

## The United Nations' Response to 9/11

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*The United Nations has been at the forefront of the global campaign against terrorism after the events of September 11, 2001, giving the campaign legitimacy and universality. The Security Council acted with remarkable speed with its Resolution 1373 and set up the Counter Terrorism Committee with extensive powers. Its UK Chairman provided able leadership but reservations over human rights issues, lack of funding for assistance, and the danger of duplicating the work of other UN bodies with specific mandates have been revealed as deficiencies. The General assembly condemned the events of 9/11 and held debates on the subject later. The Secretary-General's views were expressed by several eloquent statements of the Secretary-General and in a policy working group report that advocated a tripartite strategy of "discussion–denial–cooperation" and made 31 recommendations. Counter terrorism is only one tool in tackling terrorism. Human rights concerns must be addressed. A separate, functional commission under the Economic and Social Council is recommended to provide the international community with a universal forum for a focused discussion on terrorism.*

### Introduction

The terrorist attacks in the United States on 11 September 2001, by their unexpected boldness, their diabolically elaborate intercontinental planning and the tragic scale of the death and destruction they wrought, are now widely regarded as a watershed in the global history of terrorism and political violence. This does not minimize the impact of terrorism in other countries prior to 9/11. Nor does it trivialize the importance of the twelve international treaties and conventions on terrorism adopted well before the events of 11 September. It is, however, a realistic assessment of the repercussions of a terrorist attack on the nerve centres of the sole superpower in the world and the global reaction to it. Nothing after 9/11 will be as it was before. A wounded superpower has not only been driven to act globally on the issue of terrorism but the entire world has responded to what is being seen as a global campaign against terrorism. The United Nations, as the only universal global body empowered by its 191 member states to maintain international peace and security, has been at the forefront of this renewed effort to combat the scourge of terrorism. This has helped to provide legitimacy and universality to the campaign as well to establish forums to discuss some of its drawbacks and omissions.

Beyond the formal condemnations of the events of 11 September 2001 adopted both by the Security Council one day afterwards (S/RES/1368(2001)) and by the UN General Assembly on 18 September (A/RES/56/10) the United Nations moved swiftly to adopt practical and effective measures through international cooperation

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to prevent future acts of terrorism. In this connection UN Secretary-General Kofi Annan underlined three important principles when he addressed the opening of the fifty-sixth session of the UN General Assembly one day after the tragic events and again on 1 October. These principles are as follows:

- (1) 'Terrorist acts are never justified no matter what considerations may be invoked'. At the same time the counterterrorist campaign should not distract from action on other UN principles and purposes, the achievement of which could by itself reduce and eliminate terrorism.
- (2) The adoption of preventive measures to be undertaken on a cooperative basis should be 'in accordance with the Charter and other relevant provisions of international law'.
- (3) The search for legal precision must be subordinated to 'moral clarity' on the subject of terrorism.

This approach ensured that the UN reaction was not one of revenge or retribution but based, as to be expected in a norm-based organization, on legal concepts and values. It also placed the action to be taken in the context of the antiterrorism conventions already adopted within the UN framework. Moreover the secretary-general focused on the protection of civilians – a vital theme in the UN – pointing significantly to the indiscriminate nature of terrorist attacks.

### **The Security Council**

The Security Council, vested with 'primary responsibility for the maintenance of international peace and security' under Article 24 of the UN Charter, moved within three weeks of 9/11 to adopt Resolution 1373 unanimously. In a body that has been accused of fractious and dilatory behaviour the speed and sweep of this resolution was truly remarkable, surprising many member states who had hoped that the General Assembly could have acted more decisively on the subject before the Security Council did. There is no doubt that politically, the Security Council with the five permanent members (P5) dominating its decision-making, had wrested the initiative and was going to be in the driving seat in the prevention and countering of terrorism. It was in an aggressive mode since all the P5 members, to a greater or lesser degree, had their own domestic and foreign policy reasons for providing the Security Council with the powers to pursue terrorists wherever they may be.

The range of actions required of member states by Security Council Resolution 1373 was extensive and detailed. From the very specific prohibitions regarding the financing of terrorism through the recruitment of terrorists and supplies of weapons to them, to the actual exchange of information in tracking the activities of terrorist groups, the resolution had the cumulative impact of setting rigorous barriers against global terrorism under Chapter VII of the charter which are mandatory for all member states to observe. Operative paragraph 6 of the resolution was perhaps the most important in practical terms because it set up a committee—later to be called the Counter Terrorism Committee (CTC)—which was to ensure and monitor the implementation of Resolution 1373. A specific timetable was recommended for member states to report to the committee and for the committee to submit a work programme to the Security Council.

The CTC has now been in existence for over two years and for a greater part of this period it has been ably led by Sir Jeremy Greenstock, the permanent

representative of the United Kingdom to the UN in New York, as its chairman. The decision on the chairmanship of the CTC was a departure from the well-established convention that representatives of the P5 countries do not chair Security Council committees. It is still to be seen whether Sir Jeremy Greenstock's successor, the permanent representative of Spain—a non-permanent member of the Security Council—will be as effective and dynamic. The influence and energy generated by the CTC is not only because of the personal leadership of the chairman but also to the fact that his country is one of the P5 members. An elaborate programme of activities, an infrastructure of support staff and a weighty documentation output that has strained the UN's resources are among the CTC's achievements. On the latter issue the secretary-general has been constrained to note on 18 January 2002 that 'We are currently using more than 25 per cent of our resources allocated to documentation to processing the national reports submitted to the committee by member states, in order to facilitate the committee's review of them. This is an unprecedented effort, which I fear cannot be sustained for long when those very same resources are being reduced by the General Assembly'. Not being a Sanctions Committee, the CTC has had to work on the basis of a broad mandate to strengthen the capacity of member states against terrorism. The reporting required from governments on their national legislation and implementation machinery and process enables the committee to assess what assistance is needed in individual countries with regard to their counterterrorism efforts. A ministerial level meeting of the Security Council on 20 January 2003 gave further impetus to the CTC by calling for all countries to take urgent action to prevent and suppress all active and passive support for terrorism, as well as by stressing the importance of complying fully with the council's resolutions in this regard.

Concerns voiced over the maintenance of human rights in the counterterrorism campaign have resulted in the High Commissioner for Human Rights (HCHR) addressing the Security Council on this issue. Links, on a continuous basis, for cooperation and information exchange have also been established between the Office of the HCHR and the CTC. In addition, a website has been designed to function as a 'one stop shop' for states looking for support in their efforts to fight terrorism, especially through the Directory of Counter Terrorism Information and Sources of Assistance. The CTC is not without its deficiencies. Two of them could be seen as a result of the experience of the period of the committee's existence. They are:

- (a) The CTC itself cannot provide assistance. It can only put member states in contact with potential donors or providers of assistance.
- (b) The CTC runs the grave risk of becoming an operational arm of the UN duplicating or overlapping the work of the UN Office on Drugs and Crime located in Vienna or other components of the UN system that are already mandated to work on different aspects of terrorism.

Nonetheless the CTC claims credit for member states upgrading their domestic laws, encouraging states to ratify the twelve international conventions and protocols relating to terrorism as well as offering guidelines and models for adoption and implementation of the existing legal instruments. A significant development was the CTC meeting held in March 2003 with representatives of several international, regional and subregional organizations. Opened by the UN secretary-general, the meeting was designed, he said, to consolidate global cooperation against terrorism with a rational division of labour based on comparative advantages of

the participating organizations. The meeting discussed global standards on counterterrorism as well as the role of regional and subregional organizations in strengthening global counterterrorism capacity and the assistance they could provide the states. A subsequent meeting limited to a discussion of the terrorism threat with regard to weapons of mass destruction (WMD) was held with relevant organizations and technical agencies in May 2003. Among those participating were the International Atomic Energy Agency (IAEA), the Organization for the Prohibition of Chemical Weapons (OPCW), the World Customs Organization (WCO) and Interpol. This meeting was seen as duplicating the efforts of others in the field and was only valuable as an attempt to identify who does what in terms of information-sharing.

An important feature of the CTC's intense activity has been the personality of the chairman. Whether the committee can sustain this level of activity without actually providing any resources to assist member states is doubtful. There is also the fact that member states outside the Security Council may not feel the same sense of ownership and participation in the CTC's activities in the long term. Their role in submitting information to the CTC may not be sufficient for them since decision-making is confined to members of the Security Council only. Individual components of the UN system such as the UN Office on Drugs and Crime, the IAEA and other operational bodies are perceived to be more likely to be responsive to the needs of member states than the CTC. The CTC may, on the other hand, move from a post-office or intermediary function to a more assertive one.

### **The General Assembly**

The General Assembly's response to the events of 11 September 2001 was firstly the adoption of a resolution one week after the tragedy condemning the acts of terrorism. Thereafter in a general debate a large number of member states participated in making it abundantly clear that there was broad unanimity on condemning the acts of terrorism against the US but differences persisted over the definition of terrorism and ways and means to combat the phenomenon. Moreover, the General Assembly held a separate debate from 1–5 October on measures to eliminate international terrorism. As a consequence of the speedy action on the part of the Security Council a separate resolution was considered redundant on the part of the General Assembly.

### **The Secretariat**

The response of the UN Secretariat to the events of 9/11 was of course embodied mainly in the many eloquent statements of the secretary-general. Among the themes he emphasized was the need to build on the wave of solidarity that 9/11 had caused so that the momentum would not be lost in developing a long-term counterterrorism strategy. The need to implement the twelve international legal conventions already in existence to combat terrorism was another theme. The need to agree on a comprehensive convention on international terrorism was also stressed. On this the secretary-general was unambiguous. He said, 'I understand that there are outstanding issues, which until now have prevented agreement on this convention. Some of the most difficult issues relate to the definition of terrorism. I understand and accept the need for legal precision . . . But let me say frankly, that there is also a need for moral clarity. There can be no acceptance of those who would seek to justify the deliberate taking of innocent civilian life, regardless of cause or grievance'.

The secretary-general has also frequently warned against the potential use of weapons of mass destruction in future acts of terrorism by urging the adoption of measures to prevent this.

A more coordinated Secretariat response to the challenges posed by 9/11 came through a policy working group established in October 2001 by the secretary-general 'to identify the long-term implications and broad policy dimensions of the issue of terrorism for the United Nations'. The group convened by the undersecretary-general for political affairs included senior officials of the Secretariat and a few outside experts. In fulfilling its mandate the policy working group had as its objectives the task of placing the role of the UN within the context of the struggle against terrorism, prioritizing the UN's activities in this regard and formulating a set of recommendations on how the UN system could function more coherently and effectively. Eight subgroups were formed for a more detailed examination of the issues involved and extensive links were established within the UN system and with outside groups including research bodies. The group submitted its report to the secretary-general on 28 June 2002 and the report was made public on 10 September with the secretary-general's endorsement one day before the first anniversary of 9/11. It was later introduced in the Security Council on 4 October 2002 when the CTC held its one-year anniversary meeting.

The group's report, while wisely recommending that the UN should focus on areas where it had a clear comparative advantage, emphasized how terrorism stood to undermine the purposes and principles of the UN Charter and had therefore to be effectively countered. The tripartite strategy proposed was as follows:

- (a) Dissuade affected groups from embracing terrorism.
- (b) Deny groups or individuals the means to carry out acts of terrorism.
- (c) Cooperate internationally in the struggle against terrorism and its multifaceted nature.

While recognizing the enormous complexity of terrorism and its multifaceted nature the group did not attempt to define terrorism. It acknowledged that terrorism was both a political and a criminal act and that both dimensions had to be addressed. Thus a multilayered and coherent strategy was necessary. Under the rubric of 'dissuasion' the report examined international legal instruments, human rights and behavioral norm setting. In the 'denial' aspect of the strategy the work of the Counter Terrorism Committee, UN efforts at disarmament and arms limitation and the prevention and resolution of armed conflicts were addressed. The third section on 'cooperation' considered non-UN multilateral initiatives and coordination within the UN system. The problem of coordination has been the bane of the UN system under normal circumstances in many areas of its laudable work and the need for this in the urgent task of combating terrorism cannot be overemphasized. The report admits frankly that in the rush to incorporate counterterrorism in all areas of work UN bodies have caused overlaps, duplication and gaps. The under-resourcing of the Terrorism Prevention Branch of the Centre for International Crime Prevention in the Office on Drugs and Crime was highlighted. This has since been remedied to some extent.

In the thirty-one recommendations made by the group within the tripartite strategy of 'dissuasion-denial-cooperation', some could be implemented without delay while others would need additional resource allocations through complex budgetary procedures. Such constraints do not apply to the Security Council's CTC to the same extent. Despite the months that have elapsed since the publication of the group's

report, implementation of the recommendations has been slow. It is clear that action by the Secretariat is being overshadowed by the CTC.

## **Conclusion**

Following the foregoing survey of the UN's response to the gauntlet thrown down by the terrorists on 11 September 2001 it is necessary to evaluate this record as a basis for future action. Terrorism must be seen in context. It is undoubtedly a pernicious evil that affects all nations big and small, rich and poor. Counterterrorism is but one of the tools we must use in ushering in a better and safer world. It cannot diminish efforts in other priority areas of work such as the war on poverty, the struggle to eliminate HIV/AIDS, the promotion of human rights and disarmament. The very complexity of terrorism as a phenomenon requires a broader approach than is offered today by the CTC. As Secretary-General Kofi Annan has stated "the reality is that, like war, terrorism is an immensely complicated phenomenon with multiple objectives and causes, a multitude of weapons and agents, and virtually limitless manifestations".

Another important aspect is that the vital relationship between countering terrorism and maintaining human rights has not been fully explored in the CTC. Mary Robinson, her successor as HCHR, Sergio Vieira de Mello, and numerous human rights NGOs have all spoken out against the circumvention of due process of the law, the secrecy surrounding counterterrorist measures (especially when directed against foreigners in countries) and the racial and religious profiling directed especially against Arabs and Muslims. Democracies as well as dictatorships have been guilty of this curtailment of civil liberties, justifying their actions on the basis of countering terrorism. Let me quote UN Secretary-General Kofi Annan again—'there is no trade-off between effective action against terrorism and the protection of human rights'.

The problem is evidently a serious preoccupation among human rights experts today. From a meeting held by special rapporteurs, human rights experts, chairpersons of working groups of the special procedures of the UN Commission on Human Rights and chairpersons of human rights treaty bodies from 23–27 June in Geneva a joint statement was issued which contained the following – 'Although they share in the unequivocal condemnation of terrorism, they voiced profound concern at the multiplication of policies, legislations and practices increasingly being adopted by many countries in the name of the fight against terrorism, which affect negatively the enjoyment of virtually all human rights – civil, cultural, economic, political and social'.

They draw attention to the dangers inherent in the indiscriminate use of the term 'terrorism', and the resulting new categories of discrimination. They recall that, in accordance with the International Covenant on Civil and Political Rights, and pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, certain rights are non-derogable and that any measures of derogation from the other rights guaranteed by the Covenant must be made in strict conformity with the provisions of its article 4.

The Special Rapporteurs/Representatives, Experts and Chairpersons of the Working Groups of the special procedures of the Commission and the