

INTERNATIONAL AND REGIONAL COOPERATION IN COMBATING TERRORISM: THE ROLE OF THE UNITED NATIONS, IN PARTICULAR THE SECURITY COUNCIL

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I welcome this opportunity to make a presentation on the role of the United Nations, and in particular the Security Council in building cooperation at the international and regional levels in combating terrorism. In light of the many reports and the over-emphasis in the media ascribed to the role of national efforts against terrorism the truth is sometimes lost as to the value of the multi-lateral approach and contribution to combating international terrorism.

It is an understated fact that national efforts cannot succeed without the benefit of international cooperation and collaboration. The recent arrest in the United Kingdom of the alleged terrorist plotters is a case in point. At least we know that there were close collaboration and cooperation between the United Kingdom and Pakistan, while keeping the United States informed. It shouldn't be surprising to learn that other countries may also have shared information with the United Kingdom, thereby helping to put the pieces of the plot together. As a result of the high level of cooperation now existing between states, potential terrorist plots around the world are being exposed, and acts of terrorism are prevented. This is due in large part to anti-terrorism efforts undertaken at the multi-lateral level to build states anti-terrorism capacities.

I will divide my presentation into the pre- and post-9/11 periods. In discussing the role of the United Nations – both the General Assembly and the Security Council – in creating an international legal framework for combating terrorism, I will highlight the actions taken by the Security Council to combat terrorism.

You will no doubt agree that there is hardly any other issue in recent history that has so profoundly impacted the international community as has the terrorist phenomenon. Although acts of terrorism have taken many forms in the past, and many affected States have struggled with domestic terrorism practically in isolation, globalization has sharply increased the terrorist threat to the world community and has enhanced its potential for greater damage. Hence a global response.

The UN General Assembly and the global community

Despite the inherent dangers posed by terrorism, the international community had been unable to agree on a comprehensive anti-terrorism legal instrument to deal with the

scope of the challenge. There was a significant lack of political will to take the drastic steps required internationally and in each country's national legal framework. The lack of political will meant that there was a significant void in the legal capacities of all States, and of the international community to combat terrorism.

Since the early 1960's, the international community had been reacting to certain criminal acts regarded as acts of terrorism. A number of international legal instruments were adopted.

These early efforts resulted in the adoption of twelve international anti-terrorism instruments. The first of these, dating back to the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, was elaborated by the International Civil Aviation Organization. This and subsequent aviation-related conventions were direct reactions to the threat posed to the safety of civil aviation by hi-jacking and other related criminal acts threatening aviation and airport security.

Similarly, reacting to hijacking and murder on the high seas, such as the Achilo Laura incident, as well as threats to offshore oil platforms, the International Maritime Organization led the way in elaborating a number of maritime-related conventions which defined certain related criminal acts as acts of terrorism.

Other criminal acts of equal concern to the international community including crimes against members of the diplomatic community, and the taking of hostages resulted in United Nations General Assembly negotiated international legal instruments to cover these terrorist acts during the decade of the seventies. In addition, the international community adopted conventions aimed at protecting nuclear material, and the marking of plastic explosives for the purpose of detection.

On 9 December 1994, the United Nations General Assembly, in its resolution 49/60, adopted the *Declaration on Measures to Eliminate International Terrorism*. In the resolution's preambular paragraphs, the Declaration referred to the 'determination of the Assembly to eliminate terrorism in all its forms.' The General Assembly reaffirmed its unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed.

In December 1996, the General Assembly established an Ad Hoc Committee tasked with crafting legal instruments for the suppression of terrorist bombings and for the suppression of nuclear terrorism. The landmark International Convention for the Suppression of Terrorist Bombings was adopted by the General Assembly on 15 December 1997. This convention established new criteria for international cooperation in combating all forms of international terrorism.

The General Assembly decided in 1998 that the Ad Hoc Committee should work on drafting an international convention for the suppression of the financing of terrorism. The Committee elaborated what was the final of the 12 pre-9/11 international anti-

terrorism instruments – the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly on 9 December 1999.

Most of these international anti-terrorism legal instruments had not entered into force, and none enjoyed universal application. By September 11, 2001, only two countries had ratified or acceded to all twelve international instruments.

In addition to the twelve international anti-terrorism instruments, a number of regional organizations had also adopted anti-terrorism conventions. Their fate was quite similar to the international instruments. Most of the states in each of the respective regions had either failed to become parties to the regional conventions or to implement them.

In the pre-9/11 period, the General Assembly continued working through its Ad Hoc Committee on a draft convention for the suppression of nuclear terrorism, as well as on a comprehensive convention on international terrorism. The latter continues to elude the General Assembly as there is difficulty agreeing on a universally acceptable definition of terrorism.

Prior to September 11, 2001, the international community's approach could best be characterized as reactive rather than proactive. However, with the adoption of each international instrument, it became more widely recognized that there were significant gaps in the international legal framework to adequately deal with acts of terrorism. The case for a comprehensive convention that would provide legal and administrative modalities for all states in the suppression and prevention of international terrorism remained.

In January 2001, the General Assembly, endorsed the work of the Ad Hoc Committee; reiterated its earlier condemnation of all forms of terrorism as criminal and unjustified; and declared that terrorist acts committed 'for political purposes are in any circumstances unjustified, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.'

The UN Security Council pre-9/11

Like the General Assembly, the UN Security Council, although primarily reactive, also made significant strides in dealing with acts of terrorism. Emerging from decades of Cold War malaise, the Security Council began in earnest to deal seriously with internal and international threats to peace and security, including terrorism.

Expanding its role in the maintenance of international peace and security generally, the Council charted a new course in its legislative and enforcement authority. The Council's new legislative activism was aimed at state and non-state actors alike, including measures taken under Chapter VII of the UN Charter imposing targeted sanctions on parties to intra-state conflicts and measures against terrorists and terrorist groups.

The Council also acted against states – Libya, Afghanistan, more specifically the Taliban regime, and the Sudan – accused of sponsoring or harboring terrorists.

In the case of Libya, the Council invoked its Chapter VII authority and imposed sanctions on 31 March 1992, for failing to obey a prior request by the Council to provide full and effective response to requests from the governments of the United Kingdom, France and the United States in their investigations of the destruction of the Pan Am flight 103 and Union de transports aeriens flight 772 (UTA 772). The Council determined that Libya's failure to comply fully constituted a threat to international peace and security.

The Council again acted under Chapter VII to impose sanctions on the Sudan for failure to return the three accused terrorists implicated in the terrorist assassination attempt on the President of Egypt in Addis Ababa on 26 June 1995, to Ethiopia for trial.

After a number of years under international sanctions, both Libya and the Sudan agreed to cooperate as required.

The same cannot be said, however, for the Taliban regime in Afghanistan. In that case, there were increasing concerns that terrorist groups were being trained and were operating from the territory of Afghanistan, particularly in the area under the Taliban control. The Security Council, on 29 August 1998, expressed its concern over these developments and demanded that the warring factions in Afghanistan refrain from harboring and training terrorist and terrorist organizations.

Acting with greater resolve to pressure the Taliban, the Council demanded in its resolution 1214 on 8 December 1998, that the Taliban ceased providing sanctuary and training for international terrorists and terrorist organizations and that all Afghan factions should cooperate with efforts to bring indicted terrorists to justice. By this time, Usama bin Laden and members of the Al-Qaida terrorist group as well as other terrorists were known to be conducting terrorism training in Afghan territory under the Taliban's control. Al-Qiada was also fighting alongside Taliban forces in the Afghan civil war. The Taliban did not respond to the sanctions directives of the Security Council.

While actions taken against Libya and the Sudan marked a turning point in the Security Council on terrorism, the Council only began to deal comprehensively with international terrorism in 1999, when it adopted two anti-terrorism resolutions in quick succession – resolution 1267 on 15 October 1999 and resolution 1269 on 19 October 1999.

Resolution 1267, primarily a response to the attacks on the U.S. embassies in Dar-es-Salaam and Nairobi in August 1998, imposed an asset freeze on the Taliban for failing to respond to prior Council resolutions demanding that bin Laden be turned over for prosecution.

Because resolution 1267 was adopted by the Council under Chapter VII of the UN Charter, it created mandatory legal obligations on states to enforce it. The Council established a Committee of the 15 Council members, supported by a group of experts, to monitor implementation of the mandatory sanctions regime. A number of other resolutions were adopted under Chapter VII, pre-9/11, imposing further sanctions against the Taliban and Usama bin Laden and those individuals and groups associated with them.

At the same time, while prior terrorism-related resolutions were designed in response to a specific incident as in the cases with Libya and the Sudan, or to target particular individuals and groups, as in the case with the Taliban and bin Laden, resolution 1269 dealt with international terrorism in general. Its broad application marked a significant milestone in the Security Council in its efforts against international terrorism. In resolution 1269, the Council condemned

all acts, methods and practices of international terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, in particular those which threaten international peace and security.

The Council expressed its readiness “to take necessary steps in accordance with its responsibilities under the Charter of the United Nations in order to counter terrorism threats to international peace and security”. The Council emphasized the need of member states and the international community as a whole to intensify the fight against terrorism at the national and international levels. It called on all states to take appropriate steps, set out in the resolution, including for states to become parties to and implement the then 11 outstanding international conventions and protocols dealing with terrorism.

However, because resolution 1269 was not adopted under Chapter VII of the Charter it did not have the force of a legally binding obligation on states, and therefore was unenforceable. This action by the Council, though significant in its treatment of terrorism, amounted to nothing more than a political act and was treated as such by most states. It required the political will of states for its implementation. Such political will was not present in the period before September 11, 2001.

The post-9/11 period

The post-9/11 period saw significant changes in the international community’s resolve to deal with terrorism. The terrorist attacks of September 11, 2001 had unprecedented global effects. The world community was unprepared. There was no comprehensive international legal instrument in place for cooperation among States on the issue of terrorism. No country in the world, including those with the most sophisticated legal systems, institutions and security regimes had the requisite legislative, executive or security mechanisms to deal with, suppress, and prevent terrorist acts.

Diverse political considerations notwithstanding, there was, for the first time, a global consensus to take action to deal with the problem of international terrorism. This was particularly true for the Security Council.

Prior to 9/11, most countries did not include acts of terrorism as an extraditable offence. Most countries did not have in place the requisite legal regime or the operational mechanism required to provide mutual assistance in criminal matters with respect to acts of terrorism. There was, and remains today, no universally accepted definition of terrorism.

As I have written and stated a number of times, the events of September 11 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 manifestations.

Faced with this gap in the legal and institutional capacities of States, and of the international community as a whole, the UN Security Council took an unprecedented series of actions, creating a blueprint for international action to suppress and prevent terrorism. Establishing what I have termed 'a platform' for combating international terrorism. With terrorism seen as a threat to international peace and security actions to suppress and prevent terrorism required coordination and cooperation on a global scale. The Security Council set out to establish such a framework.

First, the Security Council adopted resolution 1368 on 12 September 2001, in which it made a fundamental determination, regarding any act of international terrorism as a threat to international peace and security. This determination was a basis for further Chapter VII action in furtherance of the Council's responsibilities.

Second, the Security Council set about crafting an anti-terrorism legal framework by putting in place an international basis for building counter-terrorism measures. Acting under Chapter VII of the Charter, the Security Council adopted resolution 1373, on 28 September 2001, setting out certain mandatory measures to be taken by all States.

Resolution 1373 required that all states create a prescribed legal framework in their national laws and institutions to combat international terrorism, and to cooperate fully with other States on a global scale in this effort. States were mandated to take the necessary actions to prevent the commission of terrorist acts. At the same time, the Security Council was unequivocal in stating its determination to take all necessary steps to ensure full implementation of the resolution.

In general, without exception, resolution 1373 required all States

- to take appropriate action to prevent all aspects of terrorist financing and all forms of support to terrorists;
- to deny safe haven to terrorists and their supporters;
- to prevent access to weapons;

- to further cooperation in the prevention, investigation and prosecution of terrorist acts, including through exchange of information and early warning, and to prosecute or extradite terrorists and those who support them;
- to develop modalities for cooperation on a global scale, including cooperation on measures to deal with links between terrorism and other threats to security, such as trans-national organised crime, arms trafficking, drug trafficking, money-laundering and the illegal movement of nuclear, biological and chemical weapons.

In essence, a legal and administrative platform should be created in each country to combat terrorism and to cooperate with others on a global scale in this effort. And, even though there was no clear definition of terrorism, each country had to decide within its domestic legislation on the underlying criminal acts to which resolution 1373 was applicable.

Third, in order to ensure compliance, the Security Council established the Counter-Terrorism Committee, known by its acronym “the CTC”, and tasked it with monitoring the compliance of States with the requirements of the resolution. States were required to file reports with the CTC demonstrating concisely and clearly their legislative and executive measures, or plans for such measures, to give effect to the resolution. The CTC provided advice to states and established continued monitoring of their progress, including through facilitating technical assistance where needs were identified.

In the past two years, the CTC through its Counter-Terrorism Executive Directorate (CTED) has conducted country visits to selected states to determine the level of implementation of the requirements of resolution 1373 and to assess those states’ outstanding needs. The expectation is that through this process the CTED will facilitate states needing assistance to identify sources of assistance, and assistance providers to target assistance more effectively.

Also, in 2004, the Security Council created new obligations on all states in its resolution 1540 (28 April 2004), which required them to deny terrorists access to weapons of mass destruction and their delivery systems. A panel of experts provides assistance to the 1540 committee in monitoring compliance and providing guidance to states.

Over the years, the Security Council has also significantly tightened the sanctions against the Taliban, bin Laden and Al-Qaida, and related groups and associates, and has strengthened its monitoring mechanism to ensure compliance with those sanctions.

Having determined that the murders of former Lebanese Prime Minister Rafik Hariri and others were the result of an act of terrorism, the Security Council, on April 7, 2005, in response to a request by the government of Lebanon, acting under Chapter VII of the Charter, established an international independent investigation Commission to assist the Lebanese authorities in their investigations. The investigation is now in an

advanced stage and the Security Council is considering the establishment of a special international court to prosecute the perpetrators.

On 13 April 2005, the General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism, providing yet another international instrument for suppressing and preventing acts of terrorism.

The Security Council, through the CTC has been very active in engaging regional and international organizations in combating terrorism. Through a series of conferences, beginning in March 2003, the Council has urged international organizations to develop counter-terrorism-related programs within their competences and to assist their member states counter-terrorism capacity-building. The relevant international organizations, in particular, the International Civil Aviation Organization (international standards for passports and other travel documents), International Maritime Organization (International Ship and Port Facilities Security Code), World Customs Organization (security of the supply chain), the International Organization for Migration (migration control and management) and the International Monetary Fund (money-laundering and terrorist financing), have all responded with programs which have contributed significantly to building counter-terrorism capacity.

At the same time, the CTC has encouraged regional and sub-regional organizations to build their own capacities to facilitate counter-terrorism capacity-building among their members and across their respective regions. The CTC/CTED, however, has not developed programs aimed at helping regional and sub-regional organizations to maximize their potential roles in counter-terrorism efforts.

While global counter-terrorism capacity has not yet reached the desired level, great strides have been achieved in counter-terrorism capacity-building. A vast number of countries now have an appropriate degree of competence and the legal and operational capacity to cooperate with other states to suppress and prevent acts of terrorism. There have been significant improvements in border and immigration controls denying safe haven to terrorists; increased safety in the supply chain; improved capacity to investigate and prosecute terrorist acts; and the legal and administrative capacity to suppress the financing of terrorism and recruitment to terrorist groups.

While there remain many obvious deficiencies in overall global anti-terrorism capacity, most states have now become parties to the twelve international anti-terrorism instruments and, to varying degrees, have implemented them in their domestic laws. The United Nations, and in particular the Security Council, in cooperation with international and regional organizations, will continue to seek ways to make counter-terrorism measures more effective. My expectation is that this will continue to be the case over the long term.