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Assessing the UN's Efforts to Counter Terrorism

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Introduction

It is now more than fifty years the UN General Assembly negotiated its first anti-terrorism convention (on offences committed on board aircraft). Some 25 years ago, the Security Council imposed sanctions against Libya for sponsoring acts of terrorism. Some fifteen years ago, the attacks of 9/11 led to a flurry of UN measures to confront the terrorist threat. And ten years ago, the UN General Assembly adopted a Global Counter-Terrorism Strategy. Looking back at five decades of counter-terrorist action, this article attempts to provide an assessment of the impact of the UN's overall counter-terrorism efforts.

The UN's counter-terrorism work in recent years can be organized under three headings: first, a norm-setting role that includes a) the development and promotion of a Global Counter-Terrorism Strategy and efforts to counter violent extremism, b) a set of international conventions, and c) far-reaching Security Council resolutions imposing counter-terrorism obligations on member states; second, capacity-building activities to help countries meet these obligations; and third, Security Council-mandated sanctions, in the 1990s, against state sponsors of terrorism, and since 9/11 against hundreds of individuals and entities affiliated with Al Qaida.

Reviewing these efforts, this article concludes that while the UN plays an important and useful role in establishing norms and frameworks for cooperation, its most significant operational contribution may ultimately lie in a field that does not fall narrowly within the UN's counter-terrorism framework; namely, its work in resolving conflicts in countries where terrorist groups seek to take advantage of the widespread instability.

International Conventions

Starting in 1963, sixteen international conventions have been negotiated under the UN's auspices criminalizing specific acts of terrorism, such as hostage taking, acts against certain means of transport or categories of persons, or use of certain devices for terrorist purposes. The most recent is the 2005 Convention for the Suppression of Acts of Nuclear Terrorism. Some of these conventions, such as the 1999 Convention on Terrorist Financing, enjoy near-universal membership. Whether states parties have adopted internal enforcement measures is a different matter. None of the treaties contains a monitoring and follow-up regime.

Nevertheless, together these instruments have helped establish global anti-terrorism norms and provide a framework for international counter-terrorism cooperation.

The treaty framework constitutes a necessary but insufficient condition for effective counter-terrorism. The finding of a 1990 study that there had been no statistically significant reduction in the post-treaty number of attacks is likely to remain valid today.¹

Unfortunately, efforts to adopt an all-encompassing comprehensive counter-terrorism convention have eluded the UN. This is because member states have been unable to agree on a definition of terrorism, in particular on the questions of whether the definition should include so-called "state terrorism" (i.e. acts carried out by the military forces of a state against civilians) and whether people under foreign occupation should retain the right of violent resistance.

While the absence of a comprehensive convention does not represent a serious gap in the law (almost every form of terrorism is prohibited either by the various sectoral conventions or by international criminal law) and has not stood in the way of robust UN counter-terrorism action post-9/11, it does undermine the organization's moral authority by inhibiting it from sending an unequivocal message that terrorism is never an acceptable tactic. More importantly, though, the fact that there is no agreed definition of terrorism raises serious human rights concerns, as this allows some governments to justify their prosecution of legitimate political dissent as combating terrorism mandated in far-reaching Security Council mandates.

Sanctions Against State Sponsors of Terrorism

During the Cold War, the UN Security Council was largely silent on terrorism and much of the UN's counter-terrorism activity unfolded in the General Assembly. This began to change in the early 1990s against the backdrop of a rise in state-sponsored acts of terrorism. The Security Council imposed sanctions against Libya in 1992 over Tripoli's noncooperation with the investigation of two airline bombing incidents; against Sudan in 1996 for alleged involvement in an assassination attempt on Egyptian president Mubarak; and against the Taliban regime in Afghanistan in 1999 for harboring the leadership of Al Qaida. However, during the 1990s, the Council refrained from taking action against a number of other states, such as Iran, whose sponsorship of terrorism was established in a Berlin court in April 1997.

Sanctions against Sudan and Libya were phased out in 2001 and 2003, respectively, after both ended their sponsorship of terrorist groups at least partly in response to the sanctions. By contrast, as would become clear on 11 September 2001, sanctions against the Taliban did not lead

1 W. Enders, T. Sandler and J. Cauley, "UN Conventions, Technology and Retaliation in the Fight Against Terrorism: An Econometric Evaluation," *Terrorism and Political Violence* 2, No. 1 (1990), pp. 83-105.

to any policy change in Kabul, even though sizable financial assets were frozen.

Nevertheless, the cases of Sudan and Libya suggest that sanctions (as well as the threat thereof and the prospect of their removal) can be an effective tool against state support of terrorism, at least in those cases in which the economic damage and loss of prestige outweigh the benefits a regime believes it derives from involvement in terrorist activities. Moreover, forceful Council action arguably served to further de-legitimize state sponsorship of terrorism and might have deterred other countries from using terrorism as a tool of statecraft. The threat of state sponsorship of terrorism is certainly much less prevalent today than it was in the 1980s or 1990s.

Security Council-led Counter-Terrorism Action in the Aftermath of 9/11

As the previous paragraphs attest, the UN was much more active on counter-terrorism in the 1990s than is commonly realized. However, the real game-changer for the organization in this area was 9/11, which highlighted the increasingly transnational nature of the threat, making the UN Security Council a natural venue to lead the international charge against Al Qaida. Resolution 1368, adopted on 12 September 2001, established an important precedent by invoking—for the first time—the right of self-defense against terrorist attacks under Article 51 of the UN Charter, providing an international seal of legal approval to the subsequent US invasion of Afghanistan. The Council also extended the sanctions on Al Qaida, which were originally just focused on Afghanistan, to all parts of the globe, vastly expanding the list of individuals and entities against whom the sanctions would be applied (the so-called 1267 sanctions regime).

Less than two weeks later, the Council adopted Resolution 1373, one of the most ground-breaking resolutions in the body's history. It imposed legally binding obligations on all UN member states to, among other things, enhance legislation, strengthen border controls, and increase international cooperation to combat terrorism. The Council also established, and later expanded and institutionalized, a support structure to monitor member state implementation of Resolution 1373. The new counter-terrorism architecture established by the Council was a remarkable development for an organization whose membership had been deeply divided on the question of the legitimacy of non-state violence, in light of the fact that many liberation movements had at one point or another been labeled "terrorist" by former colonial

powers. However, as Eric Rosand and the present author have written: "While the UN's pre-9/11 effort was ambivalent, the new focus on Al Qaida allowed UN members to unite to condemn a specific terrorist group and thus enable the US to move terrorism near the top of the UN's agenda."²

In 2004, the Council further broadened its counter-terrorism program, embarking on an ambitious effort to keep weapons of mass destruction out of terrorist hands. That year, after the discovery of the clandestine nuclear proliferation network operated by Pakistani nuclear scientist A. Q. Khan, the Council unanimously adopted the far-reaching Resolution 1540, which requires all UN member states to take legislative and regulatory steps to prevent terrorists and other non-state actors from acquiring weapons of mass destruction and their means of delivery. Resolution 1540 was modelled after, and bore many similarities to, the Council's counterterror effort under Resolution 1373. Like Resolution 1373, it imposed binding obligations on all member states, thereby circumventing the normal treaty-making process. And like Resolution 1373, it led to the creation of a committee and monitoring mechanism intended to help states implement the onerous obligations contained in it.

However, the Council's expanding counter-terrorism effort soon attracted widespread criticism, undermining member state buy-in. First, the legislative nature of Resolutions 1373 and 1540, which created far-reaching and binding obligations on all member states without their prior agreement, elicited much resentment, which only recently began to recede. Second, the US invasion of Iraq under the banner of the global war on terror delegitimized Washington's counter-terrorism endeavor in the eyes of many member states. Third, the Council's neglect of human rights issues relevant to terrorism led to some outrage among the NGO community and beyond. In particular, the disregard of due process in the 1267 sanctions listing procedures, which did not offer any recourse or review mechanism for individuals who argued they were wrongfully sanctioned, came under growing criticism. The 1267 regime was eventually deemed by the European Court of Justice to have violated fundamental human rights, posing a potential threat to the legitimacy of the Council's larger sanctions enterprise. In 2009, the Council reluctantly established an ombudsperson to review requests for delisting from sanctioned individuals or entities, which helped alleviate the criticism and resulted in the removal of dozens of individuals and entities from the sanctions list. The Council's cavalier approach to individual human rights in adopting the sweeping terms of resolution 1267 stands as one of the shoddiest moments in its record.

² Eric Rosand and Sebastian von Einsiedel, "9/11, the War on Terror, and the Evolution of Multilateral Institutions," in Bruce Jones, Shepard Forman and Richard Gowan (eds.), *Cooperating for Peace and Security: Evolving Institutions and Arrangements in a Context of Changing U.S. Security Policy* (Cambridge: CUP, 2010), p. 145.

While questions regarding the legitimacy of the Council's counter-terrorism effort subsided over the years, questions regarding its effectiveness have assumed greater prominence. Financial sanctions contributed to a significant weakening of Al Qaida from 2005 – 2011. However, they have since lost their bite as the group's financing no longer relies on wealthy donors but on criminal enterprise and coercive taxation in areas where terrorist groups control territory, as in Syria. The regular reports of the expert panel monitoring implementation of the sanctions have greatly contributed to our understanding of the evolution of Al Qaida and the Taliban and the conflict economy of the countries in which they operate. While there is scant evidence to suggest that the sanctions regime lastingly constrained its targets, it did help reinforce the counter-terrorism norm and foster international cooperation. It also had an important stigmatizing effect by signaling to the local population that their future did not lie with groups such as the Taliban, the Islamic State and Boko Haram – key to countering the insurgencies.³

Meanwhile, the Council's Counter-Terrorism Committee (CTC) and its Counter-Terrorism Executive Directorate never managed to fulfill convincingly its mandate under Resolution 1373 to assume a leading role in identifying capacity needs of all member states, helping states to prioritize necessary actions, and to reach out to donor states and organizations to provide the needed financial assistance for the least developed countries to fill the gaps. The US, in particular, soon became increasingly disillusioned with what could be achieved in the fight against terrorism through the CTC, which proved unable to name and shame countries in non-compliance with Resolution 1373 and degenerated into a largely process-oriented body,

It was against this background that the US under President Obama, in 2011 created the Global Counter-Terrorism Forum, an "action-oriented" platform outside the UN framework to foster effective multilateral cooperation in counter-terrorism, in particular with respect to capacity-building. Similarly, with respect to Resolution 1540, the Obama administration concluded that while the Resolution had provided a useful normative framework, the UN was operationally too slow and bureaucratic, leading it to establish a new initiative outside the UN framework, namely the Nuclear Security Summit process, meant to enhance international cooperation to prevent nuclear trafficking and terrorism.

While Washington moved the locus of action outside the UN, it continued to value the Council's norm-setting role in confronting the terrorism threat and today counter-terrorism

constitutes one of the few policy areas on which the five permanent members continue to cooperate closely in the Security Council. In September 2014, at a time of deep concern about thousands of foreign nationals from over eighty countries having joined extremist Islamist groups in Syria and Iraq, the United States spearheaded the adoption of Council resolution 2178, eventually co-sponsored by 103 other countries - that obliged all member states to prevent, criminalize, and prosecute international travel by their citizens to join terrorist groups. Adopted at a summit level meeting of the Security Council, the "foreign fighters" resolution may have had some mobilizing effect on member states. At the same time, it is difficult to implement and monitor, and its breadth and vagueness raise serious human rights concerns about the potential for abuse by repressive states against separatist or opposition forces branded as "terrorist."

Broadening the UN's Counter-Terrorism Agenda: the Global Counter-Terrorism Strategy and Countering Violent Extremism

Meanwhile, a few years after 9/11, the UN Secretary-General and the UN General Assembly, concerned about the Council's exclusive grip on the UN's counter-terrorism agenda, attempted to reassert their own role in this area. In 2005, UN Secretary-General Kofi Annan tabled a blueprint for a global counter-terrorism strategy that was meant to place greater emphasis on addressing root causes and respect for human rights. At the same time, he established an interagency "Counter-Terrorism Implementation Task Force" to ensure that the wide array of UN agencies would bring their combined strength to bear on the implementation of the strategy. The year after, the General Assembly followed suit, unanimously endorsing a modified version of the Secretary-General's strategy. That strategy helped transform a previously acrimonious UN discussion on counter-terrorism into a comparatively constructive one. And in some countries, the strategy provided welcome cover for governments to strengthen counter-terrorism measures without being seen by their skeptical publics to be buying into the controversial US-led war on terror.

All told, however, it is debatable whether either the strategy or the task force produced concrete achievements on the ground, other than generating a cottage industry of meetings and expert workshops in New York and elsewhere. The task force added new structures and layers to an already complicated counter-terrorism architecture, intensifying duplication and competition instead of furthering coherence. Saudi Arabia, in 2014, donated \$100million to a UN Counter-Terrorism Center that was created within the

3 Sebastian von Einsiedel and Peter Romaniuk, "Sanctioning the Enemies of Humanity," in George Lopez and Sebastian von Einsiedel (eds), *The Sanctions Enterprise* (Cambridge: CUP, forthcoming).

Task Force Secretariat, to assist capacity-building efforts. However, there is little evidence so far that the Task Force has the necessary absorption and implementation capacity to use these funds productively.

Meanwhile, rhetorical support by many governments for the UN strategy notwithstanding, its call for more comprehensive counter-terrorism approaches largely fell on deaf ears. Indeed, around the world many governments continued to rely primarily on military and law enforcement tools in their counter-terrorism efforts, often to the detriment of human rights and with insufficient attention paid to underlying drivers of extremism. French President François Hollande's invocation of a "war on terrorism" and adoption of reflexive security measures following the November 2015 Paris attacks, while understandable given the very serious pressure exerted by these attacks on French society, suggest that the lessons of the US-led "war on terror" have not been internalized.

To be fair, the rise of the Islamic State and the growing problem of foreign fighters have led, in recent years, to some wider acknowledgement that security-based counter-terrorism measures alone have not been sufficient to prevent the spread of violent extremists. This has given rise to efforts to operationalize the elements of the UN's global counter-terrorism strategy that deal with root causes and human rights. These efforts are now framed, at the UN and beyond, under the new headline of "Countering Violent Extremism," (CVE) which Peter Romaniuk has called "the most significant development in counter-terrorism in the last decade."⁴ In 2014, the Security Council endorsed the concept in Resolution 2178, mentioned earlier. In December 2015, the UN Secretary-General issued a "Plan of Action to Prevent Violent Extremism" which promoted a laundry list of measures, from conflict prevention and strengthening governance, human rights and the rule of law to engaging communities, empowering women and youth, and advancing education and employment - amounting to a vast, and largely unfunded, agenda.⁵

Effective pursuit of any of these activities may – or may not – contribute to reducing violent extremism. However, there are valid concerns about pursuing a broad range of UN activities under the CVE-label, which risks "securitizing" development efforts,⁶ leading activities the UN does and should

pursue in their own right to be seen as counter-terrorism endeavours. Framing CVE in this way also entails the danger of "downplaying other sources of fragility, delegitimizing political grievances and stigmatizing communities as potential extremists."⁷ Moreover, as an intergovernmental organization catering to the needs and driven by the interests of national governments, the UN is constitutionally ill-equipped to implement CVE measures. Eric Rosand rightly notes that these measures are better carried out by local actors, such as municipal governments, who are "best positioned to prevent the spread of violent extremism within their communities."⁸ The UN's comparative advantage may thus lie in supporting and mobilizing funding for networks that would allow for sharing of best practices among such local actors.

The UN's Conflict Resolution Role

A major 2016 report by the International Crisis Group assessing international efforts to confront Al Qaida and the Islamic State noted that growing reach of these groups in recent years "is more a product of instability than its primary driver." The report concludes that "[p]reventing crises will do more to contain violent extremists than countering violent extremism will do to prevent crises."⁹ It follows that the UN's operationally most meaningful contribution in the area of counter-terrorism may lie in its conflict prevention, peacebuilding or peacekeeping efforts in countries in which terrorist groups take advantage of the widespread instability.

The UN has accumulated ample experience and a proven record of success in its efforts to end civil wars over the past two and a half decades. However, serious questions arise regarding the preparedness of the UN's conflict management tools, in particular its peace operations, to deliver mandates in countries affected by terrorist insurgencies, such as Afghanistan, Iraq, Libya, Syria, Somalia, Yemen, Lebanon, and Mali.

First, the growing presence of Islamist terrorist groups in many of today's civil war environments complicates the UN's peacemaking because many of these groups pursue maximalist demands that are very difficult to meet or to incorporate into political settlements based on human rights and democratic governance. Second, even where such groups may be motivated primarily by local, legitimate,

4 Peter Romaniuk, "Does CVE Work? Lessons Learned from the Global Effort to Counter Violent Extremism," Global Center on Cooperative Security, September 2015, p. 2.

5 UN Secretary-General, "Plan of Action to Prevent Violent Extremism," Report to the General Assembly, A/70/674, 24 December 2015.

6 Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the Human Rights Council, A/HRC/31/65, 22 February 2016, p. 22.

7 International Crisis Group, "Exploiting Disorder: Al Qaida and the Islamic State", Crisis Group Special Report, 14 March 2016, p. iv.

8 Eric Rosand, "21st Century International CVE Cooperation: Gotta Go Local," Global Center on Cooperative Security Policy Brief, June 2016, p. 1.

9 International Crisis Group, "Exploiting Disorder," p. ii-iv.

and reversible grievances, key powers tend to discourage negotiations with them, many of them being proscribed through UN, US, or EU terrorism designation lists. Third, jihadi groups have proven difficult to engage around respect for humanitarian norms, which the UN has successfully employed elsewhere with other armed non-state actors. Fourth, the UN has increasingly become a target of such groups, which has led it to ever greater preoccupation with protecting itself rather than local civilians and has hampered its ability to engage with the local population, win hearts and minds, and mediate local disputes. And finally, as a high-level review of UN peace operations concluded in 2015, "UN peacekeeping missions, due to their composition and character, are not suited to engage in military counter-terrorism operations."¹⁰

While that conclusion is doubtless accurate, the UN needs to reflect on how it can adapt its peace operations to deliver on their mandate in theaters where terrorist networks are present. Among the key questions the UN will need to confront are: how to identify elements among violent extremist groups that could potentially be engaged in mediation, peace and reconciliations processes, and how to peel them away from die-hard radicals; how to reconcile the implementation of mandates to extend state authority with the need to address grievances of local communities which have mainly experienced state authority as oppressive and exclusionary force; and how to adapt Disarmament, Demobilization, and Reintegration programs to the context of violent extremism.¹¹

Conclusion

What do all the UN's efforts in the field of counter-terrorism add up to? This review lends some credence to the damning assessment of Richard Barrett, the former head of the UN expert panel monitoring implementation of sanctions against Al Qaida and the Taliban, who recently concluded that "[t]he U.N. is too political, too uncoordinated, too focused on process rather than outcomes and follow-up, and too far removed from the people who actually deal with the problems of terrorism on the ground to make much of an impact, or even to appear relevant."¹²

While it is true that the UN's operational counter-terrorism activities have faced severe shortfalls and limitations, the UN has proven a useful venue for establishing the broad normative and cooperative frameworks for collective counter-terrorism action. It thus provides conducive background music that can be helpful to those member states who want to embark on comprehensive counter-terrorism efforts in line with human rights and international law. However, the UN's norm development has proven too weak to offset the negative effects of counterproductive counter-terrorism policies by Member States that ultimately exacerbate the terrorist threat.

10 High-level Independent Panel on United Nations Peace Operations, "Uniting our Strengths for Peace – Politics, Partnerships and People, 16 June 2015, page 31.

11 James Cockayne and Siobhan O'Neil (eds), *UN DDR in an Era of Violent Extremism: Is it Fit for Purpose?* (Tokyo: UNU Centre for Policy Research 2015).

12 Somini Sengupta, "Examining the UN's Record on Urgent Global Challenges," *The New York Times*, 19 Sep 2016.