bianchi, A and Naqvi, Y, eds, *Enforcing International Law Norms Against Terrorism* (Hart Publishing, Oxford 2004) 260.

level, a tendency to exclude acts of terrorism from the 'political offence' clause can be noticed which may reflect a growing perception of terrorism as an unjustifiable and illegal activity. It means that the political nature of terrorism, once expressly emphasised, now tends to be superseded by a more 'technical' approach, according to which it is absolutely necessary to combat and eradicate such acts of violence without considering motives and justifications for the terrorist activity.⁶² The aforementioned clause, for the first time, came into effect in the Terrorist Bombing Convention of 1997.⁶³ According to Article 11, '[n]one of the offences set forth in [A]rticle 2 shall be regarded, for the purpose of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives'.⁶⁴ Accordingly, any request for extradition (or for mutual legal assistance) based on such an offence 'may not be refused on the sole ground that it concerns a political offence[,] or an offence connected with a political offence or an offence inspired by political motives'.⁶⁵ Moreover, to fill the potential gap, the Convention adds in Article 9(5)

'the provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between State Parties to the extent that they are incompatible with this Convention'.⁶⁶

These provisions imply that this Convention, implementing the exclusion of an exception regarding the political offence, overrides any other clause providing for the foregoing exception and adopted under previous extradition treaties.

Similar provisions have been included in the Terrorist Financing Convention of 1999 (accordingly – Article 14 and Article 11(5))⁶⁷ and in the Nuclear Terrorism Convention of 2005 (Articles 15 and 13(5)),⁶⁸ thus, it may be expected that the above provisions related to the question of political offence shall constitute one of the elements of the international legal model of preventing and suppressing terrorism. In fact, this assumption becomes a reality because the solution in question has already been included in the conventions and protocols adopted since 2005, amending and supplementing the older UN anti-terrorist conventions: the London Protocol of 2005 (amending the Rome Convention of 1988),⁶⁹ the Beijing Convention of 2010 (intended to replace the Montreal Convention of 1971 and its Airport Protocol of 1988)⁷⁰ and the Beijing Protocol of 2010 (intended to supplement the Hague Convention of 1970).⁷¹ Nevertheless, it must be stressed that a political exception has to be

⁶² *Ibid*, 266.

⁶³ Terrorist Bombing Convention of 1997, *supra* nt 13.

⁶⁴ *Ibid*.

⁶⁵ *Ibid*.

⁶⁶ *Ibid*.

⁶⁷ Terrorist Financing Convention of 1999, *supra* nt 14.

⁶⁸ Nuclear Terrorism Convention of 2005, *supra* nt 15.

⁶⁹ See Article 10(2) of the London Protocol of 2005, introducing Article 11 *bis* to the Rome Convention of 1988. More on the amendments introduced by this Protocol – see Tuerk, *supra* nt 31, 358–365.

⁷⁰ See Article 13 of the Beijing Convention of 2010.

⁷¹ See Article XII of the Beijing Protocol of 2010, introducing Article 8 *bis* to the Hague Convention of 1970. More on the amendments introduced both by the Beijing Convention and Protocol – see Witten, SM, "Introductory Note to the Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft" (2011) 50 *ILM* 141–143.

clearly separated from clauses contained in more contemporary conventions, according to which a mutual legal assistance or extradition may be refused if a request has been submitted with the purpose to judge, to punish or to persecute such a person on account of his or her political opinions or similar reasons.⁷²

A fear to extradite to a State affected by *coup d'état* or a State authorised to conduct criminal proceedings and, consequently, to issue a judgment of conviction may be regarded as one of the major factors discouraging potential terrorists. Therefore, it is important to formulate extradition law in such a way as to guarantee that individuals responsible for acts of terrorism, when captured, will certainly be held liable and will face justice. What is extremely crucial is also the relationship between the right to political asylum and developing (especially after the events of the 11th September 2001) anti-terrorist law, according to which an individual guilty of a terrorist crime is denied political asylum. Following the above, the international law regime in conjunction with effective extradition law, which excludes any 'safe haven' for terrorists, could become a successful deterrent and a specific preventive measure in suppressing international terrorism. In fact, considering the increasing tendency to exclude acts of terrorism from the category of political offences that are not subject to extradition and to qualify them as ordinary crimes, terrorists are not entitled to political asylum. As emphasised in Article XIV(2) of the Universal Declaration of Human Rights of 1948,⁷³ '[t]his right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations'.

However, due to difficulties accompanying the process of defining 'political offence', the assessment and the final classification of such an offence lies within the competency of the State to whom an extradition request has been forwarded.⁷⁴ Such classification consists mainly of the determination of which offences would not be regarded as political offences. Among these exceptions are assassinations of heads of States and persons entitled to international protection, crimes against life, genocide, aircraft hijacking and war crimes. Still, what is lacking is a positive definition of 'political offence' – thus the evaluation of 'acts of terrorism' could be subjective, despite the above-mentioned relevant provisions of the UN conventions. Additional factors which greatly hinder an effective application of extradition against terrorists are: treatment of terrorists as members of regular (or irregular) armed forces by some States (including all legal consequences arising therefrom, especially with regard to relevant provisions of international humanitarian law)⁷⁵ and a refusal to recognise terrorism,

⁷² See Article 12 of the Terrorist Bombing Convention of 1997; Article 15 of the Terrorist Financing Convention of 1999; Article 16 of the Nuclear Terrorism Convention of 2005; Article 10(3) of the London Protocol, introducing Article 11 *ter* to the Rome Convention of 1988; Article 14 of the Beijing Convention of 2010; Article XIII of the Beijing Protocol of 2010, introducing Article 8 *ter* to the Hague Convention of 1970. Cf. Röben, *supra* nt 17, 803.

⁷³ UNGA Res 217 A (III) (10 December 1948) UN Doc A/RES/3/217 A.

⁷⁴ Wierzbicki, B, *Zagadnienia współpracy państw w zapobieganiu i zwalczaniu przestępczości* [The Issues of co-operation between States in Preventing and Combating Crime] (Dział Wydawnictw Filii UW w Białymstoku, Białystok 1986) 27.

⁷⁵ According to Article 19(2) of the Terrorist Bombing Convention of 1997, '[t]he 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'. Cf. Article 4(2) of the Nuclear Terrorism Convention of 2005; Article 3 of the London Protocol of 2005, introducing Article 2 *bis* to the Rome

even when directed against civilian objects, as illegitimate conduct.⁷⁶ However, as the fight against terrorism is expected to be long-term and global, the issue of surrender of individuals suspected of being involved in such activity becomes one of the most crucial modern issues.

In conclusion, it must be emphasised that extradition, in many cases, is still the best possible measure that ensures acts of terrorism will not be carried out without impunity. It is true that the extension of jurisdiction through re-interpretation of the territoriality principle, the principle of nationality or by means of the adoption of the principle of universal jurisdiction, is crucial and most definitely desired. More effective, however, may turn out to be making extradition; a practical and efficient measure ensuring the accomplishment of the goal, namely, counteracting the phenomenon in question. This is what the initiators of the international anti-terrorist conventions aimed for. In case of terrorist crimes, extradition, therefore, ought to be regarded as the practical alternative, if not the preferential option.

III. Jurisdictional Clauses

Acquiring physical control over a person suspected of terrorism by the State authorities leads to another question, namely the determination of proper jurisdiction. Any disputes arising therefrom between the States take the form of a conflict of jurisdiction: either positive (when two or more States claim a right to judge the accused) or negative (when governments of the States, usually due to political reasons, prefer to dispose of the accused together with the related problem from their own territory). Those conflicts stem from the fact that neither in the doctrine nor in the case-law of international criminal law are there commonly accepted criteria of addressing which States concerned should have jurisdiction over the case. Usually, the State whose authorities have already apprehended the accused is the State who has jurisdiction, provided that the rules of competence deriving from the national criminal law do not provide otherwise.⁷⁷

In general, the doctrine of international law distinguishes four principles of jurisdiction in criminal cases. The first is the territoriality principle which constitutes all crimes committed on the territory of the State, onboard maritime vessels and onboard aircraft registered under the flag of said State. The second principle is based on the competence arising from nationality and authorises the State to judge and prosecute their citizens, irrespective of the place of commitment of the criminal act (the principle of nationality). The third principle concerns the protection of State security and provides measures to prosecute and penalise individuals threatening either the State's security, integrity or independence, regardless of the perpetrator's nationality and the place where the crime was committed (the protective principle). Finally, the fourth principle is underpinned by the universality of jurisdiction of all States regarding certain crimes irrespective of whose territory, against whom and by whom these crimes have been committed (the principle of universality, or the principle of universal jurisdiction).

Convention of 1988; Article 6(2) of the Beijing Convention of 2010; Article VI of the Beijing Protocol of 2010, introducing Article 3 *bis* to the Hague Convention of 1970. More on this question – see O'Donnell, D, "International Treaties Against Terrorism and the Use of Terrorism during Armed Conflict and by Armed Forces" (2006) 88 *IRRC* 853, 863–871.

⁷⁶ Cf. Płachta, *supra* nt 24, 42.

⁷⁷ Płachta, M, "Bitwy wielkiej wojny [The Battles of Great War]" *Rzeczpospolita* (Warszawa 2 March 2002) Law 4.

As easily noticed, the most effective way which guarantees punishment of perpetrators of terrorist crimes is to adopt the principle of universal jurisdiction, which has already been applied in international law. The principle of universal jurisdiction concerning repression of international crimes condemned by the international community covered, *inter alia*, piracy (often compared with the phenomenon of terrorism), human trafficking, war crimes, genocide, crimes against humanity and apartheid. As for terrorism, numerous national legislation and international agreements strongly condemn various crimes of global nature which may be referred to as ‘terrorist acts’, such as taking hostages or aircraft hijacking. Moreover, every State denounces, persecutes and penalises acts of terrorism directed against any such State or their citizens.⁷⁸ However, existing international legal regulations related to the fight against terrorism do not grant absolute priority to the principle of universality, establishing usually a combined system of various principles and rules and merely adopting the principle of universality as ancillary and supplementary.⁷⁹

In principle, all UN anti-terrorist conventions adopted after 1963 are based on a similar jurisdictional system, with some minor differences. Thus, all UN anti-terrorist conventions contain a set of specific jurisdictional grounds for all State Parties. However, in the majority of those conventions States have decided upon solutions aimed at establishing their own jurisdictions over crimes set forth in said conventions. The most frequently repeated term is as follows, ‘Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences...’ etc. What is important is that this obligation usually applies to instances where a crime was committed either:

- 1) on the territory of a particular State;
- 2) by nationals of a particular State, sometimes even by a stateless person with a permanent residency in a given State;
- 3) on board a maritime vessel or aircraft registered in that particular State.⁸⁰

As is clear from above, the foregoing solution in no way refers to the principle of universal jurisdiction. Moreover, most anti-terrorist conventions comprise an additional provision which is formulated similarly to a recommendation rather than an obligation: ‘Each State Party may also establish its jurisdiction over any such offence when (...)’:

- 1) the offence is committed against a national of that State;
- 2) the offence is committed against a State or government facility of that State abroad, i.e. against its embassy;
- 3) the offence is committed in an attempt to compel that State to do or abstain from doing any act.⁸¹

⁷⁸ More on this question – see Blakesley, CL, *Terrorism, Drugs, International Law, and the Protection of Human Liberty: A Comparative Study on International Law, Its Nature, Role, and Impact in Matters of Terrorism, Drug Trafficking, War, and Extradition* (Transnational Publishers, New York 1992) 137–141.

⁷⁹ Galicki, *supra* nt 43, 27.

⁸⁰ See, eg, Article 5(1) of the Montreal Convention of 1971; Article 3(1) of the Diplomatic Agents Convention of 1973; Article 7(1) of the Terrorist Financing Convention of 1999; Article 9(1) of the Nuclear Terrorism Convention of 2005; Article 8(1) of the Beijing Convention of 2010.

⁸¹ See, eg, Article 5(1) of the Hostages Convention of 1979; Article 6(2) of the Rome Convention of 1988; Article 6(2) of the Terrorist Bombing Convention of 1997; Article 8(2) of the Beijing Convention of 2010; Article VII of the Beijing Protocol of 2010, introducing Article 4 to the Hague Convention of 1970.

The solution presented above is accurately illustrated by Article 6 of the Terrorist Bombing Convention of 1997:

- ‘1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in Article 2 when:
 - (a) The offence is committed in the territory of that State; or
 - (b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
 - (c) The offence is committed by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
 - (a) The offence is committed against a national of that State; or
 - (b) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or
 - (c) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or
 - (d) The offence is committed in an attempt to compel that State to do or abstain from doing any act; or
 - (e) The offence is committed on board an aircraft which is operated by the Government of that State.
3. Upon ratifying, accepting, approving or acceding to this Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established in accordance with paragraph 2 under its domestic law. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.
4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.
5. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law’.⁸²

The jurisdictional scope of the Terrorist Bombing Convention of 1997 is relatively wide due to the equally wide scope of its application. On the other hand, the jurisdictional clauses of the Diplomatic Agents Convention of 1973 are definitely narrower.⁸³ It should also be noted that all discussed conventions contain the provision expressed in Article 6(5) of the Terrorist Bombing Convention, according to which they do not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.⁸⁴ Thus, if national criminal law provides for any additional jurisdictional grounds that are not contrary to international law, proceedings may be conducted on their basis without prejudice

⁸² Terrorist Bombing Convention of 1997, *supra* nt 13.

⁸³ See Article 3(1) of the Diplomatic Agents Convention of 1973.

⁸⁴ See, eg, Article 7(6) of the Terrorist Financing Convention of 1999; Article 9(5) of the Nuclear Terrorism Convention of 2005; Article 8(4) of the Beijing Convention of 2010.

to the provisions of any of those conventions. In the legal sense, the jurisdictional bases provided for in the treaties in question are not exhaustive, but complementary to the grounds provided for under national law. Where conventions oblige State Parties to exercise jurisdiction in accordance with the rules envisaged therein, jurisdiction becomes mandatory, whereas jurisdiction based on national law is optional. The national legal bases correspond to those listed in Article 6(2) of the Terrorist Bombing Convention and are clearly identified as discretionary (a State Party ‘may also establish its jurisdiction’).⁸⁵ It should be added that the distinction between obligatory and discretionary jurisdictional grounds is a relatively new solution in terms of anti-terrorist conventions. In older conventions, for example in the Montreal Convention of 1971 (in its original wording), only obligatory grounds are provided.⁸⁶

It should also be noted that the conventions in question contain a clause providing for some ‘autonomy’ of the domestic law of State Parties. In order to establish its own jurisdiction, the national legislation of the State Party must enable it to detain the alleged offender, if appropriate, extradite that person or prosecute him or her (the principle of *aut dedere aut judicare*). To fulfil this obligation, jurisdictional clauses must be formulated in such a way that they can be applied in the event of the perpetrator’s presence in that State, even if there is no connection between that State and the criminal offence or its perpetrator. This allows the introduction of a clause relating to universal jurisdiction based on the presence of a perpetrator in an unconnected State. Conventions do not indicate which State Parties have the priority of jurisdiction. In practice, the State Party that detained the alleged perpetrator may judge him or her, and if it does not, it must initiate extradition proceedings. Thus, the analysed conventions present a uniform and comprehensive approach towards the establishment of State jurisdiction in the absence of traditional relationships allowing it to be determined.⁸⁷

The UN conventions on the fight against international terrorism have, in a sense, attempted to fill the gap left by classical international law. According to such classical law, national courts had primary jurisdiction over crimes committed on their territory, on certain crimes committed abroad by citizens of that State and on crimes aimed against them or at the basic interests of that State. Most national courts, however, did not have sufficient jurisdiction to deal with crimes committed abroad by foreigners and directed against foreigners. As a result, terrorists who have taken refuge in the territory of a third State could have escaped prosecution in such cases. The above-mentioned conventions, concerning the various forms that the phenomenon of terrorism can take, can therefore be considered as an important step towards bridging the current gap.⁸⁸

The UN anti-terrorist conventions form a somewhat two-tier system of jurisdiction. One of these levels is based on numerous grounds of jurisdiction, of an obligatory or discretionary (optional) nature, which State Parties must guarantee (or may maintain) in order to prosecute those suspected of committing a crime established within such conventions. The second level refers to jurisdiction based on the *aut dedere aut judicare* principle which obliges State Parties to lay down in their national legislation the right to

⁸⁵ Kolb, *supra* nt 61, 248–249.

⁸⁶ See Article 5(1) of the Montreal Convention of 1971. The optional jurisdictional grounds have been included in Article 8(2) of the Beijing Convention of 2010, intended to replace the Montreal Convention.

⁸⁷ Röben, *supra* nt 17, 799–800.

⁸⁸ Guillaume, G, “Terrorism and International Law” (2004) 53 *ICLQ* 537, 542.

prosecute; this must also extend to cases where there is no connection between that State and the criminal offence or perpetrator, and extradition does not occur. States are therefore obliged under the conventions to amend their domestic legislation, so they can pursue the defined crimes on the basis of universal jurisdiction. The basis of this jurisdiction is the presence of an alleged offender in the territory of the prosecuting State.⁸⁹ Thus, there is no doubt that consistent and objective compliance with the above principle would improve the effectiveness of the international legal system of combating terrorism.⁹⁰

IV. Other Forms of Co-operation

The effective fight against terrorism requires the close co-operation of States. An important role of this co-operation is emphasised by the fact that even if the alleged perpetrator of a terrorist offence has been extradited, or if the jurisdiction over the perpetrator has been clearly established, nothing can guarantee that the trial will be successful. The need for co-operation is obvious, and its forms can be very diverse. These include the exchange of (confidential) information, legal assistance in conducting investigations and criminal proceedings, taking evidence from witnesses at the request of the requesting State, transferring witnesses or material evidence to the requesting State, taking joint preventive measures and many other forms, most somewhat formalised.

Inter-state co-operation aiming at the suppression of international terrorism assumes a different form in the UN anti-terrorist conventions, yet in principle some forms of co-operation are repeated. These include: taking preventive measures, exchanging information and mutual legal assistance in cases of terrorist offences. These forms do not occur in all the conventions discussed, but their provisions are formulated in a very similar manner and the goal to be achieved is identical. These other forms of co-operation should, of course, compliment the extradition and jurisdictional provisions discussed above, creating together an integrated system of legal measures to prevent and combat international terrorism.

A. Preventive measures and exchange of information

The experience gained from the fight against transnational criminal activity, including terrorism, permits the statement that the first and most important stage of this fight is the co-operation of intelligence agencies and law enforcement organs. This co-operation is to be primarily a preventive and deterrent measure, and only as a last resort is it to serve as a repressive measure. National systems, however, share intelligence and preventive functions between rival, bureaucratised agencies, thus limiting their individual and shared effectiveness. In addition, such independent State agencies have a tendency to establish and develop *ad hoc* relations with their counterparts in other States. Therefore, any information that flows between these correspondent agencies encounters internal and bureaucratic obstacles; this characterises the co-operation of States in the field of information exchange and the implementation of preventive measures.⁹¹

⁸⁹ See, eg, Article 6(4) of the Rome Convention of 1988; Article 6(4) of the Terrorist Bombing Convention of 1997; Article 9(4) of the Nuclear Terrorism Convention of 2005; Article 8(3) of the Beijing Convention of 2010. Cf. Kolb, *supra* nt 61, 255–256.

⁹⁰ Cf. Guillaume, *supra* nt 88, 542.

⁹¹ Cf. Cherif Bassiouni, M, “Legal Control of International Terrorism: A Policy-Oriented Assessment” (2002) 43 *Harvard International Law Journal* 83, 94.

No international agreement has been established so far to regulate this issue of inter-state co-operation between intelligence agencies and law enforcement organs. It is possible to speak at most of certain fragmentary regulations that were included in various international conventions which were devoted to the issues of combating broadly-understood transnational crimes and concerning the co-operation of States in criminal matters. These regulations usually concern only specific aspects of the co-operation in question – for example the exchange of information – and mostly take the form of a general obligation or appeal addressed to States Parties without specifying entities that should be responsible for the implementation of this co-operation.

Similar solutions have been included in UN anti-terrorist conventions, particularly regarding the co-operation on preventive measures and the exchange of information between States. These issues have been uniformly regulated in the analysed conventions, and the differences result only from the specificity of the problem regulated by the particular treaty.⁹² The Nuclear Terrorism Convention of 2005⁹³ may boast the most extensive and universal provisions in question. Indeed, the form of terrorist activity stipulated in said convention requires, above all, preventive actions. Therefore, Article 7 of the Nuclear Terrorism Convention focuses on the issue of joint preventive measures in an exhaustive manner and clearly underlines the importance of information exchange. Moreover, Article 7 of the convention discussed contains not only solutions already accepted in the existing anti-terrorist conventions,⁹⁴ but also enriches this set with some new elements that will be used – wholly or partially – in subsequent anti-terrorist conventions.⁹⁵

According to Article 7(1) of the Nuclear Terrorism Convention, State Parties are obliged to co-operate to prevent terrorist offences by:

‘[t]aking all practicable measures, including, if necessary, adapting their national law, to prevent and counter preparations in their respective territories for the commission within or outside their territories of the offences set forth in Article 2, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or knowingly provide technical assistance or information or engage in the perpetration of those offences’.⁹⁶

State Parties shall also co-operate by:

‘[e]xchanging accurate and verified information in accordance with their national law and in the manner and subject to the conditions specified herein, and coordinating administrative and other measures taken as appropriate to detect, prevent, suppress

⁹² For example, Article 18(2)(a) of the Terrorist Financing Convention of 1999 underlines the need of co-operation in the prevention of offences set forth in Article 2 of the convention by considering ‘[m]easures for the supervision, including, for example, the licensing, of all money transmission agencies’.

⁹³ Nuclear Terrorism Convention of 2005, *supra* nt 15.

⁹⁴ See, eg, Article 5(2) of the Vienna Convention of 1980; Article 15 of the Terrorist Bombing Convention of 1997; Article 18 of the Terrorist Financing Convention of 1999.

⁹⁵ See, eg, Article 12 of the London Protocol of 2005, amending Article 13(1) of the Rome Convention of 1988; Article XVI of the Beijing Protocol of 2010, introducing Article 10 *bis* to the Hague Convention of 1970.

⁹⁶ Nuclear Terrorism Convention of 2005, *supra* nt 15.

and investigate the offences set forth in Article 2 and also in order to institute criminal proceedings against persons alleged to have committed those crimes. In particular, a State Party shall take appropriate measures in order to inform without delay the other States referred to in Article 9 in respect of the commission of the offences set forth in Article 2 as well as preparations to commit such offences about which it has learned, and also to inform, where appropriate, international organizations'.⁹⁷

Concerning the above-mentioned information, State Parties shall take all appropriate measures consistent with their national law

'to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention'.⁹⁸

It should be added that in situations where State Parties decide to provide information to international organisations as confidential, they should take appropriate measures to ensure the confidentiality of such information.

B. Mutual legal assistance

Most UN anti-terrorist conventions contain provisions relating to the institution of mutual legal assistance. It is a relatively new form of co-operation between States, developed primarily since the 1960s, but has its origins in an almost century-old and still-functioning practice known as 'rogatory letters', mainly used in civil matters and based on the principle of comity. According to this practice, the judicial authority of one State addresses to a judicial authority of another State a request for judicial assistance in the form of taking the testimony of a witness or securing tangible evidence. The requested court then transmits the record of the witness testimony or tangible evidence to the requesting court, certifying that the evidence has been secured in accordance with the requirements determined by the law of the requested State. As this practice became more common, some of the States decided to go a step further and began sending special commissions to other States ('rogatory commissions'), the task of which was to conduct their own investigation in a given case. This practice was not based on comity but on an agreement between the States concerned. The member of such commissions was either a judge or prosecutor who conducted an investigation or examination of a witness in the territory of another State.⁹⁹

Since the 1960s, the practice of many States (particularly in Europe and the Americas) has departed from the establishment of the above committees and replaced them with bilateral agreements on mutual legal assistance (so-called Mutual Legal Assistance Treaties – MLATs). Some regional organisations, such as the Council of Europe, the Organization of American States and the League of Arab States, have also begun to support MLATs, adopted as multilateral and regional agreements.¹⁰⁰ Similarly, the UN began to support mutual legal assistance as an effective instrument for combating international crimes

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ Cherif Bassiouni, *supra* nt 39, 504–505.

¹⁰⁰ *Ibid.*, 505.

– many UN treaties contain appropriate provisions establishing the general legal framework for this form of legal co-operation.

The scope of legal assistance is extremely broad, and its forms are very diverse. They include: taking of witness testimony, securing tangible evidence (such as bank records) or conducting investigations. These forms of legal assistance may be provided by judicial authorities, prosecutorial personnel or law enforcement organs of the requested State. Sometimes the requested State allows a judge or prosecutor from the requesting State to conduct the investigation on its territory, but only under the supervision of the judicial authorities of the requested State.¹⁰¹

The transnational character of many terrorist groups and their activities, often exceeding the borders of one State, triggered the introduction of provisions that exclude terrorist acts from the benefits of the political offence exception into contemporary agreements concerning legal assistance in criminal matters. The obligation to provide the greatest possible legal assistance in criminal proceedings, conducted in relation to specific terrorist offences, also results from provisions of the UN anti-terrorist conventions.¹⁰² Article 10(1) of the Terrorist Bombing Convention of 1997 can be indicated as a model example of anti-terrorist solutions regarding mutual legal assistance. According to this Article, State Parties are obliged to

‘afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in Article 2, including assistance in obtaining evidence at their disposal necessary for the proceedings’.¹⁰³

Article 10(2) stipulates that State Parties shall ‘carry out their obligations under paragraph 1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them’. In the absence of such treaties or arrangements, ‘State Parties shall afford one another assistance in accordance with their domestic law’.¹⁰⁴

This general obligation of States to provide legal assistance is a natural consequence of the adoption (albeit to a limited extent) of the principle of universality of prosecution with respect to acts of international terrorism. Indeed, in a significant number of cases, only legal assistance allows the fulfilment of the obligation to prosecute and punish the offender. In order to conduct criminal proceedings or to request for extradition, it is necessary to gather essential data and relevant evidence.¹⁰⁵

¹⁰¹ *Ibid*, 506.

¹⁰² See, eg, Article 10 of the Hague Convention of 1970; Article 11 of the Montreal Convention of 1971; Article 11 of the Hostage Convention of 1979; Article 13 of the Vienna Convention of 1980; Article 12 of the Rome Convention of 1988; Article 12 of the Terrorist Financing Convention of 1999; Article 17 of the Beijing Convention of 2010.

¹⁰³ Nuclear Terrorism Convention of 2005, *supra* nt 15.

¹⁰⁴ *Ibid*.

¹⁰⁵ Cf. Wierzbicki, *supra* nt 74, 205.

V. Is There a Universal Treaty-Based Model of Combating Terrorism?

The legal analysis of the UN anti-terrorist conventions presented above, relating to extradition issues, jurisdictional clauses and other forms of co-operation, confirms the fact that there is a specific system of legal measures within the UN aimed at suppressing international terrorism. It can even be assumed that within this organisation a specific, treaty-based model of combating international terrorism has been developed. One perceives that the legal framework of this model is fairly comprehensive when it comes to its scope. While some gaps and shortcomings can be found, in principle, international legal measures relating to the fight against international terrorism are quite satisfactory, even though no universal and comprehensive anti-terrorist convention has been adopted so far. The consistent normative approach adopted by the international community represented at the UN, which focuses on creating principles and rules to effectively prosecute individuals responsible for activities prohibited in the light of the conventions in question, is generally an appropriate framework for the UN legal model of combating terrorism.¹⁰⁶

The significant evidence for the development of this legal model are amendments and modernisation introduced in 2005–2014 by conventions and protocols relating to the suppression of terrorism, beginning from the London Protocol of 2005 and ending with the Montreal Protocol of 2014.¹⁰⁷ Thanks to these amendments, older anti-terrorist conventions (namely, the Tokyo Convention of 1963, the Hague Convention of 1970, the Montreal Convention of 1971 and the Rome Convention and its Protocol of 1988) have been supplemented with the current standard provisions enshrined in modern international anti-terrorist treaties. For example, both the Beijing Convention and Beijing Protocol of 2010 expand the jurisdictional provisions of the Hague and Montreal Conventions (for example by requiring State Parties to establish jurisdiction where the alleged offender is a national) and establish other optional grounds for jurisdiction. Both instruments also contain a standard provision, originating with the Terrorist Bombing Convention of 1997.¹⁰⁸ By amending and supplementing these conventions, State Parties have ‘adapted’ them to the contemporary threats posed by terrorism, thus unifying the system of international legal solutions for combating terrorism and increasing the effectiveness of the UN treaty-based model of combating terrorism. It is worth mentioning that the solutions adopted in the UN anti-terrorism treaties regarding the principle of *aut dedere aut judicare*, extradition, jurisdictional clauses and certain forms of inter-state co-operation were also included in the draft comprehensive convention against terrorism.¹⁰⁹

Is it a universal model though? It seems that it is still too early to formulate such an opinion. There are still many factors and difficulties that make it impossible to treat the above-mentioned model as universal. First of all, international anti-terrorist conventions create a system of principles and rules that constitute treaty law, and therefore apply only *inter partes*. Therefore, the *aut dedere aut judicare* principle binds only the State Parties to these conventions. This principle is still not a rule of customary international law. Thereby, one cannot speak of the universality of this principle as binding *erga omnes*. This means, among

¹⁰⁶ Cf. Bianchi, *supra* nt 2, 498.

¹⁰⁷ As regards the amendments which will be introduced by the Montreal Protocol of 2014 – see Urban, JA, “The Protocol to Amend the Convention on Offences and Certain Acts Committed on Board Aircraft: A Missed Opportunity or a Sufficient Modernization?” (2016) 49 *Indiana Law Review* 713–743.

¹⁰⁸ Witten, *supra* nt 71, 142.

¹⁰⁹ See UNGA, *supra* nt 16, Annex III, Articles 6, 8, 11, 13, 14, 15, and 17.

other things, that third States do not have to observe it, as opposed to the State Parties to the conventions in question.¹¹⁰ However, some representatives of the doctrine maintain that the universality of the *aut dedere aut judicare* principle is just a matter of time.¹¹¹

Another problem is related to the alleged lack of efficacy of the anti-terrorist treaty regime, which largely depends on national measures implementing relevant rules rather than on the scope and content of these rules. By opting for a system that entrusts national authorities with the task of prosecuting individuals, it is assumed not only that the States ratify the treaty, but also that national legal systems incorporate the treaty within the national legal order effectively and in a timely manner. Adopting such legislation may be necessary to make the treaty norms self-executing and directly applicable by courts. The decision-making process at the national level on when to prosecute and when to extradite must be clearly defined to ensure the correct implementation of the *aut dedere aut judicare* principle, when applicable, and national legislative bodies must promptly adopt legislation whenever the amendments of criminal law and criminal procedure is needed.¹¹²

Finally, there is no doubt that without a commonly accepted definition of terrorism, it is difficult to create a coherent and efficient regime to prevent and combat this phenomenon. Obviously, it is possible to assume – for the needs of the theoretical model – that terrorist acts are defined, according to the UN Security Council Resolution 1566 (2004), as:

‘criminal acts, including against civilians, committed with the intent 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’.¹¹³

However, it is a general description of acts that fall within the rubric of terrorist activity without purporting to fully define terrorism, and Resolution 1566 limits the use of the term ‘terrorism’ to offences that are already recognised in existing international conventions and protocols.¹¹⁴ Therefore, as long as the universal legal definition of terrorism does not exist, one cannot rely on the emergence of a universal model of combating terrorism in international law.

Conclusion

The nature of contemporary terrorism requires broad regional and international co-operation. There is no doubt that the fight against this criminal activity must be conducted in accordance with the principles and rules of international law, which can be considered as extremely useful in this fight. Several states, on the basis of adopted international

¹¹⁰ Cf. Kolb, *supra* nt 61, 272.

¹¹¹ See Higgins, R, “The General International Law of Terrorism” in Higgins, R and Flory, M, eds, *Terrorism and International Law* (Routledge, London–New York 1997) 26.

¹¹² Bianchi, *supra* nt 2, 499.

¹¹³ UNSC Res 1566 (2004) (8 October 2004) UN Doc S/RES/1566 (2004) para 3.

¹¹⁴ Setty, S, “What’s in a Name? How Nations Define Terrorism Ten Years After 9/11” (2011) 33 *University of Pennsylvania Journal of International Law* 1, 15–16.

agreements, have committed to observe these principles and rules and take them into account when establishing appropriate internal legal standards. The principles and rules in question constitute the legal basis for measures taken to prevent and combat terrorism, such as extradition or mutual legal assistance. However, if the fight against the discussed phenomenon is to be successful, these measures must be at least similar in character, and ideally, they should constitute a consistent and uniform system, which significantly facilitates co-operation and co-ordination of activities aimed at implementing these measures.

Within 55 years of the adoption of the Tokyo Convention of 1963, the international community has made significant progress in the fight against international terrorism. Achievements in this area of international co-operation were possible due to the engagement of various international organisations – including the universal organisation, which is the UN. A number of international anti-terrorist conventions, adopted at that time under the auspices of the UN or its specialised agencies and ratified by the majority of States, enabled the introduction, development and strengthening of the *aut dedere aut judicare* principle in cases of terrorist offences; numerous forms of international co-operation, including the institution of extradition and mutual legal assistance, have become inseparable and – through practice – more effective means to prevent and combat the phenomenon in question.¹¹⁵ The essence of all UN anti-terrorist conventions is a certain basic assumption that the alleged perpetrator can nowhere, in any State Party, find a safe haven, regardless of his or her citizenship or where the crime was committed. This assumption can be realised thanks to the introduction of the legal measures mentioned above to all the conventions discussed, although their formulations in relevant provisions may differ slightly.¹¹⁶

The phenomenon of terrorism is so extensive and dynamic that it is necessary to constantly improve anti-terrorist measures, particularly in the legal sphere. For example, in the case of extradition, it is necessary to modernise this form of international co-operation to adapt it to the specificity of prosecuting contemporary terrorists and ensure greater efficiency in its practical application. The structure of extradition should be strengthened, *inter alia* by explicit and unambiguous determination of the obligation arising from the *aut dedere aut judicare* principle. Interpretation of this principle must include criteria to determine when there is an obligation to extradite, and when (under what conditions) the obligation to prosecute may be recognised as effective and just. Without more specific provisions, the existing general obligation States derive from this principle, and relating to the fight against terrorism, may prove insufficient in the future.¹¹⁷

Finally, the broadly understood co-operation in combating international terrorism, contained in the UN anti-terrorist conventions, should be interpreted not only from the perspective of the object and purpose of these treaties, but also in the spirit and context of concrete UN Security Council Resolutions aimed at international terrorism. Undoubtedly, the imperative nature of these resolutions and their global impact (for example Resolution 1373 of 2001¹¹⁸ was addressed to all States, not only to Member States of the UN) have contributed to intensifying inter-state co-operation in the global ‘war on terrorism’ and have

¹¹⁵ Cf. Guillaume, *supra* nt 88, 547.

¹¹⁶ Röben, *supra* nt 17, 799.

¹¹⁷ Cf. Cherif Bassiouni, *supra* nt 38, 731.

¹¹⁸ UNSC Res 1373 (2001) (28 September 2001) UN Doc S/RES/1373 (2001).

caused various forms of this co-operation to undergo gradual unification.¹¹⁹ This is certainly a significant step forward in the process of shaping a universal model of combating international terrorism.

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¹¹⁹ For example, in resolution 1373 (2001) the Security Council called upon all States to ‘exchange information in accordance with international and domestic law and co-operate on administrative and judicial matters to prevent the commission of terrorist acts’ (*Ibid*, para 3(b)).