

# British Society of Criminology

## **The United Nations and Counter-terrorism After September 11: towards an assessment of the impact and prospects of counter-terror ‘spill-over’ into international criminal justice cooperation**

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### **Abstract**

The paper focuses on the recent role of the United Nations (UN) after the attacks of 11 September 2001 in improving the effectiveness and commitment of states to counter-terrorism through the development of domestic legislation, policy and practice. The post-Cold War context provided a facilitative environment for the UN Security Council enabling *ad hoc* or case-by-case responses to acts of terrorism during the 1990s. However, the paper argues that the intervention of the Security Council in the aftermath of ‘9/11’ has proved to be a decisive break-point to a comprehensive regime that binds states to international legal norms against acts of terrorism and increases the obligations to undertake ‘executive action’ against all forms of terrorism. Realisation is contingent on a substantive improvement to international criminal justice cooperation in general, raising the prospect of ‘spill over’ effects into other areas of criminal police and judicial policy and practice.

The response of the UN Security Council in countering terrorism after 11 September 2001 should be regarded as a unique example of international criminal justice policy-making, articulated through the broad-based ongoing enforcement and capacity-building work of a ‘Counter Terrorism Committee’. This has been made possible via the political commitment and financial sponsorship of the Group of Eight and other international organisations in which these countries play key roles. Further, the strategy to concurrently push the agenda downwards and outwards to regional and international organisations respectively, has led to the adoption of counter-terrorism as a criminal justice priority by a wide range of regional and sub-regional organisations. Arguably, this will provide longevity in the strategy, but also facilitates the spill over of counter-terrorism executive action into the wider criminal justice

cooperation. This paper does not seek to provide a definitive analysis or conclusion on these factors, but seeks to make the case for a broader research agenda focussed upon the UN and counter-terrorism.

## **Introduction**

The United Nations (UN) is a primary focal point for conflict resolution and the establishment of universal legal norms and the setting of human rights standards. In the field of international terrorism, the UN system as a whole has taken a sustained interest in developing an effective multilateral legal response to acts of terrorism, as incidents and diverse forms of terrorism have gained prominence in the last four decades (Wardlaw 1989, 88-102). But the development of universal legal norms in this area has been tempered by superpower conflict and competition, national liberation movements struggling for independence from colonists, and perhaps most prominently today the unresolved 'Palestinian question'. These bases for conflict have hindered the international community's efforts to counter terrorism as a *generic* phenomena, leading to an imperfect position where particular *acts* of terrorism and *facilitators* of terrorism have been legally proscribed via a network of UN conventions but without a universal definition of terrorism being agreed (Secretariat of UN General Assembly 2002). Since the 1960s responsibility for the development of these conventions has been assumed by the UN General Assembly and a number of UN specialized agencies.<sup>1</sup> This has resulted in agreement on twelve main UN conventions, but the UN has not been able to translate this ostensible agreement to an obligation on the 191 members of the United Nations to sign and ratify them - those states reluctant to act, did not.

The outcome of this unrealised legal framework is clear in critical public statements from UN Secretary General's both before and after the attacks on 11 September 2001. For example, on the 40<sup>th</sup> anniversary of the signing of the UN Charter in 1985, Secretary General Javier Perez de Cuellar stated that:

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<sup>1</sup> Namely the International Civil Aviation Organization and the International Maritime Organization but also the 'related organisation' of the International Atomic Energy Agency.

Mere condemnation of .... [terrorist] acts is insufficient. Effective international action is required. Resolutions and conventions have been adopted in the past.... These provide a vital framework for countermeasures. It is tragically evident, however, that new, multilaterally coordinated efforts are urgently required to deal with this terrible phenomenon, which is beyond the capacity of any one country to handle alone (cited: Maxwell-Finger, 1990: 259).

In the aftermath of the attacks on 11 September 2001, both the issues of non-ratification and the lack of an overall convention on terrorism were brought to the fore by the current UN Secretary General Kofi Annan:

The fight against terrorism must begin with ensuring that the 12 legal instruments on international terrorism already drafted and adopted under United Nations auspices are signed, ratified and implemented without delay by all states. It is also important to obtain agreement on a comprehensive convention on international terrorism (UN Secretary-General, November 2001).

On September 11<sup>th</sup>, 2001 only two countries had ratified all twelve of the UN conventions related to terrorism – the UK and Botswana (Ward 2003, 291). It will be seen below that the lack of widespread ratification and effective implementation of these longstanding legal instruments featured prominently in the unprecedented UN Security Council's formal response to September 11<sup>th</sup>. The international community's poor track record in unrealised universal legal norms, poor implementation, and the subsequently patchy picture of international cooperation against international terrorism has become one of the main focal points for remedial action after September 11<sup>th</sup>. Crucially, this was led by the most powerful organ of the UN, the Security Council, and the apparent results achieved to date raise the prospect of both a globally-recognised universal legal framework for countering terrorism, and the development of effective proactive and preventative executive responses in all states. For anyone interested in international criminal justice policy-making a key question is what is the real impact on the criminal justice field, and will this result in enhanced bases for international cooperation against transnational crime in general?

Whilst some may regard the response of the UN after 11 September 2001 as a positive indicator of the UN system in action, it is now clear that realisation of state commitments in the post-9/11 regime has been underpinned both by financial backing and technical aid. In particular, the Group of Eight most industrialised national of the world has funded much of the UN's work but also the UN Security Council has adopted a strategy to explicitly engage other international, regional and sub-regional organisations, to cooperate and coordinate bi-lateral and multilateral technical aid and assistance to states that would not otherwise realise

the ambitious counter terrorism objectives. This engagement raises important issues of ‘tasking’ and the role of regional organisations and the impact of power in formulating counter-terrorism in practice within this new regime of global counter-terrorism. The fall-out of these developments have also been tangible in human rights concerns and the response of certain states to increase action against internal dissent and those seeking to gain self-determination. This has led, somewhat reluctantly at first, to the Security Council explicitly involving wider UN agencies with responsibilities to uphold the universal human rights standards.

The first part of the paper outlines the UN system in relation to criminal justice policy and then examines the Security Council Resolutions and academic legal commentary on the development of international criminal law to combat acts of terrorism, critically appraising UN outcomes in this area. The following section then examines the changes to the work of the UN after September 11<sup>th</sup> 2001 and the new ‘regime’ of international enforcement cooperation against terrorism within the Security Council, and the work of its Counter Terrorism Committee in particular. This leads to an analysis of the contemporary enforcement of state obligations, but also the ascendant role of the broader UN system in state capacity building, albeit contingent upon western financial and technical sponsorship. Finally, the paper ends with a preliminary research agenda for future comparative analytical work on the impact of the efforts to counter-terrorism on wider criminal justice cooperation, and to understand how regional organisations have been effectively mandated to develop and promote criminal justice enforcement policies.

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## **The UN System in Brief**

191 sovereign countries belong to the UN accepting the obligations of the UN Charter. The Charter sets out basic principles of international relations, defining the role of the UN as to maintain international peace and security, develop friendly relations among nations, solve international problems, promoting respect for human rights and to be a centre for harmonising the actions of nations. The UN co-ordinates criminal justice efforts globally through the development of international law and leads international campaigns against organised crime, drugs and people trafficking, and terrorism. The main institutions of concern here are the General Assembly and the Security Council.

The General Assembly comprising representatives of all member countries, has mainly considered issues related to terrorism and taken legislative responsibility (Rosand 2003). This has been principally achieved by its' subsidiary Economic and Social Council (ESC) that coordinates the economic and social policy and operations of the UN under the overall authority of the General Assembly via, in the crime field, the 'functional' Commission on Crime Prevention and Criminal Justice. Thus the ESC is the central decision-making and policy-formulating forums for international criminal justice issues within the UN. The relevant autonomous 'specialized agencies', part of the UN system include the International Maritime Organisation (IMO) and the International Civil Aviation Organisation (ICAO), each of which have developed some of the twelve UN conventions and protocols on acts of terrorism – essentially providing the foundation for an emerging multilateral legal regime against terrorism.<sup>2</sup> The Assembly cannot force action by any member state, but its

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<sup>2</sup> Conventions deposited with the Secretary-General of the UN: Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973; International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979; International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999. Conventions deposited with other depositaries: Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963. (*Deposited with the Secretary-General of the International Civil Aviation Organization*); Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970. (*Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America*); Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971. (*Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America*); Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980. (*Deposited with the Director-General of the International Atomic Energy Agency*); Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988. (*Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America and with the Secretary-General of the International Civil Aviation Organization*); Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988. (*Deposited with the Secretary-General of the International Maritime Organization*); Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988. (*Deposited with the Secretary-General of the International Maritime Organization*); Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991. (*Deposited with the Secretary-General of the International Civil Aviation Organization*).

recommendations are an important indication of world opinion. The 40-member UN Commission on Crime Prevention and Criminal Justice (UNCCPCJ) is a 'subsidiary body' with a brief to develop international policies and promote activities to combat national and transnational crime, promoting the role of criminal law, crime prevention and improving the efficiency and fairness of criminal justice administration systems. The UN Office on Drugs and Crime (UNODC), with around 400 staff-members across the world, undertakes this work within a crime programme and the drugs programme. The crime programme includes the combating of corruption; illicit trafficking in human beings; transnational organised crime; and via the Terrorism Prevention Branch, actions to increase state capacity in countering terrorism. Since 2002 the Branch has been responsible for the *Global Programme Against Terrorism*.

The UN Charter gives the Security Council primary responsibility for maintaining international peace and security. With regard to threats, under the Charter, all member states are obliged to carry out the Council's decisions. There are fifteen Council members, five of them permanent - China, France, the Russian Federation, the United Kingdom and the United States - the others being elected for a term of office.<sup>3</sup> For an affirmative Security Council decision there must be a majority, but all permanent members, four of whom are members of the Group of Eight, have a veto.

Through this 'UN system' its member countries have a range of 'peaceful' and 'coercive' measures that may be deployed to counter the threat and practice of terrorism. In examining the scope of these it is important to note the Security Council regarded the attacks of 11 September 2001 as a threat to international peace and security, but its decisions were not framed as responses to Al-Qaeda, but as a response to international terrorism. They were designed to have a general and ongoing impact, albeit directed at the immediate tactical challenges of the global network of Al-Qaeda conducting asymmetric 'warfare' against the USA and other nations (National Commission on Terrorist Attacks on the US, 2004). Despite this, it is at the national *local* level that the appropriate responses, peaceful and coercive, can be delineated with reference to the UN's universal legal norms and incorporated into regional and sub-regional policy responses. Key to the *legitimacy* of the

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<sup>3</sup> On 11 September 2001 the ten elected members were Bangladesh, Colombia, Ireland, Jamaica, Mali, Mauritius, Norway, Singapore, Tunisia and Ukraine.

overall response of the international community is that while both peaceful and coercive measures are regarded as contributors to deterrence and resolution to the threat of terrorism, *peaceful means* must be deployed first (United Nations 1973, Art.33). It was in this vein that in October 2001 the UN Secretary General initiated a review of the role of the UN in relation to terrorism, reporting in 2002 a three-pronged strategy of ‘dissuasion’, ‘denial’ of the terrorists’ means to act, and sustaining international cooperation (through international and regional organisations) – the UN acting where it has a ‘comparative advantage’ (Policy Working Group, 2002). The discussion here on the UN enforcement strategy against terrorism must therefore be seen as just one strand of a wider response of the UN to international terrorism.

### **Developing UN enforcement action against terrorism**

During the 1990s the Security Council acted against incidents of terrorism by, at the most extreme, imposing economic and diplomatic sanctions in states. This was seen in relation to Libya in 1993 (in response to the Lockerbie bombing) and Sudan in 1996 (in response to the prescient Sudanese government support for Ben Laden and acts of terrorism). By 1999, the developing threat from Al-Qaeda and its support (subsequently) from the Taliban regime in Afghanistan led the Security Council to issue its most stringent response in Resolution 1267 (hereafter SCR 1267) under the terms of Chapter 7 of the UN Charter, due to its failure to respond to previous SCRs (Stahn n.d.). This SCR established a sanctions regime that incorporated for the first time a Security Council “sanctions committee” to monitor state compliance (SCR 1267, para. 6). The importance of a Chapter 7 Resolution under the UN Charter, which relates to ‘Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression’, is that it stipulates that ‘action *shall* be taken’ (specifically under Art.39 of the UN Charter) [emphasis added]. Thus, in the specific case of the Taliban continuing to allow Al-Qaeda to operate training camps in Afghanistan, the Security Council in 1999 uniquely used the full weight of the UN Charter to oblige all UN members to comply with the terms of the Resolution (SCR 1267, paras. 3 & 4). This increasingly stringent intervention of the Security Council continued to be a key feature, but critically it was only directed against individually identifiable states, in response to specific acts of terrorism.

Some four days after the passing of SCR 1267, and in the context of the recent adoption of the twelfth UN agreement on terrorism (on the Suppression of the Financing of Terrorism), a

somewhat different approach was taken by the Security Council in its SCR 1269. This sought to enhance the universal legal response to terrorism at the domestic and international level in ‘calling’ on all countries to implement the UN instruments on terrorism whilst it ‘encouraged’ speedy adoption of the pending conventions’ (para.2, emphasis added). Crucially, it is seen here that in moving for the first time to a general response against terrorism in the implementation of universal legal norms no specific obligation to comply was placed on member states and no mechanism was put into place to monitor state accession or to evaluate compliance (Szasz 2002, 902). Looking to the remainder of the UN system, it was also clear that the Terrorism Prevention Branch was limited to a handful of personnel, and with little legal support. It is noteworthy that the UN Office of Legal Affairs’ Action Plan of 2000 entitled, *Strategy for an Era of Application of International Law*, did not specifically mention terrorism. The Action Plan states that ‘Many multilateral treaties of potential global application remain unsigned by a large number of States or, though signed, unratified. The objective of creating a global framework of binding norms in the areas concerned is consequently frustrated, particularly in those cases in which the treaties are prevented from entering into force’. (UN Office of Legal Affairs 2000, 2) Despite the general objectives, UN practical capacity-building assistance and support to ease compliance with SCR 1269 was to all intents and purposes unavailable. Clearly, in acting against a specific threat the political will was present in the Security Council, but in acting in general to bind member countries to a set of legal norms with universal intent the political will in still could not be obtained.

To understand the mismatch between aspirations and actions by the Security Council prior to September 11<sup>th</sup> it is necessary to reflect on the continuing lack of progress in developing a single convention on terrorism (UN General Assembly Sixth Committee 2000, paras.13-18; UN General Assembly 2004)<sup>4</sup> – which would necessarily have to define terrorism in international law. The General Assembly’s Sixth (Legal) Committee, working on the Draft Comprehensive Convention on International Terrorism, was in the run-up to 11 September 2001 still unable to make any substantive progress due to continuing reluctance of many states to de-legitimise extreme political violence as a means of oppressed peoples gaining self determination (Secretariat of the UN General Assembly 2002). In such a scenario, this limited the extent to which the Security Council could ‘lead’ in prescribing decisive action

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<sup>4</sup> Following India’s tabling of a working document in 2000. See UN General Assembly Sixth Committee 2000, paras.13-18.



against international terrorism *per se*.

In summary, prior to September 11<sup>th</sup> 2001, the UN system was able to draft a range of legal agreements that, as a whole, sought to counter designated acts of international terrorism. However, with no compulsion placed on states to ratify any convention promulgated by the UN General Assembly (UN 1973, Art. 10), and in particular its continuing disagreements on a comprehensive convention on terrorism, it is difficult to see that any effective international response was possible to systematically counter terrorism. Despite the above activity of the UN system up to 2001, there was a clear lack of political resolve in the Security Council to oblige countries to accede to a universal legal framework against acts of terrorism. Instead the Security Council had distinguished itself by issuing a range of aspirational Resolutions on the developing UN legal framework against terrorism, undermining the apparent post-Cold War political will that had developed in the 1990s to act against specific terrorist threats to international peace and security.

### **The new UN regime of international cooperation against terrorism**

The attacks on September 11<sup>th</sup> <sup>5</sup> immediately highlighted the gap between rhetorical intent and commitment within the international community in responding to international terrorism. Since the early 1960s, the UN General Assembly has laboured to develop a range of specialist conventions and protocols to counter acts of international terrorism, but by 2001 only two countries, Botswana and the United Kingdom, had acceded to all twelve UN conventions that collectively comprised the international community's universal legal response to international terrorism (Ward 2003, 903). Only four states, Botswana, Sri Lanka, UK and Uzbekistan had ratified the 1999 Convention relating to terrorist financing (forty-six other states had signalled intent by signing the Convention), a measure that was to become key to the Security Council's strategic response to the attacks (Szasz 2002, 903). This low level of signature and ratification was graphically exposed after the attacks on September 2001 advertising the international community's failure to achieve widespread adherence to universal legal norms. Action to address this became the key plank of a strategic UN

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<sup>5</sup> On 12<sup>th</sup> September 2001, SCR 1368 set out the Security Council's specific response to the September 11<sup>th</sup> attacks by Al-Qaeda, including recognition of the 'inherent right of individual or collective self-defence in accordance with the Charter'. These elements are outside the scope of this paper, but can be reviewed in Cassese, n.d.; Dupuy, n.d.; and Stahn, n.d.

Security Council intervention, crucially under the terms of Chapter 7 of the UN Charter, relating to ‘Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression’. Under this Chapter, Resolutions can prescribe that ‘action shall be taken’ (Art.39). As noted above this obligatory form of action had only previously been used (rarely) in relation to action against specific groups or threats.

Despite the attacks in September 2001 being quickly attributed to Al-Qaeda, the response of the Security Council became a unique breakpoint with past practice as it sought to ‘legislate against terrorism’ (Szasz 2002) in *general*, and making implementation of executive action against terrorism a *universal* concern. To enable this, the Security Council was additionally committing itself to a challenging strategy to increase global state capacity to act against international terrorism, as well as monitoring state compliance in the adoption of universal legal norms. This two-pronged *enforcement* strategy was set out on the 28 September 2001 in UN Security Council 1373. The Resolution obliged all countries to legislate (Szasz 2002, 902) in acting against the financing of terrorism and other support to international terrorism (SCR 1373, paras. 1-2). The latter included information and intelligence exchange between states, the screening of asylum seekers, the elimination of political exemption clause to the extradition of suspects, as well as addressing the links between terrorism, organised crime and American neo-conservative concerns with weapons of mass destruction in the hands of terrorist groups (SCR 1373, para. 4). Within these broad-based obligations to legislate, and to undertake executive action against terrorism, a number of issues were outlined but specifically the Resolution went on to call for full international cooperation via bi-lateral and multilateral agreements, and in particular it called for ratification of the 1999 Convention on the Suppression of the Financing of Terrorism ‘as soon as possible’ (para. 3(d)). Clearly, an obligation to ‘increase cooperation’ against terrorism would be facilitated by the global ratification of all twelve UN conventions and protocols on acts of terrorism, but the latter convention on the financing of terrorism was the only one specifically mentioned in the operative text of the Resolution (para. 3(d)) even though ‘the relevant international conventions relating to terrorism’ had been specifically referred to in the Resolution’s preamble. Therefore whilst the Security Council required member countries to act, it was not *fully* prescriptive in terms of the universal legal norms referred to in the previous section of this paper, perhaps implicitly acknowledging the disagreement on defining terrorism within

General Assembly, the representative opinion of the wider UN membership.<sup>6</sup>

The UN counter-terrorist enforcement strategy set out in SCR 1373 also had the key lever of a ‘committee’ of the Security Council (to subsequently become known as the ‘Counter Terrorism Committee’ or CTC) established ‘to monitor implementation of this resolution’ (para. 6). In contrast to the Security Council “sanctions committee” established under SCR 1267 in 1999 to monitor state action against the Afghan Taliban regime, this was the first time in the field of international terrorism that general ‘executive action’ and the adoption of international legal norms to fulfil the will of the Security Council was to be monitored by a Security Council committee. Importantly, Szasz makes it clear that there was no indication that these obligations would ‘lapse’ (2002, 902) or that the monitoring would end until full legal and operational compliance was attained.

Overall it can be seen that the passage of SCR 1373 uniquely set an obligatory international legal regime to realise a general UN enforcement strategy against international terrorism encompassing a wide range of judicial, criminal police and immigration cooperation measures. It implicitly recognised that universal political agreement on what constituted ‘terrorism’ was not present (allowing states to variously define terrorism at the domestic level) but also that the UN system needed to realistically focus on long-term state counter-terrorist capacity building to attain the objectives of SCR 1373. The open-ended mandate of the Counter Terrorism Committee was an acknowledged break with the past, namely that the September of 11<sup>th</sup> attacks represented, or were, a general ‘threat to international peace and security’, one that exceptionally warranted an obligatory ongoing regime of monitoring of compliance.

The Counter Terrorism Committee (CTC) comprises all members of the Security Council with a mandate ‘to monitor implementation of the resolution, with the assistance of appropriate expertise’ (SCR 1373, para. 6). Established by the 4<sup>th</sup> October 2001 (UN Security Council 2001) the CTC was to generate a ‘work programme’ to realise the Resolution’s aims (SCR 1373 para. 7) by 28 October, and to receive within 90 days, reports from on 191 UN member states on their state of compliance. It subsequently became clear that the first and subsequent 90-day periods entailed consecutive work programmes that have

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<sup>6</sup> As Szasz states, the Security Council is not obliged to regard the will of the international community by taking regard of the view of the UN General Assembly, but ‘would also be well advised to do so’ (Szasz 2002, 905).

been reported to the Security Council ever since (CTC 2004a). The UK Ambassador to the UN, Sir Jeremy Greenstock (UN Security Council 2001) was the first Chair of the CTC and is widely credited with establishing working procedures to facilitate state compliance, recognising the extensive legal, technical and operational challenges this would entail for many states. The CTC formally interpreted the demands of UN SCR 1373 as three discrete prioritised stages (see Annex) with ‘Stage A’ being the initial priority to ensuring that states have ‘effective counter-terrorism legislation in all areas of activity related to resolution 1373’ (CTC, 2003a). ‘Stage B’ would then focus on ‘strengthening [state] executive machinery to implement resolution 1373-related legislation’, whilst the final stage would mop-up outstanding areas of the Resolution (*Ibid.*). Subsequent related resolutions emphasised both the importance of parallel supportive actions by international, regional and sub-regional organisations for the CTC (SCR 1377, 2001) and the need for capacity building through assistance and exchange of international best practice and compliance within ‘international human rights, refugee and humanitarian law’ (SCR 1456, 2003).

The CTC’s sustained parallel emphasis on capacity building (as well as monitoring state compliance) to achieve the UN enforcement strategy placed demands on the wider UN system. The General Assembly had already agreed in 1998 that the Office on Drugs and Crime and Crime Prevention needed to play a greater role in ‘combating international terrorism in all its forms and manifestations’ increasing the resourcing to the Centre for International Crime Prevention, housing the Terrorism Prevention Branch (UN General Assembly 1998, paras. 1 & 61-63). The post-September 11<sup>th</sup> scale of resourcing of the UN system was indicated by the new \$2.8m two-year *UN Global Programme Against Terrorism* launched in October 2002 to build capacity in member states in support of Stage A of the work of the CTC in facilitating adoption of legislation against terrorism.<sup>7</sup> This accompanied General Assembly approval of a further ‘strengthening’ of the Terrorism Prevention Branch in December 2002 (UN ODC 2003: 4) and by October 2003 over 30 states had benefited from direct UN technical assistance from this route (UN ODC 2003: 7). As noted above the CTC was urged by the Security Council (SCR 1456) to help coordinate international and bilateral assistance to countries to fulfil the UN counter-terrorism strategy,<sup>8</sup> and by 2004

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<sup>7</sup> Based upon: “Two technical assistance projects on ‘Strengthening the legal regime against terrorism’” (UN ODC 2003: 6).

<sup>8</sup> The CTC established ‘Directory of Counter-Terrorism Information and Sources of Assistance’ comprising offers of assistance from countries, bodies and international organisations, as well as a Technical Assistance Team, to support the

some ten international organisations including the UN ODC and sixteen individual countries had offered their technical expertise and support, principally in the fields of legal technical support, but also policing and law enforcement (CTC, 2004b).

Full implementation of the obligatory law enforcement strategy set out in SCR 1373 will require many states to develop criminal justice policy and law enforcement action. The work of the CTC both exposes states that do not comply (or are slow in complying) and focuses the UN system and other international and regional organisations on capacity building. While the SCR focuses on the twelve conventions and protocols against terrorism, in this first stage it is the action against acts, actors and facilitators of terrorism that are directly transferable to other criminal justice policy domains – such as intelligence exchange, pre-trial international police and judicial cooperation, extradition, tracing and seizure of the proceeds of crime and enhanced border screening. This prospective ‘spill-over’ into a wider criminal police and judicial domain is also evident as the CTC moves to Stage B, where wider existing UN programmes against money laundering and transnational organised crime and being drawn into the process. At this stage, where attention is on ‘executive action’, the impact on law enforcement is most tangible. In assessing likely spill over then the focus of the Security Council through the CTC relies on three discretionary factors. Firstly, continued political support from the Security Council for Resolution 1373 and the work of the CTC. This has been evident in subsequent related Security Council Resolutions between 2001 and 2004. Secondly, sustained financial support, particularly from the Group of Eight most industrialised nations, to fund the capacity building activities of the wider UN system. For example the *Global Programme Against Terrorism* is funded entirely by voluntary contributions from Austria, Canada, France, Germany, Italy, Japan and the USA (all but Austria are members of the G8 – Austria is the seat of the UN ODC) (UN ODC 2003, 6). A further SCR in 2003 (1456) sought to accelerate the capacity building process, noting the additional financial contributions from the Security Council membership, and calling for other UN member states to add to them (para.11). The IMF and the World Bank are also funding and supporting implementation of obligations within the Convention on the Suppression of the Financing of Terrorism 1999 (UN ODC 2002, 4) an organisation in which G8 members also play key roles. The final factor is deepening work by international and regional organisations to embed the objectives of the Security Council strategy into

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work of the CTC. (CTC, 2003b). The directory is at [http://www.un.org/Docs/sc/committees/1373/ctc\\_da/index.html](http://www.un.org/Docs/sc/committees/1373/ctc_da/index.html)

localised criminal justice policy initiatives and integration activities. Whilst further detailed research is needed to ascertain this, it was shown in the report of the outgoing Chair of CTC in April 2003 (UN 2003), following six work programmes spanning 18 months, that the acknowledged priority of the CTC was now upon Stage B – implementation - and the key work of regional and international organisations was recognised in a meeting of 60 organisations in March 2003 ‘all with counter-terrorism programmes...had been important in establishing a concrete global structure’ (UN 2003: 1).

## Conclusion

This paper seeks to open a research agenda in to the intrusion of the Security Council into counter-terrorism and the consequent impact on the wider criminal justice domain after 11 September 2001. The indicators and evidence of this are not yet fully developed, but the legal and (increasingly) enforcement capacity building programmes are apparent, financed by developed nations, and delivered through a broad network of international, regional and sub-regional organisations with the UN CTC at the hub. The potentially positive development of the UN system in fostering broad-based criminal justice capacity-building in less developed nations needs to be considered alongside UN reliance on the same countries to fund criminal justice programmes to tackle organised crime, trafficking and drug control. This raises many research questions that can be examined as the impact of SCR 1373 becomes transparent in adopted UN and regional work programmes promulgated as counter-terrorism strategies, but with potentially wider criminal justice spill over effects. A selection of relevant research avenues would include:

- Continuing surveys of the rate of ratification of UN and other regional<sup>9</sup> legal

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<sup>9</sup> Relevant regional legal agreements against terrorism comprise: Arab Convention on the Suppression of Terrorism, signed at a meeting held at the General Secretariat of the League of Arab States in Cairo on 22 April 1998. (*Deposited with the Secretary-General of the League of Arab States*); Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1 July 1999. (*Deposited with the Secretary-General of the Organization of the Islamic Conference*); European Convention on the Suppression of Terrorism, concluded at Strasbourg on 27 January 1977. (*Deposited with the Secretary-General of the Council of Europe*); OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, concluded at Washington, D.C. on 2 February 1971. (*Deposited with the Secretary-General of the Organization of American States*); OAU Convention on the Prevention and Combating of Terrorism, adopted at Algiers on

instruments on terrorism

- Comparative analyses of the definitions of terrorism adopted within differing national jurisdictions, and the potential impact of UN legal drafting assistance to those countries that have legislated against terrorism after 11 September 2001
- Assessments of the stimulus for adoption of broader UN instruments such as the UN Convention Transnational Organised Crime (and associated Protocols) that contain substantive international cooperation developments in the police and judicial spheres
- Examination of the availability and take-up of law enforcement operational capacity training / technical expertise
- Profiling of recipients of UN, regional, international and bilateral capacity-building support, compared to states experiencing differing forms of terrorism
- Evidence of withdrawal / increase of voluntary support to other UN programmes on drug control, money laundering, trafficking in people etc. to examine if budgets have increased or shifted in capacity-building financial assistance and/or biases increased towards enforcement as opposed to prevention/conflict resolution

Clearly, there are great biases in available resources and concrete political will in differing regions, and the impact of these can be initially surveyed in the country reports to the CTC and the consequent CTC responses requesting further information. Periodic reports to the Security Council by its CTC have raised, and ostensibly resolved, strategic concerns (over capacity building, the need for regional organisations to realise the aims of SCR 1373) and these have drawn in allied initiatives by regional organisations such as the European Union<sup>10</sup> and the African Union (African Union 2002; Cilliers and Sturman 2002) and international organisations such as the Group of Eight (G8 2003). Therefore it is at the regional level that research attention on the adoption of the UN SCR 1373 prescriptions should also focus. For example, the spill over into wider criminal justice matters are most evident to date in the European Union (Norman, 2002) with the 2001 agreement on, and 2004 implementation of, the European Arrest Warrant. Appraisals of this effect in other regions should be undertaken.

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14 July 1999. (*Deposited with the General Secretariat of the Organization of African Unity*); SAARC Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987. (*Deposited with the Secretary-General of the South Asian Association for Regional Cooperation*); Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, done at Minsk on 4 June 1999. (*Deposited with the Secretariat of the Commonwealth of Independent States*).

<sup>10</sup> EU Terrorism Roadmap initiated in the aftermath of September 11<sup>th</sup> (Norman, 2002) and its 'revamp' after the 2004 Madrid bombings.

On 28<sup>th</sup> September 2001 the Security Council branched out into universal criminal justice policy-making in the name of counter-terrorism and is enforcing this attention on an ongoing basis. The ramifications of this strategy remain to be adequately researched and analysed, but it is one area where a comparative regional analysis should provide challenging research questions that will require adoption of less parochial analyses of international criminal justice policy and practice.



## **Annex: Counter Terrorism Committee (CTC): Setting Priorities**

(exact quote: CTC 2003)

### Stage A

The CTC first looks at whether a State has in place effective counter-terrorism legislation in all areas of activity related to resolution 1373, with specific focus on combating terrorist financing.

The CTC focuses on legislation as key issue because without an effective legislative framework States cannot develop executive machinery to prevent and suppress terrorism, or bring terrorists and their supporters to justice. Countering-terrorist financing included as a Stage A priority because of the special emphasis placed on this aspect of support for terrorism in operative paragraph 1 of resolution 1373.

In order to ensure a methodical and progressive approach, third and future reviews of a State's reports should continue to focus on "Stage A" until the CTC has no further comments at this stage.

### Stage B

Once States have in place legislation covering all aspects of resolution 1373, the next phase of implementation can be broadly defined as a State, in accordance with its responsibilities, within its sovereign jurisdiction, fully to implement resolution 1373, strengthening its executive machinery to implement resolution 1373-related legislation. "Stage B" might, in the light of experience so far, include activity along effective and coordinated executive machinery covering all aspects of resolution 1373 and in particular preventing recruitment to terrorist groups, the movement of terrorists, the establishment of terrorist safe havens and any other forms of passive or active support for terrorists or terrorist groups. Effective executive machinery includes, inter alia, having in place:

1. police and intelligence structures to detect, monitor and apprehend those involved in terrorist activities and those supporting terrorist activities,
2. customs, immigration and border controls to prevent the movement of terrorists and the establishment of safe havens, and
3. controls preventing the access to weapons by terrorists.

### Stage C

Differences in circumstances mean that progress through these priorities will not be uniform. The CTC recognises that every State is an individual case; however it asks all States to move towards implementation of resolution 1373 at their fastest capable speed.

Looking further ahead, the CTC will at some stage need to consider its dialogue with States who already have in place adequate legislation covering all aspects of resolution 1373 and adequate executive machinery implementing this legislation, and who have not been identified as requiring other priority attention. In such cases, the CTC might move on to monitor "Stage C" of resolution 1373 implementation, building on "Stages A and B" and covering the remaining areas of 1373. The objectives set out above may be reviewed by the CTC after a further experience of the process.

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