

**Regional workshop for police officers, prosecutors and judges in South Asia
on effectively countering terrorism**

20-22 March 2012
New Delhi, India

Key Observations of Organizers

I. Working group session for police officers

(a) Ensuring effective national cooperation

1. Participants in the session for police officers stressed the importance of putting in place counter-terrorism legislation that allows for the prosecution of those involved in terrorism-related activities, the benefits of establishing specialized courts that dealt exclusively with terrorism and the advantages of developing and implementing a national counter-terrorism strategy.
2. By clearly defining the respective roles of national, provincial and local counter-terrorism agencies and by clearly designating a lead agency, national strategies provided an essential framework for cooperation in counter-terrorism matters. The police had an important role to play in the “prevention” component of such strategies.
3. A key challenge was to dismantle existing communications barriers between national counter-terrorism agencies. This could be achieved by creating joint counter-terrorism teams or centres that could help ensure the flow of information, both between agencies and between levels of law enforcement, and thus facilitate pre-emptive investigation and inter-operability among national agencies, whether before, during or after a terrorist incident. Joint classification systems could also help enhance information-sharing by national, provincial and local entities.
4. Joint analytical terrorism centres were useful tools, which enabled the police to collect and analyse foreign and domestic terrorism-related data and disseminate it to the relevant departments and agencies. Because such centres were usually staffed by representatives of a broad range of agencies, they facilitated comprehensive assessments of terrorist threats, as well as the development of threat-based and early-warning systems.
5. Another key challenge was the overlap between the activities of criminal investigation agencies and national security/ intelligence agencies. Much of that overlap was due to differences in priorities (disrupting terrorist attacks/prosecution). The difficulty of turning intelligence into evidence that could be brought to a court and the difficulties involved in disclosing sensitive information during trials were also factors.

(b) Ensuring effective international cooperation

6. The effectiveness of coordination at the national level influenced the effectiveness of international cooperation.
7. Both formal and informal channels should be used to obtain rapid and effective results in seeking international cooperation. A prerequisite for pursuing informal channels of international cooperation was the existence of a preapproved framework that permitted the pursuit of practical forms of cooperation. Sustained interpersonal contact was also necessary.

8. There was a distinction between cooperation aimed at obtaining information and/or intelligence and cooperation aimed at seeking evidence. The primary objective of the former was to obtain, as rapidly as possible, information that would assist in investigations and efforts to follow-up on leads. The use of police-to-police and other informal channels was ideally suited to that purpose. Evidence, however, was best obtained through formal channels, which tended to be slow, but resulted in documentation that could be presented to a court.
9. Terrorism itself represented a grave threat to human rights. The rights of victims (including their right to justice) were too often forgotten. However, to sacrifice human rights in counter-terrorism efforts was to concede a victory to terrorists.
10. Existing frameworks could be utilized to improve regional cooperation so as to allow practitioners to obtain the necessary information and/or evidence to assist law enforcement activities. INTERPOL National Central Bureaus (NCBs) played a crucial role in facilitating information exchange, both among States and with the INTERPOL General Secretariat.
11. The introduction of mechanisms to facilitate practical, international cooperation among police officers in South Asia was welcome. Regional cooperation arrangements such as the ASEAN Association of Heads of Police (ASEANAPOL), the Eastern Africa Police Chiefs Cooperation Organization (EAPCCO) and the West African Police Chiefs Committee (WAPCCO) should accommodate the sharing of information by law enforcement officials at the working level.

II. Working group session for prosecutors

12. Participants in the session for prosecutors considered the role of the prosecutor in conducting investigations and building cases, as well as the extent to which prosecutors were or were not involved in developing charges and identifying gaps in evidence.
13. There was a lack of coordination between investigative agencies and prosecutors, especially at the early stages, before charges were brought. Before identifying evidentiary gaps, prosecutors generally advised the investigator to develop the evidence. In most cases, it was for investigators to decide whether they wished to act on that advice. However, the defence might be engaged from the outset.
14. The absence of prosecutors during the planning phase of operations created the risk that large amounts of evidence would be collected either without legal sanction or in a manner that might not otherwise be up to evidentiary standards. As a result, the evidence might be excluded by the court. Early involvement during such operations (during both the planning and execution phases) might help prosecutors to develop proper investigative and prosecutorial strategies. In circumstances where undercover agents were deployed by investigative and/or intelligence agencies, it was advisable to ensure greater coordination between the prosecutor and the investigator, in particular, in respect of the conduct of the undercover agent.
15. Despite the benefits of cooperation between prosecutors and investigators, the high workload (number of cases assigned to a prosecutor at any given time) made it difficult for prosecutors in many South Asian States to play a more proactive role in investigations.
16. Cases in which prosecutors withheld information from the defence were often quashed in the higher courts. Ultimately, this reduced the legitimacy of the State; led to the absence of basic rights to a fair trial; brought the broader criminal justice system into disrepute; and might also lend support to terrorist groups.

17. Most jurisdictions in the region had not established a formal witness-protection framework. This made it difficult to ensure the safety of witnesses and led to witness intimidation and to the dismissal of cases owing to lack of evidence.
18. There was a need to strengthen prosecutors' capacities. Many of the existing training programmes for prosecutors in South Asia were ad hoc arrangements that were located in larger institutions (e.g., police academies and training centres for federal investigative bodies) and designed for law enforcement agencies. The region lacked the specialized training and capacity-building required by prosecutors.
19. In view of the transnational nature of the terrorist threat, there was a need to enhance cooperation among prosecutors in the region and a need for more opportunities to exchange best practices and experience and to build trust and confidence.

III. Working group session for judges

20. There was a need to ensure effective operational coordination among national counter-terrorism bodies. The role of the judge might be compared to that of the referee. There was a need to ensure judicial independence. Although judges must not "descend into the arena," the reality was that the judiciary relied on effective cooperation with prosecutors and defence counsel, as well as on cooperation with other Government agencies (e.g., ministries of justice, in respect of the protection of witnesses).
21. Many jurisdictions had established specific counter-terrorism legislation that had subsequently been refined, revised or, in some cases, repealed over time. Others had established no specific legislation.
22. Participants also shared the approaches of their respective jurisdictions to the handling of bail, the use of special terrorism courts, the use of plea bargains, the conduct of summary trials, the process by which confessions were received, the weight given to confessions in criminal proceedings, and the protections that might be imposed.
23. Participants also considered the role of the judiciary in the investigation and collection of evidence in terrorism prosecutions. Unlike judges working in inquisitorial systems characteristic of some civil law States, judges in most South Asian States did not play an active role in the gathering of evidence. For the most part, the role of judges, if any, in the region was rather marginal, and limited to the issuance of warrants, etc.
24. Participants also discussed varying approaches to disclosure. There was considerable variation in the requirements for disclosure to the defence and the role of judges in making determinations in that regard. In most jurisdictions in the region, prosecutors were required to disclose only information that would form part of their case. There was no obligation upon the prosecutor to disclose unused information that might be beneficial to the defence. In common law jurisdictions outside the region, however, there was an increasing tendency to require prosecutors to disclose all relevant information to the defence. It was noted that a number of jurisdictions (including the United Kingdom) had established statutory regimes defining the prosecution's obligations.
25. Participants also considered the use and disclosure of sensitive material and the role of judges in making determinations in that regard. A number of participants described statutory regimes and procedures for the handling of intelligence and of sensitive or classified material. These

included the use of special counsels or security-cleared defence attorneys, as well as the redaction or otherwise sanitizing of sensitive or classified material for disclosure. Participants also discussed the role of judges in determining what could or must be disclosed.

26. Courts should safeguard the rights of the accused while defending the rights of the victims to justice. Terrorist violence and the emotional reaction it inspired could lead Governments to “tilt the balance” too far in favour of the State in their efforts to prevent attacks and secure prosecutions. As illustrated by many instances in which draconian counter-terrorism legislation had been repealed or amended as a result of judicial decisions, the judiciary played a crucial role as a check against the abuse of special powers.
27. Respect for human rights was critical, not just for its own sake, but also to ensuring effective international cooperation in terrorism investigations and prosecutions (especially where concerns regarding possible torture or other inhumane or degrading treatment might prevent other jurisdictions from honouring requests for mutual legal assistance and extradition).
28. There was a need to strengthen judicial capacities in terrorism-related trials and a need to create more opportunities for regional counterparts to share experiences and best practices. National judicial academies played a critical role in building domestic capacities, and forums such as the present workshop could also provide a basis for deepening regional cooperation.