

Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism

06/01/2004

THE MEMBER STATES OF THE SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC)

MINDFUL of the purposes and the principles of cooperation enshrined in the SAARC Charter and the Charter of the United Nations;

RECALLING the declaration of the eleventh SAARC Summit adopted at Kathmandu on 6th January 2002;

FURTHER RECALLING that, at the Eleventh SAARC summit, the Heads of State or Government, reiterated their support to the United Nations Security Council Resolution 1373 of September 28, 2001 and affirmed their determination to re-double efforts collectively as well as individually, to prevent and suppress terrorism in all its forms and manifestations, including, by increased co-operation and full implementation of the relevant international conventions relating to terrorism to which they are parties and called on all Member States, inter-alia, to prevent and suppress the financing of terrorist acts by criminalizing the provision, acquisition and collection of funds for such acts;

BEARING IN MIND the decision of the SAARC Council of Ministers at its Twenty Third session in Katmandu on 22nd August, 2002, wherein the Council mandated the preparation of an Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism, recognizing importance of updating the Convention, in order to meet the obligations devolving in terms of Security Council Resolution 1373 (2001);

HAVE AGREED as follows:

Article 1

Objectives and Purposes

The purpose of this Additional Protocol is to strengthen the SAARC Regional Convention on Suppression of Terrorism, particularly by criminalizing the provision, collection or acquisition of funds for the purpose of committing terrorist acts and taking further measures to prevent and suppress financing of such acts. Towards this end, State Parties agree to adopt necessary measures to strengthen co-operation among them, in accordance with the terms of this Additional Protocol.

Article 2

Relationship to SAARC Convention

This Additional Protocol supplements the SAARC Regional Convention on Suppression of Terrorism, done at Kathmandu on 4th November, 1987 (hereinafter referred to as the "1987 SAARC Convention"). The 1987 SAARC Convention and this Additional Protocol shall be read and interpreted together as a single instrument.

Article 3

Definitions

1. "Funds" mean assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.
2. "Proceeds" mean any funds derived from or obtained, directly or indirectly, through the commission of an offence set forth in Article 4.

Article 4

Offences

1. Any person commits an offence within the meaning of this additional protocol if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the Annex to this Protocol: or

b) Any other act intended to cause death or serious bodily injury to a civilian, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act; or

c) An offence within the scope of any Convention to which SAARC Member States concerned are parties and which obliges the parties to prosecute or grant extradition.

2 (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the state party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;

(b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.

3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraph (a) or (b).

4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.

5. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;

(b) Organizes or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;

(c) Contributes to the commission of one or more offences as set forth in paragraph 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or

ii) be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.

Article 5

Domestic Measures

States Parties, in accordance with the provisions of their respective Constitutions, shall endeavour to become Parties to the international instruments listed in the Annex to which they are not yet a Party.

Article 6

Liability of legal entities

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a persons responsible for the management or control of that legal entity has, in that capacity, committed an offence as set forth in Article 4. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of an individual or individuals who have committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 above are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 7

Measures to prevent, suppress and eradicate the financing of terrorism

1. State parties shall consider and take all practical measures at the national level, inter-alia by adapting their domestic legislation to prevent, suppress and eradicate the financing of terrorism, and for effective international cooperation with respect thereto including:

a) A comprehensive domestic regulatory and supervisory regime for banks, other financial institutions and other entities deemed particularly susceptible to being used for the financing of terrorist activities. This regime shall require banks and other financial institutions and other entities to utilize effective measures for the identification of customers, paying special attention to unusual or suspicious transactions and to report promptly to the Competent Authorities, all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose;

b) Measures to detect and monitor movements across national borders, of cash, bearer negotiable instruments and other appropriate movements of value. These measures shall be subject to safeguards to ensure proper use of information and should not impede legitimate capital movements;

c) Measures of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of any act constituting an offence within the scope of the international instruments listed in Article 4 of this Additional Protocol, including assistance in obtaining evidence in their possession, necessary for the proceedings; and

d) Establishing and monitoring channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in Article 4, within the conditions prescribed by domestic law.

2. Towards facilitating the above, each State Party shall consider measures to establish and maintain a financial intelligence unit to serve as a national center for the collection, analysis and dissemination of pertinent money laundering and terrorist financing information.

Article 8

Seizure and confiscation of funds or other assets

1. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences set forth in Article 4 as well as the proceeds derived from such offences, for purposes of possible forfeiture.

2. Each State Party shall take appropriate measures, in accordance with its domestic legal principles, for the forfeiture of funds used or allocated for the purpose of committing the offences set forth in Article 4 and the proceeds derived from such offences.

3. Each State Party concerned may give consideration to concluding agreements on the sharing with other State Parties, on a regular or case-by-case basis, of the funds derived from the forfeiture referred to in this article.

4. The provisions of this Article shall be implemented without prejudice to the rights of third parties acting in good faith.

5. The measures referred to in paragraph 1 shall apply with respect to offences committed both within and outside the jurisdiction of a State Party.

Article 9

Predicate offences to money laundering

1. State Parties shall take the necessary measures to ensure that its domestic money laundering legislation also includes as predicate offences those offences set forth in Article 4 of this Additional Protocol.

2. Money laundering predicate offences referred to in paragraph 1, shall include those committed both within and outside the jurisdiction of a State Party.

Article 10

Cooperation on immigration and customs controls

1. States Parties, consistent with their respective domestic legal and administrative regimes, shall promote co-operation and the exchange of information in order to improve immigration and customs control measures to detect and prevent the international movement of terrorists and their accomplices and trafficking in arms, narcotics and psychotropic substances or other materialist intended to support terrorist activities.
2. To this end, they shall promote co-operation and the exchange of information to improve their controls on the issuance of travel and identify documents and to prevent their counterfeiting, forgery, or fraudulent use.
3. Such co-operation shall be carried out without prejudice to applicable international commitments in relation to the free movement of people and the facilitation of commerce.

Article 11

Cooperation among law enforcement authorities

States parties shall work closely with one another, consistent with the respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action for the prevention, suppression and prosecution of the offences set forth in Article 4.

Article 12

Mutual legal assistance

The provisions of Article VIII of the 1987 SAARC Convention relating the Mutual Legal Assistance shall apply, mutatis mutandis, in respect of the offences set forth in Article 4 of this Additional Protocol.

Article 13

Extradition

The provisions of Article III of the 1987 SAARC Convention shall apply, mutatis mutandis, in respect of the offences set forth in Article 4 of this Additional Protocol.

2. The provisions of Article IV of the 1987 SAARC Convention relating to the duty to extradite or prosecute shall apply, mutatis mutandis, in respect of the offences set forth in Article 4 of this Additional Protocol.

Article 14

Exclusion of Fiscal Offence exception

None of the offences set forth in Article 4 shall be regarded, for the purpose of extradition or mutual legal assistance, as a fiscal offence. Accordingly, State Parties may not refuse a request for extradition or for mutual legal assistance on the sole ground that it concerns a fiscal offence.

Article 15

Exclusion of political offence exception

For the purpose of extradition or mutual legal assistance, none of the offences established in the international instruments set forth in Article 4, shall be regarded as a political offence or an offence connected with a political offence or an offence inspired by political motives. Accordingly, a request for extradition or mutual assistance 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.

Article 16

Denial of refugee status

Each State Party shall take appropriate measures, consistent with the relevant provisions of national and international law, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offence set forth in Article 4 of this Additional Protocol.

Article 17

Non-discrimination

None of the provisions of this Additional Protocol shall be interpreted as imposing an obligation to extradite or to provide mutual legal assistance, if the requested State Party has substantial grounds to believe that the request to extradite or to provide mutual legal assistance, has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 18

Principles of Sovereign Equality and Territorial Integrity

1. State Parties shall carry out their obligations under this additional protocol in a manner consistent with the principles of sovereign equality and territorial integrity of states and that of non-intervention in the domestic affairs of other states.

2. Nothing in this Additional Protocol entitles a State Party to undertake in the territory of another State Party exercise of jurisdiction or performance of functions that are exclusively reserved for the authorities of that other State Party by its domestic law.

Article 19

Rights and Obligations under International Law

Nothing in this Additional Protocol shall be interpreted as affecting other rights and obligations and responsibilities of states and individuals under international law, in particular, the purposes

and principles of the Charter of the United Nations, international humanitarian law, and international human rights law.

Article 20

Technical Cooperation

State Parties shall promote, where appropriate, technical co-operation and training programmes with other regional and international organizations conducting activities related to the objectives and purposes of this Additional Protocol.

Article 21

Consultations

State parties shall hold periodic consultations, as appropriate, with a view to facilitating:

- a) The effective implementation of this Additional Protocol; and
- b) The exchange of information and experiences on effective means and methods to prevent, detect, investigate and punish offences within the scope of the Additional Protocol.

Article 22

Signature and ratification

This Additional Protocol is open for signature by all Member States of SAARC at the SAARC Secretariat in Kathmandu. It shall be subject to ratification. Instruments of Ratification shall be deposited with the Secretary-General of SAARC.

Article 23

Entry into Force

The Additional Protocol shall enter into force on the thirtieth day following the date of deposit of the seventh Instrument of Ratification with the Secretary-General of SAARC.

Article 24

Depositary

The Secretary-General of SAARC shall be the depositary of this additional protocol and shall notify Member States of signatures to this additional protocol and all deposits of Instruments of Ratification. The Secretary-General shall transmit certified copies of such instruments to each Member State. The Secretary-General shall also inform Member States of the date on which this Additional Protocol will have entered into force in accordance with Article 23.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments have signed this Additional Protocol.

DONE in ISLAMABAD, PAKISTAN, On This the Sixth Day of January Of the Year Two Thousand Four, In Nine Originals, In The English Language, All Texts Being Equally Authentic.

M. Morshed Khan
Minister for Foreign Affairs
People's Republic of Bangladesh

Nado Rinchen
Officiating Minister for Foreign Affairs
Kingdom of Bhutan

Yashwant Sinha
Minister of External Affairs
Republic of India

Fathulla Jamell
Minister of Foreign Affairs
Republic of Maldives

Dr Bhekh B Thapa
Ambassador-at-large for Foreign Affairs
His Majesty's Government of Nepal

Khurshid M Kasuri
Minister of Foreign Affairs
Islamic Republic of Pakistan

Tyronne Fernando
Minister of Foreign Affairs
Democratic Socialist Republic of Sri Lanka.

ANNEX

a) Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970.

b) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.

c) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, approved by the General Assembly of the United Nations on 14 December 1973.

d) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

e) Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980.

f) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988.

g) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.

h) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.

i) International Convention for the Suppression of Terrorist Bombings, approved by the General Assembly of the United Nations on 15 December 1997.

j) International Convention for the Suppression of the Financing of Terrorism, approved by the General Assembly of the United Nations on 9 December 1999.