

THE UNITED NATIONS IN THE FIGHT AGAINST TERRORISM

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I. INTRODUCTION

International efforts to eliminate terrorism started years before the United Nations was established. Terrorism was of concern to the international community as early as 1937, when the League of Nations prepared a draft convention for the prevention and punishment of terrorism. The draft convention defined terrorism as:

“All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.”¹

Although this convention never came into existence and the definition ignores acts against civilians, rather than against the State *per se*, it did serve as a point of reference for later discussion of terrorism when the United Nations and regional intergovernmental organizations dealt with the issue from a legal and political perspective.

II. THE GENERAL ASSEMBLY

Despite many years of debate, the General Assembly has thus far been unable to agree on a definition of terrorism. But lack of agreement on a definition does not mean that the international community has made no progress in combating the problem.

The United Nations and other international organizations have managed to formulate ad hoc conventions dealing with specific forms of terrorism. Since 1963, the international community has elaborated 13 legal instruments related to the prevention and suppression of international terrorism². The most recent, the International Convention for the Suppression of Acts of Nuclear Terrorism, was opened for signature on 14 September 2005.

Over the years, levels of awareness of the phenomenon of terrorism has depended on the experience of the international community as a whole at any given time. Following the attack on Lod airport, near Tel Aviv, and the kidnapping and killing of 11 Israeli athletes during the Olympic Games at Munich in 1972, the issue of terrorism became the epicenter of attention and contention in the General Assembly when, by note dated 8 September 1972, then Secretary-General Kurt Waldheim requested the General Assembly to include in the agenda of its twenty-seventh session an additional item of an important and urgent character, entitled “Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives or jeopardize fundamental freedoms”³.

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The views expressed in this paper are not necessarily those of the United Nations Counter-Terrorism Committee.

¹ 19 League of Nations O. J. 23 (1938) (never entered into force).

² These are:

- The Convention on Offences and Certain Other Acts Committed On Board Aircraft (1963);
- The Convention for the Suppression of the Unlawful Seizure of Aircraft (1970);
- The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
- The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973);
- The Convention against the Taking of Hostages (1979);
- The Convention on the Physical Protection of Nuclear Material (1980);
- The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988);
- The Protocol for the Suppression of Unlawful acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988);
- The Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988);
- The Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991);
- The International Convention for the Suppression of Terrorist Bombings (1997);
- The Convention for the Suppression of Terrorist Financing (1999); and
- The International Convention for the Suppression of Acts of Nuclear Terrorism (2005).

³ See document A/8791 of 8 September 1972.

The General Assembly, as is logical given its membership and decision-making norms, accurately mirrors the global view of terrorism over the past three decades. Three different periods may be distinguished: the first, from 1972 to 1991, is characterized by the terms used in resolutions of the period: proposals of "measures to prevent terrorism". From 1972 to 1989, consideration of terrorism as a general problem was assigned primarily to the Sixth Committee of the General Assembly under an agenda item entitled "Measures to prevent international terrorism". At that time, there was a clear disagreement within the membership as to whether terrorism should be prevented through cooperation in suppressing its manifestations or removal of its root causes.

A second period covers the period 1993 to 2001. During this period, the basic considerations were human rights and terrorism and measures to eliminate international terrorism, reflecting broader agreement that the existence of root causes did not justify terrorist acts. Since then, the General Assembly has issued numerous resolutions condemning acts of terrorism and calling on Member States to cooperate with each other in order to prevent and eliminate terrorism.

The events of 2001 did much to change the orientation of the General Assembly's counter-terrorism policy. In the third (and current) period, the concept and terminology are evolving towards discussion of measures to eliminate terrorism. The disappearance of the former bipolar confrontation has had a favorable impact on the Organization and its ability to act. This development is a reminder that it is the standard-setting activity of the General Assembly that has given rise to the international conventions and protocols on terrorism whose implementation the Security Council upholds today as fundamental in the global counter-terrorism effort.

What is widely recognized, however - sometimes with a hint of reproach - is that the United Nations and, more specifically, the General Assembly has thus far been unable to establish a commonly accepted definition of terrorism. Nor has it been capable of concluding a global counter-terrorism convention, of which a definition should be a fundamental part. Indeed, since 1996, the General Assembly has been considering a draft which had its origin in a proposal by India and which, in practice, would be close to finalization were it not for continuing disagreement over this issue. The difficulties are well known: for a significant number of Member States, recourse to terrorism cannot be justified under any reason or circumstance. That position has been reiterated in United Nations documents and in statements by the Secretary-General, the Security Council and the General Assembly, including the Summit Declaration of September 2005.⁴

⁴ The Outcome Document of the World Summit includes the following paragraphs on terrorism:

Terrorism

81. We strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security.
82. We welcome the Secretary-General's identification of elements of a counterterrorism strategy. These elements should be developed by the General Assembly without delay with a view to adopting and implementing a strategy to promote comprehensive, coordinated and consistent responses, at the national, regional and international levels, to counter terrorism, which also takes into account the conditions conducive to the spread of terrorism. In this context, we commend the various initiatives to promote dialogue, tolerance and understanding among civilizations.
83. We stress the need to make every effort to reach an agreement on and conclude a comprehensive convention on international terrorism during the sixtieth session of the General Assembly.
84. We acknowledge that the question of convening a high-level conference under the auspices of the United Nations to formulate an international response to terrorism in all its forms and manifestations could be considered.
85. We recognize that international cooperation to fight terrorism must be conducted in conformity with international law, including the Charter and relevant international conventions and protocols. States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law.
86. We reiterate our call upon States to refrain from organizing, financing, encouraging, providing training for or otherwise supporting terrorist activities and to take appropriate measures to ensure that their territories are not used for such activities.
87. We acknowledge the important role played by the United Nations in combating terrorism and also stress the vital contribution of regional and bilateral cooperation, particularly at the practical level of law enforcement cooperation and technical exchange.
88. We urge the international community, including the United Nations, to assist States in building national and regional capacity to combat terrorism. We invite the Secretary-General to submit proposals to the General Assembly and the Security Council, within their respective mandates, to strengthen the capacity of the United Nations system to assist States in combating terrorism and to enhance the coordination of United Nations activities in this regard.
89. We stress the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief.
90. We encourage the Security Council to consider ways to strengthen its monitoring and enforcement role in counter-terrorism, including by consolidating State reporting requirements, taking into account and respecting the different mandates of its counter-terrorism subsidiary bodies. We are committed to cooperating fully with the three competent subsidiary bodies in the fulfillment of their tasks, recognizing that many States continue to require assistance in implementing relevant Security Council resolutions.
91. We support efforts for the early entry into force of the International Convention for the Suppression of Acts of Nuclear Terrorism and strongly encourage States to consider becoming parties to it expeditiously and acceding without delay to the twelve other international conventions and protocols against terrorism and implementing them.

However, other Member States maintain that in certain circumstances – such as the fight against foreign occupation – the use of violence does not constitute terrorism. That divergence has been further deepened by disagreement on the legal status of the armed forces in conflicts involving non-State actors: should the Geneva Conventions on humanitarian law or international counter-terrorism norms prevail?

Both the report of the High Level Panel on Threats, Challenges and Change and the Secretary-General, in his Madrid address, were very precise in this respect. The High Level Panel concluded as follows:

“158. Since 1945, an ever stronger set of norms and laws - including the Charter of the United Nations, the Geneva Conventions and the Rome Statute for the International Criminal Court - has regulated and constrained States’ decisions to use force and their conduct in war - for example in the requirement to distinguish between combatants and civilians, to use force proportionally and to live up to basic humanitarian principles. Violations of these obligations should continue to be met with widespread condemnation and war crimes should be prosecuted.

“159. The norms governing the use of force by non-State actors have not kept pace with those pertaining to States. This is not so much a legal question as a political one. Legally, virtually all forms of terrorism are prohibited by one of 12 international counter-terrorism conventions, international customary law, the Geneva Conventions or the Rome Statutes. . .

“160. The search for an agreed definition usually stumbles on two issues. The first is the argument that any definition should include States’ use of armed forces against civilians. We believe that the legal and normative framework against State violations is far stronger than in the case of non-State actors and we do not find this objection to be compelling. The second objection is that peoples under foreign occupation have a right to resistance and a definition of terrorism should not override this right. The right to resistance is contested by some. But it is not the central point: the central point is that there is nothing in the fact of occupation that justifies the targeting and killing of civilians.”

Similarly, in his Madrid address, the Secretary-General argued that:

“The report of the High-Level Panel offers us a way to end these arguments. We do not need to argue whether States can be guilty of terrorism, because deliberate use of armed force by States against civilians is already clearly prohibited under international law. As for the right to resist occupation, it must be understood in its true meaning. It cannot include the right to deliberately kill or maim civilians. The Panel calls for a definition of terrorism which would make it clear that any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians and non-combatants, with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from any act. I believe this proposal has clear moral force, and I strongly urge world leaders to unite behind it.”

Indeed, in order to conclude the accelerating effort to develop a global counter-terrorist policy led by the United Nations, it would be helpful to have both the convention and the definition.

At this point, an observation of a general nature should be made. In this field, as in others which receive the attention and concern of the United Nations, the inability to reach agreement is often attributed to the faults and problems of the Organization, as distinct from its Member States. But while the Organization as such is not without its shortcomings, we cannot forget the responsibility of Member States, whose will made possible the existence of the United Nations and today continues to dictate what the Organization, can and cannot do. This is particularly true with respect to the General Assembly’s efforts to agree on the text of the draft comprehensive convention on terrorism.

This observation should not be understood as a criticism of the Member States in general, or of any of them in particular. It is simply a reminder of where the power of the United Nations is vested - in the sovereignty of Member States - and of the way in which the Organization is a mirror of changing, and not always positive, developments in international relations. However, it would be malicious and incorrect to say that the Organization cannot do anything to help States in the fight against terrorism or, still more radically, that nothing can be done in the absence of a definition. These self-serving assertions, however tempting, are belied by reality.

On one hand, the absence of a definition of terrorism has not prevented the General Assembly from preparing the counter-terrorism conventions and protocols which the international community has adopted in the past and which contain descriptions of all the elements associated with the perpetration of terrorist acts. On the other hand, the international community's heightened awareness of terrorism, as reflected in the decisions of the General Assembly, is proof that tolerance of terrorism and its manifestations is minimal if not non-existent. Apart from the terrorists themselves and their sympathizers, it is extremely rare to hear words of praise or justification of terrorist acts. Mention of the "root causes" of terrorism, often a smokescreen for justification, is made today in more discreet and cautious tones and it has become more possible to approach this aspect of the problem – the extent to which political, social or economic circumstances might explain the recourse to terrorist methods or, alternatively, the attempt by terrorists to use these conditions in an attempt to justify their actions – in a reasonable and accurate manner.

Thus, the General Assembly has addressed international terrorism by developing a normative framework that identifies terrorism as a problem common to all Member States and by encouraging concerted governmental action to develop more specific national and international instruments to address it. The solutions proposed, always within the framework of respect for international law and cooperation between States which is the cornerstone of the Charter, have been gradually strengthened to the point that they have become obligatory as the scope and deadliness of terrorism continue to grow. The package of counter-terrorism measures that the United Nations now imposes on its 191 Member States constitutes a strong, solid and reasonable bulwark. Despite initial hesitation and some remaining reticence, United Nations counter-terrorism policies and doctrines are today a critical point of reference when confronting one of the most serious and visible threats to the security of mankind at the dawn of the twenty-first century.

III. THE SECURITY COUNCIL

The Security Council is the United Nations organ that has borne most of the responsibility for addressing the problem of terrorism. And, contrary to widespread belief, it has been doing so since the early 1990s, nearly 10 years before the terrorist attacks of 11 September 2001. In the late 1980s, a number of shocking terrorist acts jolted the conscience of mankind. In December 1988, Pan-Am flight 103 crashed in the Scottish village of Lockerbie when a bomb placed on board the aircraft exploded. The 259 passengers on board and 11 persons on the ground were killed. In September 1989, the French UTA flight 772 crashed in the Niger after a device on board the aircraft exploded; a total of 171 persons died. In both cases, the Libyan Arab Jamahiriya was alleged to have been involved in the attacks. On 26 June 1995, a group of terrorists made an unsuccessful attempt on the life of President Hosni Mubarak of Egypt, who was attending a meeting of the Organization of African Unity in Addis Ababa. Three of the suspects sought refuge in the Sudan, whose Government declined to grant Egypt's request for their extradition.

In January 1992, Security Council resolution 731 (1992) warned the Libyan Arab Jamahiriya of the consequences if it failed to hand over the suspects. In March of that year, resolution 748 (1992), which characterized the Libyan actions as a threat to international peace and security and invoked Chapter VII of the Charter of the United Nations in imposing a broad range of sanctions, was adopted. It was later reinforced by resolutions 883 (1993) and 1192 (1998). As a result of the sanctions imposed by the Security Council, France obtained from Libya partial satisfaction of its demands in 1996 and six Libyan nationals were tried and convicted of participation in the attacks on the UTA plane. The two Libyan citizens suspected of having organized the attacks on the Pan-Am flight were handed over to the Netherlands on 5 January 1999 to be tried by Scottish judges under Scottish law. One defendant, Abdel Basset al-Megrahi, was convicted of murder in 2001 and sentenced to life in a Scottish prison. On 12 September 2003, after the Libyan Arab Jamahiriya formally stated that it accepted responsibility for the actions of its officials and agreed to pay billions of dollars to the victims' families, the Security Council lifted the sanctions imposed on it.

Following the Sudan's refusal to grant extradition of the individuals suspected of carrying out the attacks on the life of President Mubarak, the Security Council imposed economic sanctions and a ban on commercial flights. The sanctions, which had a marked effect on the conduct of the Sudanese authorities, were lifted on 28 September 2001 after the Government decided to expel various individuals suspected of terrorism, including Osama Bin Laden himself.

IV. THE 1267 COMMITTEE

On 7 August 1998, two powerful bombs exploded simultaneously in the American embassies in Kenya and Tanzania. The attacks caused a total of 263 deaths, including 12 Americans, and injured more than 5,000 people. In Security Council resolution 1189 (1998), adopted immediately after the attacks, a vigorous condemnation was accompanied by a demand for Member States' cooperation in the investigation. The perpetrators were gradually identified as followers of Bin Laden and members of the Al Qaida network, which was then based in Afghanistan under the protection of the Taliban Government. The Council imposed a range of economic sanctions on the Government of Afghanistan and demanded that the Taliban cease its support for international terrorism and extradite Bin Laden. The sanctions regime was reinforced in December 2000 and again in 2001. In paragraph 6 of its resolution 1267 (1999) on Al Qaida and the Taliban and related persons and entities, the Security Council established a committee to monitor compliance with the sanctions, known as the Al Qaida and Taliban Sanctions Committee or the 1267 Committee, in order to help the Council verify Member States' compliance with the sanctions regime.

V. THE COUNTER-TERRORISM COMMITTEE

The terrorist attacks of 11 September 2001 in New York, Washington and Pennsylvania caused a shock felt and remembered by all. The United Nations' response to the attacks was prompt and decisive. On 12 September 2001, the Security Council unanimously adopted resolution 1368 (2001), whose main and novel feature lay in its invocation of the right to individual or collective self-defense under the terms of Article 51 of the Charter and which solemnly called upon all Member States to work together "to bring to justice the perpetrators, organizers and sponsors" of terrorists acts and to "redouble their efforts to prevent and suppress" them. This resolution is considered a turning point as it legitimized the use of force to fight terrorism.

A few days later, on 28 September 2001, the Security Council invoked Chapter VII of the Charter and unanimously adopted resolution 1373 (2001), which represented a major qualitative and quantitative advance in the new approach to terrorism that the United Nations was seeking to impose. The resolution, which is binding on all Member States, imposes a wide range of legal, financial, police and cooperation measures. It also requires all Member States to ratify and implement the provisions of the international counter-terrorism instruments. Resolution 1373 (2001) also established the Counter-Terrorism Committee, a subsidiary organ of the Security Council comprising all 15 of its members and charged with monitoring compliance with the resolution. The Committee was instructed to begin its work by requesting all Member States to submit reports on the measures that they had adopted in implementation of the Council's decisions.

In adopting resolution 1373 (2001), the Security Council was entering a virtually new area of the Organization's political and legal life by requiring, inter alia, the criminalization of terrorism and the acts of perpetrators, accomplices and financiers. At the same time, the resolution calls upon States to ratify the international counter-terrorism conventions and incorporate them into domestic law. Resolution 1373 (2001), unlike those referred to previously, does not impose penalties on States which are responsible for acts considered reprehensible by the Council or which collaborate with such States; instead, it represents a decision on the measures that all Member States should adopt in the fight against terrorism.

In the four years of its existence, the Counter-Terrorism Committee has maintained an active, rigorous correspondence with Member States. It is clear that Resolution 1373 (2001) has contributed to the development of an environment in which no one dares any longer to question the obligation of all States to cooperate in the effort to isolate terrorists and terrorism.

VI. THE COUNTER-TERRORISM COMMITTEE EXECUTIVE DIRECTORATE

In the early days of its work, the Committee had only a small number of experts and support personnel. In late 2003, some of its members drew attention to the inadequacy of these resources and to the need to "revitalize" the Committee. A report on this topic (S/2004/124), adopted by the Committee on 19 February 2004, proposed the establishment of a Counter-Terrorism Committee Executive Directorate (CTED), headed by an Executive Director who would be appointed at the level of Assistant Secretary-General and would work under the policy guidance of the Committee. The document was unanimously endorsed by the

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Council in its resolution 1535 (2004) of 26 March 2004.

On 18 May 2004, in compliance with the provisions of resolution 1535 (2004) and with the approval of the Security Council, the Secretary-General appointed an Executive Director who took up his functions on 28 June. Since then, I have focused my activities on what is, in fact, the core and ongoing aspect of his mandate – to propose working frameworks to the Committee, implement its decisions, develop frameworks for cooperation with States and international organizations, undertake the urgent and immediate task of obtaining budgetary approval for the expenditures of the new entity, and proceed with the recruitment of staff. With a staff of carefully chosen experts responsible for assisting the Committee in its work, CTED was declared fully staffed in September 2005 and fully operational in December 2005.

CTED represents a shift into a new phase of the United Nations' efforts to eradicate terrorism; the experts of its primary counter-terrorism body maintain an intensive dialogue with Member States concerning their implementation of resolution 1373 (2001). This dialogue involves, in the first phase, collecting from States written reports on their implementation of the counter-terrorism obligations set forth in the resolution. All Member States are required to submit such reports, which serve as the basis for an active dialogue with the Committee and CTED. A more thorough dialogue occurs in the context of country visits, which are a more focused, practical follow-up with the national authorities responsible for implementing the various provisions of the resolution. The visits are conducted with the consent of the host country and in full cooperation with its authorities. Following each visit, the counter-terrorism experts compile a report based on their on-site observations in order to assist the State in its implementation of the resolution and to identify the State's assistance needs. On that basis, and in full cooperation with the Member State, CTED then works with donor countries and international organizations to facilitate provision of the necessary assistance.

One of CTED's tasks is that of coordination. In order to avoid duplication of effort and to achieve the best results, CTED cooperates and coordinates its work with international and regional organizations and implements some of the best practices and guidelines developed by these organizations in its assessment methodology.

Cooperation is also achieved in the on-site visits; experts from these organizations participate in CTED's visits and share with its experts their views on the best ways to assist Member States in implementing resolution 1373 (2001).

VII. THE 1540 COMMITTEE

Other recent resolutions of the Council also deserve mention. In resolution 1540 (2004) of 28 April 2004, the Council notes with concern the possibility that terrorists might use chemical, biological and nuclear weapons of mass destruction. The text of the resolution, which falls under Chapter VII of the Charter of the United Nations, imposes a detailed set of obligations on Member States in order to ensure that terrorists, here characterized as "non-State agents", do not come into possession of such weapons. The resolution states that the agents to which it refers are those described in resolution 1267 (1999) (on Al Qaida and the Taliban and related persons and entities) and 1373 (2001) (on counter-terrorism) and establishes, for a period of no more than two years, a Committee as a subsidiary organ of the Security Council responsible for monitoring compliance with its requirements.

Thus, through these key resolutions, the Security Council has established three subordinate bodies to deal with terrorism: the 1267 Committee, created in the late 1990s in order to monitor compliance with the sanctions on the Taliban and Al-Qaida and to maintain a list of internationally designated terrorists to be apprehended and brought to justice; the Counter-Terrorism Committee, with its Executive Directorate; and the 1540 Committee, which is responsible for keeping weapons of mass destruction out of the hands of non-State actors.

VIII. SECURITY COUNCIL RESOLUTION 1566 (2004)

Among the measures taken by the Security Council in its development of a global counter-terrorism strategy, mention should be made of the recent adoption of two resolutions.

Resolution 1566 (2004), unanimously adopted on 8 October 2004 under Chapter VII of the Charter of the United Nations, has its origin in a draft presented by the Russian Federation following the terrorist attacks on Beslan, in the Russian republic of North Ossetia, in September 2004. The attack took the lives of some 350 persons, 11 of them members of the Russian security forces, and 172 children who were students at the school in which the terrorists carried out their attack. The resolution is similar to resolution 1373 (2001) but contains the outline of a definition of terrorism and an unambiguous condemnation of terrorism and of any attempt to justify it. Paragraphs 9 and 10 of the resolution establish a working group “to consider and submit recommendations to the Council on practical measures to be imposed on individuals, groups or entities involved in or associated with terrorist activities, other than those designated by the Al-Qaida/Taliban Sanctions Committee. . .” and to consider “the possibility of establishing an international fund to compensate victims of terrorist acts and their families. . .” Thus, this resolution opened new areas in the Organization’s counter-terrorism package.

On 16 December 2005, the working group submitted its report to the Security Council.⁵ Some may find this document disappointing; although the working group made recommendations on the future work of the Security Council in the area of counter-terrorism, there was no agreement to expand the list of individuals, groups and entities involved in or associated with terrorist activities established under the Al-Qaida/Taliban Sanctions Committee. With respect to the compensation of victims, the working group concluded that the best approach, for the time being, was to encourage individual States to determine ways and means to extend assistance to the victims of terrorist acts and that the establishment of a compensation fund for victims of terrorist acts at the international level was still premature.

IX. SECURITY COUNCIL RESOLUTION 1624 (2005)

Initially proposed by the United Kingdom and based on Chapter Six of the Charter of the United Nations, resolution 1624 (2005) was adopted unanimously on 14 September 2005 at the World Summit, soon after the attacks of 7 July and 21 July 2005 on London’s public transport system that killed 56 people and injured some 700.

This resolution condemns “in the strongest terms all acts of terrorism irrespective of their motivation, whenever and by whomsoever committed, as one of the most serious threats to peace and security”. It further calls upon Member States to adopt measures to prohibit by law incitement to commit a terrorist act or acts, to prevent such conduct and to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct. Like resolution 1373 (2001), resolution 1624 (2005) calls on States to report to the Counter-Terrorism Committee as part of their ongoing dialogue on counterterrorism and directs the Committee to continue to help Governments strengthen their capacities.

One of the important elements of this resolution is its establishment of links between incitement to terrorism, attempts to justify or glorify terrorist acts (*apologie*) and furthering of such acts.

X. THE SECRETARY-GENERAL OF THE UNITED NATIONS

The contributions of the Security Council and the General Assembly to United Nations policy on the issue of terrorism have been supported by those of Secretary-General Kofi Annan, who clearly wishes to play an active role in the development of a United Nations stance against terrorism. In October 2001, shortly after the attacks of 11 September and the Security Council’s adoption of resolution 1373 (2001), the Secretary-General decided to establish a Policy Working Group on the United Nations and Terrorism. The Group made 31 recommendations in August 2002 under a “tripartite strategy” that sought to:

- a) Dissuade groups of discontents from adopting terrorism;
- b) Deny groups or individuals the means to carry out terrorist acts; and
- c) Promote broad cooperation in the fight against terrorism.⁶

⁵ See document S/2005/789.

⁶ Identical letters dated 1 August 2002 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council (A/57/273 and S/2002/875, respectively).

These recommendations reflect an institutional sense of the Organization as subtly different from Member States in that it offers an order of priorities which, without altering the fundamental direction imparted by the Security Council and the General Assembly, focuses on different areas. The Policy Working Group considered that the United Nations should concentrate its direct role in counter-terrorism on the areas in which the Organization has a comparative advantage.⁷

Lately, the Policy Working Group's guidelines have been superseded by the recommendations of the High Level Panel on Threats, Challenges and Change, the ideas set forth in the Secretary-General's Madrid speech and the work of the Counter-Terrorism Implementation Task-Force. In its report "A More Secure World: Our Shared Responsibility", the High-level Panel on Threats, Challenges and Change recommended that the United Nations should develop a comprehensive strategy, respectful of human rights, to respond to the threat of terrorism.

The High Level Panel, on behalf of the United Nations, also offered a definition of terrorism that could be adopted by Member States and called for a definition of terrorism which would make it clear that any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians and non-combatants, with the purpose of intimidating a population or compelling a Government or an international Organization to do or abstain from any act.

In his Madrid address on 19 March 2005, the Secretary-General presented a comprehensive, concrete strategy for the United Nations to the participants in the International Summit on Democracy, Terrorism and Security. He began by saying that:

"Terrorism is a threat to all States, to all peoples, which can strike anytime, anywhere. It is a direct attack on the core values the United Nations stands for: the rule of law; the protection of civilians; mutual respect between people of different faiths and cultures; and peaceful resolution of conflicts".

The Secretary-General identified five key elements of a United Nations strategy in the fight against terrorism:

"First, to dissuade disaffected groups from choosing terrorism as a tactic to achieve their goals;
Second, to deny terrorists the means to carry out their attacks;
Third, to deter States from supporting terrorists;
Fourth, to develop State capacity to prevent terrorism; and
Fifth, to defend human rights in the struggle against terrorism".

He announced that all departments and agencies of the United Nations would contribute to the implementation of this strategy and established an Implementation Task Force, under his Office, which will meet regularly to review the handling of terrorism and related issues throughout the United Nations system.

The Secretary-General went on to urge world leaders to unite behind the High Level Panel's definition of terrorism in an instrument which had clear moral force and stressed that:

"It should be clearly stated, by all possible moral and political authorities, that terrorism is unacceptable under any circumstances and in any culture".

XI. COUNTER-TERRORISM AND HUMAN RIGHTS

As indicated by the Secretary-General, one of the main roles of the United Nations in the counter-terrorism effort is to seek to ensure that States respect human rights while countering terrorism. This task is carried out principally by the United Nations human rights bodies based in Geneva, Switzerland, under the coordination of the Office of the High Commissioner for Human Rights (OHCHR). At its sixty-first session in April 2005, the Commission decided to appoint a special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The United Nations human rights

⁷ See the report of the Policy Working Group on the United Nations and Terrorism in annex to document A/57/273/S/2002/875.

treaty bodies and special procedures based in Geneva continue to pay close attention to the issue of human rights and counter-terrorism within their relevant mandates and resources.

In fact, however, all United Nations bodies are called upon to take the human rights dimension into account. The Counter-Terrorism Committee recognizes that it does not, strictly speaking, have a human rights monitoring role under the mandate conferred by resolution 1373 (2001). Nonetheless, the Committee has acknowledged that human rights need to be taken into account in its work and that of CTED. This follows from clear pronouncements by the Security Council; for example, in paragraph 6, of the annex to its resolution 1456 (2003), the Council affirms that “States must ensure that any measures 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.” This position is also expressed in the 2005 World Summit Outcome Document, adopted in New York in September 2005.

Generally speaking, the position of the United Nations is that effective action against terrorism and respect for human rights are not incompatible objectives. The international human rights instruments, as well as some of the regional instruments, contain provisions allowing for limited restrictions on some rights in exceptional situations of “public emergency which threatens the life of the nation” (see, for example, article 4 of the International Covenant on Civil and Political Rights). The threat of international terrorism may, under certain circumstances, meet this threshold although all actions taken in such situations must be strictly necessary and proportionate to the intended aim. At the same time, certain rights, such as the right to life and to freedom from torture and cruel, inhuman or degrading treatment or punishment, are never subject to suspension or restriction. The Executive Directorate has on its staff a human rights officer whose primary responsibility is to advise the Executive Director on all aspects of international human rights, humanitarian and refugee law that are relevant to the Committee’s mandate.

The basic principle guiding the United Nations in this area is that the struggle against terrorism is not served by compromising human rights; on the contrary, respect for human rights is not only compatible with a successful counter-terrorism strategy; it is an essential element of it.⁸

It might be pointed out that although the General Assembly continues to debate the question of whether terrorism itself violates human rights, there is broad agreement that terrorism has a grave impact on individuals’ ability to enjoy their human rights. Indeed, the United Nations system is paying increasing attention to the issue of the human rights of victims of terrorism. The issue was addressed specifically in the Outcome Document of the 2005 World Summit and in Security Council resolution 1566 (2004), which called for the creation of a working group to consider the possibility of establishing an international fund to compensate victims of terrorist acts and their families. In Security Council resolution 1624 (2005), the Council expressed “its profound solidarity with the victims of terrorism and their families” and stressed “the importance of assisting victims of terrorism and providing them and their families with support to cope with their loss and grief”.⁹ In addition, the question of the rights of victims was raised by the Secretary-General as a key concern in a comprehensive counter-terrorism strategy.

There is no doubt that assisting the victims of terrorism and their families is one of the challenges to be faced by the United Nations in the future.

XII. A LOOK INTO THE FUTURE

The United Nations has become a key player in the global effort to eradicate terrorism. All the Organization’s bodies and departments, and the Secretary-General himself, are dedicated to this task.

The dilemma faced by the United Nations, and indeed by mankind as a whole, is how to respond to this challenge without abandoning or setting aside the characteristics of our common civilization, which gave

⁸ See the report of the Secretary-General entitled “Protecting human rights and fundamental freedoms, while countering terrorism” (A/60/374).

⁹ S/RES/1624, ninth preambular paragraph; similar language is used in the Outcome Document of the 2005 World Summit (A/RES/60/1, para. 89).

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birth to the United Nations and has maintained it over time as the most perfect - or, if you will, the least imperfect - of the organizations that mankind has known in its long and troubled history. The goal is to overcome the dark forces of totalitarianism and it is to be hoped that with clarity of judgement, resolute will and a sense of history, the United Nations will rise to the challenge by meeting the international community's expectations. The preliminary results offered here give us reason to believe that we will succeed.