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Recommended Citation

Rostow, Nicholas (2002) "Before and after: The Changed UN Response to Terrorism Since September 11th," *Cornell International Law Journal*: Vol. 35: Iss. 3, Article 3.

Available at: <http://scholarship.law.cornell.edu/cilj/vol35/iss3/3>

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Before and After: The Changed UN Response to Terrorism since September 11th

Nicholas Rostow†

Introduction

The United Nations (UN) has always had an ambivalent relationship with the entire idea of terrorism. Some of its constituent parts (governments and international civil servants) and influential elements in the UN firmament (would-be governments, non-governmental organizations, and individuals) have viewed terrorism as a social phenomenon.¹ In contrast, experts outside the UN view terrorism quite differently. Although they have had difficulty drafting a precise definition,² experts have long agreed that terrorism is a means—a weapon.³ Terrorism is not a political move-

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1. For UN perspectives on terrorism in the mid-1980s, see Abraham D. Sofaer, *Terrorism and the Law*, 64 FOREIGN AFF. 901, 903-06 (1986). For a more recent reflection on the UN understanding of terrorism, consider a comment in February 2001 by a Malaysian representative to the ad hoc committee of the General Assembly created to draft a comprehensive convention on terrorism. Speaking on behalf of the Organization of the Islamic Conference, the representative said that a definition of terrorism was desirable so that terrorism could be “differentiated from the legitimate struggles of people under foreign occupation for national liberation, as recognized by the relevant resolutions and declarations of the United Nations.” *Committee on Terrorism Takes Up Draft Comprehensive Anti-Terrorism Convention*, Press Release, Ad Hoc Committee on Assembly Resolution 51/210, 5th Sess. 19th mtg., U.N. Doc. L/2971 (2001).

2. Terrorism, which dates at least from the French Revolution, has bedeviled those who would draft a definition. See Walter Laqueur, *We Can't Define "Terrorism" but We Can Fight It*, WALL ST. J., July 12, 2002, at A12.

3. Nearly forty years ago, Raymond Aron wrote: “The word *terror* has been employed, in our era, in at least four contexts: by the Germans to designate the bombing of cities, by those seeking to conserve an established power (German occupation officials in France or French authorities in Algeria) to stigmatize the action of the *resistants* or nationalists, by all authors to characterize one of the aspects of totalitarian regimes, and lastly by usage to designate the relation of dual impotence between the two great powers [the United States and the Soviet Union] armed with thermonuclear bombs.” RAYMOND ARON, *PEACE & WAR: A THEORY OF INTERNATIONAL RELATIONS* 169 (1967). More recently, Eric Hobsbawm noted that “the democratization or privatization of the means

ment in and of itself, but a tool used by various movements. Groups from Ireland to the Philippines, from the Korean Peninsula and Japan to Africa and the Middle East, from Russia to India, from the United States to South-east Asia, have turned to terrorism to advance their causes because too often it has proved effective. Since September 11, 2001, everyone has been able to see that the use of terrorism crosses national and ethnic boundaries. Even among those who admit that terrorism is a weapon, many have trouble accepting that terrorism should be banned in all circumstances.⁴ This phenomenon has bred misunderstanding about what the UN has said and what it is doing about the problem; indeed, about whether it sees terrorism as a problem at all and, if so, what kind of problem.

The following pages sketch the UN approach to terrorism and the impact of the attacks of September 11, 2001 on that approach. In this context, I shall offer some tentative views about the future political and lawmaking activity of the UN in regards to terrorism.

I. The United Nations, Anthropologically

It may be useful first to reflect on what the UN is and is not. It is, above all, a human place. It exhibits the full range of behavior and emotion. Moreover, its institutions also conform to Parkinson's Laws on Administration.⁵

The UN consists of a large number of groups involved in complex relationships. First, there are the delegations of Member States. The presence of 191 state representatives in one place creates a multiplicity of dynamics that do not always seep through the UN walls but which do always affect the handling of international crises and the negotiation of international agreements. Some representatives act independently of their capitals and write their own instructions. Other representatives have close relations with their capitals and are bombarded with instructions. Some votes are for sale, and some delegations cede to substitutes. A story making the rounds tells of a non-governmental organization offering to represent an impoverished State at a big conference, thus nominally giving that State a voice without its having to pay the cost of attendance.

Non-governmental organizations (NGOs) are a wild card in UN diplomatic games. NGOs are numerous and multiplying. Since NGOs were first granted consultative status with the Economic and Social Council (ECOSOC) in 1948, the number of NGOs eligible for that status has

of destruction" raised the specter "of violence and wreckage" anywhere. ERIC HOB-
SBAWM, *THE AGE OF EXTREMES: A HISTORY OF THE WORLD, 1914-1991* 560 (1994).

4. See, e.g., *Committee on Terrorism*, *supra* note 1 (quoting Pakistani representative who stated that it was necessary to take into consideration the Islamic Conference proposal to develop a definition so that terrorist acts could be distinguished from legitimate struggles for liberation; and quoting the Syrian representative who stated that "terrorism must be distinguished from the legitimate national struggles against foreign occupation"). For a fuller discussion of the UN labyrinth, see generally NEW ZEALAND MINISTRY OF FOREIGN AFFAIRS & TRADE, *UNITED NATIONS HANDBOOK* (1998).

5. See C. NORTHCOTE PARKINSON, *PARKINSON'S LAW AND OTHER STUDIES IN ADMINISTRATION* 2-13 (1957).

increased from 41 to over 1,350.⁶ In 1999, the Yearbook of International Organisations numbered international NGOs at more than 26,000.⁷ Both NGOs and certain State delegations are pushing for increased NGO inclusion in the UN processes. NGO influence on some negotiations has been substantial. For example, according to a U.S. participant, NGOs dominated the 1998 negotiations on a ban on landmines.⁸ NGOs proved equally significant in the negotiations that created the 1998 Rome Statute of the International Criminal Court.⁹ They exert the most influence, however, through participating in the democratic political processes of the UN Member States.

Next in importance are relations among UN organs. The dynamic between the Security Council and the General Assembly attracts the most attention. Tension between the two bodies is inevitable. The General Assembly is jealous of its budgetary prerogatives, while the Security Council guards its "primary" responsibility for maintaining international peace and security.¹⁰ In the decade since the 1991 Gulf War, the interests of the Security Council and the General Assembly have overlapped. This phenomenon has encouraged forum shopping. The General Assembly has developed a number of means to consider and make recommendations on issues that the Security Council is also considering notwithstanding Article 12 of the UN Charter¹¹ and a potential veto by a Permanent Security

6. *Arrangements and Practices for the Interaction of Non-governmental Organizations in All Activities of the United Nations System: Report of the Secretary-General*, U.N. GAOR, 53d Sess., Agenda Item 58, ¶ 2, U.N. Doc. A/53/170 (1998).

7. *Citizens' Groups: The Non-Governmental Order: Will NGOs Democratise, or Merely Disrupt, Global Governance?*, *ECONOMIST*, Dec. 11, 1999, available at 1999 WL 29811934. The yearbook listed only 6,000 such NGOs in 1990.

8. See generally Gina Li, *An Analysis: The Impact of Non-Governmental Organizations On the Practice of Public Relations*, *PUB. REL. Q.*, Winter 2001, at 11-14.

9. See Ruth Wedgwood, *The Irresolution of Rome*, 64 *L. & CONTEMP. PROBS.* 193, 202-08 (2001).

10. UN CHARTER art. 24, para. 1.

11. Article 12 bars the General Assembly from making recommendations with respect to a situation with which the Security Council is seized absent a Security Council request. U.N. CHARTER art. 12, para. 1. When the Soviet Union blocked the Security Council from considering intervention in the Korean War, the United States obtained General Assembly adoption of the "Uniting for Peace" Resolution, which provided that the General Assembly may consider the matter with a view to making recommendations when the Security Council is prevented from exercising its primary responsibility of maintaining or restoring international peace and security. See ROSALYN HIGGINS, *UNITED NATIONS PEACEKEEPING 1946-1967: DOCUMENTS AND COMMENTARY: THE MIDDLE EAST* §§ 2.4, 2.11 (1969); ROSALYN HIGGINS, *UNITED NATIONS PEACEKEEPING 1946-1967: DOCUMENTS AND COMMENTARY: ASIA* § 3.4 (1970). In the Korean War, the General Assembly recommended actions in defense of South Korea. See *id.* The Soviets and the French, for example, argued that the Uniting for Peace approach was inconsistent with the UN Charter. See *id.* More recently, the Palestinians and their UN allies have argued that the General Assembly ought to invoke the Uniting for Peace resolution in dealing with the Arab-Israeli problem because the United States has used its Security Council veto to defeat certain resolutions dealing with Arab-Israeli issues. See James Bennet, *U.N. Report Rejects Claims of a Massacre of Refugees*, *N.Y. TIMES*, Aug. 2, 2002, at A10; James Bennet, *Israeli Forces Pull Back from Jenin, But Blockade Still Remains*, *N.Y. TIMES*, Apr. 19, 2002, at A10; Joel Greenberg, *Freed Palestinians Tell of Roundup in Grim Detail*, *N.Y. TIMES*, Apr. 10, 2002, at A10.

Council Member. Refusals to terminate Special Sessions and the bootstrapping of humanitarian issues stand out among tactical approaches. Supporters of the Palestinian Authority have kept the Tenth Emergency Special Session of the General Assembly going with repeated adjournments for years after 1997. Some delegations grumble that the Palestinians are debasing the currency of General Assembly sessions by repeatedly preventing meetings from having any constructive impact on the Arab-Israeli situation. The ECOSOC, the International Court of Justice, and the Human Rights Commission are unique UN entities with their own *agendae* and habits.

Last, but not in any way least important, are the UN bureaucracies.¹² One of Parkinson's Laws says that when a bureaucracy reaches a certain size, it ceases to require contact with the outside world in order to function.¹³ In effect, the bureaucracy becomes accountable only to itself.

The UN organization chart lays out an unwieldy structure of seven principal organs, from which stem as many as 90 offices, agencies, committees, programs, funds, and other entities.¹⁴ Throngs of full-time employees staff each of these sub-organs—translators, statisticians, economists, secretaries, television producers, computer experts, lawyers, physicians, carpenters, and others.¹⁵ The UN Secretariat employs 8,700 permanent staff members under its regular budget, in addition to nearly 5,740 under specially funded programs or projects.¹⁶ Then, like a flying buttress, a contract bureaucracy supports the structure. Sometimes organizations like the Security Council create institutions to assist its work. The Iraq inspection bureaucracy serves as one example.

Sometimes the Secretary-General employs additional staff for particular purposes. For example, in response to criticisms of the UN for its failure to prevent the genocide in Rwanda and the massacre of Muslim civilians at Srebrenica in Bosnia, Secretary-General Kofi Annan appointed Lakhtar Brahimi, the former Foreign Minister of Algeria, to examine UN peacekeeping operations.¹⁷ Brahimi's report¹⁸ represented an authoritative call for adequate mandates and resources for missions; however, its practical impact on such difficult missions as the UN operation in the Democratic Republic of the Congo (DRC) has been limited. Where missions are risky, as in the DRC, the UN has trouble finding states willing to

12. See generally NEW ZEALAND MINISTRY OF FOREIGN AFFAIRS & TRADE, *supra* note 4.

13. See PARKINSON, *supra* note 5, at 2-13.

14. See Organization Chart of the United Nations, available at <http://www.un.org/aboutun/chart.html> (last visited Oct. 28, 2002).

15. See United Nations General Information, available at http://www.un.org/geninfo/ir/ch2/ch2_txt.htm (last visited Oct. 28, 2002).

16. *Id.*

17. *UN Peacekeeping Under Review*, BBC News, Aug. 23, 2000, available at http://news.bbc.co.uk/hi/english/world/americas/newsid_892000/892075.stm (last visited Oct. 27, 2002).

18. *Report of the Panel on United Nations Peace Operations*, U.N. GAOR, 55th Sess., U.N. Doc. A/55/305-S/2000/809. See also BBC News, *supra* note 17.

contribute forces.¹⁹ After the United States and its coalition²⁰ partners overthrew the Taliban in Afghanistan, Annan again turned to Brahimi to work on developing a new political future in Kabul. He did so with such success—developing a new government under President Karzai, fashioning a Loya Jirga (council) that could represent the country as it turned a historical page, and helping to mold a new political consensus in Afghanistan—that he made it look easy.

Brahimi is one of the Secretary-General's cadre of Special Representatives, employed in trouble-spots worldwide. Some Special Representatives have governmental responsibilities. Others engage in difficult and exhausting diplomacy, trying to prod warring parties toward peace.

In all, the UN system employs more than 64,700 people worldwide, whose interests and views affect, and sometimes shape, policy decisions.²¹ This congeries of actors affects the way the UN historically has approached the issue of terrorism, and how it continues to exercise its authority today. It also makes speaking of the "United Nations" difficult; instead, it is important first to consider which "United Nations" one means. The tapestry of interactions among the groups, delegations, bureaucrats, experts, and NGOs creates expectations for the future and establishes "right" behavior that can have the practical force of law.

These group dynamics affect how the UN acts on terrorism and, indeed, almost all other subjects. They frame debates and influence their outcomes. For example, the work habits of the Secretariat, contracts with translators, and other exogenous factors affect the Security Council's pace of work on terrorism.

II. Before and After September 11, 2001

There is no doubt that the attacks against the United States on September 11, 2001, have changed the context of UN activities. Before September 11, the UN treated the general subject of terrorism as a General Assembly issue. Specifically, the matter mainly fell within the jurisdiction of the Sixth (Legal) Committee of the General Assembly. Through the Sixth Committee and other UN bodies, the UN has played a part in elaborating conventions addressing specific crimes committed by terrorists, although most of the Conventions omit the word "terrorism." The conventions address the handling of nuclear material,²² plastic explosives,²³ aviation,²⁴

19. See *Special Committee on Peacekeeping Operations Ends Two Day Debate On Need For Rapid Deployment of Peace Operations*, Press Release, Special Comm. on Peacekeeping Operations, 168th and 169th mtgs., U.N. Doc. GA/PK/175 (2002), available at <http://www.un.org/News/Press/docs/2002/GAPK175.doc.htm> (last visited Jan. 15, 2003).

20. *Report of the Panel on United Nations Peace Operations*, *supra* note 18. See also BBC News, *supra* note 17.

21. See United Nations General Information, *supra* note 15.

22. See Convention on the Physical Protection of Nuclear Material, 1979, 1456 U.N.T.S. 24631.

maritime navigation,²⁵ protected persons,²⁶ and hostage-taking.²⁷ The goal was to create a basis for universal jurisdiction over, and condemnation and criminalization of, the types of crimes that terrorists commit, but not terrorism per se.²⁸ Although non-lawyers decided what the conventions would or would not cover, lawyers negotiated the texts.

At the same time as negotiators made progress on acceptable texts in these areas, the Sixth Committee was unable to agree on a definition of terrorism. Since the May 1972 terrorist killings of 28 airline passengers in Israel and of 11 Israeli athletes at the Munich Olympic Games in September 1972, the General Assembly has debated how to define terrorism and has been unable to reach a consensus.²⁹ Some do not want to label people terrorists when they use tactics, which, in other contexts would make them terrorists. Advocates of this perspective would exempt from the definition of terrorism all activities done in resistance to "foreign occupation" and activities by those "engaged in the struggle for national liberation." Despite the efforts of then Secretary-General Waldheim in the wake of the killings at the Munich Olympics and subsequent attempts by others after September 11, 2001, it has proved so far impossible to achieve a comprehensive definition of terrorism. The effort to define terrorism has foundered because some want to be able to use terrorism to advance their political or social agendae. To this end, in the UN arena, those that would use terrorism insist on consideration of the causes of terrorism and other distracting and difficult matters that derogate from treating terrorism as a means to an end.³⁰ As a result, there is no UN-originated convention on the subject (yet).

After the Sixth Committee failed, the General Assembly decided to change the forum (however slightly, given the participation). In 1996, the

23. See Convention on the Marking of Plastic Explosives for the Purpose of Detection, Mar. 1, 1991, U.N. Doc. S/22393, available at <http://untreaty.un.org/English/Terrorism/Conv10.pdf> (last visited Mar. 21, 2003).

24. See, e.g., Convention on Offences and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, 20 U.S.T. 2941, T.I.A.S. No. 6768, 704 U.N.T.S. 219; Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, 22 U.S.T. 1641, 1973 U.N.T.S. 106; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Sept. 23, 1971, 24 U.S.T. 564, I.I.A.S. No. 7570, 974 U.N.T.S. 178; Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Feb. 24, 1988, reprinted in 27 I.L.M. 627 (1988).

25. See Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Mar. 10, 1988, S. TREATY DOC. NO. 101-1 (1988), reprinted in 27 I.L.M. 672 (1988); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, Mar. 10, 1988, 1678 U.N.T.S. 304, reprinted in 27 I.L.M. 685 (1988).

26. See Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, Dec. 14, 1973, 28 U.S.T. 1975, 1035 U.N.T.S. 167.

27. See International Convention Against the Taking of Hostages, Dec. 17, 1979, 1316 U.N.T.S. 206.

28. See generally John F. Murphy, *Civil Liability for the Commission of International Crimes as an Alternative to Criminal Prosecution*, 12 HARV. HUM. RTS. J. 1, 24 (1999).

29. See, e.g., Sofaer, *supra* note 1, at 903.

30. *Id.* at 904.

General Assembly established an ad hoc committee to elaborate an international convention for the suppression of terrorist bombings.³¹ The General Assembly subsequently charged that committee with elaborating new international conventions for the suppression of acts of nuclear terrorism and a comprehensive legal framework for dealing with international terrorism.³² The General Assembly has renewed the committee's mandate every year since then, and the committee has issued annual reports since 1997.³³ Delegates have been able to agree on the criminality of certain activities without ever having agreed on a definition of terrorism.³⁴

After September 11, 2001, the Security Council weighed in on terrorism—"took charge" probably is not too strong a term—and became the locus of action. That the larger world could not agree on a definition of terrorism or condemnation of terrorism in all circumstances became irrelevant; or, if not irrelevant, a symptom of political disagreement all could understand. As a first step, the Security Council adopted Resolution 1368.³⁵ The Resolution unequivocally condemned the terrorist attacks of September 11, called on all states to "work together urgently to bring to justice the perpetrators, organizers and sponsors" of the attacks, and called on the international community to "redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions."³⁶ The Resolution also reaffirmed the inherent right of self-defense in accordance with Article 51 of the UN Charter. Given the circumstances, this affirmation was significant: it implied that the attacks triggered the right even if, at the time of adoption, the UN Security Council knew almost nothing about who or what had launched them.

31. G.A. Res. 51/210, U.N. GAOR, 51st Sess., U.N. Doc. A/RES/51/210 (1996).

32. See Ad Hoc Committee Established by General Assembly Resolution, available at <http://www.un.org/law/terrorism/> (last visited Jan. 16, 2003).

33. See *id.*

34. See Report of the Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December, 1996, 6th Sess., U.N. Doc. A/57/37 (2002); Report of the Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December, 1996, 5th Sess., U.N. Doc. A/56/37 (2001); Report of the Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December, 1996, 4th Sess., U.N. Doc. A/55/37 (2000); Report of the Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December, 1996, 3d Sess., U.N. Doc. A/54/37 (1999); Report of the Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December, 1996, 2d Sess., U.N. Doc. A/53/37 (1998); Report of the Ad Hoc Committee Established by General Assembly Resolution 51/210 of 17 December, 1996, 1st Sess., U.N. Doc. A/52/37 (1997). See also *Terrorism by Any Definition*, WASH. TIMES, July 9, 2002; Mani Shankar Aiyar, *No Global War on Terror*, UNITED PRESS INT'L, July 6, 2002. Perhaps if the international community were able to agree on a definition of terrorism, this fact would mean terrorism had ceased to be a threat.

35. S.C. Res. 1368, U.N. SCOR, 56th Sess., 4370th mtg., U.N. Doc. S/RES/1368 (2001).

36. *Id.*

A. Capacity-Building: The CTC

Resolution 1373 followed shortly after Security Council Resolution 1368.³⁷ In the resolution, the Council decided to impose a number of binding obligations on States.³⁸ They require that States prohibit both active and passive support for terrorists. As a result, not only are States to punish financial transactions on behalf of terrorists and freeze the asset of terrorists and their supporters, but also States must tighten their border controls, increase their vigilance against passport and identification forgery, deny safe haven to terrorists, and work toward enhancing international cooperation against terrorism.³⁹ As compared to previous resolutions, Resolution 1373 is far-reaching. It imposes on all States legal obligations of the kind usually contained only in treaties developed through the normal treaty-making process. The Security Council was able to adopt such a resolution under the immediate pressure of the September 11 attacks.⁴⁰ Effective implementation of this Resolution will increase capabilities to fight terrorism all over the world.

To help assure implementation, the Security Council applied a practice normally reserved for keeping the Security Council's hands on the details of sanctions and established a committee of the whole Security Council to monitor implementation.⁴¹ The new committee, known as the Counter-Terrorism Committee (CTC), operates by consensus, meaning that all Committee Member States have a veto.⁴² The Resolution calls on all States to report to the CTC on their implementation of the Resolution no later than 90 days from the date of adoption, and thereafter according to a CTC-mandated timetable.⁴³ The mandate in this Resolution carries no expiration date or completion point.

The CTC Chair has often remarked that the UN Member State response shows the degree of shared understanding of the importance of the issue, and acceptance of, and support for, the Resolution and the CTC. The Chair's actions have contributed to this acceptance and support. The

37. S.C. Res. 1373, U.N. SCOR, 57th Sess., 4385th mtg., U.N. Doc. S/Res/1373 (2001).

38. U.N. CHARTER art. 25.

39. S.C. Res. 1373, *supra* note 37.

40. See, e.g., *Secretary-General, Addressing Assembly on Terrorism, Calls for 'Immediate, Far-Reaching Changes' in UN Response to Terror*, Press Release, United Nations General Assembly SG/SM/7977 GA/9920 (Oct. 1, 2001). It is not clear that a few weeks later the influence of September 11 had not so diminished as to render it impossible to achieve another similar resolution had it been sought.

41. S.C. Res. 1373, *supra* note 37, ¶ 6. See also Jeremy Greenstock, Chair of the Counter-Terrorism Committee, Presentation at the "Combating International Terrorism: The Contribution of the United Nations" Symposium in Vienna, Austria (June 3-4, 2002) available at <http://www.un.org/Docs/sc/committees/1373/ViennaNotes.htm> (last visited Mar. 20, 2003).

42. See generally www.un.org/Docs/sc/committees/1373 (last visited Mar. 20, 2003).

43. S.C. Res. 1373, *supra* note 37, ¶ 6.

Chair regularly briefs the entire UN membership on the CTC's activities.⁴⁴ He believes in maximum transparency as a good in itself and, in the case of the CTC, necessary to maintain its legitimacy within the UN community. He uses these occasions to stress the CTC's fidelity to Resolution 1373, often noting that document is the CTC's "Bible."

The Resolution calls on States to report the steps they are taking to implement the Resolution. These reports generally cover counter-terrorism measures in seven areas: legislation, financial asset controls, customs, immigration, extradition, law enforcement, and illegal arms trafficking.⁴⁵ Almost all Members of the UN reported to the CTC in the first year. To expedite analysis of these reports, the CTC divided itself into three sub-committees. Each of the sub-committees works toward processing five reports a week. Experts in relevant subjects aid the sub-committees by, among other things, drafting the CTC response to the initial reports. The experts have proved invaluable and integral to the CTC process, assisting with the continuing need to fully probe countries' responses.⁴⁶ For example, when a country asserts, "money laundering is illegal so no money laundering takes place," the experts reply, "we need to know how this law is implemented," or "how do you monitor to ensure that no money laundering takes place?" The experts' external, non-political role helps the CTC obtain real answers.

The sub-committees draft (and the full Committee approves) letters back to the reporting States, saying, "Thank you for the information you provided; we still need additional information on the following issues . . ." Thus, the response letters vary greatly by State, depending on the specificity of the first report. For example, one country submitted a single-spaced, 58-page report, with relevant appendices. The CTC response was able to discuss intricate details of the country's banking system. In contrast, some reports have been sketchy.⁴⁷ In such cases, the CTC has responded with a tutorial on how to understand the obligations of Resolution 1373 and how to meet the needs of the CTC. This practice has prompted some criticism about whether the CTC treats some states unfairly by holding them to a different standard based on their level of development. However, disparities are an inevitable and a necessary aspect of the CTC's work. There is no point of completion when the committee will issue a certificate of compli-

44. See Briefings by the Chairman of the Counter-Terrorism Committee, at www.un.org/Docs/sc/committees/1373/briefings.htm (listing the Committee's briefing schedule for 2002, which, on average, consisted of two briefings a month).

45. See S.C. Res. 1373, *supra* note 37, ¶ 6.

46. For a description of the CTC operating procedures, see CTC Programme of Work, U.N. Doc. S/2001/986 (Oct. 19, 2002), at <http://www.un.org/Docs/sc/committees/1373/> (last visited Mar. 20, 2003).

47. In order to get a sense of the varying quality among the reports, compare Report From Japan Pursuant to Paragraph 6 of Resolution 1373 (2001), U.N. Doc. S/2001/1306 (Dec. 27, 2001), available at <http://www.un.org/Docs/sc/committees/1373/1306e.pdf>, with Report From Afghanistan Pursuant to Paragraph 6 of Resolution 1373 (2001), U.N. Doc. S/2002/668 (June 13, 2002), available at <http://www.un.org/Docs/sc/committees/1373/668e.pdf> (last visited Mar. 20, 2003).

ance that a State has become "Terrorism-Proof."⁴⁸ The CTC's task has been to ensure, to the extent possible given its resources, that each State is making its best efforts to eliminate opportunities for terrorists to establish themselves in its territory.⁴⁹ The CTC's work with Member States through the review process has helped individual States learn how best to strengthen their counter-terrorism capabilities and has gone far in creating a more universal, "best practices" in the global fight against terrorism.

The open-ended dialogue between the CTC and the Member States has evolved and matured. The Committee has developed standardized questions. These are not published. But the responses are public, available on the internet. As a result, the CTC has created the basis for anyone independently to develop a matrix evaluating every State's assessment of its implementation of Resolution 1373. Such action ought to help the international community increase incentives for fulfilling 1373 obligations, thus strengthening the world's capacity to combat terrorists and terrorism.

Resolution 1373 does not include a definition of terrorism. As a result, every country is left to define terrorism for itself, and the Resolution can instead focus on raising the capacity and the capability to fight terrorism—leaving other UN bodies and multi-lateral groups to argue about what is and what is not terrorism.⁵⁰ The CTC fulfills its mandate by trying to make countries honestly assess their own counter-terrorism policies and capacities. In the case of States that are unwilling to characterize as terrorist activities in pursuit of certain goals, the CTC is able to highlight the inconsistencies such an approach can engender. For example, the CTC can call attention to tensions arising from a State's different international obligations, particularly conflicts between obligations under UN conventions and provisions in regional conventions that address the same subject.⁵¹

The Office of the UN High Commissioner for Human Rights has expressed concern that the war on terrorism not be exploited for political advantage by allowing governments wrongly to incarcerate political opponents.⁵² The Office has asked the CTC to monitor respect for human rights in connection with States' implementation of Resolution 1373. As the CTC Chair told the Security Council in public session in January and July 2002, the CTC is mindful of human rights in its work and values communication with the Office of the High Commissioner.⁵³ But, the Chairman said, the CTC cannot and must not stray from its mandate in

48. See Greenstock, *supra* note 41.

49. See *id.*

50. See *id.*

51. See U.N. CHARTER art. 103 ("In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."). Compare S.C. Res. 1373, *supra* note 37, with League of Arab States, Arab Convention for the Suppression of Terrorism, Apr. 1998, available at <http://www.al-bab.com/arab/docs/league/terrorism98.htm> (last visited Mar. 20, 2003).

52. See *UN Questions New US Entry Controls*, BBC News, June 6, 2002, available at www.bbc.co.uk/1/hi/world/americas/2028990.stm.

53. See S.C. Res. 1373, *supra* note 37, ¶¶ 1, 2, 6.

Resolution 1373. Therefore, the CTC does not view itself as a human rights monitoring body and leaves such work to others.⁵⁴ In addition, as some representatives on the CTC have noted, Resolution 1373 is, in essence, a call to implement a regime of law. If Resolution 1373 is properly implemented, the rule of law will be strengthened. In turn, human rights, which depend on the rule of law for their consistent vindication, will be strengthened.

After one year in operation, the CTC's future direction and goals remain in a process of step-by-step clarification. The CTC could be enormously effective. Its influence extends from helping countries adopt laws regarding the abuse of charitable institutions and other devices to elude financial regulations, to encouraging enhanced border security training using multilateral fora, to assisting governmental organizations in the counter-terrorism area, among other things. Conceivably, the CTC could help the international community reach agreement on a constructive definition of terrorism. On the other hand, even States that strongly oppose terrorism express concern from time to time about the CTC's potential to scour deeply into a government's innermost activities.

In monitoring implementation, the CTC aims to improve worldwide counter-terrorism capabilities and to help match countries that need assistance in this area with assistance providers. Thus, it serves as a switchboard. Even countries with substantial counter-terrorism capacity need help, if only in the area of understanding their own vulnerabilities. Through the CTC process and interactions with regional and sub-regional groups, countries that have not thought of themselves as capable of providing counter-terrorism assistance are now looking at their capabilities in a new light. For example, some small countries have great expertise in regulating and monitoring financial transactions. Other countries need training in these fields. A match may be possible, fostered by the CTC. In addition, the dialogue between States and the CTC may allow the CTC to indicate areas in which the CTC believes a State needs assistance, even if the State does not view itself in that light. Further, the CTC believes that it can help regional and sub-regional organizations⁵⁵ leverage scant assistance resources, in part because these organizations can help tailor such resources to the needs of their particular region.

As part of the process of building a database on worldwide, counter-terrorism assistance capabilities, in November 2001 the CTC invited all States with the capacity to do so to contribute to the compilation of a database of sources of advice and expertise in the areas of legislative and administrative practice. Using this information, the Committee created a web-based directory for assistance in the areas of activity covered by Reso-

54. See Greenstock, *supra* note 41.

55. Examples: The Organization of American States (OAS), the African Union (AU), the European Union (EU), the Organization for Security and Cooperation in Europe (OSCE), the Arab League, the Gulf Cooperation Council (GCC), the Caribbean Community (CARICOM), the Association of Southeast Asian Countries (ASEAN), the Pacific Island Forum (PIF), and the ASEAN Regional Forum (ARF).

lution 1373: drafting counter-terrorism legislation, financial law and practice, extradition law and practice, police and law enforcement work, and (illegal) arms trafficking.⁵⁶

B. Sanctions

The Security Council was ready to respond to the terrorist acts of September 11 because it had already decided that terrorism constitutes an appropriate subject for its consideration and action. The Council had already spent several years addressing issues related to terrorism in Taliban-ruled Afghanistan⁵⁷ and, before that, in Libya after the bombing of Pan Am Flight 103 in December 1988.⁵⁸ In August 1998, the Security Council condemned the attacks on UN personnel in the Taliban-held territories of Afghanistan.⁵⁹ Later that year, the Council demanded that the Taliban stop providing sanctuary and training to international terrorists and halt the cultivation and production of, and trafficking in, illegal drugs.⁶⁰ Then, in October 1999, under the Presidency of Russia,⁶¹ the Security Council acted in response to several bombings of apartment buildings in Moscow for which the Russian government blamed Chechen terrorists.⁶²

On October 15, 1999, the Security Council adopted Resolution 1267, imposing sanctions on Usama bin Laden and Taliban-controlled Afghanistan, and the Security Council created a Committee of the Whole Council to administer the resolution's implementation.⁶³ This Resolution obligated all States to freeze Taliban assets and to deny permission for any Taliban-affiliated aircraft to depart or land from their territory. The Resolution directed the Committee to designate funds to be frozen and aircraft to be denied take-off or landing rights. Because these measures are decision of the Security Council under Chapter VII of the UN Charter, they are mandatory on all States.⁶⁴ After the removal of the Taliban from power in

56. The directory can be found at <http://www.un.org/docs/sc/committees/1373> (last visited Oct. 24, 2002).

57. See S.C. Res. 1363, U.N. SCOR, 4352d mtg. at 1, U.N. Doc. S/RES/1363 (2001); S.C. Res. 1333, U.N. SCOR, 4251st mtg. at 1, U.N. Doc. S/RES/1333 (2000); S.C. Res. 1214, 4053d mtg. at 1, U.N. SCOR, 4051st mtg. at 1, U.N. Doc. S/RES/1214 (1998); S.C. Res. 1193, 391st mtg. at 1, U.N. Doc. S/RES/1193 (1998).

58. See, e.g., S. C. Res. 748, U.N. SCOR, 3063d mtg., U.N. Doc. S/RES/748 (1992).

59. S.C. Res. 1193, *supra* note 57.

60. S.C. Res. 1214, *supra* note 57.

61. The Presidency (chair) of the Security Council rotates monthly according to the English alphabetical order of the member states. See <http://www.un.org/docs/scinfo.htm>.

62. See Michael R. Gordon, *Another Bombing Kills 18 in Russia*, N.Y. TIMES, Sept. 17, 1999, at A1.

63. S.C. Res. 1267, U.N. SCOR, 4051st mtg., U.N. Doc. S/RES/1267 (1999).

64. Article 25 of the UN Charter provides that member states agree to carry out the "decisions" of the Security Council. U.N. CHARTER art. 25. In order to give States adequate notice of the legal reach of Security Council resolutions, the Council typically includes the word "decides" in legally binding sections of resolutions. Some Member States incorporate such Security Council decisions into their own law without much ado. Chapter VII of the UN Charter sets forth the Security Council's power to take coercive action to maintain or restore international peace and security. U.N. CHARTER ch. VII.

Afghanistan and the apparent destruction of Al-Qaida's bases there, the Security Council on January 6, 2002, adopted Resolution 1390, removing the territorial basis for the sanctions on the Taliban—instead of sanctioning Afghanistan in order to change its policies, measures would now be directed against “Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them” wherever they happened to be.⁶⁵

The Security Council broke new ground in adopting such an approach. In tackling the realities of transnational terrorists who employ all means of transportation, communication, and finance, the Council has had growing pains. In particular, the Council has discovered that its mandatory sanctions regime can create administrative difficulties if the targeted individuals or entities claim to have been victim of mistaken identity. The Council has tried to be practical while avoiding judicial functions or otherwise usurping the legal obligations of governments with respect to persons suspected of terrorism.

III. The Moral Imperative

The Security Council resolutions on terrorism adopted since September 11, 2001, frame the work of UN organs on terrorism. For most Member States they also provide a framework and guide for action. Even without consensus on the criminal wrongfulness of terrorism in all circumstances much can be accomplished in such areas as capacity-building, implementation of sanctions against terrorists, their accomplices and supporters, and international cooperation generally. Most successful anti-terrorist efforts have resulted from multi-lateral cooperation. In working on these goals step-by-step, UN institutions and the broader international community may help bring about a global consensus on a definition of terrorism. Direct progress to that end now remains stalled by those who find terrorism a convenient, powerful, and available weapon. These people and entities do not accept that the activities they advocate are terrorist.

The UN Secretary-General, Kofi Annan, has used his global moral authority, enhanced when he received the Nobel Peace Prize in 2001,⁶⁶ to condemn terrorist acts, and call for worldwide unity against terrorism.⁶⁷ In a speech the day after the attacks of September 11, the Secretary-General said, “All nations of the world must be united in their solidarity with the victims of terrorism, and in their determination to take action, both against

65. S.C. Res. 1390, U.N. SCOR, 4452d mtg., U.N. Doc. S/RES/1390 (2002).

66. See *UN, Annan receive Nobel Peace Prize at award's centennial ceremony in Oslo*, UN News Service, Dec. 10, 2001, available at <http://www.un.org/apps/news/printnewsAr.asp?nid=2368> (last visited Jan. 16, 2003); UN Secretary-General Kofi Annan, Address at the Nobel Peace Prize Ceremony in Oslo, Norway (Dec. 10, 2001), available at <http://www.un.org/News/Press/docs/2001/sgsm8071.doc.htm> (last visited Jan. 16, 2003).

67. See *Words Alone Inadequate as Response to Terrorist Attacks, Secretary-General Tells Opening of Fifty-Sixth General Assembly*, Press Release, U.N. GAOR, U.N. Doc. SG/SM/7951 GA/9906 (2001), available at <http://www.un.org/News/Press/docs/2001/sgsm7951.doc.htm> (last visited Jan. 16, 2003).

the terrorists themselves and against all those who give them any kind of shelter, assistance or encouragement.”⁶⁸ On October 1, 2001, while urging States to conclude a Comprehensive Convention on Terrorism, he said:

It will also be important to obtain agreement on a comprehensive convention on international terrorism. In the post-11 September era, no one can dispute the nature of the terrorist threat, nor the need to meet it with a global response. I understand that there are outstanding issues, which until now have prevented agreement on this convention. Some of the most difficult issues relate to the definition of terrorism. I understand and accept the need for legal precision. But let me say frankly that there is also a need for moral clarity. There can be no acceptance of those who would seek to justify the deliberate taking of innocent civilian life, regardless of cause or grievance. If there is one universal principle that all peoples can agree on, surely it is this.⁶⁹

His speech became the basis for his personal engagement in an effort, in late autumn 2001, to push States to reach agreement. That effort so far has failed.

The international effort to combat terrorism is over thirty years old. It came close to agreement on a generally applicable definition of terrorism in the immediate aftermath of the attacks of September 11, 2001. Despite the personal efforts of the Secretary-General acting as a facilitator, prod, and moral conscience, the Organization of the Islamic Conference (OIC), consisting of 57 Islamic Member States of the UN, could not agree with the rest of the international community on what terrorism is. The differences are emblematic of the history of international discussions on terrorism.⁷⁰ First, the OIC wants to exclude acts directed against foreign occupation from the terrorist label. In 2001, the reasons did not need to be declared: the OIC wanted to exempt terrorism against Israel and terrorism against India over Kashmir.⁷¹ Second, the OIC wanted to brand violations of the laws of war by State military forces as terrorist. This goal is aimed at the Israel Defense Forces. All countries with large armies objected. Violations of the laws of war are war crimes; they are not *ipso facto* acts of terrorism.

68. *Id.*

69. *Secretary-General, Addressing Assembly on Terrorism, Calls for 'Immediate, Far-Reaching Changes' in UN Response to Terror*, Press Release, U.N. GAOR, U.N. Doc. SG/SM/7977 GA/9920 (Oct. 1, 2001), available at <http://www.un.org/News/Press/docs/2001/sgsm7977.doc.htm> (last visited Jan. 18, 2003).

70. The differences are also symptomatic of divisions among OIC member states. For a recent and powerful example of a secular Muslim leader loosing out to the radicals in the OIC, compare the opening speech of Malaysian Prime Minister Mahathir Mohamad at the OIC Conference on April 1, 2002, in which he opposed terrorism against innocents, see Carla Anne Robbins et al., *Hazardous Conflict: Violence in Mideast is Testing the Limits of U.S. War on Terror*, WALL ST. J., Apr. 2, 2002, at A1, with the Conference conclusions, which rejected the Malaysian Prime Minister's view and retained the OIC's boilerplate language on terrorism, see Rohan Sullivan, *Muslims Shy from Defining Terrorism*, CHICAGO TRIB., Apr. 4, 2002, at 3.

71. See, e.g., *Statements in Security Council Meeting to Combat Terrorism*, Press Release, U.N. SCOR, U.N. Doc. SC/7638 (Jan. 20, 2003) (reiterating, in part, Syria's view that the international community should define terrorism and distinguish between it and a struggle for freedom); *Committee on Terrorism*, *supra* note 1.

The OIC could not accept language of a proposed compromise on these two issues, even though the compromise bowed in the direction of struggles by “peoples” under international law and contained a reference to international law in the provisions regarding a State’s regular armed forces.

The conventional wisdom concludes that the international community will not succeed in this area until the conflicts in the Middle East and over Kashmir come to an end. Once the international community can agree on a definition, then it can move ahead on measures against terrorist use of nuclear and other weapons of mass destruction. Indeed, it could even bring to the counter-terrorism effort the array of international institutions operating in geographical areas traditionally hospitable to terrorists. By such time, of course, the utility and impact of achieving agreement on a generally applicable definition may have diminished: those conflicts have prevented agreement to date and have provided at least nominal justifications for many terrorist acts.

Conclusion: Terrorism and World Order

I began this speech with some perhaps caustic comments about the UN world. Driven by the exigencies of the attacks of September 11, 2001, that world took action in the counter-terrorism field that has proved and continues to prove to have a positive impact. Given the realities involved in moving any large, non-hierarchical organization in a single direction and persuading it to act quickly; given the disparate groups and interests competing to affect the activities of the UN and the international community; given the intense debate about the agenda and use of resources; and given the organization’s and community’s habits of viewing, in an almost nineteenth-century way, the responsibility for effective action against serious, wide-ranging threats to peace and security as belonging to the “Great Powers,” whether they act through the Security Council or not, one should applaud the UN counter-terrorism response and its sustained effort. That there is more to do does not invalidate what has been done.

The future work of the UN on terrorism depends, in part, on whether there are other terrorist attacks on the scale of those of September 11, 2001. Horrible as they were, they increased Member States’ incentive to take action against terrorism and use the UN forum for doing so. In the absence of such attacks, one may expect the CTC to remain the lead UN counter-terrorism vehicle. Because it is the wish of Member States, the CTC will maintain its step-by-step approach. One can expect verbal fist-cuffs from the effort of individual Member States or groups of States to scrutinize through the United Nations the activities and policies of States identified by the United States as supporting terrorists. In the absence of usable evidence connecting one or more of those States to specific terrorist attacks, the impact of such exchanges may be limited to rhetoric. Nonetheless, with every terrorist attack, it becomes more difficult for States to defend terrorism or insist that terrorists alleged goals justify it. As a result, terrorism makes it easier to use the United Nations against terrorists.

Ultimately, terrorism is a weapon against order. For more than two centuries, those who have fought the status quo, whether political, social or structural, have found terrorism an attractive device. It too often achieves at least part of the terrorists' objectives. Few if any democracies can claim to have remained immune to the political or social claims of terrorists. In an age of nuclear and other weapons of mass destruction, the threat posed by terrorists can only grow. For that reason alone, world order and order under law will be strengthened to the extent that terrorists are prevented from carrying out their deeds. The UN can help by continuing to call for high standards of counter-terrorist capacity and by helping States meet those standards.