

# The UN Security Council's Counterterrorism Program: What Lies Ahead?

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## Acronyms

ASEAN	Association of Southeast Asian Nations
CTC	Counterterrorism Committee
CTED	Counterterrorism Executive Directorate
CTITF	Counterterrorism Implementation Task Force
E10	Elected 10 – The non-permanent members of the UN Security Council
ECOWAS	Economic Community of West African States
ETA	Euskadi Ta Askatasuna
G77	Group of 77 – A group of 133 UN member states, generally from the developing world
ICAO	International Civil Aviation Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
INTERPOL	International Criminal Police Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Organization of the Islamic Council
P5	Permanent Five – The permanent members of the Security Council
PIA	Preliminary Implementation Assessment
SADC	Southern African Development Community
SC	Security Council
SG	Secretary-General
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office of Drugs and Crime
US	United States
WCO	World Customs Organization



## Executive Summary

Since September 2001, the Security Council and its various counterterrorism-related subsidiary bodies have made significant contributions to the global counterterrorism campaign, primarily through norm-setting and institution building and by keeping terrorism on the political agenda while engaging in dialogue with—and stimulating the activities of—states and multilateral bodies. Yet, rather than together constituting a comprehensive strategy to address the global terrorist threat, each Council initiative has had an improvisational, ad hoc quality. Following each major terrorist attack—often against one of its own members—the Council's response has extended well beyond the specific incident at hand with little regard to its relation to the already existing Council program.

These bodies, in particular the Counterterrorism Committee (CTC) and its expert body, the Counterterrorism Executive Directorate (CTED), have succeeded in gathering unprecedented amounts of information from states on their efforts to implement their obligations; making some of that information public through their respective websites; establishing ongoing interactive dialogues with states on counterterrorism; helping to identify and fill some of the capacity gaps; engaging with a wide-range of international, regional, and subregional bodies; and, more broadly, highlighting the importance of international cooperation in the global counterterrorism campaign. Yet, the committees and their expert groups have also faced a range of challenges that have limited their effectiveness to one degree or another. Most significantly, in the case of the CTC and its CTED, they have had to confront the perceived illegitimacy and under-representation of the Council in this field and the growing sense in the wider UN membership and beyond that it is no longer appropriate for a Council body operating under Chapter VII of the UN Charter to be at the center of global counterterrorism capacity-building activities.

After an overview of the Council's counterterrorism initiatives since September 2001, this report provides an analysis of the UN Security Council's counterterrorism program and recommendations for its improvement, with a focus on the CTC and its CTED. It discusses the contributions of these bodies and highlights steps that can be taken by each to enhance their ability to operate efficiently, promote and expand understanding of their counterterrorism work to a broad range of stakeholders (both inside and outside the UN system), improve facilitation of

capacity-building assistance, and ensure that more emphasis is placed on human rights. The recommendations are for UN member states and the broader UN community to consider in the lead up to the Council's discussions surrounding the future of the CTED, whose mandate expires on 31 December 2007. The following outlines some of the findings and policy options described in the narrative and expanded on in the annex to this report:

- **The Security Council needs to identify its comparative advantage(s) in the global counterterrorism campaign six years after September 2001**, be it in norm-setting, facilitating technical assistance, focusing political attention, information sharing, monitoring the implementation of norms, liaising with international, regional and subregional bodies, or monitoring/enforcing compliance. The Council should reflect upon the contributions it has made to global counterterrorism efforts in the past and ensure that its current and future initiatives are aimed at addressing the current and future manifestations of the threat.
- **The Council should help promote and clarify its relationship to the General Assembly's UN Global Counterterrorism Strategy.** It should 1) contribute to the General Assembly's review of the Strategy scheduled for the fall of 2008; 2) situate the work of its counterterrorism-related committees within their existing mandates in the context of the more widely accepted Strategy; and 3) encourage all of their expert bodies to actively participate in all relevant UN Counterterrorism Implementation Task Force working groups.
- **The Council, CTC, and CTED should improve communication with the broader UN community and other stakeholders.** It should 1) hold a public Council meeting in the fall of 2007 to provide all interested UN member states with an opportunity to comment on the work of CTED and its future; 2) reform and streamline procedures for CTED site visits and CTC/CTED communication

with states; and 3) place greater emphasis on making the CTC/CTED's work transparent and accessible to the wider UN community, as well as to experts in national capitals, multilateral bodies, academic and research communities, and civil society organizations.

- **The working methods of the Council counterterrorism-related committees should be improved** to avoid becoming unduly bogged down in procedural matters or protracted discussions of limited substance resulting from an inability to reach consensus among their fifteen members.
- **The Council should take steps to improve the coordination and cooperation among its counterterrorism-related committees and expert groups.** This should include monthly meetings of the different committee chairs, quarterly informal Council consultations on the work of the Council counterterrorism-related committees, and/or the establishment of a single expert body, possibly in the UN Secretariat, to service all of its counterterrorism-related committees.
- **The CTC/CTED tool kit should be expanded to adopt a more flexible, tailored and nuanced approach to its interactions with member states.** The Council should authorize the establishment of CTED field presences in different regions; convene regional and subregional meetings involving government experts focusing on specific elements of Resolution 1373; give the CTED more flexibility in terms of site visits; and rely on the analysis of specialized agencies or bodies, where appropriate, to avoid duplication of work.
- **The CTC/CTED needs to place greater emphasis on human rights in its monitoring of member state implementation of Resolutions 1373 and 1624** including as part of its site visits. This could involve, *inter alia*, building on the country or thematic-specific analysis being carried out by the UN human rights mechanisms;

including human rights in the CTED's technical assistance and best practices directories; including the CTED senior human rights advisor and/or OHCHR staff on its site visits; and developing, in cooperation with the relevant UN human rights mechanisms, best practices in areas of practical relevance to counterterrorism practitioners.

- **The CTC/CTED should deepen its engagement with both donor states and states in need of assistance.** This could include, *inter alia*, providing donors with greater access to CTC/CTED trip reports and other assessments of member state capacities and priorities; sitting down with major donors in the field both before and after visits; deepening cooperation with UNDP; adding experts to its staff with practical experience on technical assistance issues; and focusing attention on regions and countries that are not the current focus of ongoing donor activities.
- **The CTC/CTED should improve coherence and coordination among its own staff.** This could include the establishment of a functional cluster of experts responsible for reviewing the work being done by the geographic clusters; improving the vertical and horizontal flow of information within CTED among and between the clusters and management; and the preparation of a technical guide on the CTED's approach to assessing implementation of the different provisions of Resolutions 1373 and 1624 to ensure a consistent approach among all of its experts.

## Introduction

The Security Council acted swiftly and unanimously after 11 September 2001. The day after the collapse of the World Trade Center (visible from the windows of many UN delegates' offices) the Council adopted Resolution 1368, which declared international terrorism to be a threat to international peace and security, and—adopting much of the wording from Article 51 of the UN Charter—affirmed that a state victimized by terrorism was justified in exercising the right of individual and collective self-defense in

response.<sup>1</sup> Over the past six years, the Council adopted a series of resolutions, most of them under Chapter VII of the UN Charter, imposing a range of often complex obligations on all UN member states focused on security-related and other preventative aspects of counterterrorism. Those resolutions also established a number of Council subsidiary bodies to monitor member state implementation, work with states to strengthen their counterterrorism infrastructure, and reach out to international, regional, and subregional bodies on these issues.

The emergence of the Council as a central figure on the counterterrorism playing field, however, was a relatively new phenomenon. Like the rest of the UN, it was reluctant to address international terrorism prior to the events of September 2001. During the Cold War, the prevailing attitude among states was that terrorism was largely a national problem and thus generally did not constitute the threat to international peace and security required for the Council to be seized with the issue under the UN Charter. In fact, previously the Council seemed to attach greater concern to the response of states to terrorism than to terrorist acts themselves. This tendency started to change in the 1980s when both the General Assembly and Council adopted resolutions emphasizing that terrorism was no longer a legitimate tool in the fight for self-determination or other political struggles.<sup>2</sup>

When the Cold War paralysis in the Council ended, it was able to respond forcefully to a new brand of terrorism that ignored national borders, focusing on the states that were seen as sponsoring this new type of terrorism. Thus, in the 1990s it adopted Chapter VII resolutions imposing sanctions against Libya, Sudan, and Afghanistan for their alleged support of discrete acts of terrorism, such as the bombing of Pan Am Flight 103 and the bombings of the US embassies in Kenya and Tanzania. Yet this response, robust as it may have seemed at the time, differs both qualitatively and quantitatively from its post-9/11 activity. The Council has moved from adopting coercive measures under Chapter VII against individual states in the 1990s to a generic, norm-setting and institution-building approach. Although, like in the past, the Council was reacting to particular terrorist attacks, its response was now global. This has resulted in the development of a broad, international legal counterterrorism framework and a series of institutions to work with states and other stakeholders to implement it.

In the six years since the September 2001 attacks, there has yet to be an independent assessment of the Council's counterterrorism program with formal recommendations for its improvement. The time for such a review is ripe for a number of reasons. First, with the adoption of the General Assembly's Global Counterterrorism Strategy (UN Strategy) in September of 2006 and the institutionalization of the UN Counterterrorism Implementation Task Force (CTITF), both of which are aimed at mobilizing the different parts of the UN system to promote a more coordinated and cohesive UN counterterrorism program, there are growing questions among states and the broader UN community as to how the existing Council program should relate to or be integrated with these new initiatives. Second, many states are becoming increasingly frustrated with a hydra-headed Council response that was imposed upon the wider UN membership and thus may lack the broad-based political support it needs for it to be effective over the long-term. Finally, the initial mandate of the Council's largest counterterrorism expert group, the Counterterrorism Executive Directorate (CTED) expires on 31 December 2007 and the Council will need to decide on the future of this body before then. The expiration of the mandate also provides an opportunity for the Council to reflect upon its post-9/11 counterterrorism efforts and to improve the effectiveness of its overall program in this field.

With these factors in mind, the International Peace Academy and the Center on Global Counter-Terrorism Cooperation launched a "Security Council Counterterrorism Review Project" in February 2007. This project has consisted of two workshops convened at the Malaysian Mission to the UN in New York involving UN officials, representatives from the Security Council and other UN member states, as well as academic and other non-governmental experts. It has also involved a series of interviews with UN, member state, and non-government experts, and this report, which includes a number of independent recommendations for member states and the broader UN community to consider in the lead up to the Council's discussions surrounding the future of CTED. These discussions are expected to begin in the fall of 2007. Although this report will touch upon all aspects of the Council's counterterrorism program, given the expiration of the CTED's mandate at the

<sup>1</sup> United Nations Security Council Resolution 1368, UN Doc. S/RES/1368 (2001), 12 September 2001.

<sup>2</sup> United Nations General Assembly Resolution 40/61, UN Doc. A/RES/40/61 (1985), 9 December 1985; United Nations Security Council Resolution 635, UN Doc. S/RES/635 (1989), 14 July 1989.

end of 2007 and the likely interest within the UN community regarding the future of that particular body, this report places greater emphasis on the work of the CTED, and its parent body, the CTC, and the steps that the Council could take to enhance their effectiveness.

Annexed to this report is a series of recommendations, some of which will be discussed and referred to in the report itself. The recommendations highlight steps that can be taken by the Security Council, the CTC and/or the CTED to enhance each entity's ability to operate efficiently, promote and deepen understanding of their work on counterterrorism to others inside and outside the UN system, improve facilitation of capacity-building and ensure that more emphasis is placed on human rights. Some of the recommendations might require a Council resolution or a CTC decision or will take a longer period of time to implement. Several can be acted on by the relevant body in the near-term either before or soon after the review of the CTED is completed at the end of this year.

## **A Survey of the Council's Post-9/11 Counterterrorism Initiatives: Improvisation Trumps Strategy**

Some two weeks after the passage of Resolution 1368, the Council adopted what remains perhaps its most ground-breaking resolution, Resolution 1373, which enumerated a detailed list of obligations—from criminalizing the financing of terrorism, to freezing terrorists' assets, to strengthening border controls, to denying terrorists safe haven, to bringing terrorists to justice—that all member states must undertake as part of a global counterterrorism campaign. It further established the CTC (modeled on the country-specific sanctions committees that the Council had established over the years) to monitor state implementation of these requirements and asked the Secretary-General to appoint a small handful of independent consultants to support the CTC's work. In November 2001, perhaps recognizing the difficulties that most states would have meeting the complex requirements of Resolution 1373, the Council extended the CTC's

mandate with the adoption of Resolution 1377 to include the facilitation of technical assistance to states and working with international, regional, and subregional organizations to develop technical assistance programs and promote best-practices in the areas covered by Resolution 1373.

In January 2002, the Council decided to broaden the financial, travel, and arms sanctions it had imposed on Taliban-controlled Afghanistan following the terrorist attacks against the US Embassies in Nairobi and Dar es Salaam (Resolution 1390) to address what had now morphed into a global threat, with al-Qaida at its center. As part of its response to 9/11, the Council required all states to impose these measures on the individuals and entities listed by the Al-Qaida/Taliban Sanctions Committee, the Council committee which manages and updates the list. The Council also asked the Secretary-General to establish a group of independent experts (Monitoring Team) to monitor state implementation of this expanded regime. Through a series of subsequent resolutions, most recently Resolution 1735 (December 2006), the Council has sought to strengthen and refine this sanctions regime.<sup>3</sup>

Support for the sanctions regime, however, seems to be eroding as a result of concerns regarding both the quality of information on the list and the lack of fully transparent procedures for adding and removing names from the list. The coordinator of the Monitoring Team has cited a number of reasons why fewer and fewer states are putting forward names for inclusion on the list, including the reluctance on the part of some to admit publicly to a "terrorist problem" by nominating their own nationals, the fact that forwarding the names of another country's citizens for listing can be seen as an unfriendly act, and "misgivings about the fairness of a tool which can freeze people's assets without telling them why."<sup>4</sup>

With respect to improving procedures for removing names from the list, the committee has been trying to strike the right balance between its European members (and non-members), which generally favor greater transparency and more rights for those on the list, including possibly allowing them to approach the committee directly, and other, less forward leaning members.<sup>5</sup>

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<sup>3</sup> The committee has amended its guidelines, putting minimum evidentiary standards for submitting names and a more transparent listing process into place. It has also standardized mechanisms, including name transliteration and the use of reference numbers of all entries. "The 1267 (Al-Qaida/Taliban) Committee and the 1540 (WMD) Sanctions Committee," *Security Council Report*, Update Report no. 5, 16 January 2006. Available at [www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.1355491/k.48B7/UPDATE\\_REPORT\\_NO\\_5BRThe\\_1267\\_AlQaidaTaliban\\_Committee\\_and\\_The\\_1540\\_WMD\\_Sanctions\\_CommitteeBR16\\_JANUARY\\_2006.htm](http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.1355491/k.48B7/UPDATE_REPORT_NO_5BRThe_1267_AlQaidaTaliban_Committee_and_The_1540_WMD_Sanctions_CommitteeBR16_JANUARY_2006.htm) (accessed 19 August 2007).

<sup>4</sup> Mark Tevelyan, "U.N. Al Qaeda Sanctions in Need of Reform," *Reuters*, 26 July 2007.

<sup>5</sup> Improving the committee's procedures for adding and removing names to its list is an essential element of enhancing the effectiveness of the Council's



In January 2003, France, the Council President, convened a meeting of the Council at the foreign minister level to show the body's continued commitment to addressing the global terrorist threat. Although a number of Council members, including the French and Russians, used this meeting to warn the United States about the perils of unilateral action in Iraq,<sup>6</sup> the meeting culminated with the adoption of another generic counterterrorism resolution (Resolution 1456), the annex to which largely reaffirmed language in existing Council pronouncements on the issue. Significantly, however, it included the Council's first call on states to respect human rights while countering terrorism, using language that has subsequently been repeated in a range of UN fora.<sup>7</sup> Although not adopted under Chapter VII like Resolution 1373, this resolution was also the hook subsequently used by some UN members to push the CTC to give human rights concerns greater attention.

Between January 2003 and its next major counterterrorism resolution, the Council continued its practice of adopting a resolution, presidential statement, or press statement responding to major terrorist attacks. Most famously, in its rush to show solidarity with Spain—then serving on the Council—following the March 2004 Madrid train bombings, the Council adopted a resolution that both condemned the terrorist attacks and identified (wrongly, as it turned out) the radical Basque separatist group, Euskadi Ta Askatasuna (ETA), as bearing responsibility.<sup>8</sup> This error has never been corrected, which perhaps illustrates how little importance is now attached to what have become rather routine and merely symbolic gestures of the Council.

With the Madrid attacks still fresh in the minds of Council members, the Council was finally able to resolve the differences among its members on whether to create a larger and more professional expert group to support the CTC and what the structure of such a

group should be. During the first two-and-a-half years of the CTC's mandate it had become clear to many Council and non-Council members that, given the breadth and long-term nature of its mandate, the committee needed a larger, more permanent and professional staff body to support its work. Resolution 1535 not only established such a body, the CTED (with its some 20 experts and a further 20 support staff), but for the first time explicitly authorized the CTC, via the CTED, to conduct site visits to states, with their consent, to discuss the implementation of Resolution 1373. This decision was triggered by the recognition that relying on state written reports alone was limiting the CTC's ability to assess implementation efforts effectively.

With a robust legal framework already in place and a reinforced CTC intended to serve as a hub for the counterterrorism programs at the UN and other intergovernmental bodies, the Council nevertheless decided to continue to expand the framework and create additional institutional mechanisms, each time in reaction to a specific attack or incident. Motivated partly by a heightened sensitivity to nuclear security after the revelations in February 2004 of the nuclear black market run by A.Q. Khan and following the precedent of Resolution 1373, the Council adopted Resolution 1540 in 2004, which requires all states to take a series of legislative and regulatory steps to prevent weapons of mass destruction and their means of delivery from getting into the hands of terrorists. The resolution also established another Council subsidiary body—the 1540 Committee—and assigned it largely the same tasks it had given the CTC in the context of the implementation of 1373.<sup>9</sup>

State reporting to the 1540 Committee has lagged, partly because of reporting fatigue among countries burdened with an ever-increasing number of council counterterrorism-related committees each with its own reporting requirements.<sup>10</sup> During a

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Al-Qaida/Taliban Sanctions regime, which is a core part of the Council's counterterrorism program. Because this issue has been and continues to be ably addressed by policy and research centers such as Brown University's Watson Institute for International Studies (see, e.g., *Strengthening Targeted Sanctions through Fair and Clear Procedures*, March 2006. Available at [http://watsoninstitute.org/pub/Strengthening\\_Targeted\\_Sanctions.pdf](http://watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf) [accessed 20 August 2007]), and in the interest of avoiding duplication and overlap, this report does not address ways to improve these procedures.

<sup>6</sup> "Ministerial-Level Security Council Meeting Calls for Urgent Action to Prevent, Suppress all Support for Terrorism: Declaration in Resolution 1456 (2003) Adopted Unanimously Highlights Counterterrorism Committee's Role in Implementation," 20 January 2003. Available at [www.un.org/News/Press/docs/2003/sc7638.doc.htm](http://www.un.org/News/Press/docs/2003/sc7638.doc.htm) (accessed 8 August 2007).

<sup>7</sup> The annex states that "States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law." United Nations Security Council Resolution 1456, UN Doc. S/RES/1456 (2003), 20 January 2003, Annex, para. 6.

<sup>8</sup> For a discussion of this resolution (Resolution 1530) and its implications, see Therese O'Donnell, "Naming and Shaming: The Sorry Tale of Security Council Resolution 1530 (2004)," *European Journal of International Law*, 17 (5) p. 968 (2006).

<sup>9</sup> The Council provided the 1540 Committee with an initial mandate of two years, which it renewed in April 2006 for another two-year period (Resolution 1673).

<sup>10</sup> As of 1 February 2007, the 1540 Committee has received reports from 135 states or slightly more than two-thirds of the UN membership. "Cooperation between the Security Council and International Organizations in the Implementation of Resolutions 1540 (2004) and 1673 (2006)," UN Doc. S/2007/84, 13 February 2007.

debate on 23 February 2007 in the Council on the work of the 1540 Committee, for example, South Africa's permanent representative said the Council "should acknowledge that the 1540 reporting requirements themselves were overly complicated and not suitable for many developing States."<sup>11</sup> In addition, the committee's day-to-day work has been impeded by a lack of agreement among its members on its program of work, how to use the analysis being prepared by the committee's group of experts (for example, whether they can be used by the committee and its group of experts to judge member state implementation), how broadly to share the expert group's analyses, whether the group can use publicly sourced material (as opposed to only information provided by governments) in analyzing a country's implementation efforts, and cumbersome procedures for communicating with states.

The Council's response to the seizure of some 1,200 hostages and the death of hundreds of civilians, including 186 children at a school in Beslan, Russia later in 2004 was emblematic of its broader efforts to address the terrorist threat. The desire to satisfy short-term political objectives of one or more Council members overcame the need to develop a more coherent Council counterterrorism program.

The Russian Federation, using the Council's forceful dynamic response to 9/11 as its benchmark, pushed the Council to adopt its strongest condemnation to date of attacks against civilians in Resolution 1566. In fact, only last minute objections by the two Organization of the Islamic Conference (OIC) members on the Council, Algeria and Pakistan, and the Russians' desire to maintain Council unity in its response to terrorism, stood in the way of the Council adopting its own definition of terrorism in this resolution and thus treading on territory most UN members view to be within the sole purview of the General Assembly. Although the resolution, which was not adopted under Chapter VII, contained a number of diverse elements, perhaps most significantly it decided to establish yet another Council subsidiary body (1566 Working Group) to consider a series of issues on which the Council could not agree during the negotiations of 1566: practical measures for dealing with terrorist groups other than Al-

Qaida/Taliban and the prospects for developing an international fund to compensate the victims of terrorism and their families. The differences among Council members surfaced during the meetings of the Working Group, which has rarely convened and, not surprisingly, has been unable to reach consensus on any meaningful recommendations.

The Council's most recent addition to its counterterrorism program was in reaction to the assault on London's mass transit system, yet another major terrorist attack on one of its members—and the third one against a P5 country. Here, the Council adopted another unanimous resolution (Resolution 1624) which calls on states to take action to combat incitement, strengthen their border security, and "enhance dialogue and broaden understanding among civilizations." It was adopted under Chapter VI, largely because the US refused to support a Chapter VII, i.e., legally binding, resolution in an area touching upon sensitive issues under the First Amendment of the US Constitution. The Council assigned the CTC responsibility for monitoring state implementation of its provisions and, as with Resolutions 1373, 1540, and under the Council's Al-Qaida/Taliban sanctions regime, asked states to report in writing to the Council on steps they were taking to implement the provisions of the resolution.

## **Assessing the Council's Efforts: Achievements and Shortcomings**

The above chronological survey of the Council's counterterrorism initiatives since September 2001 is revealing both in terms of the number and breadth of activities. Rather than forming part of a comprehensive strategy to address the global terrorist threat, however, each Council initiative seems to have had an improvisational, *ad hoc* quality. Following each major terrorist attack, often against one of its own members, the Council has reacted with a response that extends well beyond the specific incident at hand, while paying little regard to whether or not it fits into the already existing Council program.<sup>12</sup> In fact, the Council has yet to reflect on its overall effort, where its comparative advantage lies, and whether it in fact

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<sup>11</sup> "Security Council Affirms Determination to Strengthen Cooperation Aimed at Countering Nuclear, Chemical, Biological Weapons Proliferation: Presidential Statement Follows Day-Long Debate On Ways to Enhance Implementation of Resolution 1540 (2004)," SC/8964, 23 February 2007. Available at [www.un.org/News/Press/docs//2007/sc8964.doc.htm](http://www.un.org/News/Press/docs//2007/sc8964.doc.htm) (accessed 17 August 2007).

<sup>12</sup> Given the nature of the Council's role it has often found itself responding in a similar manner to other threats to international peace and security. Yet, it has also shown the ability to modify its response to a particular threat over time, with a view to refining or enhancing the effectiveness of the tools it uses to address such threats. This was prominently seen in the context of the Council's use of "smart sanctions" in order to reduce the humanitarian impact of Council-imposed economic and other sanctions.

belongs at the center of the global counterterrorism campaign where it has sought to establish itself since 2001.

Robust and decisive Council action in the period after 9/11 was needed to help internationalize the response to the now global threat and stimulate other multilateral bodies to become engaged in the fight against terrorism. Six years later, more than seventy such formal and informal bodies are now involved in some form of counterterrorism activity and a wide range of other UN actors are now committed to contributing in this effort. The Council certainly bears some responsibility for this achievement. With this growth in activity, however, it is an appropriate time for the Council to consider what role it should play going forward. In doing so, the Council should first assess both its own contributions over the past six years as well as those of its relevant subsidiary bodies and their expert groups. Having established them to focus on state implementation of generally technical mandates, the Council has allowed these entities to handle the somewhat routine tasks of day-to-day implementation monitoring, and in doing so, provided only broad oversight of their work.

These bodies have succeeded in gathering unprecedented amounts of information from states on their efforts to implement their obligations, making some of that information public through their respective websites, establishing ongoing interactive dialogues with states on counterterrorism, helping to identify and fill some of the capacity gaps, engaging with a wide-range of international, regional, and subregional bodies, and more broadly, highlighting the importance of international cooperation in the global counterterrorism campaign. Yet, the committees and their expert groups have also faced a range of challenges that have limited their effectiveness to one degree or another. This section will address both the accomplishments and the shortcomings of the Council's counterterrorism effort in a number of different areas, with a particular focus on the work of the CTC and its CTED. In doing so, it will identify a number steps, which are also included in the Annex, that could be taken to address some of these shortcomings.

### **Norm-Setting**

Although not traditionally seen as being within its powers, the Council has succeeded in establishing an ambitious counterterrorism legal framework. In doing

so it has both filled normative gaps at the global level and helped put terrorism on the international agenda, where it is likely to remain for the foreseeable future. For this it should be commended. When the Council adopted Resolution 1373, for example, there was no global counterterrorism legal framework in place. Although twelve international conventions and protocols against terrorism had been adopted in various UN fora over a period of nearly forty years, only two countries were parties to all of them. In fact, the Terrorist Financing Convention, then the most recent of these treaties, had only five states party, well below the number required to have entered into force. Given the differences within the General Assembly regarding the scope of the definition of terrorism, which continue to this day, it was not realistic to expect that the more representative body do more than condemn the attacks of 9/11, which it in fact did.

In addition to imposing a series of legal obligations on all countries, Resolution 1373 called for all states to become party to all of the international conventions and protocols against terrorism, which today number sixteen. Since the adoption of this resolution, the Council, including through the CTC, has continued to highlight the importance of getting all states to join these instruments. Partly as a result of this political pressure from the Council, the number of states party to these treaties has dramatically increased since September 2001. For example, on 9/11 only Botswana and the United Kingdom were parties to the twelve international instruments related to terrorism that were then in force. Today, more than eighty countries are parties to all of these same instruments.<sup>13</sup>

Yet, already being perceived by many as under-representative and in need of expansion, the Council's use of its Chapter VII authority to impose obligations on all UN member states and thus circumvent the traditional international lawmaking process, which is still based on the consent of states, has proven to be controversial. Many countries, particularly but not exclusively from the global South, have questioned the Council's authority to impose general, legal obligations as it did with both 1373 and 1540. Many believe that this general norm-setting role belongs to the more representative General Assembly and that having the Council, a fifteen-member body unaccountable to the other UN organs, use this tool threatens to disrupt the balance of power between the Council and

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<sup>13</sup> *Short ratification status*, 31 July 2007, prepared by UNODC's Terrorism Prevention Branch (copy on file with the authors).

General Assembly as set forth in the UN Charter. Excluded from the decision-making process, and from participation in the monitoring mechanisms created by the Council, many states have not felt any real ownership of the counterterrorism commitments imposed by the Council and the counterterrorism initiatives launched under its authority. This, in turn, has led to difficulties in getting states to take the steps necessary to implement the Council's normative framework.

### **Monitoring Implementation**

Perhaps one of the Council's most significant contributions to international efforts to combat terrorism has been its creation of a number of intergovernmental mechanisms to monitor state implementation of the global counterterrorism legal framework. The expert bodies established to support the work of these mechanisms have sought to provide the Council with the tools to assess each country's implementation efforts, and in the process, identify capacity gaps and priorities which could then be referred to bilateral and multilateral donors. The importance of this development is underscored by the fact that none of the international conventions and protocols related to terrorism included a treaty monitoring mechanism to keep track of and promote ratification and implementation efforts. Thus the Council mechanisms, in particular the CTC, which made universal participation in these instruments a key talking point in all of its interactions with states, has filled this important function.

The CTC, the 1540 Committee, and the Al-Qaida/Taliban Sanctions Committee have had some success in fulfilling their monitoring functions, keeping close track of the efforts of many states to implement the different counterterrorism mandates imposed by the Council. For example, the CTC has been conducting what amounts to the first worldwide audit of counterterrorism capacities largely as the result of the some 700 written reports states submitted to it on their efforts to implement Resolution 1373 since the fall of 2001. Although it is difficult to determine what direct role the CTC has played, many states have taken concrete steps to revise existing or adopt new laws and enhance their compliance with UN counterterrorism mandates.

With the limitations of relying exclusively on

written reports as an assessment tool apparent two years into the CTC's mandate, a consensus emerged within the CTC that it should focus more on verifying "ground-truth" through on-the-ground assessments. Thus, the Council explicitly authorized the CTC, through its CTED, to conduct site visits to consenting states "to engage in detailed discussions on the implementation of Resolution 1373."<sup>14</sup> These visits, which include representatives from relevant international, and occasionally regional, organizations, have provided the CTC with much needed additional data, beyond the paper reporting process.

As of July 2007, the CTED has visited eighteen countries, affording important interaction with relevant officials. It appears, however, that the visits have been weighed down by an overly formal and rigid process for preparing and conducting them, which has also impeded effective and timely follow-up. As a result, the returns on the visits do not seem to match the CTED's heavy investment of time and resources in planning and conducting them.<sup>15</sup>

Going forward, rather than the one-size fits all approach (see Recommendation 10) the CTED would benefit from having a range of types of visits to choose from depending on the situation of the particular country. Options could include more targeted visits that focus on a narrower set of issues than under the current arrangement, which seeks to cover the entirety of 1373 and relevant parts of Resolution 1624, or short visits by one or two CTED experts to a group of countries in a region that share priorities or needs in a particular aspect of the resolution(s).

In considering whether and how to expand the CTC/CTED visit options, the Council should look at the approach the Al-Qaida/Taliban Sanctions Committee Monitoring Team has taken in this area. Unencumbered by CTC-style procedures for preparing and conducting visits to states, the Monitoring Team has been able to make targeted, short visits to states to discuss implementation of the sanctions regime. In 2006, the team visited twenty-four countries, often for a day or two each. Unlike the CTED site visits, which the CTC pushes to ensure appropriate geographic balance and are thus not always able to focus on where the CTED might add the most value, the Monitoring Team trips have focused on states which face a high level of threat,

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<sup>14</sup> United Nations Security Council Resolution 1535, UN Doc. S/RES/1535 (2004), 26 March 2004, preambular para. 10.

<sup>15</sup> By the end of 2006, the CTED had conducted fifteen country visits but could point to only two countries that had received assistance as a result of those visits. "Report of the Counterterrorism Committee to the Security Council for its Consideration as Part of its Comprehensive Review of the Counterterrorism Committee Executive Directorate," UN Doc. S/2006/989, 18 December 2006.



have particular knowledge of the threat, or are deemed vulnerable to the threat.<sup>16</sup>

To further enhance the CTC/CTED's monitoring function, in March 2006 the CTC approved the CTED's use of a new analytical tool, the "preliminary implementation assessment" (PIA), to assess each state's implementation efforts. This new tool was designed to give the CTC a more accurate picture of the situation in, and specific needs of, particular countries. It is intended to replace the seemingly never-ending paper-driven exercise that has characterized much of the CTC's work since it was established in 2001. Instead of reports and letter writing, the PIA will be a living document to be shared with the relevant state in order to give it a sense of where it stands vis-à-vis the implementation of Resolution 1373 (and now Resolution 1624) in its entirety. The PIA also allows the CTED to work more directly with states to identify their technical assistance needs and to facilitate delivery in cooperation with donors. According to the CTED, this tool is now being used to help identify technical assistance priorities for more than 100 states and to refer requests to both bilateral and multilateral assistance providers. The PIA concept borrows from the 1540 Committee's development and use of a common matrix, which identifies the different steps states should take to fully implement the provisions of Resolution 1540 and what additional steps still need to be taken.

The consensus-based decision-making procedures of the CTC have, however, at times significantly slowed down its work and have so far limited the impact of the PIAs. For example, it took the CTC nearly six months to agree on the short cover letter that would be sent to each state to seek their comments on the CTED's analysis and priorities and their agreement to share that information with potential assistance providers. The delay was due to the inability of the committee to reach consensus among its fifteen members on the text of the letter. The disagreements, as has often been the case in Council counterterrorism-related committees, were between members of the P5 and the Group of 77 (G77) elected members on the Council (E10). The latter, still

questioning the legitimacy of Resolution 1373 and the CTC, want the CTC to show greater deference in its interaction with states than do some of the P5, which are eager to see the CTC move more quickly and aggressively.<sup>17</sup>

Given that 1) most of the PIAs are still being considered by the CTC's three sub-committees, and 2) none of them have been sent either to the states concerned or to potential assistance providers, it is too early to tell how effective a tool they will be in helping the CTC improve its ability to monitor state implementation efforts. It will be interesting to see whether states feel any less burdened by the PIA process than they were by the traditional reporting process.

The underlying reasons for the delays in obtaining the necessary CTC approval for sharing the PIAs with both the relevant state and potential assistance providers, however, may resurface whenever there is an effort by some committee members to try to expand the use of the PIAs. Further, the quality of the analysis in the PIAs and the consistency among them tends to vary depending on which of the three CTED geographical clusters prepared them.<sup>18</sup> There is currently no internal CTED technical guide to the preparation of these important assessments to ensure that experts use a standard approach to assess each state's implementation efforts. These shortcomings, if not corrected, will become more obvious once the PIAs are shared outside of the CTC and could damage the reliability of the PIAs in the eyes of both states and multilateral bodies alike. Changing the CTED organizational structure to help ensure more horizontal coordination on different substantive aspects of Resolution 1373 and consistency among the clusters (Recommendation 18); requesting the CTED to produce the above-mentioned technical guide as an internal CTED document (Recommendation 20); and ensuring that the CTED has all of the necessary expertise to perform its work effectively (Recommendation 18) should be among the Council's priorities when it considers the renewal of the CTED's mandate later this year.

<sup>16</sup> "Assessment Prepared by the Analytical, Support and Sanctions Monitoring Team pursuant to Annex I (m) to Resolution 1617 (2005)," 27 October 2006, para. 45.

<sup>17</sup> The delay in reaching agreement on the CTC's program of work for the first half of 2007, which was not adopted until May 2007, offers another example of how the consensus decision-making impedes the CTC's work. "CTC and CTED Programme of Work: January to June 2007," UN Doc. S/2007254, 4 May 2007.

<sup>18</sup> In January 2004, the Chair of the CTC identified the lack of consistency in the work of the committee's then expert group (the predecessor to the CTED) and asserted that "CTC should implement a system that corrects this problem while taking into account a tailored approach." "Report of the Chair of the Counterterrorism Committee on the Problems Encountered, Both by States and by the Committee in the Implementation of Resolution 1373 (2001)," UN Doc. S/2004/70, 24 January 2004, para. V.A.2. The establishment of the CTED was supposed to have corrected this problem.

### **Enforcement: Assessing Compliance**

Despite being charged with monitoring a series of obligations that are binding on all UN member states, the Council's counterterrorism-related committees have had difficulty using the information gathered to move towards assessing compliance or even developing common standards to help measure state implementation performance. None of the committees has ever referred a single state to the Council for non-compliance. This partly stems from the general reluctance of UN members to single out one of their colleagues, particularly where Chapter VII is involved, and the consensus-based practice under which these committees operate. On a number of occasions, one or two committee members, including the one from the region in which a targeted country is located, have successfully blocked any efforts to exert meaningful pressure on a particular country. In practice, the consensus approach has significantly weakened the political and legal power of the various Security Council resolutions on terrorism adopted—and the counterterrorism-related subsidiary bodies created—under Chapter VII. This tends to be exacerbated by the fundamental political problem that these committees, particularly those established by the generic Resolutions 1373 and 1540, continue to face as a result of the Council's use of its questionable “legislative” authority and the lack of ownership that the wider UN membership continues to have in these processes.

### **Capacity-Building: Technical Assistance Facilitation**

Given these difficulties, despite having developed a robust, binding counterterrorism framework and monitoring process, these mechanisms (including the one sanctions committee among them, the Al-Qaida/Taliban Sanctions Committee) have focused nearly all of their attention on the more positive (and less coercive) instruments in their tool kits, e.g., building state capacity, engaging with both states and multilateral bodies, and promoting the development and dissemination of best practices to assist states with the implementation of the various resolutions.

Shortly after the adoption of Resolution 1373, for example, the Council recognized the difficulties that

the majority of states would have meeting its complex set of obligations and that it was necessary to help states augment their counterterrorism capacities. With the adoption of Resolution 1377 in November 2001, the CTC sought to become a central player in encouraging potential donor states and organizations to become more active in the field of counterterrorism technical assistance and in helping match the needs of states with available assistance. This labor intensive activity requires not only rigorous analysis and prioritization of each country's needs, but regular and proactive engagement with both the recipient and donor communities. With the help of only a small group of expert consultants during the first few years of its mandate, the CTC was able to make limited progress in this important aspect of its mandate. In fact, a major motivation behind the Council's decision to “revitalize” the CTC through the creation of the CTED in 2004—which provided the CTC with a more permanent, professional staff body of some 20 professionals—was the recognition that the CTC needed to “strengthen the facilitation of technical assistance to States as one of [its] priorities.”<sup>19</sup>

The establishment of the CTED and the expanded tool kit, which includes the PIAs and site visits, have improved the CTC's information gathering and analytical capabilities. In addition, the CTED has prepared a lengthy directory of international best practices, standards, and codes aimed at helping states maximize their efforts to implement Resolution 1373.<sup>20</sup> Although essentially a compilation of links to websites of other organizations, the directory does provide states with one-stop shopping for guidance.

While the CTED has shown marked improvement in helping the CTC fulfill its technical assistance facilitation mandate, much work remains to be done. This was underscored by the CTC's comprehensive review of CTED at the end of 2006, which listed technical assistance facilitation as one of the two areas in which the CTED had not made sufficient progress.<sup>21</sup> Since the report was issued, the CTED has taken strides in the right direction, although it is premature to determine their overall impact. For example, the CTED states in its first semi-annual report of 2007 that it has fully updated its directory of assistance offered by donor states and organizations

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<sup>19</sup> “Report of the Counterterrorism Committee on its Revitalization,” UN Doc. S/2004/124, 19 February 2004, para. III.7.C.

<sup>20</sup> *Security Council Resolution 1373, Directory of International Best Practices, Codes and Standards*. Available at [www.un.org/council/ctc/best\\_prac.html](http://www.un.org/council/ctc/best_prac.html) (accessed 9 August 2007).

<sup>21</sup> The outgoing CTC chair expressed disappointment with the CTED's lack of measurable results and said that the CTED could do much better. “The measuring stick for evaluating the effectiveness has been the degree to which member states implement the resolution,” she said. Quoted in “February 2007 Review of Counterterrorism Executive Directorate,” *Security Council Report*. Available at [www.securitycouncilreport.org](http://www.securitycouncilreport.org).

and integrated that directory into its technical assistance matrix in order to provide a centralized and comprehensive indication of states' assistance needs, on the one hand, and information about available assistance programs on the other. In addition, it has now identified a total of 410 technical assistance areas and referred forty-one states to potential technical assistance providers.<sup>22</sup> Two indications of how much these efforts within the CTED will contribute to global counterterrorism capacity-building activities, however, are the extent to which 1) states and organizations can access and rely on the matrix, and 2) technical assistance providers can rely on the CTED's analyses and list of priorities.

The CTC's 2006 comprehensive review of the CTED highlights many of the shortcomings in its technical assistance facilitation efforts. It fails to mention, however, how difficult a task it is for an organization to succeed in showing concrete progress in "facilitating" the delivery of technical assistance when it is provided neither a mandate nor resources to actually provide assistance. With a broad range of bilateral and multilateral donors already active, each often having a clear sense of where it wants to target its limited counterterrorism assistance, the space for a facilitator to operate may not be that great. To the extent that space exists, while the CTED can conduct its own analysis of the capacity gaps, it must rely on donors both to share updated and accurate information on their capacity-building programs and seek its help in linking a state in need with available assistance. Donors in turn need to be able to rely on the CTED's analysis of gaps and priorities. Success therefore lies largely outside the CTED's hands. Finally, lacking a mandate to provide technical assistance, the CTED needs to find other incentives to offer potential assistance recipients in return for their cooperation. At present, states are being asked to invest considerable time and resources to cooperate with the CTED without receiving anything tangible in return. To address this recurring complaint, as provided in Recommendation 13, the CTC/CTED should not only recommit to improving donor coordination, but

convene meetings in relevant regions and subregions with potential donors, and consider establishing a trust fund that would allow donors to provide money for capacity-building that could be maintained as a bilateral contribution to individual or shared projects that will better enable recipient states to address needs related to the implementation of Resolution 1373. In addition, as indicated in Recommendation 17, the CTED should consider more carefully where to focus its attention, seeking to identify regions, subregions, and countries that are currently not the focus of ongoing donor activities. The chances of the CTED adding value are likely greater when it enters a playing field that is not already crowded with bilateral and multilateral technical assistance programs and donor activities.

### **Engaging with States, the UN System and Other Stakeholders**

Among the core tasks of each of the Council's counterterrorism-related committees has been to engage with UN member states, other parts of the UN system, and other stakeholders, both in New York and out in the field, with a view to raising awareness of the various Council counterterrorism initiatives and promoting the importance of international cooperation and coordination in the global counterterrorism campaign.

Each committee has sought to develop a separate dialogue with each state on its efforts to implement the relevant Council-imposed obligations. Resolution 1373, for example, tied the establishment and functions of the CTC to a paper-laden process of collecting and analyzing data contained in progress reports submitted by states on their implementation efforts. Recognizing the limits of such a process, the avenues for dialogue have gradually been expanded over time, by encouraging more direct contacts between CTED experts and member state diplomats in New York and experts in capitals, allowing CTED site visits to states upon their consent, and approving the PIAs (and thus moving away from the

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org/site/c.glKWLeMTIsG/b.2461281/k.1E4/February\_2007brReview\_of\_the\_CounterTerrorism\_Executive\_Directorate.htm (accessed 8 August 2007). Requests for assistance remained unanswered and she felt that the CTED had not provided the CTC with the support that it needed to achieve these objectives. The CTC wanted the CTED to provide more rigorous analysis of States' efforts to implement Resolution 1373 and to highlight particular areas of concern. The CTED's inability to provide focused analysis has been one of its major shortcomings. The CTC also wanted the CTED to provide recommendations on the development of standards for measuring 1373 implementation, something the CTED had promised to provide the CTC by the end of 2006. The CTC also expressed dissatisfaction with the CTED's efforts to reach out to international, regional, and subregional bodies and the fact that it could report only two instances where technical assistance had been delivered to a country in need as a result of CTED facilitation. Further, the CTC made a number of recommendations aimed at improving the effectiveness of the CTED site-visits to member states, which did not appear to have produced the results expected when the CTED was given the mandate to conduct them in 2004.

<sup>22</sup> "Semi-Annual Report on the Work of the Counterterrorism Committee Executive Directorate (CTED) 1 January to 30 June 2007," (copy on file with the authors).

report/letter writing process). More recently, the CTED has helped organize workshops or informal forums for small groups of member states. For example, in July it brought together in New York assistance providers, donors, and West African states to facilitate cooperation among different donors active in West Africa, which allowed more direct interaction between the relevant donor and recipient communities. In addition, in cooperation with the 1540 Committee expert group, the Monitoring Team, and UNODC's Terrorism Prevention Branch, the CTED has plans to organize workshops involving groups of states that are late in submitting their reports to the CTC and the other committees in the fall of 2007.<sup>23</sup>

The CTED's interactions with states and its work under the CTC, along with the work of the CTC itself, continue to be seen as largely a New York, diplomatic exercise. It has had difficulty building the sustained relationships with experts (and other officials) in capitals that would allow it to promote awareness of states' obligations under Resolution 1373, gain a better understanding of the political realities on the ground, and permit more effective and timely follow-up to the site visits. Part of the reason for this is the CTC's tendency to micro-manage the CTED, requiring it to produce implementation plans for the CTC before taking steps to implement CTC directives. Thus, often burdened with having to produce written reports to satisfy the CTC, the CTED experts have had less time to devote to cultivating relationships with government (and other) experts outside of New York. In addition to reducing the frequency of CTC meetings (Recommendation 6) and the number of reports requested of the CTED (Recommendation 15), consideration should be given to relocating a number of the CTED experts to different regions around the globe (Recommendation 11). Having a field presence of its own could allow the CTED to take a more hands-on approach in its work with states, improve its follow-up and enable it to establish itself as a field-based organization able to interact more effectively not only with national experts, but with representatives from UN country and regional teams, relevant regional and subregional organizations, and, where appropriate, civil society.

This would allow the CTED to take regional and local cultural and political perspectives more fully into account and to be seen as less imposing, which could help build relationships and strengthen ongoing dialogues with states and other stakeholders locally, rather than from a distance in New York. Further, this would allow the CTED to work more directly with local stakeholders to create or strengthen counterterrorism mechanisms or centers of regional and subregional organizations, as called for in the UN Strategy.

Moreover, the CTC and its CTED should borrow some of the best practices of the Council's other counterterrorism-related committees, which have utilized different and more effective methods for engaging with states outside of New York. For example, both the UN Office for Disarmament Affairs (formerly the Department for Disarmament Affairs) and member states have organized a series of regional meetings aimed at raising awareness of Resolution 1540, the 1540 Committee, and the steps countries should take to implement their obligations under the resolution. These meetings have provided good opportunities for representatives of the committee and/or its expert group to conduct informal exchanges with national experts in attendance.<sup>24</sup> Further, the Monitoring Team has organized several meetings of heads of security and intelligence services in different regions, including the Middle East and North Africa, the horn of Africa, and the Trans-Sahel. Such meetings have not only provided useful fora for raising awareness of the UN sanctions, they have also offered an opportunity for intelligence officials from different countries within regions, some of which suffer from a lack of cooperation, to build trust and share information regarding the Al-Qaida threat. What both of these examples have in common is that they have taken place outside of New York and involved officials from capitals (i.e., the ones actually responsible for drafting or implementing the laws or taking other action necessary to implement the Council's counterterrorism framework) (Recommendation 10).<sup>25</sup>

In addition to identifying more opportunities for the CTED to engage directly with experts and other

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<sup>23</sup> "Semi-Annual Report on the Work of the Counterterrorism Committee Executive Directorate (CTED) 1 January to 30 June 2007," (copy on file with the authors), p.4.

<sup>24</sup> "Talking Points for the Joint Briefing by the Security Council Committees Established pursuant to Resolutions 1267 (1999), 1373 (2001) and 1540 (2004) to the Security Council," presented by Ambassador Peter Burian, the Chairman of the Committee established pursuant to UN Security Council Resolution 1540, 22 May 2007. Available at <http://disarmament2.un.org/Committee1540/doc/statement.chair.SC.22may07.doc> (accessed 18 August 2007).

<sup>25</sup> "Assessment prepared by the Analytical Support and Sanctions Monitoring Team pursuant to annex I (m) to resolution 1617 (2005)," 27 October 2006.



officials in capitals, as stated in Recommendation 7, more emphasis needs to be placed on making the work of the CTC and its CTED more transparent and accessible to the UN community, experts in national capitals, multilateral bodies, academic and research communities, and civil society. While the CTC should be commended for improvements made to its website and for the adoption of a communications strategy, more effort is needed to increase the transparency of the CTC and its CTED. Since its early days, the CTC has insisted that its work will be guided by the principles of “cooperation, transparency and evenhandedness.” In practice, however, non-Council members are prohibited from attending CTC meetings and thus lack a clear sense of what is on the CTC’s agenda at a given time. Given the glacial pace at which the committee often moves and its tendency to get bogged down in seemingly endless debates about the wording of a sentence in a CTC document (rather than substance), it is not clear that more transparent committee proceedings, via the adoption of regular press releases for instance, would actually be in the CTC’s interest at this stage.

Further, too few of the CTC/CTED’s documents and analyses are made available to non-Council members. Even if only via a password-protected website, potential donors, in particular, need to be provided with greater access to CTED country assessments in order to deepen CTED engagement with them (Recommendation 7a).

Both the CTC Chair and the CTED Executive Director should make outreach, both in and outside of New York, a higher priority (Recommendation 7b). More engagement with civil society organizations and the private sector is needed, not only to raise awareness of the work of the CTC/CTED, but to engage them more directly in identifying ways in which they might be able to contribute to the implementation of Resolution 1373. For example, input from these outside experts could be solicited as part of CTED site visits to states (Recommendation 7f and g).

### **Coordination and Cooperation with International, Regional, and Subregional Bodies**

Among the main tasks assigned to the CTC early on was to reach out to international, regional, and

subregional bodies to encourage them to become more involved in the global counterterrorism campaign—for example, by developing counterterrorism action plans, best practices, capacity-building programs, units within their secretariats, and urging their members to join the international terrorism-related treaties and to implement Resolution 1373.

The CTED has succeeded in establishing contacts with a wide range of intergovernmental bodies, which have been “selected for their ability to use their geographic, political, technical and financial leverage in support of states’ implementation of [Resolution 1373].”<sup>26</sup> The CTED’s first semi-annual report of 2007 highlights the different ways in which the CTED has engaged with these bodies, which include enhancing information sharing, discussing the development and promotion of best practices, facilitating the provision of technical assistance, and coordinating the substantive preparation and conduct of site visits to states. It also highlights the contributions those bodies, in turn, have made to the CTED’s work by participating in—or otherwise providing useful input to—the site visits.<sup>27</sup>

The CTED has engaged successfully with some organizations. Much of this, however, has been with functional bodies such as the World Customs Organization, Interpol, or the Financial Action Task Force, or regional bodies in Europe, such as the European Union, the Council of Europe, or the Organization for Security Cooperation in Europe, i.e., bodies with capacity within their secretariats and donors among their members. It has had more difficulty, however, having sustained interaction with regional and subregional bodies where capacity is often lacking both at the institutional level and among their members, and thus where the need for more active CTED involvement is greatest. For example, it has not had any significant interaction with either the Association of Southeast Asian Nations (ASEAN) or the ASEAN Regional Forum, which has impeded the CTED’s ability to engage effectively with states in Southeast Asia.

The CTED is also deepening its involvement with subregional bodies in Africa, as shown by its July 2007 New York workshop for ECOWAS states in which the ECOWAS secretariat participated and the upcoming Southern African Development

<sup>26</sup> “Report of the Counterterrorism Committee to the Security Council for Its Consideration as part of Its Comprehensive Review of the Counterterrorism Executive Directorate, Annex I: Semi-Annual Comprehensive Report on the Work of the Counterterrorism Committee Executive Directorate for the Period 1 January to 30 June 2006,” 18 December 2006, UN Doc. S/2006/989, p.25.

<sup>27</sup> “Semi-Annual Report on the Work of the Counterterrorism Committee Executive Directorate (CTED) 1 January to 30 June 2007,” (copy on file with the authors), pp. 9–10.

Community (SADC) workshop for states late in submitting reports to the CTC and the other Council counterterrorism-related committees.

While these meetings are important, the CTED needs to ensure they are part of a long-term, sustainable strategy for engaging not only with the individual bodies, but with the region as a whole and other relevant parts of the UN system active in the region (Recommendation 11). Transforming the CTED into a field-based body with a small staff in New York to engage with the CTC, as suggested above, would certainly help as it would allow the CTED experts to engage more easily and regularly with the often under-resourced bodies in Africa and Southeast Asia, where Resolution 1373 implementation needs are often the greatest.

In addition to engaging with individual multilateral bodies, the CTC was given the mandate from the Council (via Resolution 1377) to enhance the coordination and cooperation among these different entities. It has so far convened four international meetings of representatives from more than sixty international, regional, and subregional bodies. Three of the four meetings were convened prior to the establishment of the CTED, with the CTED in existence to organize only the fourth meeting, held in Kazakhstan in January 2005. Although intended as opportunities to promote informal dialogue and the exchange of best practices among representatives from the different entities, each meeting which sought to address nearly all aspects of Resolution 1373 seemed to lack focus and amounted to largely a series of the same oft-heard formal speeches on the work being carried out by each organization in realm of Resolution 1373. Each of the meetings concluded with the adoption of an ambitious declaration outlining the areas in which the CTC and other organizations would seek to enhance cooperation and enumerating the Resolution 1373-related activities that the different bodies would perform.<sup>28</sup>

Seeking to correct some of the shortcomings from the first four meetings, the CTC decided to limit the focus of its fifth meeting, which will be held in Nairobi in October 2007, to the “prevention of terrorist movement and effective border security.” The CTED has worked closely with the relevant functional organizations (ICAO, Interpol, IMO, UNHCR, and WCO) in planning the meeting. The

agenda is now structured to facilitate discussions on a series of practical issues where improved cooperation is essential, produce concrete, action-oriented recommendations, and minimize the amount of time devoted to the reading of prepared, official remarks. It remains to be seen, however, whether a formal gathering of representatives from nearly eighty intergovernmental bodies can produce the sort of dialogue, informal exchange of views, and pragmatic results that its organizers desire, or whether smaller scale approaches that are issue and region-focused, as well as part of a comprehensive strategy to addressing the implementation of the broader UN counterterrorism framework, might be more effective.<sup>29</sup>

One of the impediments to more effective CTC/CTED engagement with these intergovernmental bodies is the fact that both the Al-Qaida/Taliban Sanctions Committee and 1540 Committee, with the support of their respective expert groups, have established their own separate contacts with many of these same institutions. Thus, rather than having one Council interlocutor, which would help ensure the delivery of a consistent message, with many of these bodies there are three. This redundancy puts an increased burden on the organizations, many of which have only one person in their secretariats following all security-related issues and thus may lack the capacity to engage with one, let alone three, Council counterterrorism-related committees in any meaningful way. Representatives from some organizations may also confuse distinctions among the different mandates, given their somewhat overlapping nature, and ask themselves why they need to have three different Council counterterrorism-related points of contact.

### **Coherence of the Council's Effort**

Having each of the Council's counterterrorism-related committees engage in outreach activities with many of the same set of often under-resourced organizations is an example of the overlapping mandates and duplication of effort that is both symptomatic of the overall Council response and an impediment to its effectiveness. The Council continues to view the work of its three committees through three separate lenses, despite the fact that the same countries (and often the same individuals) sit on all of these bodies. The prolif-

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<sup>28</sup> See, e.g., “Joint Statement of the Fourth Special Meeting of the Counterterrorism Committee with International, Regional and Subregional Organizations Held in Almaty, Kazakhstan, January 2006,” UN Doc. S/2005/84, 11 February 2005; “Vienna Declaration: Follow-Up Meeting to the United Nations Counterterrorism Committee (CTC) Special Meeting of 6 March 2003,” UN Doc. S/2004/276, 1 April 2004.

<sup>29</sup> For further details regarding this meeting see the CTC's website: [www.un.org/sc/ctc/](http://www.un.org/sc/ctc/) (accessed 8 August 2007).

eration of Council counterterrorism programs and initiatives has produced overlapping mandates, turf battles between and among committees and expert groups, duplication of work, and multiple and sometimes confusing reporting requirements for states. In general, information sharing and other forms of cooperation between and among these groups have been inadequate and often redundant, which has inhibited the overall Council effort. The Council itself has recognized these shortcomings since 2004 and has repeatedly called for improvements in numerous resolutions and presidential statements, but has yet to take the steps needed to improve the situation.<sup>30</sup>

The Secretary-General's March 2006 Report, "Mandating and Delivering: Analysis and Recommendations to Facilitate the Review of Mandates," provides a succinct overview of some of the limitations of the Council's counterterrorism effort as currently structured. It finds the Council-led effort to be too diffuse, lacking sufficient coordination to be effective.<sup>31</sup> Many UN members appear to share this assessment. The report offers a number of possible ways to improve the situation, which include streamlining or consolidating the disparate parts of the Council's program into a more unified and coherent structure. The recommendations in this report were not acted upon, however, in part because they were presented to the General Assembly in the context of a General Assembly mandate-review discussion, when Council action would be required for implementation.

During the Council's discussions of the possible renewal of CTED, however, it is appropriate to consider ways in which to create a more coherent Council effort, including those suggested in the report of the Secretary-General (Recommendation 9). In doing so, the Council should keep in mind that while there are considerable overlaps in functions and mandates among its various counterterrorism-related mechanisms, there are some differences that should be respected. This can be done, however, even in the context of a consolidation of the committees and/or groups of experts as suggested in the recommendations.

## Human Rights

One of the hallmarks of the Security Council's response to terrorism since September 2001 has been the initial reluctance and still cautious approach to integrating human rights considerations and the work being done by relevant human rights actors in the UN system into the work of the Council's Al-Qaida/Taliban Sanctions Committee and the CTC.

The Al-Qaida/Taliban sanctions regime and other international regimes that impose sanctions on individuals have attracted significant attention from governments and non-governmental organizations concerned about the human rights implications of these regimes.<sup>32</sup> As the UN High Commissioner for Human Rights has recently stated, "while the system of targeted sanctions represents an important improvement over the former system of comprehensive sanctions, it nonetheless continues to pose a number of serious human rights concerns related to the lack of transparency and due process in listing and delisting procedures."<sup>33</sup>

Calls have been coming from all corners, including from world leaders at the 2005 World Summit, to enhance the due process rights of those individuals and entities seeking to have their names removed from the Council's Al-Qaida/Taliban Committee's Consolidated List. In response to these concerns, the committee established new de-listing procedures in December 2006, which include a request to the Secretary-General to establish a "focal point" to receive de-listing requests, and, where appropriate, to forward them to the Committee. While the creation of a "focal point" is a positive step, it still leaves the ultimate decision for de-listing squarely in the hands of the Committee, and is thus unlikely to silence those countries and human rights organizations that have advocated for the creation of an independent panel of experts to consider de-listing requests. Many critics believe that only an independent panel would ensure the right to effective review and remedy by a competent and independent mechanism. The Council's response is unlikely to be the end of the story on this issue as the various

<sup>30</sup> See, e.g., United Nations Security Council 1735, UN Doc. S/RES/1735, 22 December 2006; Security Council Presidential Statement, UN Doc. S/PRST/2006/56, 20 December 2006; Security Council Resolution 1617, UN Doc. S/RES/1617, 29 July 2005; Security Council Resolution 1566, UN Doc. S/RES/1566, 8 October 2005; Security Council Presidential Statement, UN Doc. S/PRST/2005/3, 18 January 2005; Security Council Resolution 1535, UN Doc. S/RES/1535, 26 March 2004.

<sup>31</sup> "Mandating and Delivering: Analysis and Recommendations to Facilitate the Review of Mandates," UN Doc. A/60/733, Report of the Secretary-General of the United Nations, 30 March 2006, paras. 122-123.

<sup>32</sup> See, e.g., "Strengthening Targeted Sanctions through Fair and Clear Procedures," Watson Institute for International Studies, Brown University, March 2006. Available at [watsoninstitute.org/pub/Strengthening\\_Targeted\\_Sanctions.pdf](http://watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf) (accessed 8 August 2007).

<sup>33</sup> Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism, "Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled 'Human Rights Council,'" UN Doc. A/HRC/4/88, 9 March 2007.

ongoing challenges to the individual listings, and the procedures themselves, continue to work their way through national and regional courts. The outcome of these challenges is likely to influence the Council's further treatment of these issues.<sup>34</sup>

There is a considerable body of literature highlighting the absence of any mention in Resolution 1373 of the obligation of states to respect human rights in the design and implementation of their counterterrorism measures, and the resulting lack of attention paid to rights issues by the CTC as it monitors states' implementation efforts.<sup>35</sup> Human Rights Watch produced a report in 2004 that highlighted the CTC's failure to take up human rights-related issues when responding to state reports from Egypt, Uzbekistan, Malaysia, Morocco, and Sweden, each of which described actions with human rights implications.<sup>36</sup> The CTC has reacted to pressure from its European and Latin American members, the UN human rights bodies, the High Commissioner for Human Rights, and the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism (Special Rapporteur) to increase its human rights focus. Yet the CTC has proceeded rather cautiously, leaving a lingering impression that it has not been sufficiently responsive to its critics.<sup>37</sup> This caution is mainly due to the views of some of the P5, which have voiced concern about diluting its security focus.<sup>38</sup>

In its early days, the CTC's position was that while it does take human rights seriously and has engaged in a dialogue with the OHCHR, the task of monitoring adherence to human rights obligations in the fight against terrorism falls outside of the CTC's mandate. Rather, it was argued that monitoring should be left

to human rights bodies and institutions. By early 2003, as a result of the language included in the annex to Resolution 1456, the CTC included a paragraph in all of its letters to states providing that they "must ensure that any measure taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee, and humanitarian law."<sup>39</sup> Some two years later, in March 2005, the CTC's position once again changed. It agreed to allow its newly expanded staff body, the CTED, to hire the first ever human rights expert to advise the CTC, but limited his activities to liaising with the UN human rights bodies and non-governmental organizations. By the end of May 2006, with the CTC having adopted its first, albeit anodyne, "conclusions for policy guidance regarding human rights and the CTC,"<sup>40</sup> the single expert was actually allowed to provide advice to the CTC on human rights issues. Although ambiguous, the policy guidance represented a broad consensus and by virtue of its mere adoption, the CTC finally conferred its stamp of approval on more sustained cooperation on human rights.<sup>41</sup>

As a result of this incremental movement by the CTC, communication between the CTC and OHCHR has intensified, and on two occasions, in October 2005 and 2006, the CTC was briefed on practical issues by the Special Rapporteur. CTED experts are now including human rights issues in their preliminary assessments of states' efforts to implement Resolution 1373 based on the findings of the UN human rights mechanisms and are raising human rights concerns on visits to those states that have agreed to discuss them. However, OHCHR is still not included on the CTED's directory of technical assistance providers, and any exchange of information

<sup>34</sup> See "Strengthening Targeted Sanctions," March 2006. For an overview of ongoing litigation in this area see, e.g., "Sixth Report of the Analytical Support and Sanctions Monitoring Team Appointed pursuant to Security Council Resolutions 1526 (2004) and 1617 (2005) Concerning Al-Qaida and the Taliban and Associated Individuals and Entities," UN Doc. S/2007/132, 8 March 2007, pp.38-40.

<sup>35</sup> See, e.g., Jessica Almqvist, *Rethinking Security and Human Rights in the Struggle against Terrorism*, paper presented at the European Society of International Law Forum in the workshop "Human Rights Under Threat," 27 May 2005. Available at [www.esil-sedi.org/english/pdf/Almqvist09-05.PDF#search=%22human%20rights%20and%20terrorism%20CTC%22](http://www.esil-sedi.org/english/pdf/Almqvist09-05.PDF#search=%22human%20rights%20and%20terrorism%20CTC%22) (accessed 19 February 2007); "Hear No Evil, See No Evil: The U.N. Security Council's Approach to Human Rights Violations in the Global Counterterrorism Effort," *Human Rights Watch Briefing Paper*, 10 April 2004. Available at [www.hrw.org/English/docs/2004/08/04/global9185](http://www.hrw.org/English/docs/2004/08/04/global9185) (accessed 25 May 2007).

<sup>36</sup> "Hear No Evil, See No Evil," *Human Rights Watch Briefing Paper*, 10 August 2004.

<sup>37</sup> One reason human rights advocates have sought to have the CTC become actively involved in monitoring the implementation of human rights obligations in the fight against terrorism is that, unlike the human rights bodies within the UN system, the CTC has the force of a legally binding Chapter VII Security Council resolution behind it. Thus, states might have greater incentives to cooperate with the CTC than with the human rights bodies. See: CTC Briefing by Sir Nigel Rodley, Vice-Chairperson, UN Human Rights Committee, *Human Rights and Counterterrorism Measures*, 19 June 2003, (copy on file with the authors).

<sup>38</sup> Rosemary Foot, "The United Nations, Counterterrorism and Human Rights: Institutional Adaptation and Embedded Ideas," *Human Rights Quarterly*, vol. 29 (2007): 489-514.

<sup>39</sup> See statement by Mexico's Ambassador to the UN, Adolfo Aguillar Zinser, Security Council, 58th Sess., 4792nd Mtg. (23 July 2003), UN Doc. S/PV.4792, p. 14.

<sup>40</sup> United Nations Security Council Counterterrorism Committee, "Conclusions for Policy Guidance regarding Human Rights and the CTC," S/AC.40/2006, 25 May 2006. Available at [www.un.org/sc/ctc/pg25may06.html](http://www.un.org/sc/ctc/pg25may06.html) (accessed 3 May 2007).

<sup>41</sup> For a fuller discussion of the evolution of the CTC's handling of human rights issues see, EJ Flynn, "The Security Council's Counterterrorism Committee and Human Rights," *Human Rights Law Review*, (Spring, 2007): 371-384.



between the CTED and the UN human rights mechanisms is still done on an ad hoc basis. Further, the CTED's visits to states, which include representatives from various UN agencies and regional bodies, have yet to include a representative of a human rights body or even the CTED's senior human rights adviser.<sup>42</sup> Finally, human rights continues to be noticeably absent from the CTED's directory of best practices for implementing relevant provisions of Resolution 1373. While there have been some tangible gains since the early days of the CTC, much more could be done to integrate the CTC/CTED's activities with the human rights work being done within the UN system. Activities in this area remain largely invisible to the public and thus the perception remains that the CTC has no mandate to monitor the compliance of counterterrorism measures with human rights norms when those measures are implemented by states pursuant to Resolution 1373.

With the adoption of the General Assembly's Global Counterterrorism Strategy, which underlies the mutually reinforcing relationship between the promotion and protection of human rights and effective counterterrorism measures, and prioritizes respect for human rights and the rule of law as essential to all its aspects, it will be difficult for the CTC and its CTED to maintain its cautious approach that has yet to fully integrate the human rights perspective into its work. Leading up to the review of the CTED's mandate, the Council is likely to hear calls for the CTED to place greater emphasis on human rights in its monitoring of the implementation of Resolutions 1373 and 1624. Recommendation 12 offers a number of concrete ways in which this could be achieved. A good place to start, however, might be in the context of Resolution 1624 implementation. While dealing primarily with the issue of incitement to terrorism, this Council pronouncement also stresses states' obligation to comply with their other obligations under international law, in particular international human rights law, refugee law, and humanitarian law. It also calls on the CTC and its CTED to "spread best legal practice" in areas related to the resolution. This might provide room for the CTED to expand its human rights role. For example, the CTED could work with the Special Rapporteur and the OHCHR

in developing best practices in the field of national measures to address and prevent incitement, consistent with the freedom of expression.

## **Impact of the General Assembly's Global Counterterrorism Strategy**

As the Council considers both the future of the CTED and how to strengthen its overall counterterrorism program, it will need to pay particular attention to the relationship between the Council and its various counterterrorism initiatives and the UN Strategy, which was adopted by consensus by the General Assembly in September 2006. The UN Strategy sets forth a holistic, inclusive approach to counterterrorism, which includes not just security-related and other preventative measures that have been the Council's focus since September 2001, but also gives priority to addressing underlying conditions conducive to the spread of terrorism and to ensuring respect for human rights and the rule of law. While it may not add anything not already contained in various Council resolutions (including Resolution 1373, the universal counterterrorism conventions, and other international instruments), the UN Strategy pulls those commitments together into a single, coherent and universally adopted framework.

For many of those UN members who have felt excluded from what they have perceived to be a Council-led UN counterterrorism effort that lacks the legitimacy and the inclusiveness to be effective, the adoption of the UN Strategy represents the reemergence of the General Assembly as a key player in the overall UN effort. The UN Strategy is also a response to the growing dissatisfaction within the UN with the narrow Council-led approach that leaves conditions conducive to the spread of terrorism unaddressed.<sup>43</sup>

In addition to calling for a more holistic response to the threat, the UN Strategy emphasizes the need to improve the coordination and coherence of the UN system on counterterrorism. It thus reflects the growing concerns about the lack of effective coordination and cooperation within the UN on counterterrorism, which was also reflected in the 2005 World Summit Outcome Document,<sup>44</sup> and is epitomized by

<sup>42</sup> Although the senior human rights advisor did participate in one visit, it was not in his capacity as a human rights expert, but rather as a generic counterterrorism expert.

<sup>43</sup> According to the UN Strategy "conditions conducive to the spread of terrorism" include "poverty, prolonged unresolved conflicts, dehumanization of victims of terrorism, lack of rule of law and violation of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance." United Nations General Assembly Resolution 60/288, A/RES/60/288, 8 September 2006, Section I.

<sup>44</sup> 2005 World Summit Outcome Document, United Nations General Assembly Resolution 60/1, UN Doc. A/60/1, 15 September 2005, paras. 82, 88.

the fragmented Council program. The UN Strategy's main contribution in this area focuses on the UN Counterterrorism Implementation Task Force (CTITF), which brings together twenty-four entities across the UN system working together under mandates from the General Assembly, Security Council, and various specialized agencies, funds and programs. Although the UN Strategy did not provide the CTITF with any financial or human resources, the CTITF has nevertheless managed to launch some important initiatives, including the creation of the online UN Counterterrorism Handbook, which includes information on UN Strategy-related activities of the various CTITF members and the establishment of a series of thematic working groups comprised of relevant task force members.<sup>45</sup>

Rather than reacting defensively to the UN Strategy as merely an attempt by the G77 to seize control of the UN's counterterrorism agenda and undercut the Council's authority, the Council should welcome its adoption. It not only reflects legitimate concerns about the existing Council program, but can and should be used as a vehicle for strengthening it. By (explicitly or implicitly) incorporating the Security Council counterterrorism framework, the UN Strategy can help broaden the political constituency for the Council effort and help to narrow the divide between the Council—which has dominated the UN counterterrorism program since September 2001—and the General Assembly, and perhaps more fundamentally, help to reconcile the security agenda of the global North with the development priorities of the global South.

As stated in Recommendation 3, the Council should direct all of its counterterrorism-related subsidiary bodies, while continuing to work within their existing mandates, to situate their work and dialogue with states in the context of the more widely accepted UN Strategy. The CTC and its CTED, for example, could help overcome the resentment of some states stemming from the Council's controversial use of its "legislative" authority and the growing view among the wider UN membership that a body more representative than the CTC should be facilitating capacity-building assistance. By placing its dialogue with states in the context of the UN Strategy, the CTC/CTED might find a more receptive audience. It may also have greater success in deepening its relationships with other elements of the UN system, including

UNDP, UNESCO, and other UN agencies and programs that focus on some of the conditions conducive to the spread of terrorism highlighted in the UN Strategy, but that are currently reluctant to work more closely with the CTC/CTED for fear that their work might become unduly politicized as a result of closer ties to a Council body operating under Chapter VII of the UN Charter.

The Council should also encourage the active participation of its counterterrorism-related expert groups in the CTITF and its different working groups (Recommendation 4). With the participation of the IMF, ICAO, IMO, UNODC and other technical assistance providers within the UN family, the task force provides the CTED with an opportunity to intensify the exchange of information between these bodies and thus enhance its technical assistance facilitation function. For the CTED to maximize the benefits of participating in the CTITF, however, it will need to be given wider latitude from the CTC to share its assessments and analyses of capacity gaps and needs with the other members of the task force.

Finally, as part of its effort to promote both UN Strategy implementation and a more cooperative relationship with the General Assembly on counterterrorism-related issues, the Council should contribute to the General Assembly's formal UN Strategy review, which is scheduled for the fall of 2008 (Recommendation 2). This contribution, which could be in the form of a report or a presidential statement, should indicate the ways in which the Council and its relevant subsidiary bodies are contributing to the implementation of the global instrument.

A number of provisions in the UN Strategy explicitly refer to CTC/CTED, with respect to terrorist travel-related obligations; the strengthening of its dialogue with member states and relevant international, regional, and subregional organizations on capacity-building issues; facilitating the implementation of the universal instruments against terrorism; and providing cooperation and/or facilitating technical assistance aimed at creating or strengthening counterterrorism mechanisms or centers of regional and subregional organizations. The Council's contribution to the 2008 review of the UN Strategy could include not only a progress report on the CTC/CTED's efforts to implement these elements of UN Strategy, but those related to the implementation of the other Council counterterrorism-related

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<sup>45</sup> For more information on the work of the CTITF see [www.un.org/terrorism/cttaskforce.html](http://www.un.org/terrorism/cttaskforce.html) (accessed 9 August 2007).

mandates as well. In addition, it could indicate what steps the Council has taken to improve the cooperation between and coherence of its various counterterrorism-related mechanisms as part of its effort to promote a more coordinated UN effort as emphasized in the UN Strategy.

## **The Way Forward**

The implementation of the various recommendations contained in the Annex to this report will go a long way toward addressing some of the shortcomings of the Council, the CTC, and CTED and allow for more effective engagement with member states, other parts of the UN system, international, regional and subregional bodies, and other stakeholders. Some of them could be adopted by the CTED without CTC approval, others would require CTC consideration and approval, and still others would require Council approval via a resolution or a presidential statement. To the extent that there would be budgetary implications, General Assembly Fifth Committee approval might also be necessary.

Two key themes running through many of them are the need for greater transparency in the work of the CTC and its CTED and more effective outreach to all of the relevant stakeholders to broaden the sense of ownership beyond the P5. An important signal of the Council's willingness to buy into this more transparent and inclusive approach will be whether it is willing to hold an open, public meeting in the fall of 2007 to provide all interested UN member states with an opportunity to comment on the work of the CTED and its future, as recommended in this report (Recommendation 5). This will allow the Council to hear the views from the broader membership regarding its interactions with CTED and ways in which to enhance CTED's effectiveness going forward.

A third theme is the need to give the CTED experts, many of whom appear to be of high quality, more opportunities to engage directly with experts in national capitals, multilateral bodies, and other stakeholders outside of New York. This will first require reducing the amount of time they devote to preparing reports and implementation plans for the committee to consider. More generally, however, it will also require a more mature relationship between the CTC and its CTED. The CTC will need to move away from micromanaging the CTED, as it has for much of the CTED's current mandate, and towards providing broader policy oversight, meeting less often,

and allowing the CTED experts to get on with their technical work without continued committee interference (Recommendation 15). It may prove difficult, however, to achieve consensus within the committee on this approach. So long as the CTED is being overseen by the CTC and ultimately the Council, and the concerns about the latter's legitimacy in this area exist, some of the E10 (particularly from the G77) may want to maintain tight reins on CTED.

Although the implementation of all of these recommendations will have a positive impact on the work of the CTED and the overall Council effort, it may not be able to help the CTC/CTED overcome perhaps the most significant impediments to becoming an effective mechanism over the long-term: the perceived illegitimacy and under-representativeness of the Council. There is a growing sense in the wider UN membership and beyond that it is no longer appropriate for a Council body operating under Chapter VII of the UN Charter to be at the center of global counterterrorism capacity-building activities trying to act as a "social worker" rather than the "police officer" that everyone expects from the Council.

With this in mind the Council should begin to consider where its comparative advantage lies in the global fight against terrorism six years after the adoption of Resolution 1373 and the establishment of the CTC. While these involve longer-term issues that reach beyond the Council's narrow consideration of the CTED's future, they nevertheless deserve attention, particularly with the formal review of the UN Strategy scheduled for the fall of 2008.

This report has highlighted both the Council's significant contributions to the global counterterrorism campaign as well as a number of ways in which it could improve upon its effort going forward. The contributions have primarily been in the areas of norm-setting, institution building, keeping terrorism on the political agenda, and engaging in dialogues with and stimulating the activities of states and multilateral bodies. It is not clear, however, that the Council's comparative advantage lies in all of these areas today, nor that it will in the future.

In 2007, the Council still has an indispensable political role to play in keeping international terrorism on the world's agenda. In addition, it should remain the final arbiter of non-compliance within the normative counterterrorism framework it has established. Further, there may be times when a decisive and quick norm-setting response will be needed to address a normative gap. The Council

should tread cautiously in this area, however, given the continuing concerns regarding its use of its “legislative” authority. Continued Council involvement in this area would be made more palatable if the expert bodies involved in overseeing implementation of the current and new Council-imposed norms eventually became an integral part of the UN Secretariat. There might be lessons to be learned from the Council’s oversight of peacekeeping operations, where the day-to-day responsibilities of implementing the Council’s mandates fall within the Department of Peacekeeping Operations, which reports periodically to the Council, which in turn offers broad policy guidance.

In general, the Council is ill-suited to oversee the more routine, day-to-day tasks of monitoring implementation, technical assistance facilitation, and engagement with states, multilateral bodies, and other stakeholders. It lacks the legitimacy, technical expertise, and the attention span to sustain the momentum of a long-term capacity-building program and the multitude of tasks that are involved.

The significant rise in the number of multilateral

bodies involved in counterterrorism-related work since the passage of Resolution 1373, the adoption of the UN Strategy, the emergence of the CTITF (although under-funded and not currently designed or structured to act as a major operational player), and the difficulties the Council’s counterterrorism-related committees and expert groups have had carrying out their mandates—particularly as they relate to capacity-building—argue in favor of shifting the capacity-building work away from the Council to a more representative part of the UN that can more effectively oversee the technical aspects of this work, possibly even through the creation of a new, appropriately designed, UN counterterrorism body.

As Recommendation 1 indicates, in reflecting upon its overall counterterrorism contributions and where its comparative advantage lies in the global counterterrorism campaign in 2007, the Council should ensure that its ongoing programs and any future initiatives in this area are aimed at addressing the current manifestation of the threat, which by all accounts, continues to evolve.



## Recommendations

### Identify the Council's Comparative Advantage in the Global Terrorism Campaign

1. The Security Council should reflect upon the contributions it has made to global counterterrorism efforts in the past and ensure that its current initiatives are aimed at addressing the current and future manifestations of the threat. In doing so, it could consider, *inter alia*, the following questions:
  - a. Where does the Council's comparative advantage in the global fight against international terrorism lie six years after the attacks of 11 September 2001, e.g., norm-setting, facilitating technical assistance, maintaining political attention, information sharing, monitoring implementation of norms, liaising with international, regional and subregional bodies, monitoring/enforcing compliance?
  - b. Given the dramatic rise in the number of multilateral bodies involved in counterterrorism-related work since September 2001, should the Council reorient its focus to those substantive areas, e.g., mass transit and border security, not currently addressed by other bodies?
  - c. How to sustain the high-level interest of the Council's permanent members to prevent a drifting of focus and a slowing of momentum that might impede the effectiveness of the overall Council counterterrorism effort?
  - d. Does the current set of obligations imposed by the Council on member states reflect the current and potential terrorist threat or is it in need of updating?
  - e. Should the Council remain at the center of multilateral counterterrorism efforts or should there be a redistribution of the counterterrorism work within the UN system and other multilateral bodies?
  - f. Should the Council provide more proactive direction on the work of its counterterrorism-related committees and regularly take stock and reorient or clarify their priorities?
  - g. How can the Council increase the sense of ownership of the wider UN membership in the Council's counterterrorism program, which would enhance its legitimacy and effectiveness?

### Promote and Clarify the Council's Relationship to the General Assembly Global Counterterrorism Strategy

2. The Security Council should contribute to the General Assembly's formal review of its Global Counterterrorism Strategy, which is scheduled for the fall of 2008. This contribution, which could be in the form of a Presidential Statement or a report, should indicate the ways in which the Council and its relevant subsidiary bodies are contributing to the implementation of the Strategy.
3. The Council's counterterrorism-related committees, working within their existing mandates, should situate their work and dialogue with member states in the context of the more widely accepted Strategy (as opposed to the more controversial Security Council resolutions), as part of their efforts to intensify their interactions with member states.
4. The Council's counterterrorism-related committees should encourage their expert bodies to actively participate in all relevant UN Counterterrorism Implementation Task Force Working Groups.

### Communicate with the Broader UN Community and Other Stakeholders

5. The Security Council should hold an open, public meeting in the fall of 2007 to provide all interested UN member states with an opportunity to comment on the work of the CTED and its future. This will allow the Council to hear the views of the broader membership regarding its interactions with the CTED and ways in which to enhance the CTED's effectiveness going forward.
6. The CTC/CTED procedures and practices should be reconsidered in a number of different areas as many appear to impede the ability of these bodies to achieve concrete results and to communicate effectively with the broader UN membership and other stakeholders. In addition to reducing the frequency of CTC meetings, as envisioned in Resolution 1535 (as well as the number of written reports requested from the CTED), new procedures/practices could be considered for, *inter alia*, the following:

- a. preparation and conduct of site visits;
  - b. consideration of the Preliminary Implementation Assessments;
  - c. sharing CTC/CTED documents outside of the CTC in order to increase awareness and relevance of the CTC/CTED's work; and
  - d. the work of the sub-committees, which should focus on specific actions to be taken towards states more than on the factual and analytical work being done by CTED. The latter could be addressed informally or via written procedures.
7. The CTC/CTED should place greater emphasis on making its work transparent and accessible to the wider UN community, as well as to experts in national capitals, multilateral bodies, academic and research communities, and civil society organizations:
  - a. The CTC/CTED could make more of its documents and analyses publicly available, particularly via its website.
  - b. The CTC Chair and the CTED Executive Directorate could conduct more outreach activities both in and outside of New York, involving a broad range of stakeholders.
  - c. The CTC could invite the wider UN membership to attend or participate in its meetings on certain topics that may be particularly relevant for all member states.
  - d. The CTC/CTED could encourage the Permanent Representatives from states that have been visited to speak with other Permanent Representatives in New York, particularly from the same region, regarding the benefits of a CTC/CTED visit.
  - e. The CTC/CTED could organize a briefing involving some of its satisfied customers to help explain to the broader UN community what the CTC/CTED can offer and how states stand to benefit from it.
  - f. Subcommittees could be used as a forum for enhancing the transparency of the CTC/CTED's work by engaging directly with the state concerned as well as with outside experts, including those from the private sector and civil society.
  - g. Input from outside experts, including those from the private sector and civil society, could be solicited as part of assessments and site visits.

### **Improve the Working Methods of the Council's Counterterrorism-Related Bodies**

8. The Security Council should take steps to help ensure that the important work of the various Council counterterrorism-related committees does not become unduly bogged down on procedural matters or find themselves in protracted discussions of limited substance because of an inability to reach consensus among the fifteen members of a particular committee. Such steps could include the following:
  - a. considering whether and under what circumstances to permit voting, disassociation or other procedures such as "consensus minus one" or "consensus minus two" when full consensus cannot be achieved;
  - b. establishing a mechanism whereby the chairman of the relevant committee can refer stalled matters to the Council for its consideration and resolution.

### **Enhance Council Coherence: Improve the Coordination and Cooperation Among the Council's Counterterrorism-Related Committees and Expert Groups**

9. The Security Council should take steps to improve the coordination and cooperation among its counterterrorism related committees and expert groups. A range of options should be considered. These include the following:
  - a. monthly meetings of the chairs of the different committees, chaired by the President of the Security Council and reported to the Council;
  - b. quarterly informal Council consultations on the work of the Council counterterrorism-related committees;
  - c. the establishment of a single expert body to service all of its counterterrorism-related subsidiary bodies. Such an entity could include units with expertise in the mandates of the different subsidiary bodies and could be located within the UN Secretariat, with a view to greater system-wide coherence in this field. Such a body could also be based in Vienna which would enhance the synergies with the UNODC.

### Adopt a More Flexible, Tailored Approach to (CTC/CTED) Engagement with Member States

10. The Council should expand the CTC/CTED tool kit to allow it to adopt a more flexible, tailored and nuanced approach to its interactions with member states. For example, it should consider the following:
  - a. convening regional and subregional meetings involving government experts focusing on specific elements of Resolution 1373 to develop and deepen the CTED expert network and allow experts in the region to interact/exchange best practices on Resolution 1373 implementation (in order to be effective, these regional/subregional meetings need to be part of a broader CTC/CTED strategy to deepen its engagement with local stakeholders and increase the sense of local ownership);
  - b. conducting more targeted visits that focus on a narrower set of issues than under the current arrangement, which seeks to cover the entirety of 1373 (this could include short visits by one or two CTED experts to a group of countries in a region or subregion that share priorities or needs in a particular aspect of 1373);
  - c. sending the CTC Chair or CTED Executive Directorate to visit a particular country or set of countries in a region to convey to relevant local stakeholders, including the executive and/or legislative branches of government and/or relevant civil society groups, the importance of implementing Resolution 1373 and 1624, as well as the broader UN counterterrorism framework; and
  - d. relying on the analysis of specialized agencies or bodies, where appropriate, to avoid duplication of work, and ensuring that CTC/CTED visits do not address the same set of issues that have already been addressed by these agencies and bodies (e.g., in the field of terrorist financing).
11. The Council should authorize the establishment of CTED field presences in different regions, which would allow it to collect information, and engage more directly with capitals, regional organizations, and other stakeholders. This would enable more effective long-term, sustainable strategies for engaging not only each region as a whole, but other relevant parts of the UN system and other multilateral bodies active in the region. In addition, it would allow the CTC/CTED to move beyond the New York-based, largely paper-driven effort that has generally characterized its work to date.

### Promote a Human Rights-Based Approach to Counterterrorism

12. The CTC/CTED needs to place greater emphasis on human rights in monitoring the implementation of Resolution 1373 and 1624 by member states by making it part of its site visits. This could involve, *inter alia*, the following:
  - a. building on the country or thematic-specific analysis being carried out by the UN human rights mechanisms, including the Special Rapporteur;
  - b. exchanging relevant information with the UN human rights mechanisms on a regular basis;
  - c. convening workshops on thematic issues related to Resolutions 1373 and 1624, such as non-refoulement, addressing incitement and protecting freedom of expression;
  - d. including human rights in the CTED's technical assistance and best practices directories;
  - e. including the CTC/CTED senior human rights advisor and/or OHCHR staff on its site visits;
  - f. placing the human rights issues within the broader, and less politically sensitive, rule of law framework, which underpins the mandate of the CTC/CTED;
  - g. engaging with civil society groups during country visits to improve the CTC/CTED understanding of the local political, social and cultural context in which the relevant member state is implementing Resolutions 1373 and 1624;
  - h. developing, in cooperation with OHCHR, the Special Rapporteur and other relevant UN human rights mechanisms, best practices in areas of practical relevance to counterterrorism practitioners; this might include a set of guidelines on investigation and prosecution;
  - i. authorizing the CTED senior human rights adviser to participate in the CTITF Working Group on human rights and counterterrorism.

### **Enhance the CTC/CTED's Technical Assistance Facilitation Function**

13. The CTC/CTED needs to deepen its engagement with both donor states and states in need of assistance. This could include the following:
  - a. providing donors with greater access to CTC/CTED trip reports and other assessments of member state capacities and priorities;
  - b. sitting down with major donors in the field both before and after visits;
  - c. organizing quarterly meetings in New York for donor states and organizations to share information on what each is doing with respect to certain countries or thematic areas identified in advance by CTC/CTED and to identify what follow-up is needed and which donor(s) should be involved;
  - d. participating in technical assistance delivery missions led by technical assistance providers to improve its understanding of local capacity needs and the delivery process;
  - e. establishing a CTC/CTED trust fund, which would allow interested donors to make project-based contributions to support the CTED technical assistance facilitation efforts, allowing among other things, the CTED to design and implement concrete projects in close cooperation with the relevant donors and recipients;
  - f. deepening cooperation with UNDP, which would require building support within the UN membership for getting UNDP resident coordinators to serve as focal points for UN counterterrorism and technical assistance issues.
14. The CTC/CTED should include among its experts individuals who have experience working on technical assistance issues. This could include experts from national development ministries or the broader development community and/or experts with experience engaging with donors.
15. The CTC should resist the tendency to micromanage the CTED. For example, they should no longer require the CTED to produce implementation plans for the CTC before taking steps to implement CTC directives, thus allowing the CTED more flexibility when dealing with technical assistance issues.
16. The Council's counterterrorism-related bodies should adopt a unified approach to engaging with under-resourced countries, offering them a single point of contact and channel for facilitating the delivery of technical assistance with respect to all relevant Council resolutions.
17. The CTC/CTED should consider more carefully where to focus its attention, seeking to identify regions, subregions, and countries that are currently not the focus of ongoing donor activities. The chances of the CTC/CTED adding value are likely greater when it enters a playing field that is not already crowded with bilateral and multilateral technical assistance programs and donor activities.

### **Enhance Coordination and Coherence within CTED**

18. The CTED organizational structure should be changed to help ensure more horizontal coordination and consistency among the geographical clusters. This could include the following:
  - a. the establishment of a functional cluster, which would be responsible for reviewing the work being done by geographic clusters to ensure consistency and coherence;
  - b. making use of the above-mentioned trust fund to hire consultants with expertise in certain functional areas currently lacking.
19. There should be more regular vertical and horizontal flow of information within CTED to ensure, *inter alia*, that experts in one cluster are aware of developments in others, and that experts are more informed about relevant CTED management-level discussions and decisions.
20. The CTED should prepare a technical guide, which could include information on the CTED's approach to assessing implementation of the different provisions of Resolutions 1373 and 1624, and would help ensure that the different experts are adopting a more consistent approach in their analytical work.



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