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## *Ratification, Accession and Implementation of the Universal Legal Framework against Terrorism*

Security Council  
resolutions 1373  
and 1624

Security Council  
resolutions on  
Al-Qaida  
and the Taliban  
(1267, 1333,  
1390, 1735)

Security Council  
resolutions 1540  
and 1673  
(weapons of mass  
destruction)

13 + 3 universal  
instruments  
against  
terrorism

• **Criminal Law Aspects** => **UNODC**

• **Administrative/Preventive Measures** => **IMO, ICAO, IAEA**



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## Outline

# *Ratification, Accession and Implementation of the Universal Legal Framework against Terrorism*

- Ratification/Accession
  - Notifications/Declarations
- Implementation
  - Criminal Law Regime
  - Related Legal Measures



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## Ratification/Accession

### 16 International Conventions Against Terrorism



United Nations Conventions



Instruments related to civil aviation



Maritime agreements



IAEA Conventions



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## Ratification/Accession

### Convention on prevention and punishment of crimes against internationally protected persons

- Instrument of accession to be deposited to UNSG, NY (*Article 16*)

- Reservation on dispute resolution can be made according to Art. 13)

### Convention against the Taking of Hostages

- Instrument of accession to be deposited to UNSG, NY (*Article 17*)

- Reservation on dispute resolution can be made according to Art. 16)

### Convention for the Suppression of Terrorist Bombing

- Instrument of accession to be deposited to UNSG, NY (*Article 21*)

- Article 6 para.3 Upon acceding to this convention, notify UNSG of jurisdictions established
- Reservation on dispute resolution can be made according to Art. 20)

### Convention against Terrorist Financing

- Instrument of accession to be deposited to UNSG, NY (*Article 25*)

- Article 2 Declaration to exclude treaties not contracted
  - Notify once become party to such treaties
- Article 7 para.3 Upon acceding to this convention, notify UNSG of jurisdictions established
- Reservation on dispute resolution can be made according to Art. 24)

### Convention for the suppression of acts of Nuclear Terrorism

- Instrument of accession to be deposited to UNSG, NY (*Article 24*)

- Article 9 para.3 Upon acceding to this convention, notify UNSG of jurisdictions established
- Reservation on dispute resolution can be made according to Art. 23)





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# Civil Aviation (ICAO)

## Convention on Offences and Certain Other Acts committed on Board Aircraft

• Deposit of an instrument of accession (*Article 22*)

• Reservation on dispute resolution can be made according to Art. 24 para. 2)

## Convention for the Suppression of the Unlawful Seizure of Aircrafts

Deposit of an instrument of accession (*Article 13*) *at Depository Governments (London, Moscow or Washington)*

• Reservation on dispute resolution can be made according to Art. 12)

## Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation

Deposit of an instrument of accession (*Article 15*) *at Depository Governments (London, Moscow or Washington)*

• Reservation on dispute resolution can be made according to Art. 14)

## Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation

Deposit of an instrument of accession together with the Safety Civil Aviation Convention (*Article 7*)

## Convention on the Marking of Plastic Explosives for the Purpose of Detection

Deposit of an instrument of accession together with the Safety Civil Aviation Convention (*Article 13*)

• Reservation on dispute resolution can be made according to Art. 11)





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## International Civil Aviation Organization

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**• 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation**

*Tuvalu has become party by accession*

*since 2 December 2005*

**+ 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime navigation**

*–Accession with No reservation. (Article 17)*

*Tuvalu is qualified to access this protocol to the 1988 Convention.*

**• 1988 Protocol for the Suppression of Unlawful Acts against Fixed Platforms Located on the Continental Shelf**

*–Accession with No reservation. (Article 5)*

*Tuvalu is qualified to access this protocol to the 1988 Convention.*

**+ 2005 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental shelf**

*–Accession with No reservation. (Article 8)*

*–Only three state parties need for its effect.*

*–But not before the 2005 takes effect. (12 State Parties needed)*

*Only a State Party to the 1988 Protocol may become a Party to this Protocol.*



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## INTERNATIONAL MARITIME ORGANIZATION

SAFE, SECURE AND EFFICIENT SHIPPING ON CLEAN OCEANS

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**IAEA**

International Atomic Energy Agency

*Atoms For Peace*

# Physical Protection of Nuclear Material

## • Convention on the Physical Protection of Nuclear Material

– Inform the depositary of its laws and regulations which give effect to this Convention. (Art. 14)

## + Amendment to the Convention on the Physical Protection of Nuclear Material

• Reservation on dispute resolution can be made according to Art. 17)

**15 contracted states**

**(Not yet in force)**

2/3 of the 134 States Parties have deposited their instruments of ratification, acceptance or approval with the depositary.



# IAEA

International Atomic Energy Agency

*Atoms For Peace*

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# Implementing Domestic Legislation

- 1. Definitions**
- 2. Offences**
- 3. Jurisdiction**





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- *This presentation*
  - *cannot go into great details.*
  - *is not comprehensive.*
  - *does not cover administrative measures*
- *Next Monday will be devoted to the discussion in details.*



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## Definitions

- No need to define terrorism
  - Definition of Terrorist Acts:
    - Terrorist Financing Convention
    - 2005 Maritime Protocols
  - ..the purpose of the act, by its nature or context, is to intimidate a population...
- Things as defined in the CT treaties, such as ...



- Things as defined in the CT treaties, such as
  - Terrorist Bombing Convention
    - Explosive or other lethal device
    - BC/radioactive device or weapon
    - Place of public use
  - Nuclear Conventions
    - Nuclear material, facility
    - Radioactive material
  - 2005 Maritime Protocols
    - Bio Chemical Nuclear (BCN) weapons
  - Diplomatic Agents Convention
    - Internationally protected persons



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# Implementing Domestic Legislation

- 1. Definitions**
- 2. Offences**
- 3. Jurisdiction**





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# Offences

- Elements of the offences
  - Not too demanding
    - Dangerous or harmful acts > actual harm
      - Likely to cause death/serious injury... (Nuclear Material Conv.)
      - Likely to endanger... (such as Maritime treaties)
  - Not too general
  - Intention, not motive, is always required
- 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft
- Convention on the Marking of Plastic Explosives for the Purpose of Detection



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# Offences

Offences related to the Safety of Civil Aviation

Offences related to Maritime Safety

Offences Related to the  
status of the victim

Offences Related to Dangerous Materials

Offences related to Financing of Terrorism



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# Offences

**Two conventions:** No requirement to establish offences

- 1963 Convention on Offences and Certain Other **Acts Committed on Board Aircraft**
  - Simply requires establishment of jurisdiction over domestic offences committed on board registered aircraft
  - Refined in subsequent aviation instruments
- Convention on the Marking of **Plastic Explosives** for the Purpose of Detection
  - Take measures to prohibit and prevent the movement of unmarked explosives



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## Offences related to the Safety of Civil Aviation

- 1970 Unlawful Seizure of Aircraft Convention
- 1971 Civil Aviation Safety Convention
- 1988 Airport Protocol







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## Offences related to the Safety of Civil Aviation

### 1970 Unlawful Seizure of Aircraft Convention

- Dealing with **hijacking**:
- Any person on board in flight
  - Unlawful act, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft” (Art. 1)
  - attempt
  - Accomplice, aiding/abetting
  - on board in flight
    - right before take off = doors closed
    - right after landing = door open
    - forced landing = until authorities taking over



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## Offences related to the Safety of Civil Aviation

### 1971 Civil Aviation Safety Convention

- Dealing with acts aimed to destroy aircraft
- Any person on board in flight
  - attacks on aircraft in service
  - acts of violence against
    - persons on board an aircraft in flight,
    - air navigation facilities
  - false communications
- if those acts are **likely to endanger aircraft** in flight
  - attempt – accomplice beyond board
- in service
  - from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until 24 hours after any landing



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## Offences related to the Safety of Civil Aviation

### 1988 Airport Protocol

- integrally related to the previous 1971 Convention
- offence committed by a person if he, using
  - any device, substance or weapon:
    - “(a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
    - “(b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport,
  - **if the act endangers or is likely to endanger safety at that airport”**



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## Offences related to Maritime Safety

### 1988 Maritime Convention

- Criminal provisions similar to those dealing with attacks upon aircraft,
  - hijack a ship, (*hence endangering safe navigation*)
  - If likely to endanger its safe navigation
    - damage to a ship or its cargo
    - place a device or substance
    - cause serious damage to navigation facilities
    - communicate false information
  - injuring or killing any person in connection with the commission of the previously specified offences





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## Offences related to Maritime Safety

### 1988 Fixed Platforms

- Criminal provisions similar to those dealing with attacks upon a ship
- Extends the coverage of the Convention to attacks upon fixed platforms located on the continental shelf.



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## Offences related to Maritime Safety

**2005 Protocol to the Maritime Convention**

**2005 Protocol to Fixed Platforms Protocol**

- Any person who intentionally
  - (a) when the purpose of the act, *by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act*
    - uses and discharge of BCN weapons and other substances from a ship or fixed platform
      - Definition of BCN for criminal law purpose
    - uses a ship in a manner that causes death or serious injury or damage
  - (b) transports on board a ship unlawfully:
    - BCN weapons and other substances



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## Maritime Conventions & Protocols

- Inapplicable to landlocked states?
  - situations in which landlocked countries
    - with nationals are killed or injured on board a ship or fixed platform or
    - with nationals commit an offence under the Convention or Protocol,
    - suspected offenders are found within its territory, or
    - ~~preparations for the commission of offences against the safety of maritime navigation or a fixed platform are made within its territory.~~
- Legal procedures agreed to in advance under these international agreements could minimize post-attack friction between States.
- International cooperation in criminal matters
  - Dual criminality



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## Offences Related to the status of the victim

- 1973 Diplomatic Agents convention
- 1979 Hostages Convention







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## **Offences Related to the status of the victim**

### **1973 Diplomatic Agents Convention**

- Protected persons
  - Heads of State and foreign ministers and their family members in a foreign State,
  - Diplomatic agents when those agents are entitled to special protection under international law
  - Family members
- Attacks upon
  - the person or his/her liberty
  - Official premise, private accommodation, means of transport
- **Threat** to commit any such attack



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## **Offences Related to the status of the victim**

### **1979 Hostages Convention**

- Seizure or detention +
  - Threat to kill, injure or continue to detain a hostage to  
=>
  - compel any State, international organization or person to do or abstain from any act.
- No need to aim for benefits
- **Act 7 of 1984: An Act Relating to the Offence of Taking Hostages**
  - *Exactly implementing!*



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## Offences Related to Dangerous Materials

- 1997 Bombings Convention
- 1980 Convention Physical Protection of Nuclear Material
- 2005 Nuclear Terrorism Convention



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Offences Related to Dangerous Materials

## 1997 Bombings Convention

- Intentional place/discharge bomb into
  - a “place of public use”
  - public facility
  - to injure or kill
  - to cause extensive destruction that is likely to result in major economic loss
- Defining BC/radioactive device or weapon





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## Offences Related to Dangerous Materials

### 1980 Convention Physical Protection of Nuclear Material

(a) Intentional unlawful handling or use of nuclear material, which

▶ causes or

▶ is likely to cause

▶ death or serious injury to any person or substantial damage to property;

(b) a theft or robbery of nuclear material;

(c) an embezzlement or fraudulent obtaining of nuclear material;

(d) Forcefully demand for nuclear material

(e) Threatening:

– 1. to use nuclear material to cause

• death or serious injury, or

• substantial property damage, or

– 2. to commit the theft or robbery in order to compel a natural or legal person

• Definition of ‘nuclear material’



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## Offences Related to Dangerous Materials

### 2005 Amendment to the 1980 Nuclear MAterial Convention

*Not yet in force*

- Extended scope
  - Technical protection for nuclear facilities and material
    - in peaceful domestic use, storage and transport
  - Expanded international cooperation:
    - rapid measures to locate and recover stolen or smuggled nuclear material
    - mitigate any radiological consequences of sabotage
    - prevent and combat **related offences**
- **Additional Crimes**



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Offences Related to Dangerous Materials

## 2005 Amendment to the Nuclear Material Convention

### Additional criminalization:

- Illegal import or export of the material
- Intentional acts
  - directed against a nuclear facility
  - interfering with the operation of a nuclear facility
    - to causes, or with the knowledge that it is likely to cause
      - death or serious injury to any person, or
      - substantial damage to property or to the environment
- Definition of “nuclear facility”



### 2005 Nuclear Terrorism Convention

- (a) Whoever unlawfully and intentionally
  - possesses the *material* or
  - makes or possesses the *device*
    - with the intent to cause
      - death or serious bodily injury, or
      - substantial damage to property or the environment
- (b) Whoever unlawfully and intentionally
  - uses the material, dispersal device or uses a nuclear facility, or
  - damages a nuclear facility
    - releasing or risk of releasing radioactive material
    - with the intent to
      - kill or serious injure,
      - substantially damage property or the environment, or
      - compel a person, an international organization, or a State to do or refrain from doing an act.
- **Threatens**
  - to use or damage the material, device or facility
- Demands by threat to hold / control material, device, facility





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## Offences related to financing of terrorism

### 1999 Terrorist Financing Convention

- The financing offence needs to be linked well to
  - other terrorist offences
- Definition of “fund” to be used to interpret criminal law
- *In-dept discussion in the afternoon by Philip Divett*



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## Stage of Crime & Liability of Legal Entities

- Attempt and participation as included in the treaties ✓
- **Threaten** to commit offences
  - Nuclear Terrorism Convention
  - Diplomatic Agents Convention
  - 2005 Maritime Protocol
- Liability of legal entities
  - Terrorist Financing Convention
  - 2005 Maritime Protocol
    - Criminal, civil or administrative liability
    - Separately from criminal liability of individuals



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# Implementing Domestic Legislation

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# Jurisdiction

- *Mandatory*
  - *Territory-based*
  - *Active personality*
- *Optional*
  - *Passive personality*
    - *Hostage Taking Con.*
    - *Bombings Convention*
  - *Protected interest*
    - *Bombings Convention*
- *Notify the adopted optional upon accession*





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# Jurisdiction

## *Additional mandatory jurisdiction*

- *Conventions Related to civil aviation*
  - *Jurisdiction over aircraft registered in Tuvalu (as may be necessary)*
  - *Jurisdiction over offences committed on board & landed with the accused still on board*
    - *Even though the act ended before landing*
- *Maritime Treaties*
  - *On board a ship flying state's flag*
  - *On board a fixed platform on state's continental shelf*
- *Diplomatic Agents Convention*
  - *Jurisdiction of the state whose diplomatic official is attacked.*



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# Jurisdiction

- *The Criminal Code is very limited on this.*
- Penal Code, Section 5 & 6
  - Territory-based jurisdiction
  - + Partly within and partly beyond the territory



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## From a domestic law perspective...

- Most conducts identified by UNCT are already somehow a crime
  - Section 320: Destroy property by explosives
  - Section 316: Casting away vessels
- Then why must we be so particular?
- Universal suppression will only be possible if:
  - Those specific offences are universally criminalized.
  - Those offences are identified by domestic law as terrorist acts
    - Extradite or prosecute
    - Broadest measure of international cooperation in criminal matters
    - Procedural and preventive measures related to those offences are in place.



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*Comments highly welcomed:*

*Thank you for your kind attention!*