

# The UN-Led Multilateral Institutional Response to Jihadist Terrorism: Is a Global Counterterrorism Body Needed?

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## Abstract

This article first briefly outlines the current terrorist threat posed by militant Islamist radical terrorism and the complexity and evolving nature of threat. It highlights the lack of consensus in academic and policy communities regarding the underlying causes of this terrorism. It then posits that the overarching challenge in the next few years will be to maintain the broad-based international cooperation in the fight against terrorism that has existed since 11 September 2001, which is essential to address the threat effectively. Elements of this challenge include dispelling the notion that the US-led counterterrorism effort is targeting Islam and keeping the global South engaged. Durable, effective and flexible mechanisms are needed at the global, regional and national levels to ensure that multifaceted, holistic strategies are developed and implemented to address these issues. The article then outlines the current capacity of multilateral institutions to contribute to the fight against terrorism. The performance of the main UN counterterrorism bodies – led by the Security Council’s different counterterrorism entities – as well as some of the key regional and functional ones, this article concludes, has been uneven. Different organisations have developed counterterrorism programs and units, but these have emerged from political reactions rather than strategic decisions with corresponding achievable technical objectives. The duplication of efforts, overlapping mandates and lack of co-ordination at the international, regional and sub-regional levels have limited the different bodies’ overall contribution to the global non-military counterterrorism

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effort and have left many of the world's vulnerabilities to terrorism unaddressed. This article concludes that maintaining international co-operation and the focus on capacity-building and other non-military counterterrorism measures, as well as the need to address the proliferation of counterterrorism bodies, highlights the need for an effective multilateral body at the center of the effort. The UN Security Council's Counter-Terrorism Committee was supposed to be this body, but it has been unable to fulfill its broad mandate effectively. The article details the limitations of the current UN Security Council-led approach and the inherent, political, administrative and budgetary challenges of operating within the UN system that would make it difficult to co-ordinate global capacity-building efforts effectively. While it proposes a possible short-term improvement – the consolidation of the different parts of the Security Council counterterrorism program into a single body – in the end, it argues that a new international body dedicated to counterterrorism outside of, but perhaps related in some way to, the UN may be needed.

## 1. The Threat

A historic tendency has been overtaken because of the emergence of al-Qaeda and the global Jihadist threat that it represents. States have traditionally considered other states' internal problems with violent political opponents who resort to terrorist violence as their own domestic problems. There is now broad recognition, even amongst the most powerful of countries, that all states are potential targets of terrorism and no state or even group of states can fight that threat on its own and that mechanisms for effective co-ordination and co-operation are needed at the national, regional and global levels.<sup>1</sup> Many countries can suffer from the economic impact of a major attack or even a threatened attack. An Australian Government white paper on terrorism makes this point clear: 'the transnational impact of the threat means that a country does not have to experience a direct terrorist attack on its soil to suffer from the effects of terrorism.' A country with weak governance or financial infrastructure corrupted and exploited by terrorists may have devastating implications for countries on the other side of the world and economic repercussions for the entire world economy.<sup>2</sup>

- 1 Numerous leaders have made this point, including Philippines President Arroyo, who, speaking at the August 2006 ASEAN Leaders Summit, stated that '[w]e cannot deal with the [terrorist] threats alone. We must work with other countries and international institutions if we are determined to successfully address and eliminate them', 6 August 2006, <<http://archive.gulfnews.com/articles/06/08/13/10059705.html>>; Kofi Annan, who has noted that 'terrorism is a threat to all States, to all people, which can strike anytime, anywhere', Secretary General's Global Strategy for Fighting Terrorism, 11 March 2005, <<http://www.un.org/News/Press/docs/2005/sgsm9757.doc.htm>>; and US President George W. Bush has remarked, 'The global threat of terrorism requires a global response', The White House, 'President Bush Discusses Progress in the War on Terror', Oak Ridge National Laboratory, Oak Ridge, Tennessee, 12 July 2004.
- 2 Australian Department of Foreign Affairs and Trade, 'Australian Paper: Experiences in Combating Transnational Terrorism'. Available at <[http://www.dfat.gov.au/globalissues/combating\\_transnational\\_terrorism.html#\\_ftn1](http://www.dfat.gov.au/globalissues/combating_transnational_terrorism.html#_ftn1)>.

Since 9/11, an unprecedented global counterterrorism campaign has resulted in the death or capture of much of the al-Qaeda leadership. As a formal hierarchical network, today al-Qaeda is a shell of the organisation it once was. Years of offensive military operations against it and its leadership and other efforts to disrupt its operations have significantly degraded al-Qaeda's capacity to centrally orchestrate large-scale attacks. The result is a wider, more disparate and dispersed movement, in many ways just as or more dangerous, still capable of operationally directing and inspiring large-scale terrorist violence worldwide. Although there is no consensus among experts as to just how decentralised the movement is, there is broad agreement that its members are bent on inflicting unprecedented destruction, going beyond the scale of achieving limited political aims like terrorist groups of the past. There is also little dispute that al-Qaeda has spawned successor groups and inspired movements and individuals that share its messianic goals and destructive means. Unlike during the Cold War, when like-minded allies could focus on protecting centres of military and industrial capacity, it is now the least governed, most lawless places that are either breeding grounds or potential breeding grounds for terrorists who, as the example of September 11 showed, are motivated by a palpable sense of Western vulnerability. This new breed of terror networks frequently has no affiliation to sovereign nations and operates across religious or national boundaries. To respond to this threat, counterterrorism efforts must deliberately cut across the cultural, ethnic, regional and religious divides that terrorists seek to exploit.<sup>3</sup>

Yet, the threat is not just coming from the ungoverned spaces on the globe, as the bombings in both Madrid and London as well as the murder of Dutch artist Theo van Gogh by a young Dutch militant have revealed. There is a growing group of what the Center on Strategic and International Studies' Daniel Benjamin has referred to as self-starter, 'home-grown' terrorists who may have very little connection to al-Qaeda or other pre-existing groups but have been won over by the ideas of Osama bin Laden and his followers.<sup>4</sup> Self-recruited and often self-trained, they have relied on the Internet, operating without external support or instructions from what might remain of an al-Qaeda hierarchy to carry out deadly attacks.<sup>5</sup>

3 Anthony Cordesman, 'The Lessons of International Cooperation in Counterterrorism', address to the RUSI Conference on Transnational Terrorism 'A Global Approach', 18 January 2006.

4 Daniel Benjamin, Senior Fellow, Center for Strategic and International Studies, Testimony before the Senate Foreign Relations Committee, 'The Changing Face of Terror – A Post 9–11 Assessment', 13 June 2006. Available at <<http://www.senate.gov/~foreign/testimony/2006/BenjaminTestimony060613.pdf>>.

5 Rik Coolsaet, 'Jihadi Terrorism – Where Do We Stand?', Second IRRI (Belgian Royal Institute for International Relations) Conference on International Terrorism, 13 February 2006. Available at <<http://irri-kiib.be/speechnotes/06/060213-jihad.terr/coolset.htm>>.

There is no consensus as to what is the direct cause of the existence and spread of Jihadist terrorism. For example, in a BBC interview two days after the London Underground bombings, British Prime Minister Tony Blair stated that it is crucial to address terrorism's 'underlying causes', which he identified as poverty, lack of democracy and the Middle East conflict.<sup>6</sup> Yet, if the prime minister were correct, the terrorist phenomenon would be different than the one that actually exists. Despite poverty being widespread, most of the world's poorest societies have not produced terrorist organisations, particularly not ones with an international scope. A Norwegian Institute of International Affairs panel of leading terrorism experts found that there is only a weak and indirect relationship between poverty and terrorism.<sup>7</sup> Similarly, most countries lack democracy; and it is far from clear that democracy is the goal of most terrorist organisations.<sup>8</sup> On the contrary, few would dispute that the US-led invasion and the various missteps that have characterised the occupation of Iraq have been directly responsible for the rise in Jihadist violence in that part of the world.

The policy and academic communities do, however, appear to share a common understanding of some of the conditions that attract individuals to this brand of extremism. As the Secretary General stated in his April 2006 report, *Uniting against Terrorism*, 'terrorist acts do not occur in a social or political vacuum'. According to the Secretary General, these 'conditions conducive to exploitation by terrorists' include extremist ideologies and dehumanisation of victims, violent conflict, poor governance, lack of civil rights and human rights abuse, religious and ethnic discrimination, political exclusion and socio-economic marginalisation.<sup>9</sup> Even the United States, which had long been reluctant to acknowledge that certain societal factors can lead people to embrace rather than spurn terrorism, now agrees: addressing these 'underlying conditions' is now one of three prongs of its counterterrorism strategy (with the other two being the removal of terrorist leaders and the denial of physical and virtual safe haven).<sup>10</sup>

Given the complexity and evolving nature of the threat, as well as the diversity of conditions that make the soil fertile for terrorist recruitment and radicalisation, combating international terrorism requires a comprehensive, multifaceted response at the global, regional and local levels. To be effective,

6 Tony Blair, 9 July 2005. Available at <[http://news.bbc.co.uk/1/hi/uk\\_politics/4666311.stm](http://news.bbc.co.uk/1/hi/uk_politics/4666311.stm)>.

7 Norwegian Institute of International Affairs, *Root Causes of Terrorism* (2002). Available at <[http://www.nupi.no/IPS/filestore/Root\\_Causes\\_report.pdf](http://www.nupi.no/IPS/filestore/Root_Causes_report.pdf)>.

8 Don Radlauer, 'The London Bombings and "the Root Causes" of Terrorism', Institute for Counter-Terrorism, 10 July 2005. Available at <<http://www.ict.org.il/editorials/editorialdet.cfm?editorialid=1>>.

9 Report of the Secretary General, 'Uniting Against Terrorism: Recommendations for a Global Counter-Terrorism Strategy', 27 April 2006, at paras. 8 and 20–38.

10 Henry A. Crumpton, United States Coordinator for Counterterrorism, 'Remarks at the Royal United Services Institute Conference on Transnational Terrorism', London, England, 16 January 2006. Available at <<http://www.state.gov/s/ct/rls/rm/2006/59987.htm>>.

responses must be enduring and sustainable and must include a significant non-military component. Worldwide co-ordination is essential to ensure the cross-border co-operation necessary to track funding, disrupt planning and prevent future attacks as well as to investigate, capture and prosecute terrorists and their supporters, should those preventive efforts fail. It is also needed to develop and implement strategies for addressing the above-mentioned 'underlying conditions' and, in doing so, create a positive narrative to counter the hatred and violence that the Jihadists are so eager to spread.

Multilateral institutions can make meaningful contributions to the global campaign against terrorism, including by promoting worldwide co-ordination and co-operation in various aspects of the non-military counterterrorism effort, but in some cases they can also impede progress. As will be discussed below, the UN-led multilateral institutional response to terrorism has produced mixed results. In addition, there continues to be a shortage of serious thinking being done on how to improve the response. On the one hand, the role of such bodies is almost an afterthought in the writings of the vast majority of counterterrorism experts, who focus on bilateral or informal international co-operative efforts and generally lack a full appreciation of the workings of these institutions and the comparative advantages they might have in the fight against terrorism. On the other hand, UN or international organisation specialists generally lack the necessary background on the evolving terrorist threat and strategies for addressing it to be able to contribute much in the way of meaningful or creative ideas on the counterterrorism role of multilateral bodies.

## **2. The Challenge of Sustaining International Co-operation**

The overarching challenge in the next few years will be to maintain the broad-based international co-operation in the fight against terrorism that has existed since 11 September 2001 and is essential to address the threat effectively. To the extent that the global counterterrorism campaign succeeds in crippling al-Qaeda's global network and its ability to conduct massive attacks or leads to further decentralisation of al-Qaeda, with self-starter and self-recruiting cells and individuals, the more difficult it will be to maintain the international coalition. It is worth recalling that there is no common definition at the UN of terrorism that extends beyond Osama bin Laden, the Taliban, al-Qaeda and its followers or offspring. There is no consensus among States as to who is or is not a terrorist as the debates surrounding Hamas, Hezbollah, the Chechnyan separatists and the East Turkestan Liberation Organisation attest.

As part of this challenge, the global North will need to dispel the growing scepticism and distrust among Muslims around the globe that the US-led counterterrorism effort is targeting Islam. It will need to recognise that, as Jessica Stern, a counterterrorism expert at Harvard University, has recently reminded us, 'the

tools required in the long run to win the war are neither bombs nor torture chambers. They are ideas and stories that counter the terrorist narrative -- and draw potential recruits away from the lure of jihad'.<sup>11</sup> The ability to maintain and hopefully strengthen international co-operation in the fight against terrorism will also depend on developing strategies and programmes at the global, regional and local level that can address the ever changing terrorist tactics. For example, terrorist groups are becoming more sophisticated in their use of technology, particularly the Internet and the media. To highlight the growing problem, Gabriel Weimann, author of *Terror on the Internet*, estimated the number of terrorist websites to be around 4,800, up from around 20 in 1998 and growing at a faster rate than other segments of the Internet.<sup>12</sup>

To the extent that the threat continues to become decentralised, with a growing 'patchwork of homegrown networks,' with local conditions being the main driving force behind terrorist activities, greater attention will need to be paid to addressing the conditions that are providing fertile soil for radicalisation and recruitment in communities in Europe and elsewhere. Yet, effective strategies have yet to be developed at the international, or for that matter local, level for tackling many of these social and political conditions. This is partly because many of them, for example, local conflicts, religious extremism, human rights abuse, lack of political freedoms, touch upon highly sensitive issues on which it is difficult to achieve consensus on the most effective approaches for addressing them. As a result, 'international counterterrorism cooperation has been least successful where it matters most'.<sup>13</sup>

Another aspect of the broad challenge of maintaining international co-operation is keeping the global South engaged. For many developing countries, counterterrorism is seen largely as a Western priority, although cities in the global South have been victimised by terrorist attacks much more often than those in the North.<sup>14</sup> This perception is likely to increase the more decentralised al-Qaeda becomes, the more the 'self-starter' terrorist cells begin to dominate the landscape and the more often population centres in the global North are victimised. For the global South, the higher priorities are the battles against poverty, underdevelopment, HIV/AIDs and malaria. Relatively few countries have the necessary legal, administrative and regulatory capacities to freeze terrorists' assets, monitor the formal and informal banking systems, prevent the travel of designated individuals, deny safe haven to terrorists and their supporters and suppress the recruitment and military supply of terrorist groups. Many face

11 Jessica Stern, 'Jihad – A Global Fad', *Boston Globe*, 1 August 2006.

12 See <[http://www.technologyreview.com/read\\_article.aspx?ch=specialsections&sc=social&id=16566](http://www.technologyreview.com/read_article.aspx?ch=specialsections&sc=social&id=16566)> and <<http://www.voanews.com/english/archive/2006-05/Terrorism2006-05-03-voa74.cfm>>.

13 Rik Coolsaet, 'Jihadi Terrorism – Where Do We Stand?', Second IRRI Conference on International Terrorism, 13 February 2006, p. 7. Available at <<http://www.irri-kiib.be/speechnotes/06/060213-jihad.terr/coolset.htm>>.

14 *Ibid.*, p. 5.

deficiencies in their operational and administrative capacity for combating terrorism but may lack the resources and/or political will to take the necessary steps to address these gaps. This lack of capacity is particularly troubling because terrorists have proven adept at exploiting such gaps to fund, organise, equip and train their recruits, carry out their attacks and hide from arrest. In the end, given the global and fast-moving nature of the terrorist threat, the international community's ability to deal effectively with it will only be as strong as the globe's weakest link. Thus, building capacity of all States, including those in the often vulnerable global South must remain a priority.

Two elements of an effective long-term strategy to sustain the global South's commitment to strengthen their counterterrorism capabilities are (1) a more effectively co-ordinated international technical assistance effort, so that the States lacking both capacity and means are matched with the appropriate technical assistance in a timely manner, and (2) a clearer and more widely disseminated message as to the benefits that will accrue from enhanced counterterrorism capacities.

With respect to the latter, creating more effective law enforcement capabilities – including through the training of judges, prosecutors, intelligence officials and police; improving border, immigration and customs controls; regulating banks and financial institutions and strengthening security at ports and border crossings – will do much more than simply improve counterterrorism capacity; these improvements would parallel the steps increasingly recognised among aid donors and recipients as essential to economic development and the expansion of social and economic opportunity. Trade and investment depend on stable government and the rule of law. The G8 Leaders acknowledged this linkage in the G8's first-ever statement on strengthening the UN's counterterrorism programme, recognising that enhanced counterterrorism capacity 'will have far-reaching benefits. It will reduce the likelihood of conflict and social unrest and contribute to increased foreign investment, good governance and long-term development'.<sup>15</sup>

More than five years after the horrific events of 11 September 2001, it is increasingly clear that this will likely be a decades-long struggle. The longer the threat continues, the more sophisticated and adaptable the terrorists and the more complex the strategy for combating terrorism become. What started out as a predominantly military response to the attacks on the World Trade Center and the Pentagon has now morphed and broadened into one that focuses much more on the non-military aspects of counterterrorism, with greater emphasis now being placed on capacity building and addressing the societal and political conditions that can spawn terrorists. Thus, more than ever, durable, effective

15 G8 Statement on Strengthening the UN's Counter-Terrorism Programme, St. Petersburg, Russia, 16 July 2006, para 4. Available at <<http://www.g7.utoronto.ca/summit/2006stpetersburg/counterterrorism-un.html>>.

and flexible mechanisms are needed at the global, regional and national levels to ensure that the multifaceted, holistic strategies are in fact implemented.

### **3. The Capacity of Multilateral Institutions to Contribute to the Fight against Terrorism**

Given the greater emphasis being placed on the role of non-military measures in the fight against terrorism and the broad recognition that sustained international co-operation at all levels remains a necessary component of the effort, multilateral institutions are well-placed to make a meaningful contribution.

Yet, as the brief overview of the main UN counterterrorism bodies, as well as some of the key regional and functional ones, will show, their performance has been uneven. Different international and regional bodies have developed counterterrorism programmes and units, but these have emerged from political reactions rather than strategic decisions with corresponding achievable technical objectives. This has led to a general lack of sustained attention from politicians and senior government officials. In turn, it has failed to inspire the confidence of national technical experts, who often see the work of a growing number of committees as paper-producing machines, having little measurable impact on the enemy. This view is confirmed by the duplication of efforts, overlapping mandates and lack of co-ordination at the international, regional and sub-regional levels – all of which have limited the different bodies' overall contribution to the global non-military counterterrorism effort and have left many of the world's vulnerabilities to terrorism unaddressed.

#### **A. United Nations**

The UN has struggled since its inception with how to formulate an effective response to terrorism. On the one hand, using its norm-setting authority, it has provided a solid international legal framework for combating terrorism – via the adoption of thirteen terrorism-related treaties adopted by the General Assembly and UN agencies and a number of legally binding resolutions adopted by the Security Council – thus often reinforcing the efforts of the United States and other countries outside of the UN. On the other hand, it has been unable to reach agreement on a definition of terrorism that outlaws all indiscriminate attacks against civilians. A further defining feature of the UN's counterterrorism effort has been its reactive nature, adopting declarations or treaties or establishing committees or programmes in response to individual attacks, without developing a coherent and co-ordinated response. Because of its largely piecemeal approach, today more than twenty different parts of the UN system deal with terrorism in one form or another, with the Security Council and its

four separate counterterrorism-related bodies and three staff bodies now at the centre of this effort.<sup>16</sup>

(i) General Assembly

Although the General Assembly has contributed a handful of important international counterterrorism treaties, it is most well-known in the counterterrorism world for what it has not contributed, namely a definition of terrorism. The global body has been divided on this question since it first took up the issue of terrorism in 1972. This ongoing failure is evidenced by the still unsuccessful efforts of the Ad Hoc Committee to conclude a comprehensive convention on international terrorism, with differences surrounding the definition of terrorism continuing to impede progress. Two major outstanding issues remain. The first is the proposed exclusion from the scope of the convention for the activities of state military forces. The second is the continuing Organisation of the Islamic Conference demand for inclusion of language that would distinguish between terrorist acts and the activities of national liberation movements and 'peoples struggling against foreign occupation'. Despite momentum generated at different times by the September 11 attacks and by the convening of heads of state at the 2005 World Summit, which declared the concluding of the convention to be a priority, the talks remain stalled.

The General Assembly's inability to reach agreement on a definition of terrorism after nearly thirty-five years of discussions in one form or another – with the unfortunate continuing relevance of the phrase 'one man's terrorist is another man's freedom fighter' – has limited the impact of its counterterrorism efforts. Ongoing conflicts in the Middle East, the Kashmir dispute and the difficulty UN Member States seem to have keeping political issues away from the negotiation of a technical, law enforcement instrument mean that we are unlikely to see a breakthrough any time soon.

16 In addition to the General Assembly and Security Council and its subsidiary bodies, the other parts of the UN involved in counterterrorism-related issues include: the Department of Peace-keeping Operations, the Department of Political Affairs, the Department of Public Information, the Department for Disarmament Affairs, the Department of Safety and Security, the International Atomic Energy Agency, the International Civil Aviation Organisation, the International Maritime Organisation, the International Monetary Fund, Interpol, the Office on Drugs and Crime, the Office of the High Commissioner for Human Rights, the Office of Legal Affairs, the Organisation for the Prohibition of Chemical Weapons, United Nations Development Programme, United Nations Educational, Scientific and Cultural Organisation, the World Customs Organisation, the World Bank, the World Health Organisation, the Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism and the three Security Council staff bodies: the Counter-Terrorism Committee Executive Directorate, the Al-Qaida and Taliban Sanctions Committee Analytical Support and Sanctions Monitoring Team and the 1540 Committee's Group of Experts.

## (ii) The Security Council

Until 9/11, the Security Council shied away from addressing the challenge of terrorism on a global scale. Although it had adopted resolutions in response to discrete acts of terrorism, for example, in response to the bombing of Pan Am flight 103 and the bombings of the US Embassies in Kenya and Tanzania, its deep involvement in the UN's counterterrorism effort, commencing with Resolution 1373, is a new development. For years before 9/11, the general topic of international terrorism was largely considered a General Assembly issue.<sup>17</sup> This reluctance to consider terrorism was due to a number of factors, among them was the Cold War deadlock in the Security Council and the related North–South divide, which prevented the Council from condemning some of the most heinous terrorist attacks, including the killings of Israeli athletes at the 1972 Munich Olympics. In addition, before the emergence of al-Qaeda, terrorism was considered primarily to be associated with local and regional conflicts, and terrorists thought to define themselves and their field of operations primarily in local rather than global terms. Now, following the attacks on the World Trade Centre and with al-Qaeda and other Jihadist groups operating around the globe, few would dispute that terrorism constitutes one of the most dangerous threats to *international* peace and security. Thus, the Security Council is now leading the UN counterterrorism effort, with its Counter-Terrorism Committee (CTC) at the centre of a programme consisting of several diffuse Security Council subsidiary bodies and other UN entities.

The Security Council created its four counterterrorism-related bodies, using the authority under article 29 of the UN Charter, which allows the Council to establish subsidiary bodies to enable it to function properly. Each body comprises all fifteen Members of the Council and is modelled on the country-specific sanctions committees the Council created over the years to monitor States' implementation of different Council sanctions regimes. The general rule has been that each body is chaired by an Ambassador, usually selected among the elected Members of the Council, whose Mission is in charge of co-ordinating the committee's work. States are generally called on to report to the relevant committee on issues related to its mandate and a team of independent experts hired by the UN Secretariat as consultants, but with the consent of the committee Members, who analyse the reports and provide guidance to its parent body. The bodies all operate by consensus, generally meet in private and report periodically to the Security Council. Before 9/11, the Council had used its article 29 authority to create committees to give particular focus to a continuing threat emanating from a specific country or region. By contrast, each of the counterterrorism bodies was given a global mandate to focus on global threats that have no end in sight.

17 Kendall W. Stiles, 'The Power of Procedure and the Procedures of the Powerful: Anti-Terror Law in the United Nations', (2006) 43(1) *Journal of Peace Research* 39–40.

### *The Counter-Terrorism Committee*

The CTC has received priority attention and resources as the 'center of global efforts to fight terrorism'.<sup>18</sup> The committee has been tasked with monitoring, assessing and facilitating implementation of Resolution 1373 by States. This ground-breaking resolution imposed sweeping legal obligations on UN Member States, creating an unprecedented campaign of co-operative law enforcement measures to combat global terrorist threats. It goes beyond the existing counter-terrorism treaties, which bind only those who have voluntarily become parties to them by creating uniform global obligations.<sup>19</sup> The resolution requires every country, among other things, to freeze the financial assets of terrorists and their supporters, deny travel or safe haven for terrorists, prevent terrorist recruitment and weapons supply and co-operate with other countries in information sharing and criminal prosecution. The CTC's mandate includes 'explor[ing] ways in which States can be assisted by working with international, regional and sub-regional organizations to promote best-practices' and to encourage synergies among technical assistance programmes.<sup>20</sup> The CTC's first chair, Sir Jeremy Greenstock of the United Kingdom, described the CTC as 'a switchboard, a catalyst and a driver of other institutions to do their work in a globally coordinated way'.<sup>21</sup> Its essential functions remain twofold: to determine States' capacity to comply with their obligations under Resolution 1373 and to ensure that potential donors have sufficient information to provide technical assistance that will address the most urgent needs in a timely and sustainable manner.

In its first five years, the CTC has achieved a record of accomplishment in three key areas. First, it has helped to sustain political awareness of the importance of non-military measures against terrorism, through the adoption by

18 United Nations Secretary General Kofi Annan, Statement at Ministerial Level Meeting of the UN Security Council. See United Nations Security Council, *High-level Meeting of the Security Council: Combating Terrorism*, S/PV.4688, New York, 20 January 2003.

19 The Council's adoption of Resolution 1373 (and 1540) has been questioned and criticised by some States as falling outside its mandate. The Council, they argue, was not intended to act as a 'global legislator'. They fear that such action could disrupt the balance of power between the Council and the General Assembly as set forth in the UN Charter. Moreover, they assert that having the Council, a fifteen-Member body not accountable to the other UN organs, impose obligations on all 191 Members, threatens to weaken one of the cornerstones of traditional international law, namely, the principle that international law is based on the consent of States. Others, however, argue that the UN Charter has evolved to allow the Council to act as a 'global legislator' under certain circumstances and that the Council needs to be able to use this tool to address effectively, within the State-centred UN Charter system in which it operates, the threats posed by non-state terrorists and terrorist groups. For an in-depth discussion of the Security Council's 'legislative' role, see Stephen Talmon, 'Note and Comment: The Security Council as World Legislature', (2005) 99 *AJIL* 175; and Eric Rosand, 'The Security Council as "Global Legislator": Ultra Vires or Ultra Innovative', (2005) 28 *Ford ILJ* 542.

20 United Nations Security Council, SC Res. 1377 (2001), S/RES/1377, New York, 12 November 2001.

21 Quoted in United Nations Information Service, 'Vienna Symposium on Terrorism Adds More Momentum to Global Fight Against Terrorism', *United Nations Office on Drugs and Crime*, UNIS/CP/413, Vienna, 6 June 2002.

States of new or the improved implementation, of existing international counter-terrorism instruments and the development and implementation of counter-terrorism action plans. Second, it has played an important role in ensuring that Member State compliance with reporting requirements has been far greater than for any previous Security Council mandate (all 191 UN Member States have, at a minimum, submitted first-round reports explaining their efforts to implement Resolution 1373). The CTC has received and reviewed more than 600 reports from Member States and is thus conducting the first worldwide audit of counterterrorism capacities.<sup>22</sup> Third, the CTC has become a significant element of the worldwide campaign against terrorism by laying the groundwork for effective needs assessments and the co-ordination of capacity-building efforts. It is encouraging States and regional, sub-regional and functional organisations to co-ordinate and improve their counterterrorism efforts, with a view to helping their Members implement the Security Council-imposed counterterrorism obligations and/or join and implement the international conventions and protocols related to terrorism.

The CTC's progress in all three areas can be attributed in large part to its focus on the less controversial aspects of counterterrorism. Although Resolution 1373 imposes a series of legal obligations on all States, it does not attempt to define terrorism or identify specific terrorists, leaving such determinations up to individual Member States. Rather, in addition to the legal obligations it imposes, Resolution 1373 directs Member States to afford one another the greatest measure of assistance in tracking terrorists and investigating terrorist acts. States are urged to intensify and facilitate the exchange of information on matters related to travel, communications and arms trafficking among terrorists, but there has been no mention of any punitive action for States that do not comply with the resolution. Accordingly, the CTC has concentrated on incentives, trying to help States build capacity, with the aim of serving as a 'switchboard' between donors and States lacking capacity.

#### *The Counter-Terrorism Executive Directorate*

With the establishment of the Counter-Terrorism Executive Directorate (CTED) in March 2004, the Council sought to provide the CTC with a much needed, larger, more permanent and professional support unit. In doing so, the Council sought to enhance the CTC's ability to fulfil its broad mandate as a capacity-building body by providing it additional resources to work with States and relevant organisations. After lengthy delays due principally to the cumbersome UN budget and personnel processes, the CTED became fully staffed in the fall of 2005, more than

22 According to the CTC's seventeenth work programme, as of 30 September 2005, it had received 613 reports from UN Member States. This includes first reports from all 191 States, 169 second reports, 130 third reports, 101 fourth reports, and twenty-two fifth reports. See Counter-Terrorism Committee, 'CTC Programme of Work'. Available online at the United Nations <[http://www.un.org/Docs/sc/committees/1373/programme\\_of\\_work.html](http://www.un.org/Docs/sc/committees/1373/programme_of_work.html)> (accessed 7 December 2005).

eighteen months after it was created. It is currently preparing technical assistance needs assessments and conducting site visits in an effort to determine the areas in which States need the most help. To date, nearly one hundred needs assessments have been prepared, of which some seventy are being partially shared with donors.<sup>23</sup> It conducted site visits to five countries during 2005, with some twelve more scheduled to follow in 2006. A fully staffed CTED should enable the CTC more expeditiously to solicit and respond to follow-up reports from States and to play a better co-ordinating role among the different international, regional and sub-regional organisations contributing to the counterterrorism effort.

Building and sustaining more effective UN counterterrorism effort, however, requires more than a larger staff. It also requires more effective strategies and programmes, and it remains to be seen whether the CTED will help the CTC develop and implement them.

### *The Non-Proliferation Committee*

Motivated partly by a heightened sensitivity to nuclear security after the revelations in February 2004 of the nuclear black market run by Pakistani scientist A.Q. Khan and following the precedent of Resolution 1373, the Council adopted Resolution 1540 in April 2004, requiring all States to take a series of legislative and regulatory steps to prevent weapons of mass destruction (WMD) and their means of delivery from getting into the hands of terrorists. The CTC's capacity-building and co-ordination-focused approach was the model for the Council when it established the 1540 Committee – with a mandate of two years – to monitor States' efforts to implement their 1540 obligations.<sup>24</sup> In addition, the Council established a group of eight independent experts to support the committee's work. The committee got off to a slow start because of the presence of a particularly obstructive non-permanent Council Member, which rotated off the Security Council and thus the Committee at the end of 2004. Reporting to the committee has lagged, partly because of reporting fatigue among countries burdened with an ever-increasing number of requirements.<sup>25</sup> The committee has developed an elaborate matrix, however, which identifies the different steps States should take to implement fully the provisions of the resolution and indicates what additional steps still need to be taken. The committee has reviewed and sent a copy of the matrix to all 124 States that submitted first-round reports thus far. As for the facilitation of technical assistance, the committee is in the

23 The needs assessments contain two parts. The first consists of an analysis of the particular State's efforts to implement Resolution 1373. The second consists of a list of priority areas where the CTED believes the particular State needs technical assistance to enable it to implement the resolution fully. Currently, only the latter part is shared – only with the State's consent – with relevant donors.

24 On 27 April 2006, the Security Council adopted Resolution 1673 to extend the committee's mandate for a second two-year term.

25 As of October 2005, the committee has received reports from 124 States, i.e. some two-thirds of the UN Membership.

early stages of developing its policies in this area. If the development of policies in the other Security Council subsidiary bodies is any guide, this is expected to be a bureaucratic and time-consuming process. The committee's group of experts has so far resisted Security Council calls for greater co-ordination and co-operation with the other Security Council counterterrorism-related staff bodies, citing the WMD (rather than terrorism) focus of the 1540 Committee.

#### *Al-Qaeda/Taliban Sanctions Committee*

Although originally established as part of the Security Council's strategy to address the terrorist threat posed by Taliban-controlled Afghanistan, the mandate of the 1267 Committee (which has since become known as the al-Qaeda and Taliban Sanctions Committee) was expanded following 11 September 2001, to deal with the global al-Qaeda threat. Thus, it now monitors the implementation of financial, travel and arms sanctions against al-Qaeda, the Taliban, Osama bin Laden and their associates. As part of its response to the events of September 11, the council required all states to impose these measures on the individuals and entities listed by the committee, which manages and updates the list. To assist the committee with its work, the council established an eight-person Analytical Support and Sanctions Monitoring Team (Monitoring Team) to 'collate, assess, monitor, and report on' steps being taken to implement and enforce the sanctions measures against those on the list and to recommend new measures to address the evolving al-Qaeda threat.

Today, there are more than four hundred names on the committee's list, the vast majority of which were submitted by the United States in the aftermath of September 11 either alone or in conjunction with other UN member states. In the weeks following that day, according to one Security Council diplomat, 'there was enormous good will and a willingness to take on trust any name the U.S. submitted'.<sup>26</sup> During this period, the creation of the list was based largely on political trust, with the committee having no particular guidelines or standards for states to follow in proposing names. Since then, the committee has adopted such guidelines, putting minimum evidentiary standards for submitting names and a transparent listing process into place to help ensure that due process and other human rights standards are respected. Yet, concerns about the committee's lack of due process continue to dominate discussions regarding its work, with the procedures for listing and delisting proving to be contentious.

Maintaining support for the committee's work and implementation of the sanctions remain high priorities in the global counterterrorism effort. Such support, however, according to council watchers, seems to be eroding because of these due process concerns.<sup>27</sup> The committee continues to try to strike the right

26 Christopher Cooper, 'Shunned in Sweden: How the Drive to Block Funds for Terrorism Entangled Mr. Aden', *Wall Street Journal*, 6 May 2002.

27 'The 1267 (Al-Qaeda/Taliban) Committee and the 1540 (WMD) Sanctions Committee', *Security Council Report*, Update Report no. 5, 16 January 2006.

balance between its European members, which generally favour greater transparency and providing those on the list with more rights, including possibly allowing them to approach the committee directly, and other, less forward-leaning members. Even with the mounting controversy surrounding the process (or lack thereof) for adding and removing names from the list, however, it does still serve as the primary vehicle by which states are empowered to freeze the assets of suspected al-Qaeda and Taliban members. Whereas countries may be reluctant to freeze the assets of an entity simply because the United States or another powerful country suspects it of having ties to al-Qaeda, they have an obligation under international law to do so if that entity is included on the committee's list.<sup>28</sup>

With respect to state implementation of the sanctions themselves, the record is mixed.<sup>29</sup> As the reports of the Monitoring Team have revealed, the travel ban and arms embargo have produced few tangible results. The asset-freeze requirement, as mentioned above, has proved valuable in helping internationalise the policy of freezing terrorist assets.<sup>30</sup> However, despite the success, albeit limited, of the asset freeze, the UN Secretary General's High Level Panel on Threats, Challenges and Change, the Secretary General himself and world leaders at the 2005 World Summit noted that too often the UN-imposed sanctions are not implemented and more must be done to ensure that they are. Rather than a lack of political commitment from states, the Monitoring Team has found a lack of legislative and operational capacity to be the major impediment to implementation.

### 1566 Working Group

The Security Council's response to the seizure of approximately 1,200 hostages and the death of hundreds of children at a school in Beslan, Russia, was emblematic of its broader efforts to address the terrorist threat. The desire to

28 Moreover, more than forty have still not reported to the committee on steps they are taking to implement the sanctions, as called for by the Security Council in January 2003.

29 For a critical analysis of the work of the Al-Qaida and Taliban Sanctions Committee, see Eric Rosand, 'Current Developments: The Security Council's Efforts to Monitor the Implementation of Al-Qaida/Taliban Sanctions', (2004) 98 *AJIL* 745.

30 As of January 2005, states were reported to have seized or frozen \$147 million in assets belonging to 435 individuals and groups linked to al-Qaeda or the Taliban. In October 2005, the list included 140 individuals associated with the Taliban and 182 people and 117 businesses or groups linked to al-Qaeda. This number is somewhat misleading for a number of reasons. First, between 11 September 2001 and the end of 2001 alone, \$112 million in alleged terrorist funds had been frozen (Chantal de Jonge Oudraat, 'Combating Terrorism', *The Washington Quarterly* [Autumn 2003]). Second, in the two years after that, only \$24 million was frozen. Unspecified 'recently published US Treasury report' cited in UN Security Council doc. S/2003/1070, 2 December 2003, 12, fn. c. Little if any of the \$24 million were linked to individuals or entities listed on the al-Qaeda and Taliban Sanction Committee's list (UN doc. S/2003/1070, 36). Finally, according to a 2002 independent US expert panel on terrorist finance, 'the frequently cited total amount of terrorist-related assets blocked overstates the amount of money taken from al-Qaida and its supporters specifically, and undoubtedly represents only a small fraction of total funds available to that terrorist organization' [Maurice Greenberg, William F. Wechsler, and Lee S. Wolosky, *Terrorist Financing: Independent Task Force Report* (2002) 20].

satisfy short-term political objectives of one or more council members overcame the need to develop a coherent council-led UN counterterrorism programme.

The Russian Federation, using the council's robust response to September 11 as its benchmark, pushed the council to adopt its strongest condemnation to date of attacks against civilians in Resolution 1566. Many council members, some of which had been victimised by terrorism, wanted to show their solidarity with the Russians and thus were eager to accommodate the Russian proposals, which had little support on their merits. Despite recognising that the council's three existing terrorism-related committees were having difficulty co-ordinating and that the council's counterterrorism programme needed to be rationalised, the council agreed to establish yet another terrorism-related committee, the working group established by Resolution 1566 (2004). The council provided the working group with a mandate (1) to consider practical measures to be imposed upon individuals, groups or entities involved in or associated with terrorist activities, other than those on the al-Qaeda/Taliban consolidated list, and (2) to look into the possibility of creating an international fund for the victims of terrorism. Many individual council members objected both to the notion of an expanded UN list of terrorists absent a UN definition of terrorism and to the idea of an international fund for terrorist victims.

Predictably, the differences among council members that were subsumed during the negotiations of Resolution 1566 surfaced during the meetings of the working group, which has rarely met and, not surprisingly, has been unable to reach consensus on any meaningful recommendations. Thus, for example, discussions on whether and how to expand the list beyond al-Qaeda and the Taliban got nowhere, running into the same roadblocks that have prevented the General Assembly from agreeing on a global definition of terrorism. This impasse served as a further reminder of the difficulties the UN will face trying to maintain international counterterrorism co-operation against groups other than al-Qaeda or its associates.

With a combined budget of \$13–14 million and some thirty-six experts, the largely under-resourced mechanisms the council established to prod and encourage states to implement its counterterrorism framework were generally part of the council's reaction to particular terrorist attacks, at which times the politics of the moment trumped the need to develop an effective and coherent council counterterrorism programme. Despite pockets of success, the council has failed to develop a coherent and effective counterterrorism programme capable of implementing the far-reaching legal mandate it gave itself in this area and thus has been unable to co-ordinate global counterterrorism capacity-building efforts effectively.

### (iii) UN Office on Drugs and Crime

A number of other UN agencies have become involved in providing counterterrorism-related assistance and training to states. The most significant

element of this assistance programme is carried out by the UN Office on Drugs and Crime (UNODC), located in Vienna. Its Terrorism Prevention Branch (TPB) and Global Programme against Money Laundering (GPML) provide States with legislative drafting and other technical assistance and have expanded their respective programmes since 11 September 2001. The former focuses on helping States ratify and implement the thirteen international conventions and protocols related to terrorism and the latter on helping States implement the Terrorist Financing Convention and the Financial Action Task Force's (FATF) special recommendations on money laundering and terrorist financing. With staff and consultants stationed in regional offices and country offices around the globe, it has been able to co-ordinate quite closely with regional organisations, including by co-hosting legislative drafting workshops in different regions.

(iv) UN efforts to strengthen and streamline its counterterrorism programme

Since the events of 11 September 2001, the UN's counterterrorism programme has expanded considerably. It is no longer limited to condemning discrete terrorist acts and setting normative and legal standards but now includes monitoring of states' efforts to meet these standards and working with states to improve their capacity to fight terrorism. The locus of the UN's efforts has thus shifted away from the General Assembly to the Security Council's intergovernmental bodies and the five UN staff bodies (three Security Council bodies and two UNODC staff bodies).

There is a growing concern among UN members about the effectiveness of the UN's counterterrorism initiatives and the lack of co-ordination among its different components, particularly the Security Council committees and staff bodies. For example, in 2004, Costa Rica and Switzerland called for the establishment of a UN High Commissioner for terrorism to co-ordinate the growing number of UN counterterrorism initiatives. The proposal was motivated in part by a desire among non-Security Council members to shift the focus of the UN counterterrorism effort back to the more inclusive General Assembly by having the General Assembly take control of the currently council-led counterterrorism programme, in particular its staff bodies. In the end, the five permanent members of the council objected to it for just that reason, despite acknowledging that the UN effort could be improved.

Reflecting the broad dissatisfaction with the UN's counterterrorism programme, both the leaders at the UN World Summit and the 60th General Assembly requested the Secretary General to prepare a report with recommendations on how to enhance the UN effort.<sup>31</sup> The Secretary General's report, *Uniting Against Terrorism*, urged states to focus their efforts on the concrete, practical contributions that the different parts of the UN system can make in the

31 *Op. cit.*, fn. 9, UN doc. A/60825.

counterterrorism effort and on improving co-ordination and co-operation among the twenty-three different parts of the system currently engaged in this effort. The report emphasised the role that the UN can play in helping countries strengthen their counterterrorism capacities, both by identifying and by helping close gaps. The Secretary General also argued for the development of a more holistic, inclusive UN approach to counterterrorism, seeking to deepen the co-ordination between the Security Council's security-focused counterterrorism programme and the parts of the UN system that deal with development, human rights, education and peacekeeping – issues which are connected to one or more of the underlying societal and political underlying conditions that may contribute to terrorism.

The General Assembly started considering the Secretary General's recommendations in May 2006, with a view to develop its own counterterrorism strategy. Not surprisingly, given the global body's track record in dealing with terrorism-related issues, and the difficulties in getting different parts of the UN system to co-operate and co-ordinate to address cross-cutting issues effectively, the General Assembly has made little progress to date. It got bogged down with the same political issues that have prevented it from reaching agreement on a definition of terrorism. On the former, the United States, the EU, Japan and the rest of the global North have favoured the Secretary General's pragmatic approach. Yet, many in the global South, including nearly every member of the Organisation of Islamic Conferences (OIC), has sought to have any General Assembly strategy make an explicit distinction between terrorism and 'freedom fighters' and to recognise foreign occupation as a root cause of terrorism. Some OIC members sought to use this exercise to downplay the significance of the Security Council's contribution to the global counterterrorism campaign, with the Egyptian Permanent Representative going so far as to call for the deletion of all references to Security Council resolutions and accompanying mandates. Furthermore, some States cite the lack of a UN definition as a reason for not implementing their existing UN counterterrorism obligations, whether imposed by the Security Council or undertaken voluntarily because of joining the international conventions and protocols related to terrorism.

On the latter, some UN Members pushed back against the Secretary General's call for the United Nations Development Programme (UNDP) 'to integrat[e] concerns about terrorism into democratic governance programming', fearing that such integration might unduly politicise the UNDP's more traditional development projects.<sup>32</sup> This concern has also been voiced by the UNDP staff itself.

In the end, although unable to endorse many of the Secretary General's recommendations, the General Assembly was able to reach agreement on a rather anodyne, but consensus, strategy that largely repeats previous commitments

32 *Op. cit.*, fn. 9, para. 34.

made by one UN body or another but may provide a framework for enhancing the UN system's counterterrorism efforts.<sup>33</sup>

### **B. Regional/Functional Bodies**

Although the UN has sought to assume the leading role in the post-September 11, 2001, multilateral effort, other intergovernmental bodies have joined what has become a growth industry, with more and more counterterrorism programmes being initiated at different levels and in different substantive areas. Regional organisations such as the Asia-Pacific Economic Co-operation (APEC), the African Union (AU) and the Organisation of American States (OAS) have adopted strong political counterterrorism declarations and action plans and/or established dedicated counterterrorism units within their secretariats to work with their members in building capacity. Functional international organisations such as the International Civil Aviation Organisation (ICAO), the International Maritime Organisation (IMO), the International Monetary Fund and the World Customs Organisation (WCO), to name just a few, have also added a counterterrorism component to their work. Some have adopted counterterrorism-related best practices, codes or standards and/or provided training and other forms of counterterrorism technical assistance. Some regional bodies have succeeded in getting their members to implement the technical standards developed by the functional institutions. This has generally occurred, however, only where there is a strong donor presence among the membership, for example APEC (Australia, Canada, Japan and USA), OAS (Canada and USA) and Organization for Security and Cooperation in Europe (OSCE) (EU, Canada and US). In these bodies, donors have funded technical assistance programmes to help the less-developed members implement the relevant standards or best practices.

In addition to the above-mentioned, more formal entities, informal intergovernmental bodies such as the thirty-three member FATF and the G8 have sought to become involved in the global counterterrorism effort. The G8's Lyon-Roma Anti-Crime and Terrorism Group, which consists of a series of sub-groups staffed by experts from each of the G8 capitals meeting several times annually, has developed counterterrorism standards and best practices on a wide variety of topics. Because participation in the Group and its sub-groups is informal and flexible enough to allow the participation of a wide assortment of experts according to different subjects, the G8 is often able to produce concrete results, for example counterterrorism standards or best practices, more quickly than

33 Associated Press, 'U.N. General Assembly adopts counter-terrorism strategy', *International Herald Tribune*, 9 September 2006. Available at <[http://www.iht.com/articles/ap/2006/09/08/news/UN\\_GEN\\_UN\\_Counter\\_Terrorism.php](http://www.iht.com/articles/ap/2006/09/08/news/UN_GEN_UN_Counter_Terrorism.php)>.

more formal multilateral bodies.<sup>34</sup> Because of the G8's limited membership, however, it lacks broad legitimacy among members of the global South. Although the G8 has had some success exporting its work for adoption or endorsement by some of the functional organisations such as ICAO and/or certain regional bodies where there is a G8 Member present, it has generally had much less success in getting regional bodies where there is no such presence, for example Africa, the Middle East and South Asia.

To complement its standard setting work, in 2003, the G8 created the Counter-Terrorism Action Group (CTAG), to co-ordinate the delivery of global counterterrorism assistance in close co-ordination with the CTC. Yet, the CTAG, like the G8 itself, is an ad hoc political mechanism with no permanent secretariat, and thus, it has had difficulty sustaining momentum from one year to the next. Furthermore, it lacks the legitimacy in the global South to enable it to assume a role in co-ordinating global multilateral, non-military counterterrorism efforts. As a result, it has yet to deliver the results G8 Leaders had hoped for when it was established at the G8 summit in Evian, France.

The FATF, which was created by the then G7 in 1989 and which has strict membership criteria, has developed a set of recommendations in the fields of money laundering and terrorist financing that are widely accepted as the global standards in these areas. Although consisting of only thirty-three members, to broaden its appeal and the legitimacy of its work, FATF has helped establish FATF-style regional bodies (FSRBs) in all regions, including Africa and the Middle East. Each of the more than 150 States, which are now members of one of the FSRBs, are thus politically committed to implementing the FATF's standard-setting work.<sup>35</sup>

Although improved regional and functional responses should be applauded, most of the bodies are toiling on small pieces of territory or within a narrow field. This piecemeal approach has left swaths of territory (e.g. the Middle East and North Africa, Sub-Saharan Africa, South Asia and former Soviet states) and substantive functional areas (e.g. terrorist safe haven, travel and misuse of the Internet and other media) not covered by an effective multilateral body. It is in these areas where the terrorist threat may be the greatest, with states often lacking the capacity – for example appropriate legal and intelligence infrastructures and land, port and airport security – to confront the threat posed by home-grown terrorist groups and/or recruited radical Islamists. Partly due to a

34 For example, at the June 2004 G8 Summit, the G8 adopted the Secure and Facilitated International Travel Initiative (SAFTI), which included twenty-eight forward-leaning projects in multiple areas of travel security, including ensuring safe and efficient movement of passengers and cargo, enhancing travel document security and interoperability, information exchange, security co-operation and MANPADS threat reduction. Less than two years later, work on nearly all of the projects has been completed, and many have already been exported to broader international bodies such as ICAO.

35 For a detailed description of FATF's current mandate, see <<http://www.fatf-gafi.org/dataoecd/14/60/36309648.pdf>>.

lack of a robust technical assistance programme, regional bodies in Africa and the Middle East have generally not had much success in prodding their members to take the steps necessary to upgrade their counterterrorism capacities. The result is that the goal of developing a seamless counterterrorism web remains incomplete. The challenge is to find ways to get multilateral bodies in Africa and the Middle East, and their members, to become more active in this area.

As within the UN, the plethora of counterterrorism programmes outside it has led to overlapping mandates and lack of co-ordination and information sharing among the different organisations as well as gaps in regional and thematic coverage. This in turn has led to a growing need and calls for greater co-operation and co-ordination among the organisations to create more synergy and minimise duplication of effort. For more than four years, the CTC has sought to assume the global co-ordinating role among organisations involved in counterterrorism. Yet, apart from the convening of four international meetings that brought together representatives of more than sixty international, regional and subregional organisations as well as encouraging increased counterterrorism efforts by all organisations, the CTC has not made a significant or enduring contribution in this area. The CTC has not been able to develop close and responsive relationships with many of these organisations, which has led to difficulties in co-operating to bring technical assistance to states in need.

#### **4. The Need for a More Effective International Co-ordinating Mechanism**

Maintaining both the international co-operation that has characterised the post-September 11, 2001, campaign against terrorism and the focus on capacity building and other non-military measures in this campaign, as well as the need to address the proliferation of counterterrorism bodies, highlights the need for an effective multilateral body at the centre of the effort.

The CTC was supposed to be this body. It has produced some modest successes in increasing awareness of the global nature of the terrorist threat and compiling useful information from the hundreds of country reports that have been submitted. The CTC, however, has not been able to play an effective co-ordinating role among states and organisations and has not effectively co-ordinated global capacity-building efforts to help ensure that the priority gaps are filled. Neither the CTC nor its CTED have the resources to provide any assistance. Thus, even if the CTC can effectively determine the most urgent gaps to be filled, which still remains a big if, it must rely on donors to come forward to deliver the necessary aid. In fact, the CTC has no authority over even

the counterterrorism assistance providers within the UN system such as the UNODC's TPB and GPML and has had difficulties getting the other parts of the Council's counterterrorism programme to co-operate with it. Furthermore, purely political bodies such as the CTC and its sister council subsidiary bodies are ill-suited to the task of implementing the technical aspects of the mandates given to them by the Security Council. The most straightforward uncontroversial matters, such as facilitating technical assistance between consenting donors and recipients, have a tendency to get bound up in red tape and side-tracked by seemingly endless political discussions.

Moreover, the proliferation of Security Council counterterrorism programmes and initiatives has produced overlapping mandates, turf battles, duplication of work, multiple and sometimes confusing reporting requirements for states and continuing tension between the Security Council and the UN Secretariat. In general, information sharing and other forms of co-operation between and among these groups have been inadequate and often redundant, which has inhibited the overall council effort.

In short, if the current arrangement continues, the CTC, as well as the other Council counterterrorism bodies will probably find it more and more difficult to maintain co-operation from the broader UN Membership. This particularly goes for countries from the global South, which will continue to grow increasingly frustrated with a set of Council bodies that place a growing number of demands on under-resourced bureaucracies, without being able to provide them anything tangible, for example technical assistance, in return. In addition, the lack of co-ordination and co-operation among the different regional and functional institutions, which are central to create a seamless counterterrorism web, would continue. Moreover, little progress will probably be made in developing a more holistic UN response to terrorism, as UNDP, UNESCO and other parts of the UN system that focus on some of the 'underlying conditions' that can lead to terrorism would continue to balk at deepening their co-operation with the Security Council's CTC for fear that their work might become unduly politicised. Perhaps most importantly, simply maintaining the *status quo* will both lend support to the growing number of people who question whether the UN is capable of making a meaningful contribution to address twenty-first-century global threats and hinder efforts to enhance the role of multilateral institutions in the fight against terrorism.

### **A. Possible Short-Term Fix**

With the largest UN counterterrorism staff body's (the CTED) mandate set to expire at the end of 2007, rather than simply renew its mandate as would be the norm in the UN, the Security Council could take a somewhat bold step and consolidate its multiple counterterrorism-related bodies into a single entity to make the Council's programme more coherent and effective. The Secretary General has recently

recommended that the council consider this.<sup>36</sup> Consolidation would improve the situation somewhat and need not consume significant time and energy. It could be pursued in the short term while states give careful consideration to the question of what is needed to create an effective multilateral body capable of playing a central role in global capacity-building and other non-military counterterrorism efforts.

In addition to two options for consolidating the various council bodies – one limited to its staff bodies and one combining the committees themselves into a single Member State body – a third could include bringing the experts in the UNODC's TPB and GPML into the fold.<sup>37</sup> Any steps involving either of the UNODC programmes would require a decision of the General Assembly, the body with oversight over those offices.

Any of these steps could be carried out in conjunction with two other reforms, which would enhance the council's efforts and build support from non-council member states, particularly the smaller ones: the consolidation of the multiple reporting requirements into a single requirement and consolidated country visits by the various groups of experts. States would submit one report to the council, on a periodic basis, that contains efforts to implement all of the Security Council-imposed counterterrorism mandates. By addressing the reporting fatigue complaint head-on in this way, the council would eliminate a reason (or excuse) more and more states are giving for not co-operating fully with the various counterterrorism-related bodies.<sup>38</sup>

## **B. Limitations of the UN Security Council-Led Approach**

Even a more unified UN counterterrorism programme, however, would run up against the inherent political, administrative and budgetary challenges of

36 'Mandating and Delivering: Analysis and Recommendations to Facilitate the Review of Mandates', A/60/733, Report of Secretary General of the United Nations, New York, 30 March 2006, paras. 122–123.

37 The 2005 Gingrich/Mitchell Task Force on UN Reform, finding the UN Security Council-led counterterrorism programme poorly co-ordinated, recommended that some of these options be explored. It highlighted the problem of lack of co-ordination in the UN counterterrorism programme: 'Among the solutions that should be explored are mandating closer coordination among the committees (including reducing unnecessary duplication in Member States' reports), combining their staffs and combining the committees themselves'. *American Interests on UN Reform: Report of the Task Force on the United Nations* (Washington, D.C.: United States Institute of Peace, 2005), 78. The United States has even suggested that such a consolidation might be necessary. See 'Statement by Nicholas Rostow, General Counsel, on the Work of the 1267 Committee, in the Security Council, July 20, 2005', USUN Press Release no. 136 (05), <[http://www.un.int/usa/05\\_136.htm](http://www.un.int/usa/05_136.htm)>.

38 In addition, as recently confirmed by the Japanese Permanent Representative to the UN, consolidated site visits would enhance the effectiveness of the dialogue between the various council counterterrorism mechanisms and government officials and improve the information gathering and sharing. The 'rationalization of visits would [also] relieve the burden on visited states'. See statement by Japan (Kenzo Oshima) at the 30 May 2006, Security Council meeting to discuss the council's counterterrorism programme. A summary of the meeting is available online at <<http://www.un.org/News/Press/docs/2006/sc8730.doc.htm>>.

operating within the UN system that would make it difficult to co-ordinate global capacity-building efforts effectively. For example, even if one were to combine Security Council and UNODC counterterrorism staff and resources, you would have only some fifty to sixty experts, with an annual budget of around \$16–20 million. These are not sufficient to allow the UN to fulfil its broad counterterrorism mandate. To highlight this point: the International Atomic Energy Agency (IAEA) – the world’s central intergovernmental forum for scientific and technical co-operation in the nuclear field, working to verify that safeguarded nuclear material and activities are not used for military purposes – has a staff of some 2,200 people (with more than half of them technical experts) and an annual budget of some \$268 million.<sup>39</sup>

Second, because the funding for the Security Council’s counterterrorism programmes comes from the regular UN budget, it is subject to the politics of the Fifth Committee, the main committee of the General Assembly responsible for administration and budgetary matters. It must compete in this committee with other important programmes for limited resources.<sup>40</sup> Given the different, and at times competing, priorities of the global North and South and the Fifth Committee practice of reaching consensus on the budget, it is unlikely that the counterterrorism programme could ever be allocated the resources needed to succeed so long as it is funded out of the UN regular budget and perceived as a Security Council-led exercise.<sup>41</sup>

Third, the decision-making processes of the Security Council CTCs have also presented serious challenges. The practice of taking all decisions by consensus has significantly impeded their ability to take action in a timely fashion and at times diluted their work. To maintain its relevance and effectiveness, the leading multilateral counterterrorism body needs to be able to act quickly and decisively on matters that are often technical in nature and does not need to get bogged down in seemingly endless political debates. This is particularly so given the often fast-paced transformations in the global security environment.

The same consensus-based practice has made it difficult for any of the Security Council counterterrorism-related bodies to identify non-performers (‘name

39 For information about the IAEA’s budget and staff, see the IAEA’s website: <<http://www.iaea.org/About/budget.html>> and <<http://www.iaea.org/About/staff.html>>.

40 Of those counterterrorism-related bodies, only the UNODC/TPB and GPML accept voluntary contributions. Voluntary contributions are a major source of funding for most other UN organisations and programmes such as the IAEA, UNDP and the UN Environmental Programme.

41 The total 2005 budget for the Security Council counterterrorism programmes was \$12.5 million; for the Al-Qaida and Taliban Monitoring Team, \$3,559,300; for the CTED, \$6,888,300 and for the 1540 Committee group of experts, \$1,794,900. See ‘Questions Relating to the Programme Budget for the Biennium 2004–2005’; ‘Estimates in Respect of Special Political Missions, Good Offices and Other Political Initiatives Authorized by the General Assembly and/or the Security Council’, A/59/534/Add.1, United Nations General Assembly, New York, 23 November 2004. The TPB’s budget for 2005 was \$3.5 million, with \$1 million coming out of the UN regular budget and the rest coming from voluntary contributions and the GPML’s for 2005 was \$3.2 million in voluntary contributions.

and shame') or even to agree on a set of standards against which to measure performance. The consensus approach has meant that the political and legal power of the different Security Council resolutions on terrorism adopted under Chapter VII of the UN Charter, which authorises the Council to impose far-reaching legal obligations and sanctions on States, and the subsidiary bodies that were created using this same authority are significantly weakened.

Fourth, the council is generally focused on responding to specific, time-limited threats to international peace and security. Thus, it responds quickly and forcefully to a discrete terrorist incident, meeting at night or on the weekend to adopt the necessary resolution or presidential statement. It has found it difficult, however, to sustain the momentum of its long-term counterterrorism capacity-building programme and the multitude of tasks that are involved.

Fifth, the UN's comparative advantage in the field of counterterrorism lies in capacity building and standard setting, both of which have a significant technical component. Yet, because the UN's work in this area is overseen by the Security Council and its subsidiary bodies, this effort has been and will continue to be heavily (and perhaps unnecessarily) politicised, with delegations often interjecting tendentious political issues, thus slowing down the legal and technical work. Thus, when the Security Council is in the throes of a contentious negotiation outside the purview of its counterterrorism-related committees, the differences of views and even animosities among certain delegations can spill over into these bodies.<sup>42</sup>

The problem of overpoliticisation of technical issues is exacerbated by the fact that the representatives on the CTC and other Security Council counterterrorism-related bodies are usually political officers (regular diplomats or generalists), often with little or no background in the technical field of counterterrorism. As a result, rather than focusing on concrete country, regional or thematic issues, the bodies, in particular the CTC, have tended to become unnecessarily consumed in negotiating process-oriented papers and focusing on the political rather than the technical aspects of a particular issue. This is in contrast to technical organisations such as the IAEA, the Organisation for the Prohibition of Chemical Weapons (OPCW), Interpol and ICAO, where member state delegations generally include domestic experts in the relevant field.<sup>43</sup>

Finally, the principal UN organs in New York, including the Security Council and its subsidiary bodies, are often devotees of precedent, determined to follow established precedents and fearful of setting new ones, which often results in an excess of caution and a fear of trying anything new. This fear of setting a

42 This occurred in the latter part of 2005, for example when the council was seized with the assassination of former Lebanese Prime Minister Rafic Hariri.

43 For example, the US delegation to the IAEA includes representatives from the Department of Energy, its delegation to the ICAO includes representatives from the Federal Aviation Administration and its delegation to the World Customs Organisation includes representatives from the Department of Homeland Security.

precedent for other council work prolonged the negotiations that led to the establishment of the CTED, a somewhat unique UN body that is both part of the Secretariat and reports to the Security Council. It has also been partly responsible for the CTC's reluctance to reach out to the development and human rights communities, including non-governmental organisations in those areas. Given the rapidly evolving nature of the terrorist threat, it is important that the body that is supposed to be co-ordinating the multilateral, non-military counterterrorism effort has the operating flexibility it needs to adjust to the threat and make decisions without having to worry about establishing a precedent that might not be welcomed in non-terrorism contexts. Neither the CTC nor any of the other council counterterrorism-related bodies currently has this luxury.

### ***C. A Possible Long-Term Solution: The Establishment of a Global Counterterrorism Body***

Monitoring the implementation of states' counterterrorism obligations and helping States develop their counterterrorism capacities requires a long-term and unwavering commitment – one that will not diminish as memories of the most recent horrific terrorist attack fade or if the Security Council is seized with specific threats to international peace and security that require its urgent attention. Given the importance and long-term nature of the task, and the above-mentioned political and institutional limitations of working within the UN, a new international body dedicated to counterterrorism outside of, but perhaps related in some way to, the UN is probably needed.

Whether directly connected to the United Nations or as a stand-alone entity, a dedicated counterterrorism organisation could take over the work of the existing Security Council counterterrorism-related bodies, particularly the CTC, plus UNODC. This new organisation could focus and build upon their work.<sup>44</sup> Moreover, it would work to monitor implementation of current and future UN conventions and other instruments against terrorism. Freed from the limitations of the UN political bodies, it could more effectively perform the tasks currently being performed by them. The counterterrorism-related work of organisations in the broader UN family need not be affected, except insofar as a new global body would enhance the co-operation and co-ordination among them. Some States might initially balk at transferring the responsibilities for monitoring the implementation of Security Council counterterrorism obligations to a new, non-council body for fear that such a body would not be as powerful as those under the Security Council, lacking as it would the council's enforcement capacity. For reasons explained above, however, none of the council's counterterrorism bodies are able to make use of the council's authority and influence. For example, they are unlikely ever to identify non-performers, let alone be able to

44 Presumably, this could only be done via a decision of the Security Council.

refer a country to the council for enforcement action. While there would be a number of benefits from no longer being part of the council, the new organisation could also retain some link to it, for example the authority to refer states to it for remedial action. Thus, no real loss of power or authority needs result from such a transfer.

There would be a number of benefits that would accrue from creating a dedicated, global counterterrorism body. For example, first, it could take a more comprehensive approach to combating terrorism, in part by ensuring more rigorous analysis of states' capacities, identification of what states' priorities should be and a more proactive approach to working with states and organisations. This enhanced analysis and action could be used to address states' lack of capacity and difficulties in implementing the myriad counterterrorism-related obligations in a more effective manner, reducing the current overlap of the expert assessments being done by both UN and non-UN bodies and more efficiently utilising limited resources.

Second, it could carry out its mandate free from the limitations that bog down the current UN effort. For instance, if provided the necessary operational capacity, human and financial resources and appropriate array of technical expertise, it could conduct credible and comprehensive assessments of the counterterrorism capacity of states and ensure that those that lack the capacity are linked up with available assistance.

Third, it could help shoulder the capacity-building and training burden currently undertaken by a handful of states and organisations. In the area of terrorist financing, for example the United States, because of diminishing resources due to the heavy costs of training Iraqi and Afghan officials, focuses its technical assistance efforts on some twenty priority countries it believes are the most vulnerable. A global body could focus on those countries that are not priority countries for the United States or the other major donors (e.g. the European Union or the CTAG).

Fourth, a global body with broad North-South support could take the lead in working with those countries in which the major donors lack the necessary access and leverage to push for the enhancement of counterterrorism capacity. Assuming that it had regional offices, these could be used as platforms for capacity-building efforts such as training programmes at the regional level. Using this type of framework for training would be particularly valuable in regions where a US or other Western capacity-building effort might not be welcomed. This approach, as opposed to bilateral training programmes, would also be valuable as it would bring together officials from a group of countries in a region or sub-region and allow them to develop relationships essential to promote law enforcement and other co-operation.

Fifth, a specialised body could co-ordinate with regional and functional organisations to conduct on-the-ground assessments and provide legislative drafting and infrastructural development assistance. Effectively co-ordinating

the counterterrorism efforts of international, regional and sub-regional organisations requires sufficient staff and resources to convene meetings and workshops of domestic counterterrorism experts to exchange information, share best practices and report on challenges being faced in the fight against terrorism. The global body could perform the important function of working with regional organisations to help them establish priorities and develop programmes and projects.

Sixth, in addition to sharing information regarding regional counterterrorism initiatives, the global body could serve as a central authority to facilitate the sharing of evidence among domestic judicial authorities, mutual legal assistance among prosecutorial authorities and the implementation of extradition requests. Finally, this new body could examine existing and new ways for law enforcement and judicial authorities to co-operate more effectively.

Seventh, a global, dedicated counterterrorism organisation would not only be able to carry out more effectively and efficiently the tasks currently being performed by the existing UN bodies; it could also undertake additional tasks. It could develop a system to measure states' performance and encourage donors to require states to meet certain minimum standards to be eligible for various forms of non-counterterrorism-related assistance. A permanent global counterterrorism body could address the most topical and emerging terrorism issues – such as incitement, bio-terrorism, cyber-terrorism and terrorism and the media – which do not fit naturally within the purview of any existing multilateral fora. A larger, more expert global organisation could also be mandated to propagate counterterrorism methodologies and technologies. A new entity could help to follow trends, as the World Health Organisation (WHO) does with regard to potential epidemics, to develop global solutions to global problems. The most common procedure to address such changes today is for the General Assembly to discuss them and/or the Security Council to either establish a new subsidiary body to deal with an issue or, as in the case of terrorist incitement, refer it to the CTC.

The numerous international bodies that have been created in the past fifty years to address security and other global issues offer a range of models to look to when forming a multilateral counterterrorism organisation. They fit broadly into three categories: a treaty-based body (e.g. IAEA or OPCW), an informal, political body (e.g. Wassenaar Arrangement or FATF) or a UN programme (e.g. UNDP or UN High Commissioner for Refugees). Given the *sui generis* nature of a global counterterrorism organisation, a new body would probably draw upon elements from many, if not all, of these models.

As a first step to establish a new entity, an international process involving a broad range of stakeholders from both the global North and South should be convened outside of the unduly politicised UN setting to discuss the pros and cons of the various possibilities, with a view to recommend the elements of each that should be included in a global counterterrorism body and what the

mandate of such an entity should be. Regardless of which model is chosen, any body needs to attract broad support from a cross-section of countries to obtain the financial and political support necessary for long-term viability and legitimacy. In addition, it needs to be designed to help ensure an effective and long-lasting mechanism exists both to co-ordinate the delivery of counterterrorism capacity-building assistance to the global South and develop a more holistic and representative counterterrorism programme than the current Security Council-led one, which is too narrow in its focus.