

BUILDING CAPACITY TO COMBAT INTERNATIONAL TERRORISM: THE ROLE OF THE UNITED NATIONS SECURITY COUNCIL

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ABSTRACT

Prior to 11 September 2001, international instruments targeting specific criminal acts were adopted to deal with terrorism, and Security Council counter-terrorism measures, which were not mandatory, went unheeded. Post 11 September, the council adopted Resolution 1373(2001) under chapter VII of the charter, setting out certain mandatory measures to prevent and suppress international terrorism, including reporting to the Counter-Terrorism Committee (CTC) on actions taken to implement the resolution. No state met all the requirements, and it created a tremendous burden, particularly for those of a lesser degree of capacity and resources.

UNSCR 1377(2001) mandated the CTC to facilitate assistance to states. States are facilitated in assessing their 1373-related capacity deficiencies, and on the availability of assistance. Legislative drafting assistance and personnel training were needed by most. The CTC engages assistance providers on the priority needs for each state, and serves as a focal point for co-ordination of assistance programmes to avoid duplication and overlap. By the end of July 2003, some 80 states had requested assistance with an additional 79 receiving legislative drafting and personnel training assistance. Regional and international organizations and institutions with the capacity to provide assistance have been asked to facilitate assistance to their members.

Political will and capacity must be raised to effectively implement the measures prescribed by Resolution 1373. The Security Council provided a roadmap for combating terrorism, and the CTC has made the provision of technical assistance a priority in its work.

The events of 11 September 2001 set in motion a new paradigm for the international community to combat international terrorism. The global community lacked the necessary tools to deal with the scope of the challenge posed by international terrorism in its new manifestation, and the world clearly was not prepared for the events that unfolded on 11 September. The global community had constant reminders of the terrorist threat and the devastating consequences of acts of terrorism long before the events of 11 September. The terrorist bombings attributed to al-Qaeda, which occurred at the United States embassies in Dar-es-Salaam, Tanzania and Nairobi, Kenya in August 1998, were manifestations of this terrorist scourge giving clear indication of the problem. The release of sarin gas in the Tokyo subway in 1995, and the many acts of terrorism carried out in the United Kingdom, Spain, the Russian Federation and elsewhere served as frequent reminders. These are but a

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few of the terrorist acts, as hundreds go unreported in the international media each year.

Despite the deadly threat of terrorism, demonstrated time and again through these numerous wanton acts of criminality perpetrated in the guise of promoting confused and indefensible political agendas, the prevailing condition on 11 September 2001 was global un-preparedness.

The Security Council in its Resolution 1269 of 19 October 1999 emphasized the need to intensify the fight against terrorism at the national and international levels, and called on all states to take appropriate steps, set out in the resolution, to combat terrorism.¹ There was no mandated obligation to implement the measures enumerated in Resolution 1269, neither was there any monitoring mechanism to evaluate the compliance of states, and the provisions of the resolution, for the most part, were ignored. Most countries lacked capacity to take appropriate measures to combat terrorism and to co-operate with each other, and many lacked the political will to take any action whatsoever. Some states have been associated with providing aid and safe haven to terrorists. These important lessons have not been lost on the international community.

The United Nations General Assembly had, on 1 January 2001, strongly condemned 'all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed.'² Further, the General Assembly reiterated that terrorist acts committed 'for political purposes are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.'³ Indeed, the international community had for many years recognized international terrorism as a serious threat to the global order, and although ways were sought in different fora to deal with this phenomenon throughout the latter part of the twentieth century, the events of 11 September demonstrated that much more needed to be done. It was also evident that different ways had to be found to ensure a global response to terrorism that had not been tried before.

Terrorism in different forms has been around for centuries. The phenomenon was not new. Sparked by a number of terrorist acts, the United Nations began to grapple with the problem of international terrorism in 1972. A number of international conventions and protocols predating that period were adopted in reaction to certain international criminal conduct defined as international terrorism. As of 9 December 1999, there were twelve international anti-terrorism instruments negotiated, most of which had not entered into force,⁴ and none of these international anti-terrorism instruments enjoyed universal application. The levels of ratification

¹ UN doc. S/RES/1269 (1999), Res. 1269 (1999) of 19 October 1999, para. 4.

² UN doc. A/RES/55/158, GA Res., para. 1.

³ *Ibid.*, para. 2.

⁴ The 12 international conventions and protocols dealing with acts of international terrorism: (i) Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963; (ii) Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; (iii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; (iv) Convention on the Prevention and Punishment of Crimes against

and accession to these anti-terrorism instruments were extremely low. Prior to 11 September, only two countries had ratified or acceded to all twelve international instruments.⁵ As of the end of July 2003, 35 countries had ratified or acceded to all twelve. The last of these international instruments, the *Convention for the Suppression of the Financing of Terrorism*, which was adopted on 9 December 1999, entered into force on 10 April 2002. This convention when fully implemented will become a central element in efforts aimed at suppressing international terrorism by providing a global legal regime for cutting off terrorism's sources of funding.

At the same time, regional organizations, taking into account the special characteristics of their respective regions, also adopted anti-terrorism conventions to provide additional legal tools in combating terrorism.⁶ However, these regional anti-terrorism instruments fared no better than the international instruments in terms of ratification and implementation.

With the adoption of each convention, it became patently clearer and more widely recognized that there were wide gaps in the international legal framework to adequately deal with acts of terrorism. However, progress in agreeing on a comprehensive anti-terrorism convention, which enjoys universal appeal, was slowed by the lack of a globally accepted definition of terrorism. Such a definition continues to elude the drafters. While there have been advances in the process post-September 11, there is still no imminent resolution of this issue.⁷

Prior to 11 September, there was no co-ordinated international response to terrorism and the existing prescriptions were woefully inadequate in dealing with the multi-dimensional nature of the challenge. Efforts underway in the United Nations to craft a comprehensive legal framework, which began in earnest in 2000 with the introduction in the United Nations 6th Committee of a Draft

Internationally Protected Persons, including Diplomatic Agents, 1973; (v) International Convention against the Taking of Hostages, 1979; (vi) Convention of the Physical Protection of Nuclear Material, 1980; (vii) Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988; (viii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; (ix) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988; (x) Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991; (xi) International Convention for the Suppression of Terrorist Bombings, 1997; (xii) International Convention for the Suppression of the Financing of Terrorism, 1999.

⁵ The two countries were the United Kingdom and Botswana.

⁶ The regional anti-terrorism conventions: OAS Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance, 1971; European Convention on the Suppression of Terrorism, 1977; SAARC Regional Convention on Suppression of Terrorism, 1987; The Arab Convention on the Suppression of Terrorism, 1998; Treaty on Co-operation among the States Members of the Commonwealth of Independent States in Combating Terrorism, 1999; OAU Convention on the Prevention and Combating of Terrorism, 1999.

⁷ For a discussion of the problems faced in trying to arrive at an acceptable definition of international terrorism see M. Cherif Bassiouni, *International Terrorism: Multilateral Conventions (1937-2001)* (2001) 14-21. Professor Bassiouni also provides some valuable suggestions for resolving the definition dilemma.

Comprehensive Convention on International Terrorism,⁸ have not made sufficient progress due in part to the lack of an agreed and widely acceptable definition of international terrorism. However, the support for such a comprehensive convention is stronger now than it has ever been and some progress has been made. This progress is reflected in the report of the Ad Hoc Committee charged with negotiating the draft comprehensive convention, which also recommended that the Sixth Committee at the fifty-seventh session of the General Assembly convene a working group to continue, as a matter of urgency, the elaboration of a draft comprehensive convention on international terrorism.⁹ The process has continued in the Sixth Committee. The General Assembly had given its full endorsement for the continuation of the work of the Ad Hoc Committee in January 2001.¹⁰

Undoubtedly, it is easy to recognize a terrorist act when one occurs. However, arriving at a definition has proven quite difficult. At a minimum, the criminal conduct underlying the prohibited acts enumerated in the existing international anti-terrorism conventions and protocols form the basis for a common acceptance of what constitutes terrorist acts. It is a complex issue for which there is no simple solution. Suffice it to say, there is broad agreement that international criminal acts aimed primarily at innocent civilian targets, with wanton disregard for human life and with the objective of achieving a political end, fall squarely within the category of circumscribed terrorist acts. International terrorist acts operationally, and the *modus operandi* of international terrorists, are trans-national in nature and, in the case of the 11 September attacks, while aimed at a single target had considerable global effects. Now there is broad consensus that international terrorism posed a serious threat to international peace and security.

It is important to note that even as the events of 11 September unfolded, not only was there no comprehensive international legal instrument in place, no country in the world had appropriate legal tools to deal with and suppress terrorist acts. Faced with this gap in the legal and institutional capacities of states, and of the international community as a whole, to adequately deal with the complex issues surrounding international terrorism the United Nations Security Council took a series of actions.

The events of 11 September were unprecedented. Likewise, were the responses of the international community at large, the United Nations and, in particular, the Security Council. A new dynamic was created and the level of co-operation among the members of the Security Council in dealing with the issues surrounding international terrorism was greatly enhanced. The Security Council took a lead role on the issue in the United Nations system. The ensuing response of the Security Council was extraordinary; it was quick, firm and unequivocal. It was a necessary

⁸ Measures to Eliminate International Terrorism: Draft Comprehensive Convention on International Terrorism, Working Document Submitted by India, UN doc. A/C.6/55/1 (28 Aug. 2000).

⁹ Report of the Ad Hoc Committee established by GA Res. 51/210 of 17 December 1996, Sixth Session (28 January–1 February 2002), UN doc. A/57/37.

¹⁰ UN doc. A/RES/55/158, para. 13.

and prudent exercise of the power and prerogative of the Security Council.¹¹ There was no lack of political will among Security Council members, and the council achieved unanimity on its chosen course of action. Despite changes in the annual makeup of the Security Council, this consensus has been maintained.

First, the Security Council adopted Resolution 1368 (2001) on 12 September 2001, thereby establishing the legal basis for further action to deal with the problem of international terrorism.¹² The Security Council made certain fundamental declarations in Resolution 1368, to wit, recognizing the inherent right of individual or collective self-defence in accordance with article 51 of the charter;¹³ regarding any act of international terrorism as a threat to international peace and security¹⁴ – a determination which was fundamental to any further action contemplated and indeed carried out by the Security Council; and implicitly, that the terrorist acts of 11 September constituted an attack on the United States of America for the purposes of invoking article 51.

Resolution 1368 provided international legitimacy for military action against the perpetrators and supporters of the 11 September attacks. The government of the United States, in the exercise of its article 51 right to self-defence, submitted the requisite notification to the President of the Security Council, though providing scant details of the military action it had initiated, and describing its actions as ‘designed to prevent further attacks on the United States.’¹⁵ The United Kingdom of Great Britain and Northern Ireland¹⁶, as well as others who joined the coalition force in taking military action against the Taliban and al-Qaeda in Afghanistan, likewise invoked article 51.

While calling on the international community to redouble their efforts to prevent and suppress terrorist acts, the Security Council expressed its own readiness to take all necessary steps to respond to the terrorist attacks of 11 September and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations for the maintenance of international peace and security.¹⁷ The Security Council, in paragraph 4 of the resolution, also called on the international community to implement fully the relevant anti-terrorism conventions and Security Council resolutions, in particular Resolution 1269.

Second, the Security Council immediately set about crafting an anti-terrorism legal framework and embarked upon a council-directed global response to

¹¹ Art. 24(1) of the Charter of the United Nations provides: ‘In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security. . . .’

¹² UN doc. S/RES/1368 (2001), SC Res. 1368 (2001) of 12 September 2001.

¹³ Art. 51 of the Charter of the United Nations provides in part that: ‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations. . . .’

¹⁴ Res. 1368, para. 1.

¹⁵ Letter from the Permanent Representative of the United States of America to the President of the Security Council, UN doc. S/2001/946, dated 7 October 2001.

¹⁶ Letter from the Chargé d’Affaires of the UK to the President of the Security Council, UN doc. S/2001/947, dated 7 October 2001.

¹⁷ Res. 1368, para. 5.

international terrorism. Acting under chapter VII of the charter, the Security Council unanimously¹⁸ adopted Resolution 1373 (2001) on 28 September 2001, setting out certain mandatory requirements.¹⁹ Each member state of the United Nations, by virtue of the mandatory character of the resolution, is obligated to create the prescribed legal framework in its national laws and institutions to combat terrorism, and to co-operate fully with other states on a global scale in this effort. Full and effective implementation of Resolution 1373 has the potential of realizing a principal objective being pursued in the drafting of an international comprehensive anti-terrorism convention, that is, creation of national legal and executive capacity in all countries with the ability and the political will to engage co-operatively, thereby establishing an international legal framework to combat terrorism.

At the time the Security Council acted, while many were and to some degree remain sceptical, there were very few who questioned the legitimacy of the actions taken, acting as it were under chapter VII of the Charter. Having determined that acts of international terrorism are a threat to international peace and security, the Security Council, deriving its decision-making and enforcement powers from the charter, acted within its primary responsibility for the maintenance of international peace and security. Also, a principal legal requirement of membership is that the member states of the United Nations, by virtue of their membership, have agreed that, in carrying out its charter duties, the Security Council acts on their behalf.²⁰ Furthermore, the member states of the United Nations explicitly agree to accept and carry out the decisions of the Security Council in accordance with the charter. In other words, they are bound by the decisions of the Security Council.²¹ All 191 member states of the United Nations – big and small, powerful and less powerful alike – have a legal responsibility under international law to abide by these principles. These are international legal obligations applicable to all member states, which cannot be divorced from their responsibilities attached to membership in the United Nations.

Resolution 1373 sets out a series of mandatory requirements for all states to undertake in combating international terrorism. Paragraph 1(a) sets out the core mandate of Resolution 1373: all states are required to take measures to effectively prevent and suppress the financing of terrorist acts.²² Each state must put in place a strong legislative framework supported by institutional mechanisms having the capacity to fully implement all areas covered by the resolution. When fully implemented together with the other requirements of Resolution 1373 a legal and administrative platform will have been created in all countries to combat terrorism. And, even though there is no clear definition of terrorism, each country must decide

¹⁸ The Members of the Security Council in 2001 were: Bangladesh, China, Colombia, France, Ireland, Jamaica, Mali, Mauritius, Norway, Russian Federation, Singapore, Tunisia, Ukraine, United Kingdom, and the United States of America.

¹⁹ UN doc. S/RES/1373 (2001), SC Res. 1373 (2001) of 28 September 2003.

²⁰ Art. 24(1) of the UN Charter.

²¹ Articles 2(5), 25, and 49 of the UN Charter.

²² Res. 1373, para. 1(a).

within its legislation on the underlying criminal acts to which Resolution 1373 is applicable. Furthermore, states are required to criminalize the provision and collection of funds for terrorism,²³ and must have appropriate mechanisms for the expeditious freezing of funds and assets related to terrorist activities.²⁴ States must also prohibit anyone within their territories, directly or indirectly, from making funds available for the benefit of persons who commit or attempt to commit or otherwise facilitate the commission of acts of terrorism.²⁵

While paragraph 1 of Resolution 1373 placed particular emphasis on the prevention and suppression of the financing of terrorism, certain additional obligations were placed on all countries. These mandatory obligations provide that all states shall: refrain from providing any form of support to terrorists, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons;²⁶ take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other states;²⁷ deny, and not provide, safe haven to those who finance, plan, support, or commit terrorist acts or harbour terrorists.²⁸ Furthermore, it is made obligatory on all states to preclude any one within their territories or jurisdictions from in any way aiding or abetting the planning, promoting, financing, executing, or otherwise supporting acts of terrorism against other states,²⁹ and to ensure that such persons are brought to justice, and that the punishment reflects the seriousness of the crime.³⁰ States also are required to afford each other the greatest level of co-operation in the investigation and prosecution of terrorist acts.³¹ The mandatory requirements also aim at preventing the movement of terrorists across borders through effective border controls and other measures.³²

In addition to the foregoing mandatory requirements of Resolution 1373, the Security Council called on states to intensify and accelerate the exchange of operational information on the movement of terrorists and related criminal activities, and on the threat posed by the possession of weapons of mass destruction by terrorist groups;³³ to exchange information and increase co-operation on administrative and judicial related issues;³⁴ to co-operate through bilateral and multilateral arrangements to prevent and suppress terrorist attacks;³⁵ to become parties to, and fully implement the relevant international conventions and protocols relating to

²³ *Ibid.*, para. 1(b).

²⁴ *Ibid.*, para. 1(c).

²⁵ *Ibid.*, para. 1(d).

²⁶ *Ibid.*, para. 2(a).

²⁷ *Ibid.*, para. 2(b).

²⁸ *Ibid.*, para. 2(c).

²⁹ *Ibid.*, para. 2(d).

³⁰ *Ibid.*, para. 2(e).

³¹ *Ibid.*, para. 2(f).

³² *Ibid.*, para. 2(g).

³³ *Ibid.*, para. 3(a).

³⁴ *Ibid.*, para. 3(b).

³⁵ *Ibid.*, para. 3(c).

terrorism, including the *International Convention for the Suppression of the Financing of Terrorism*, and Security Council Resolutions 1269 (1999) and 1368 (2001).³⁶

The Security Council drew attention to the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials.³⁷ The council also emphasized the need to enhance co-ordination of efforts in order to strengthen a global response to these threats. In that vein, it would be prudent for states that have not already done so to ratify and implement the United Nations Convention against *Transnational Organized Crime* and its three Protocols³⁸ as a complement to the requirements of Resolution 1373.

The Security Council in its deliberations on Resolution 1373 was cognizant of the possible abuse of the new legal regimes both by an asylum seeker and states with respect to protection of human rights. To that end, the council enjoined states to take appropriate measures in conformity with international legal norms, including international standards of human rights, before granting refugee status, for the purpose of ensuring asylum seekers have not planned, facilitated or participated in the commission of terrorist acts.³⁹ Further, states must ensure that the perpetrators and supporters of terrorist acts do not abuse refugee status, and that claims of political motivation are not recognized as grounds for denial of extradition requests.⁴⁰ The Security Council left little doubt as to its resolve in enforcing compliance with Resolution 1373 and expressed its determination to take all necessary steps in order to ensure full implementation of the resolution.⁴¹

Recognizing that states could possibly use the combating of terrorism as a pretext to deny their citizens fundamental human rights, UN Secretary-General Kofi Annan has spoken forthrightly on this issue. In a statement to the Security Council, the Secretary-General reminded member states 'that there is no trade-off between effective action against terrorism and the protection of human rights.'⁴² In an address to the Commission on Human Rights, the Secretary-General warned 'we cannot achieve security by sacrificing human rights . . .' and that 'we must not allow the struggle against terrorism to become a pretext for the suppression of legitimate opposition or dissent.' The Secretary-General also opined: 'States must also take the greatest care to ensure that counter-terrorism does not, any more than

³⁶ *Ibid.*, paras 3(d) and (e).

³⁷ *Ibid.*, para. 4.

³⁸ The UN Convention against Transnational Organized Crime was adopted by GA Res. 55/25 on 8 January 2001, UN doc. A/RES/55/25.

³⁹ Res. 1373, para. 3(f).

⁴⁰ *Ibid.*, para. 4.

⁴¹ *Ibid.*, para. 8.

⁴² UN doc. S/PV.4453, page 3, verbatim record of the 4453rd meeting of the Security Council, 18 January 2002.

sovereignty, become an all-embracing concept that is used to cloak, or justify, violations of human rights.⁴³

The Security Council Counter-Terrorism Committee (known by its acronym 'the CTC')⁴⁴ received a briefing from the then High Commissioner for Human Rights, Mary Robinson, on 19 February 2002, in which she reiterated the importance of the CTC being mindful of states adhering to international human rights norms as they seek to implement Resolution 1373.⁴⁵ Her successor, Sergio Vieira de Mello, followed with a briefing of the CTC on 29 October 2002 on the concerns of the human rights community on the implications for human rights in the way states implemented counter-terrorism measures pursuant to Resolution 1373.

While it is obviously not the prerogative or mandate of the CTC to monitor each state's adherence to the norms of international human rights laws, the CTC, and indeed the Security Council, is not oblivious to the possibility that Resolution 1373 could be used as a pretext to violate internationally acceptable practice. Then Chairman of the Counter-Terrorism Committee, Sir Jeremy Greenstock,⁴⁶ in a report to the Security Council on the work of the CTC, noted that the CTC had established a relationship with the Office of the High Commissioner for Human Rights, and that 'the CTC will remain aware of the interaction of its work with human rights concerns.'⁴⁷ In a briefing of the Human Rights Committee on the work of the CTC, it was made clear that those bodies with competence to monitor human rights should take responsibility for human rights concerns within their own mandates and to be more open and precise about their concerns to ensure that states do not abuse the rights of their citizens under the guise of implementing Resolution 1373.⁴⁸ In continuation of this dialogue, the Human Rights Committee reciprocated with a briefing of the CTC.⁴⁹ The Security Council acknowledged this concern in its declaration attached to Resolution 1456 (2003) in which it stated that,

States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.⁵⁰

⁴³ UN Press Release, SG/SM/8196, HR/CN/989.

⁴⁴ The CTC was organized pursuant to para. 6 of Resolution 1373.

⁴⁵ Unpublished text of Statement of the High Commissioner for Human Rights, Mary Robinson, to the Counter-Terrorism Committee on 19 February 2002.

⁴⁶ Ambassador, Sir Jeremy Greenstock, Permanent Representative of the United Kingdom, served as the first Chairman of the CTC. He was succeeded by Ambassador Inocencia F. Arias, Permanent Representative of Spain, on 4 April 2003.

⁴⁷ UN doc. S/PV.4512, page 3, 4512th meeting of the Security Council, 15 April 2002.

⁴⁸ Briefing by Curtis A. Ward, CTC Liaison with regional and international organizations, Geneva, 27 March 2003.

⁴⁹ Sir Nigel Rodley, Vice President of the Human Rights Committee, briefed the CTC on 19 June 2003.

⁵⁰ UN doc. S/RES/1456 (2003), para. 6 of declaration attached to Res. 1456 (2003) of 20 January 2003.

Letters from the Chairman to all states, in response to their reporting requirements, now include this statement.⁵¹ The transparency in the CTC work has allowed human rights bodies to gain access to the reports of each state on the actions they have taken.⁵²

Resolution 1373 is undoubtedly one of the most comprehensive and far-reaching resolutions adopted in the history of the Security Council. States are required to report on actions taken by them to implement the measures mandated by Resolution 1373, including enacting requisite new legislation to give effect to the resolution. To ensure compliance with its resolution, the Security Council authorized in Resolution 1373 the establishment of the Counter-Terrorism Committee of the Security Council, comprised of the 15 members of the council,⁵³ tasked with monitoring the compliance of states with the mandatory requirements of the resolution, and receiving reports from states on the actions they have taken to implement the resolution.⁵⁴ The CTC adopted guidelines for the conduct of its work⁵⁵ and established, what became a hallmark of its operation – its *modus operandi*, if you will – transparency in its work. The chairman has faithfully carried this out, including by regular briefings to member states and the media in an effort to foster a spirit of co-operation between the CTC and the member states; and to urge states to report to the CTC, pursuant to paragraph 6 of the resolution. The CTC also established a guide for member states to follow in the submission of their reports.⁵⁶

In compiling their reports, states are asked to demonstrate, concisely and clearly, the legislative and executive measures they have in place or contemplate to give effect to Resolution 1373. States are required to report to the CTC on how they are implementing each paragraph and sub-paragraph of Resolution 1373, including steps being taken by them to enhance international co-operation in the areas covered by the resolution.⁵⁷ States are required, therefore, to report on actions taken in all of the areas covered by Resolution 1373: counter-terrorism legislation; financial law and practice; customs law and practice; immigration law and practice; extradition law and practice; police and law enforcement work; illegal arms trafficking; and any other related areas.

⁵¹ This was decided by the CTC at its 64th meeting on 8 May 2003.

⁵² As of the end of July 2003, 195 first reports, 140 second reports, and 28 third reports were posted on the CTC website.

⁵³ The Counter-Terrorism Committee is managed by a bureaux comprised of the Chairman, the Permanent Representative of the UK, Sir Jeremy Greenstock, who led the CTC for the first 18 months, and three Vice-Chairs, the Permanent Representatives of Colombia, Mauritius and the Russian Federation, Ambassadors Alfonso Valdivieso, Jagdish Koonjul, and Sergey Lavrov, respectively. Colombia and Mauritius were replaced at the end of their term on the Security Council, 31 December 2002, by Angola and Mexico. Spain succeeded the UK as Chair of the CTC on 5 April 2003, with Ambassador Inocencio Arias as Chairman.

⁵⁴ Res. 1373, para. 6.

⁵⁵ UN doc. S/AC.40/2001/CRP.1, 16 October 2001.

⁵⁶ The guidance for Submission of original reports pursuant to para. 6 of Resolution 1373 may be found on the CTC website at <www.un.org/sc/ctc>.

⁵⁷ *Ibid.*

The foregoing mandatory requirements of Resolution 1373 thrust a tremendous burden upon all states, with each possessing varying degrees of capacity and ability to fully implement the resolution. A number of small states have been overwhelmed by these new requirements. Nevertheless, the response of states to the reporting requirement and their level of co-operation with the CTC has been overwhelming and unprecedented. While many states did not meet the original 90-day period set in Resolution 1373 for their first report,⁵⁸ most had, without doubt, made every possible effort within their capacity to respond. On 4 October 2002, one year after holding the CTC's first meeting, the Chairman of the CTC, Sir Jeremy Greenstock, in his report to the Security Council, pointed to the fact that there had been wide co-operation with, and a high level of co-operation and global support for the CTC.⁵⁹

At the end of the first 18 months of the CTC on 4 April 2003, 189 member states and five others⁶⁰ had filed a first report with the CTC, and 131 states had filed follow-up second reports, and 28 third reports in response to letters they had received from the Chairman of the CTC asking them to provide further information on the measures they were taking to implement Resolution 1373. As of the end of May 2003, all 191 member states of the United Nations had filed a first report with the CTC.⁶¹ This was unprecedented in the history of the United Nations. Among the states that had failed to file their first reports during the initial reporting period, were states which had written to the Chairman of the CTC explaining that their failure to file the requisite report was due largely to their lack of capacity and resources. The process was a major undertaking for many states, even for those with an abundance of resources and expertise.

The process of analyzing the reports by the CTC's independent experts⁶² is followed by the CTC response to each state posing detailed questions seeking additional information on legislative provisions adopted or contemplated by them to implement fully Resolution 1373. Two obvious conclusions were drawn from the first round of reports received by the CTC: no state met all the requirements of Resolution 1373; and all states were required to adopt new legislation in order to fully implement the resolution. Such legislation included implementing in domestic law the twelve international anti-terrorism instruments. Each state has been given recurring ninety-day periods to respond to each letter from the CTC.

⁵⁸ Para. 6 of Res. 1373 gave all states 90 days after its adoption (27 December 2001) for filing their first report to the CTC.

⁵⁹ UN doc. S/PV.4618, the verbatim record of the Security Council 4618th meeting of 4 October 2002.

⁶⁰ Niue, Cook Islands, UNMIK, the EU, and OSCE also provided reports to the CTC.

⁶¹ The last report was received 12 May 2003 from Sao Tome & Principe, UN doc. S/2003/568. Vanuatu's report was submitted to the CTC on 18 April 2003, UN doc. S/2003/497.

⁶² The CTC utilizes the services of independent experts to analyze the reports received pursuant to paragraph 6 of the resolution and to prepare questions for states to provide additional information.

Third, at a ministerial meeting of the Security Council on 12 November 2001,⁶³ the council adopted Resolution 1377 with a declaration,⁶⁴ which, *inter alia*, fully recognized the lack of capacity of many states and the inherent problems they would face in implementing Resolution 1373, and therefore would require assistance to meet their obligations. The gap in the relative capacity of states was extremely wide. In order to fill this capacity gap, and to respond to the identified needs of states, the CTC was asked to explore ways in which states could be assisted. The Security Council called on all states to assist each other in taking urgent steps to fully implement Resolution 1373, and invited those states needing help to inform the CTC of areas in which they needed assistance. To attain this objective, the CTC was asked to explore with international, regional and sub-regional organizations the promotion of best-practice in areas covered by Resolution 1373, including, the preparation of model laws; availability of existing technical, financial, regulatory, legislative or assistance programmes which might facilitate the implementation of Resolution 1373; and the promotion of possible synergies between these assistance programmes.⁶⁵

A primary area of need identified for most states was in legislative drafting, covering all areas mandated by Resolution 1373, but the deficiencies were most acute in anti-terrorism law – an area most states found to be unfamiliar and complex, followed by banking and financial laws and regulations. States also needed help in drafting appropriate legislation to implement the twelve international instruments for the suppression and prevention of terrorism in their domestic laws. The legislative requirements had proven to be far more complex than was initially understood by most countries. Most countries became acutely aware of these legal requirements of the resolution only after receiving the response to their initial report from the CTC.

Following closely on the heels of legislative drafting, the great majority of states required assistance in the training of their personnel to implement the new laws they were now enacting. Most lacked experience in the field of counter-terrorism and, in particular, in combating the financing of terrorism and related areas. This included the establishment of a financial investigation unit; specialized training of immigration and customs officers, border control personnel, police and law enforcement personnel, including members of the judiciary, particularly in civil law countries; and providing them with the tools and equipment required to be effective in the underlying undertakings. Also, many countries lacked the human resources to

⁶³ Meeting at the level of ministers of foreign affairs, the members of the Security Council were represented as follows: Mr. Rahman (State Minister for Foreign Affairs – Bangladesh), Foreign Ministers Mr. Tang Jiaxuan (China), Mr. Fernández de Soto (Colombia), Mr. Védrine (France), Mr. Cowen (Ireland), Mr. Sidibe (Mali), Mr. Gayan (Mauritius), Mr. Petersen (Norway), Mr. Ivanov (Russian Federation), Mr. Jayakumar (Singapore), Mr. Ben Yahia (Tunisia), Mr. Zlenko (Ukraine), Mr. Straw (For. Min. – United Kingdom), Secretary of State Mr. Powell (United States of America), and Foreign Minister Mr. Knight (Jamaica), who presided over the meeting of the council).

⁶⁴ UN doc. S/RES/1377 (2001), SC Res. 1377 (2001) of 12 November 2001.

⁶⁵ *Ibid.*

absorb the type of training needed and available to combat terrorism in all its forms. The next most immediate task faced by many countries was capacity building of institutional mechanisms and executive machinery in support of the legislative framework they were creating.

The CTC embarked upon a course of action aimed at facilitating the assistance needed by states to build their capacity to implement Resolution 1373. The CTC appointed an assistance team tasked with an assistance action plan having a number of specific objectives. These included: facilitating self-help by making information available on standards, best practice and sources of available assistance by establishing a Directory of Assistance on the CTC's website;⁶⁶ encouraging donors to respond to assistance needs identified as a priority for each state; working through regional organizations and specialized institutions and organizations to tackle regional and specialized shortcomings; and encouraging capacity strengthening of regional and international organizations to respond to the identified needs of states. In its paper: '*Assistance: Next Steps*'⁶⁷, the CTC, *inter alia*, explained that,

Assistance will be effective only if it brings about practical measures which further the implementation of resolution 1373. For example, the production of model legislation should lead to the enactment of new laws; and training courses should lead to the adoption of new procedures. Donors should make sure that their assistance programmes give States all the tools they need to take the necessary action. So a model law might be accompanied by guidance on enactment, a training course and case studies. And they may also need to offer advice on the institutions, machinery and procedures to enable States to enact the new law. The CTC will encourage States and organisations to design their assistance programmes accordingly. It will monitor the results achieved through its continuing correspondence with Member States.

The CTC technical assistance programme targets each state that needs help to develop its legislative and administrative capacity to fully implement Resolution 1373. The CTC technical assistance team engages each state in bi-lateral consultations and provides advice on the importance of evaluating the gaps in its capacity and related assistance needed to fill them. Each state is advised on the availability of assistance in the context of the priorities set by the CTC, and is provided guidance on how to request assistance. The technical assistance team facilitates the process through discussions with assistance providers and potential assistance providers (state, organization or institution) to identify the priority needs for each state and the provision of assistance. Assistance providers are encouraged to develop new assistance programmes to meet the needs identified and to fill gaps

⁶⁶ The CTC website: <www.un.org/sc/ctc>

⁶⁷ Document of the CTC, *Assistance: Next Steps*, agreed following meeting on 21 October 2002.

that might exist in the assistance programme. The assistance team serves as a focal point for co-ordination of counter-terrorism assistance programmes in order to help donors avoid duplication and overlap in providing assistance.

While many states are hesitant to seek assistance for fear of reducing the amount of development assistance they receive to meet other pressing needs, some realise that there are development and economic related benefits which accrue from putting in place the legal and administrative infrastructure required by the resolution. They see that the putting in place of a well-regulated banking and financial system, immigration control and border security, customs security and regulation, improved police and law enforcement capacity, helps to provide enhanced revenue collection, prevent trans-border criminal activities, curb illicit drug trafficking, small arms trafficking, and smuggling, and helps to create a stable domestic environment for economic activity. The CTC assistance team monitors the process to ensure that assistance is used efficiently, to avoid duplication and overlap, and to ensure that there is no gap remaining at the end.

In order to facilitate this process, the CTC maintains a matrix containing a comprehensive compilation of the assistance needs of states and the response to such needs by assistance providers. It is distributed on a regular basis to current assistance providers and to potential assistance providers, in order to encourage and inform their future participation in the programme. By inclusion of all relevant information in a single source of information for current and potential assistance providers it allows current and potential assistance providers to be kept informed of the areas of need, of those areas being addressed, to aid in the process of prioritizing assistance, and to allow assistance providers to target assistance programmes appropriately. It also helps to identify areas where new assistance programmes may be required and used to assist in monitoring the assistance process to ensure the objective of targeting assistance efficiently, to avoid duplication and overlap, and to ensure that there is no gap in the assistance programme.

Over 50 states indicated in their first reports that they needed assistance to implement Resolution 1373, some of whom indicated a need for assistance in assessing their laws and executive machinery to guide their response to the CTC, and in identifying the deficiencies in their capacities. As more states reached a clearer understanding of what was expected of them, they recognized their lack of capacity and need for assistance. The number requesting assistance grew to 80 by the end of July 2003. An additional 79 states had received, or were receiving, some level of technical assistance from other states, organizations and/or institutions. Of the 159 that were receiving some capacity building assistance, 90 had received, or were receiving, legislative drafting assistance in counter-terrorism, including implementing legislation for the 12 international anti-terrorism instruments, and in financial law and practice. Some 143 states had received, or were scheduled for, personnel training in areas such as counter-terrorism related police and law enforcement work, and in customs, immigration and border controls. The level of counter-terrorism training given to each country varies according to priorities set, and risk assessments made, by the assistance provider. With assistance being targeted to priority countries and areas, many assistance needs will go unmet in the short-term.

However, the CTC in its seventh 90-day work programme⁶⁸ stated that '[t]he provision of technical assistance to such countries as need it will remain one of the Committee's priorities.'⁶⁹

The gaps in the current capacity of states and the international community, and what is required specifically to effectively carry out the objectives of Resolution 1373, is very wide. There is no easy fix of the problems identified, and the capacity building process will require the unstinting support of the donor community over an extended period of time. The CTC has encouraged states lacking the capacity to implement Resolution 1373 to seek assistance, and where necessary has offered guidance to them in seeking the appropriate assistance. The support and co-operation on both sides of the assistance programme are essential to the building blocks in combating terrorism. Building capacity to combat terrorism is a daunting task for many states. Guidance and assistance are pre-requisites for success.

States, regional and international organizations and institutions with the capacity to provide assistance, have been asked to do so. Their initial responses, if maintained over time, have the potential for success. Likewise, the responses from international, regional and specialized organizations and institutions in developing capacity building programmes related to Resolution 1373 have been encouraging. Through the work of some of these organizations, all countries needing assistance to draft appropriate legislation have access to such assistance. Model laws and convention implementation kits and the analysis of the legislative requirements of Resolution 1373 have been provided as valuable resources for many states in developing their legislative framework. International and specialized institutions have developed international standards within their respective competences and capacity building programmes for their members.

Regional and sub-regional organizations, with appropriate institutional structures, have an important role in strengthening global counter-terrorism capacity by engaging in, and facilitating the capacity building process of their members. This includes interacting with international organizations having responsibility for setting global standards, and with their members on implementing those standards, in particular, ensuring that region-wide standards are established to meet internationally accepted standards in the critical areas identified by Resolution 1373. This requires a collation of what is regarded as internationally accepted standards and best practice in areas covered by Resolution 1373, particularly as they apply to: a well regulated banking and financial system; immigration control and border security; customs security and regulations; and improved and efficient police and law enforcement capacity for investigations and prosecutions, and for regional and global co-operation.

The CTC has encouraged regional and sub-regional organizations to interact with international organizations, which have established, or are establishing, Resolution 1373 related standards within their respective mandates for their members to implement. Many countries have failed to implement these standards, some due

⁶⁸ UN doc. S/2003/710.

⁶⁹ *Ibid.*, para. 10.

to lack of capacity or lack of political will or both. International and regional organizations are strategically positioned to evaluate the level of compliance of their members with these standards and provide information as appropriate.

Building capacity to combat terrorism is an essential element in the international response to terrorism. This has become a major focus of the work of the CTC and the international community as a whole. The CTC has since its inception worked assiduously to build political will among states to implement Resolution 1373. The CTC has also worked closely with regional and international organizations in this process. To this end, the CTC convened a meeting on 6 March 2003 in which over 65 regional and international organizations participated. Issues related to their supporting role were highlighted, and a statement issued at the end of the meeting confirmed the importance of carrying forward this level of co-operation and engagement in the process by the organizations.

While the capacity building effort has enjoyed some degree of success, there remain many countries that have fallen behind in implementing Resolution 1373, some due to lack of capacity and resources and others due to lack of political will and an unwillingness to prioritize counter-terrorism measures in their domestic agendas. The CTC has decided to pay increased attention to assistance for capacity building. This aspect of the CTC could gain significant support from G8 countries,⁷⁰ which already constitute the major providers of assistance to those lacking capacity. Recognizing that 'it is essential for the G8 to build stronger international will and to engage in outreach activities towards countries in the area of counter-terrorism co-operation, and at the same time to provide capacity building assistance to those countries with insufficient capacity to fight terrorism', the G8 countries, at their 2003 summit in Evian, France, adopted a G8 action plan 'Building International Political Will and Capacity to Combat Terrorism'.⁷¹

The G8 indicated in its action plan that the areas for capacity building assistance would follow the areas outlined by the CTC: counter-terrorism legislation, financial law and practice, customs and immigration law and practice, extradition law and practice, police and law enforcement, export control and illegal arms trafficking, and domestic security measures. The stated objectives of the G8 Action Plan are, *inter alia*, to support the UN Security Council's Counter-Terrorism Committee by: prioritizing countries, regions and fields in order to co-ordinate the assistance necessary to fulfil obligations under Resolution 1373; and working with the CTC in identifying relevant international best practices, codes and standards.⁷²

The G8 created the Counter-Terrorism Action Group (CTAG) as the vehicle through which to implement its action plan.⁷³ Included in the CTAG's mandate is building upon the work already undertaken with regional organizations by the CTC, that is, following on the 6 March 2003 meeting between the CTC and regional

⁷⁰ Canada, France, Germany, Italy, Japan, Russian Federation, United Kingdom, and United States.

⁷¹ See G8 Evian Summit website, <www.g8.fr/evian/english/>.

⁷² *Ibid.*

⁷³ *Ibid.*

organizations, to identify specific roles and responsibilities for regional and functional organizations that emphasize their strengths while avoiding duplication of efforts.⁷⁴ The CTAG will request regional and functional organizations to become more active in encouraging their members to implement Resolution 1373; and will encourage these organizations to develop best practices, codes or standards applicable to implementing Resolution 1373.⁷⁵ The CTAG will also implement the G8 outreach to the international financial institutions and the relevant functional organizations in discussing areas of mutual interest in the funding and provision of counter-terrorism capacity building assistance.⁷⁶

As governments around the world re-evaluate their capacities to take action against terrorism they have to face up to their own deficiencies and those of other states. Political will and capacity must be raised to effectively implement the measures prescribed by Resolution 1373. In light of this, states are taking action in a spirit of co-operation and willingness to assist each other to ensure global anti-terrorist capacity is raised to a desirable level of effectiveness in combating terrorism. Resolution 1373 provided a roadmap in response to the needs of the international community. The course of action launched by the resolution must be sustained. Working to achieve the goal established by Resolution 1373 requires co-operation and co-ordination of efforts. The CTC, as the only body mandated by the Security Council pursuant to Resolution 1373 to carry out this task, will remain at the centre of global efforts to build capacity to combat terrorism. Support for its work must therefore be promoted and ensured through long-term co-operation and commitment by the donor community in order to achieve the desired result.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

