The U.N. Counter-Terrorism Committee:
An Institutional Analysis

C.S.R. MURTHY

1   Introduction

It is indisputable that terrorism is a pervasive and pernicious threat to global security and order. To make the combat against terrorism universal in scale, the United Nations has become a natural forum in view of its unique value and experience in addressing a wide variety of complex problems of global character. As a kingpin among several UN mechanisms addressing different aspects of the menace, the Counter-Terrorism Committee (CTC) of the Security Council signifies robust institutionalization of the international community's sensitivity to the imperative of effective collective action to deter the likes of the September 2001 attacks. Through a review of the mandate of its executive arm in December 2007, the CTC may itself come up for an appraisal with a possibility of the Committee's restructuring.

The discussion is presented in this paper in four parts. First, it examines briefly the diverse approaches to counter-terrorism, and traces the engagement of the UN in countering terrorism. In the second section the organizational and functional profile of the CTC – its mandate, structures, procedures, and functions – is taken up. The next section analyses the Committee's performance by identifying some aspects of progress in the midst of persisting problems. The final section assesses the feasibility of proposals for strengthening the institutional framework of the CTC.

2   The UN Approach to Counter-Terrorism and Evolving Strategies

The approach upheld by a cross section of countries and also by the United Nations General Assembly is that counter-terrorism efforts need to be comprehensive, for the causes of terrorism are deep seated and multifarious. Poverty, political, social and economic deprivation, denial or delay in exercise of right to self-determination, and foreign occupation lie at the root of terrorism. Moreover, terrorism could emerge as a resistive response to the process of economic modernization or social change. Critics caution against this 'root causes' approach that painting terrorists as 'passive actors' prompted by the social, economic and social surroundings could make them 'apologists' for terrorist acts.[1] The critics are unconvinced that there is a direct relationship between poverty and terrorism. Rosand

points out approvingly that much of the 'empirical scholarship on terrorism provides little indication of correlation between socioeconomic factors such as poverty, inequality, and unemployment and the incidence of terrorism'.[2] Nevertheless, just as contemporary terrorism has to be seen as not one single threat but rather many threats, counterterrorism has tended to be pursued not through rigid adherence to one approach but a mature mix of all the three approaches. A study of the patterns of the United Nations engagement in counterterrorism would attest to this hypothesis.

As an instrument of promoting international cooperation, the value of the United Nations can be potentially unique.[3] Notwithstanding the fact that terrorism constitutes a serious threat to the core values of the UN, critics write that the response of the world organization to terrorism has been "tentative, halting, even ambivalent".[4] Two explanatory factors are cited.[5] First, doubts about the capacity of the United Nations to rise up to the challenge alongside – ironically enough – a realization that no viable multilateral alternative exists for dealing with terrorism. Secondly, lack of common agreement on the legality and legitimacy of counter-terrorist measures carried out unilaterally or in groups without the backing of the UN bodies.

The attacks against the United States in September 2001 pushed the United Nations to begin working on a suitable and agreeable strategy on counterterrorism. As a first step, the Secretary-General had set up in October 2001 a policy working group which in its report cautioned against 'offering, or being perceived to be offering, a blanket endorsement of the measures taken in the name of counter-terrorism' and that UN efforts to 'reduce terrorism must not be at the expense of its core responsibilities' like development.[6] The Group very wisely acknowledged the operational inability of the UN to pre-

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[1]   Cited in Eric Rosand, Global Terrorism: Multilateral Responses to an Extraordinary Threat (Coping with Crisis Working Paper Series), New York: International Peace Academy, April 2007, p.2.

[2]   Ibid, p.7.

[3]   Anthony Cordesman, 'The Lessons of International Cooperation in Counter-Terrorism', RUSI Journal, 151(1), February 2006.

[4]   Edward Luck, 'The Uninvited challenge: Terrorism targets the United Nations' in Edward Newman, Ramesh Thakur and John Tirman, eds., Multilateralism under Challenge? Power, International Order and Structural Change, Tokyo: United Nations University Press, 2006, p.376.

[5]   Edward Luck, 'Tackling Terrorism' in David M. Malone, ed. The UN Security Council: From the Cold War to the 21st Century, New York: Lynne Rienner, 2004, p.85.

[6]   Report of the UN Policy Working Group on United Nations and Terrorism, in UN Doc. A/57/273, 10 September 2002. Though few member states would openly question the importance of countering terrorism, some appear to have misgivings about devoting growing portions of the UN's time, attention and resources to the effort.

empt specific terrorist strikes or to develop dedicated intelligence capacities, and highlighted the potential of a three-pronged strategy centred round the areas of the world body's comparative advantage. Accordingly the UN could work to dissuade the disaffected groups from pursuing terrorism for redress of grievance if any; deny groups and individuals the means to carry out acts of terrorism; and sustain broad-based international cooperation in the struggle against terrorism. In sum, dissuasion, denial and cooperation became the principal reference points in the UN approach. Taking the UN closer to the 'root causes' perspective, the High Level Panel on Threats, Challenges and Change pointed out in December 2004 that terrorism 'flourishes in environments of despair, humiliation, poverty, political oppression, extremism and human rights abuse; … regional conflict and foreign occupation'. It underscored the 'crucial need' to develop a 'global strategy of fighting terrorism' embodying an approach broader than coercive means.[7]

The call for a broad counter-terrorism approach may be interpreted as advocacy of engaging multiple structures in the problem area. The plurality of political and functional organs and their complementary concerns in the UN were such that counter-terrorism could not be a responsibility of one organ alone (as the Security Council appeared to be since September 2001 attacks). Indeed, the General Assembly and other organs of the UN as also many UN-related organizations like specialized agencies launched initiatives linked to the evolving contours of counter-terrorism as a long term task, much before the Security Council emerged as the dominant player on the scene.

In a major development, the General Assembly adopted without a dissenting vote a declaration in 1994 categorically condemning terrorism in all its manifestations committed anywhere, by whosoever and for whatever purpose. Furthermore, efforts are on in an Ad Hoc Committee to reach an agreement on the text of the comprehensive convention on international terrorism. In the past decade, the Assembly produced three important legal instruments on terrorism, viz. the International Convention for the Suppression of Terrorist Bombings (1997), the International Convention for the Suppression of Financing of Terrorism (1999), and the International Convention for the Suppression of Nuclear Terrorism

(2005). Besides, since 1963, 10 international conventions and protocols were brought into force by the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO) and the International Atomic Energy Agency (IAEA) primarily in the areas of security of air traffic as well as maritime navigation and also safety of nuclear material.[8]

The Assembly appears to be reclaiming leading role which it lost to the Security Council in the aftermath of the end of the cold war in matters relating to terrorism. The 2005 World Summit may be referred to as a landmark in this process. At the instance of that UN-60 summit, the Secretary-General presented a detailed set of proposals for strengthening the capacity of the United Nations system to counter terrorism, built around four strategies: Dissuading groups from joining or supporting terrorists; denying terrorists the means to carry out attacks; deterring states from supporting terrorism; developing state capacity to defeat terrorism through international cooperation as building blocks for a global counter-terrorism strategy.[9] Based on these inputs, the General Assembly adopted a global strategy to counter terrorism.[10]

Criticism notwithstanding[11], the strategy's significance lies in the fact that it has established for the first time a truly global counter-terrorism framework.

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7   A more secure world: Our shared responsibilities: Report of the High Level Panel on Threats, Challenges and Change in Doc.A/59/565, 2 December 2004, annex, pp.45-46.

8   These are: (1) Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed in 1963; (2) Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; (3) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971; (4) Convention on the Prevention and Punishment of Crimes against International Protected Persons, including Diplomatic Agents, 1973; (5) International Convention Against the Taking of Hostages, 1979; (6) Convention on the Physical Protection of Nuclear Material, 1979; (7) Protocol for the Suppression of Unlawful Acts of Violence at Airports, 1988; (8) Convention for the Suppression of Unlawful Acts against the Safety of maritime navigation, 1988; (9) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988; and (10) Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991.

9   Uniting Against Terrorism: Recommendations for a global counter-terrorism strategy, Report of the Secretary-General, in Doc.A/60/825, 27 April 2006.

10   A/RES/60/288, 8 September 2006.

11   It has been pointed out by critics, however that the Strategy offered few specifics to help guide its implementation. Much of the Strategy repeats existing commitments contained in the previous resolutions of the Assembly, the Council and other UN bodies. See Implementing the United Nations General Assembly's Global Counter-Terrorism Strategy in the Asia-Pacific. Washington, Center on Global Counter-Terrorism Cooperation, March 2007, p.2.

The Security Council's relatively more active role in respect of both specific incidents and the generic phenomenon of terrorism can be said to have begun with the first Security Council Summit in January 1992.[12] The Council sent a signal of its serious interest in the subject by designating terrorism as a threat to international peace and security in the Final Document adopted by consensus on that occasion. The Council notably followed up with imposition of selected sanctions against Libya, Sudan, the Taliban regime of Afghanistan, specifically targeting arms supplies, air transport, and diplomatic ties, arguing that they were either protecting or supporting those accused of involvement in specific terrorist acts.[13] The situation took a remarkable turn as a consequence of the September 2001 attacks by the Al-Qaida against the United States. In a major move going beyond short-term sanctions against specific targets, the Security Council unanimously adopted without discussion an omnibus text- Resolution 1373 - bringing in the whole spectrum of terrorist activities – concerning their finances, safe havens, support bases, and access to means of transport and munitions – across the world. The resolution demanded from all states under binding provisions of Chapter VII of the Charter to take legal and administrative measures to freeze financial sources of terrorists and their entities, criminalize direct and indirect involvement in acts of terrorism for punishment, and cooperate with other states in the efforts to counter terrorism.[14] By adopting it under the terms of Chapter VII of the UN Charter, the Council appeared to snatch the front seat from the Assembly. It made mandatory the thrust of non-binding provisions of the Convention against Financing of Terrorism adopted by the Assembly in 1999 in one stroke by skipping the usual, time-consuming procedures of ratification. By this action, the Council seemed to assert itself as 'world legislature'.[15] Furthermore, under the

terms of the resolution, a Committee of the Council was set up to monitor implementation measures taken by states despite reluctance on the part of the United States.[16] Corresponding to the desire of the United States for an urgent response, members of the Security Council wished to not obstruct negotiations on the text as a mark of solidarity with the US in its hour of challenge, and this explains adoption of such sweeping resolution without discussion in a few minutes. The hurry explains the lack of clarity about the mandate and powers of the CTC. Moreover, there are other serious issues of institutional propriety arising out of the resolution.

3   CTC – Structures and Functions

For a body described once by Kofi Annan as one at the 'centre of global efforts to fight against terrorism',[17] the delineation of the structural and functional details did not seem to bother much the representatives working on the drafting of the founding resolution in September 2001. As noted already, the delegations of the United States and other members of the Council were perhaps more interested in proving the capability of the Council to come up with a quick and concerted response to the September 2001 attacks at a political level. Under those circumstances, the Committee and its members strove to fill the gaps by laying down the CTC's structures, working methods and functional jurisdiction as part of its post-establishment evolution.

The CTC is composed of all the 15 members of the Security Council. Though theoretically non-members could be invited to the CTC meetings, only its members have been attending meetings. The Council reviews the work of the Committee in closed meetings held once in three months. Besides when consensus eludes in the Committee, the matter can be taken up by the Council (Summary records of these meetings are not accessible to general public.). The Committee reaches decisions by consensus among members, and it is the Chairman's responsibility to facilitate it through consultations. Meetings of the CTC

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[12] For a general analysis of the Security Council's role, see Chantal de Jonge Oudraat, 'The role of the Security Council', in Jane Boulden and Thomas G. Weiss (eds.), Terrorism and the United Nations: Before and After September 11, Bloomington: Indiana University Press, 2004, pp.151-172.

[13] On Libya, see C.S.R. Murthy, 'United Nations Sanctions against Libya', Journal of West Asian Studies, no.8, 1992, pp.15-25; on Taliban/Al-Qaida, C.S.R. Murthy, 'Taliban and the Afghanistan Problem, 1996-2001: Role of the UN', Himalayan and Central Asian Studies, vo.6, no.1, 2002, pp.4-34.

[14] S/RES/1373 (2001), 28 September 2001.

[15] Among the Western countries, Germany is stated to be uncomfortable with the Security Council's increasing role as global legislator ignoring the legitimate jurisdiction of the Assembly and the ECOSOC. Eric Rosand, 'The Secu-

rity Council as "Global Legislator": Ultra Vires or Ultra Innovative?', Fordham International Law Journal, vol.28, no.3, February 2005, pp.540-590. See also, Stefan Talmon, 'Security Council as a World Legislature', American Journal of International Law, vol.99, no.1, January 2005, pp.175-193.

[16] The United States later admitted to a sense of skepticism about the idea of the CTC when this resolution was drafted. See Verbatim Record of the Security Council's 4618th meeting, S/PV.4618, 4 October 2002, p.20.

[17] Secretary-General, Kofi Annan's statement in the ministerial meeting of the Security Council, Doc.S/PV.4688, 20 January 2003, p.2.

are presided by a chairman, who is appointed by the Council. He/she has to be the permanent representative of a member of the Council. Since 2001 permanent representatives of five member countries of the Council have served as the Chairman of the Committee (see Table 1). The present chairman for 2006-07 is from Panama.

Table 1: **Chairmen of the CTC, 2001-07**

Year	Chair	Country
2001-02	Jeremy Greenstock	United Kingdom
2002-03	Inocencio F. Arias	Spain
2004	Andrey I. Denisov	Russia
2005-06	Ellen Margrethe Loj	Denmark
2007	**Ricardo Alberto Arias**	**Panama**

To assist the chairman and to steer the work of the sub-committees created to scrutinize the reports submitted by countries, three posts of Vice-Chair were created to be filled by the CTC through election. But given the technical nature of the contents of reports, experts were hired to help the Committee. The growing amount of work highlighted the need to further institutionalize the CTC's executive branch instead of depending on temporary and short-term arrangements. During its time as the chair of the Committee, Spain piloted revitalization proposals which in essence led to the acceptance in principle of the idea of the Executive Directorate in 2004 – two and a half years after the setting up of the CTC.

After the CTC's revitalization in 2004, its structure has become three-tiere.[18] The Plenary (composed of all the 15 member states), the Bureau, and the Counter-Terrorism Executive Directorate (CTED), headed by the Executive Director. The Plenary has the following responsibilities:

- set CTC's priorities for promoting and monitoring implementation of Resolution 1373 (2001);

- refer to the Council difficulties in the implementation of the resolution provisions;

- consider initiatives towards improving technical assistance;

- strengthen contacts and coordination between the CTC and other UN bodies;

- intensify interactions with international regional and subregional organizations to improve coordination;

- approve the CTED's programme of work prepared by the Executive Director.

The second tier of the CTC structures is the Bureau that consists of the Chair and the three Vice-Chairs. The job of the Bureau is two-fold: to deal promptly with such issues that could be reported to the Plenary later for confirmation, and secondly to harmonize, through setting of guidelines, the work of the Sub-Committees on country reports.

The CTED was set up as a temporary arrangement for an initial period up to December 2007 to enhance the capacity of the CTC to support member states' compliance with counter-terrorism commitments. Manned by 40 officers, the CTED is in a far better position compared to the expert monitoring teams attached to two other terrorism related Committees of the Security Council – one on sanctions against the Taliban and Al-Qaida while the other relates to preventing the proliferation of WMDs to non-state actors (each of the latter two is armed with 8 experts). Its annual administrative costs amounting to nearly US$8 million are met from the regular UN budget. As the 'backbone' of the CTC,[19] the CTED undertakes the below mentioned activities through two functional wings: the assessment and technical assistance office[20] and the information and administrative office. The CTED:

- provides in-depth analysis of the implementation of resolution 1373 (2001) by States;

- engages states in a dialogue through letters, direct conversations and visits on a flexible and tailored basis;

- facilitates capacity-building of needy states in the area of technical assistance, compiles

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[18]   Security Council Resolution 1535 (2004) 26 March 2004 endorsed the proposals of the CTC Chairman on the subject. See Doc. S/2004/124, 19 February 2004 for the Chairman's proposals.

[19]   Interview with the Executive Director, Javier Ruperez on 30 May 2007 at New York.

[20]   When created with two experts in 2002, it has the following tasks: to facilitate the sharing of information on standards, best practices, and sources of technical assistance, encourage donors to respond to assistance requests, address regional and sectoral shortcomings, and encourage capacity building by regional organizations. The non-legislative technical assistance and training has come primarily from individual donor states in a bilateral mode. See David Cortright, Alistair Millar, Linda Gerber, and George A. Lopez, An Action Agenda for enhancing the United Nations Program on Counter-Terrorism, Washington, DC, Fourth Freedom Forum, September 2004, pp. 11-14.

information on relevant best practices of in-ternational, regional organizations and enti-ties;

• cooperate with other relevant subsidiary bo-dies of the Council;

• keeps in touch with international, regional and sub-regional organizations.[21]

The Executive Director, who enjoys the status of the Assistant Secretary-General, is appointed by the Secretary-General with the approval of the Security Council. The Executive Director will

• support and advise the plenary and the chair,

• ensure the comprehensive follow-up of all CTC's decisions,

• monitor their execution and evaluate their results,

• propose to the Secretary-General the ap-pointment of all assigned staff, in accordan-ce with the relevant articles of the Charter and following the UN staffing rules and re-gulations,

• inform the plenary about the work of the CTED on a monthly basis.

A management review of the CTED was comple-ted by the UN Office of Internal Oversight Servi-ces, but no details are available in the public domain. The relationship between the Secretari-at and the CTED is far from harmonious. It took nearly one and a half years for the Executive Di-rectorate to be staffed as per the original plans - which affected the working of the Committee.[22] There appeared to be tensions about the degree of autonomy the CTED exercises in hiring of the staff and about the reporting prerogative.[23] Pos-sibly this might have been one of the contributo-ry factors to the resignation of the incumbent Executive Director, Javier Ruperez from Spain in June 2007. An Australian national, Mike Smith, has been named as the new Executive Director.

The evolution of the CTC as a friendly facilitator, rather than prying policeman is remarkable. Although the CTC was set up as part of the Re-solution that explicitly invoked the enforcement powers under Chapter VII of the Charter, it is not an enforcement mechanism; it has no power to impose sanctions.[24] In other words, it is not designed to serve as a tribunal passing judge-ments on the member states. Nor is it the CTC's mission to identify specific terrorists, condemn or sanction those states that sponsor or harbour terrorists, or respond to specific terrorist acts. Rather, its purpose is to strengthen the infrast-ructure needed to fight terrorism. According to the guidelines adopted by the CTC in October 2001, the Committee would be guided in its work by the principles of co-operation, transpar-ency and even-handedness.[25] It depends on co-operation from member countries, although it is well within its rights to report to the Council about the non-cooperation from a particular member or members. The first chairperson of CTC, Sir Jeremy Greenstock deftly worked to di-vest the Committee of any intrusive, coercive capacity in its monitoring and reporting functi-ons. Targeting of particular states was avoided. Instead, engaging of all states in dialogue was preferred. This policy surely went a long way in winning the confidence of countries and putting them to comfort on a sensitive subject.[26] In sum, the Committee avoided a role of being a poli-ceman, and aimed to become a service provider to countries in need of counter-terrorism capaci-ty development in stages.

[21] Doc. S/2005/800, 16 December 2005, paragraphs 43 and 44. See Security Council Report, 'CTED Review, Decem-ber 2006, available at http://www.securitycouncilreport.org/site/c.glKWLeMTIsG /b.2267027/k.C97/December_..., accessed on 5/31/2007.

[22] The delay is partly attributable to the bureaucratic dis-putes between the CTED-Secretariat. See Counter-Terrorism Evaluation Project, Recommendations for im-proving the United Nations Counter-Terrorism Commit-tee's Assessment and Assistance Coordination Function, Notre Dame: Fourth Freedom Forum and Joan B. Kroc In-stitute for International Peace Studies, September 2005, p.4.

[23] Although the proposal on the revitalization of the CTC by its Chairman in 2004 provided that the CTED would submit semi-annual comprehensive reports as well as the programme of work to the Plenary through the Secretary-General, there is a problem about the reporting practices to be followed by the Executive Directorate: whether CTED should report through the Secretary-General or could report directly to CTC. The matter was referred to the Council for clarification. See Report of the CTC to the Security Council as part of the comprehensive review of CTED, Doc. S/2005/800, 16 December 2005, p.10.

[24] While serving as chairman of the CTC, Spain proposed preparation of a list of terrorist organizations, 'similar to the list kept by the Al-Qaida and Taliban Committee. All States would then be obliged to take action required un-der Resolution 1373 against all those individu-als/organizations on this list. The idea was not pursued for lack of support, given the problems faced for lis-ting/delisting in the Committee on Taliban/Al-Qaida. See Rosand, 2004, pp.626-627.

[25] Guidelines of the Committee for the Conduct of its work: Note by the Chairman, Doc.S/AC.40/2001/CRP.1, 16 Oc-tober 2001.

[26] Eric Rosand, 'Security Council Resolution 1373 and the Counter-Terrorism Committee: the Cornerstone of the United Nations Contribution to the Fight against Terror-ism' in Cyrille Fijnaut, Jan Wouters, and Frederik Naert (eds.), Legal Instruments in the Fight against International Terrorism, The Hague, Martinus Nijhoff, 2004, pp.610-612.

4   CTC – Progress with Problems

The impact of the CTC's activities is a mixed one. The CTC has, no doubt, achievements to its credit in many areas, although these accomplishments are accompanied by major problems. The CTC's future is linked to its ability to resolve these contradictions. What follows is an analysis of these aspects.

Promotion of Legal Framework

A remarkable feature of the CTC's activities is its promotion of greatest possible acceptance of international framework of norms on counter-terrorism. There exists a link between CTC and a realization among states about the need to be part of multilateral legal framework. Since September 2001, member states deposited nearly 700 accession/ratification instruments relating to 12 UN-system generated laws with regards to suppression of terrorist acts in one or other form. (The thirteenth one on nuclear terrorism, adopted in 2005, is yet to enter into force.) To put it in other words, 40 per cent of the total number of accessions and ratifications deposited during the past five decades belong to the period after the CTC was established. Furthermore, compared to the very small number of accessions and ratifications till September 2001 (only Botswana, the United Kingdom and Uzbekistan joined all the counter-terrorism conventions in force at that time), 75 countries deposited their instruments of accession or ratification of the 12 terrorism-related conventions since September 2001. Specifically, the 1997 convention against terrorist bombings and the 1999 convention against financing of terrorism received commitment of adherence from 135 countries. This progress occurred mainly because of the promotional activities of the CTC. As an operational consequence, funds in the accounts of terrorists of approximately US$200 million in potential terrorist funding were frozen.[27]

However, there have been problems as reported by the CTC to the Council in 2004.[28] Focusing on the banking channels of funds to terrorists without sufficiently appreciating the need to prevent terrorists from accessing through other sources like *hawala* has serious limitations. Again, monitoring terrorists' use of non-profit associations to disseminate terrorist propaganda or for collecting funds is easier said than done, both for technical and political reasons. It may be pointed out, also, that certain states are reluctant to create judicial mechanisms to prosecute those accused of, involved in, or inciting terrorist acts. Last, but not the least, ratification of international conventions without proceeding to adopt internal enforcement measures has no practical effect.

Balancing Assessment with Assistance

In its initial operations, the CTC developed an approach to assess state capacity that divided the various compliance requirements into three stages. In the first stage, states are expected to have legislation in place covering financing, cross-border trafficking and other aspects of Resolution 1373 and begin the process of becoming party to the UN counter-terrorism conventions. In the next stage states were expected to have executive machinery in place covering all aspects of the resolution, have effective coordinating machinery for counter-terrorism activity, and cooperate on the bilateral, regional and international levels, including sharing of information. In the final stage, states are expected to put to effective use the legislation and executive machinery to cooperate with other states to bring terrorists and their supporters to justice.[29] Given the disparities in the legal, administrative and executive capabilities in place among states and the sensitivities associated with any rash dictation, the CTC has wisely chosen to go slow. It has tended to concentrate on the task of aiding and monitoring legislative and administrative capacity development rather than rushing to finding deficiencies in the enforcement.

An important aspect of the CTC's work concerns assessing the preparedness of member countries on the basis of the reports submitted by governments as necessary. As per resolution 1373, member countries have an obligation to report to the CTC on the measures taken to make progress in countering terrorism. Until June 2007, 700 reports have been submitted (besides nearly 70 submitted in terms of Resolution 1624 regarding prohibition of incitement of terrorist activi-

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[27] David Cortright, 2005. Can the UN Battle Terrorism effectively?, available at http://www.fourthfreedom.org/Applications/cms.php?page_id=193, accessed on 5/21/2007.

[28] Doc.S/2004/70, 26 January 2004. Although consensus procedure for decision-making is identified by some analysts in the context of the role played by Brazil, Germany, and Pakistan in the Committee (see Alistair Millar and Eric Rosand, Allied against Terrorism: What's needed to strengthen Worldwide commitment, New York, Century Foundation, 2006, pp.31-34), one must guard against alternatives that could railroad the minority. Indeed, all major countries including the United States have used the requirement of consensus to block unwanted outcomes.

[29] Cortright et al, 2004, n.30, p.9.

ties). It became clear soon that disparities existed in the conditions and capabilities of member countries to combat terrorism through legislative and executive action. This disparity was also evidenced by states' varied responses to the obligation to report.

In another development, the CTED/CTC devised in October 2006 a core tool called the Preliminary Implementation Assessment (PIA). It is a result of a thorough, consistent, transparent and even-handed analysis of States' implementation of resolution 1373. Prepared by the CTED based on reports of and informal contacts with the states concerned as also information provided by the relevant international/regional/sub-regional organizations, scrutinized by the CTC with a view to suggesting the ways by which member states could address shortfalls identified, priority areas for technical assistance, proposals for potential donor countries, they are shared with the states concerned for a dialogue on the follow-up action within a timeframe.[30] Up to middle of 2007, the CTED has completed PIA for all 192 countries and submitted to the CTC. As a follow-up the CTD has begun organizing jointly with other interested organizations visits to 10 countries during 2006: United Republic of Tanzania, former Yugoslav Republic of Macedonia, Jordan, Malaysia, the Philippines, Mali, India, Nigeria, Pakistan and Kuwait. A tailor-made visit was conducted to Paraguay. Four of the five countries visited in 2005 have begun implementing the recommendations made by the CTED.[31]

The CTC has developed a technical assistance matrix indicating the assistance needs the various countries have reported along with a directory of assistance providers. As per information available in December 2006, 75 requests by states for assistance were referred to the Terrorism Prevention Branch located in the UN Office on Drugs and Crime (UNODC), while 64 were forwarded to IMF.[32] The CTC is less able to figure out how to transit from being a 'switch-board' to put the assistance seeking countries in touch with the assistance providers, to a further more pro-active profile of ensuring at least that the needs of the assistance-seeking countries are truly met. Lack of interest among poor countries

(some of who believe that terrorism is a problem of the Western countries) is due to the absence of incentives in return to their cooperation. The idea floated by the High- Level Panel for a trust fund has not been given serious enough thought to assist capacity-building of member countries which may not be in a position to finance various legislative/administrative changes required for compliance with counter-terrorism standards notwithstanding the parallel trend of donor fatigue.[33]

Cooperating with relevant organizations

The CTC convened special meetings of organizations and entities towards more effective cooperation in countering terrorism. One special meeting and three follow-up meetings were held in New York, Washington, Vienna, and Almaty during 2003-05 bringing together a wide array of governments, international, regional and functional organizations. The fifth one is scheduled to be held in October 2007 in Nairobi. The first meeting in March 2003, with some 60 regional, sub-regional and international organizations participating, set the tone for subsequent meetings and before underlined the need for coordinated action involving (a) sharing of data and best practices, (b) continuing to do what each of them is best at while avoiding duplication and wastage of resources, and (c) giving high priority to counter-terrorism in their activities within the framework of their respective mandates. In some respects, these special meetings served a purpose, especially in sharing of information. A case in point in this regard are the 40 recommendations on money laundering adopted by the International Monetary Fund after the September 2001 attacks. A follow-up mechanism - the Financial Action Task Force (FATF) came into being, which promoted 8 special recommendations on terrorist financing and developed a common methodology of assessing compliance. However, by and large the true potential of coordination between the CTC and other international organizations is yet to graduate from expression of good intentions in periodical meetings. Again, there is a huge deficit in the desired level of cooperation and coordination between regional/sub-regional organizations and the CTC. For example, contacts be-

[30] Counter-Terrorism Committee, Updatead Working Methods (17 October 2006), available at http://www.un.org/sc/ctc/workmethods171006. shtml, accessed on 16 May 2007.

[31] Report of the CTC to the Security Council in Doc.S/2006/989, 18 December 2006, annex, paragraphs. 21-24. UNODC participated in seven of these visits.

[32] Report of the CTC, S/2006/989, 18 December 2006, annex, para.31.

[33] Secretary-General Annan refused to endorse the proposal. Besides, reservations were expressed by others. See The Counter-Terrorism Evaluation Project, Recommendations for improving the United Nations Counter-Terrorism Committee's Assessment and Assistance Coordination Function, Notre Dame: Fourth Freedom Forum and Joan B. Kroc Institute for International Peace Studies, September 2005, pp.2-3.

tween the CTC and SAARC – the organization for South Asia, a region dubbed as the 'epicentre' of terrorism – are no more than non-existent. In addition, the modalities for exchange of crucial information with certain international organizations cannot be formalized through mere contact points, due to the confidential nature of the information.

In another dimension, the CTC strove as a catalyst in international cooperation among all stakeholders. In this direction, the CTC has compiled some 60 different best practices adopted originally by 20 organizations and entities within the UN and outside. These best practices mostly fall within the scope of Resolution 1373 like freezing of funds, tracing the movements of suspected terrorists, cooperation on weapons transfer, data banks on criminals, money laundering, extradition, maritime and aviation security, model legislations, and provisions for exclusion from refugee status, etc. Some credit for progress in these areas goes to the policy recommendations made by interested US-based think tanks like the Centre for Global Counter-Terrorism Cooperation in this regard. But notably the set of best practices would not mention any practices of the sister counter-terror bodies like the 1267 and 1540 Committees.

In 2006 the CTED informed the Council through the CTC that member states in all regions of the world have made significant progress in enacting laws and establishing counter-terrorism policies. Over 150 Member States have taken steps to combat money laundering and/or against financing of terrorism since September 2001. These include legislative, institutional and operational measures such as adoption or amendment of financial laws, creation of financial intelligence units, and regulation of banking activities with penalties for non-compliance. In 75 countries stricter standards of customs and border controls, airport, and seaport security were implemented. Some 50 countries have progressed beyond the adoption of anti-terrorist-financing laws by more closely supervising the activities of charitable organizations, denying terrorists access to weapons and prohibiting recruitment to terrorist groups. The slowest progress has been made in areas that depend on bilateral action, such as extradition treaties, early warning and cooperative arrangements; less than a fifth of the States which reported to the Committee have taken action in that regard. According to the CTED, the Western European and other countries have made the greatest progress, and most of them are technical assistance providers. In the Global

South, the Latin American and Caribbean States have made the most consistent progress in implementing the provisions of Resolution 1373. Nearly a fifth of them have established financial intelligence units. Several Caribbean countries have made progress in combating the financing of terrorism through technical assistance provided by the Commonwealth Secretariat. The progress of the countries in Africa has been the slowest. According to the Executive Directorate, 38 African countries are late in submitting their reports, while a total of 14 states have not submitted a second report and 15 are late in submitting their third report.[34] It was pointed out by some study groups that, in the Horn of Africa and South Asia the obstacles to the implementation of counter-terrorism mandates are not merely technical or legal. A lack of government accountability and mistrust between citizens and security forces has weakened public support for legitimate counter-terrorism measures.[35]

Among the major problems hindering the performance of the CTC is the late and irregular submission of reports by states. As the reporting-assessment-reporting cycles grew in frequency, reporting fatigue among member countries (especially from the Global South) has taken its toll. Kenya, New Zealand, Suriname, and Thailand were among several countries (besides the groups like CARICOM and the Pacific Islands Forum) that complained about the excessive reporting burden.[36] It is evident from the progressive decline in the number of reports submitted year after year (see table 2 below). By 2003, therefore, the process of reviewing written reports from member states was widely perceived by the committee and other experts to have reached the limits of usefulness.[37]

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[34] Semi-Annual Comprehensive Report on the Work of the CTED for January-June 2006, in S/2006/989, 18 December 2006, appendix 1, pp.17-20.

[35] Millar et al, 2006, n.47, p.5. On the related mandate to monitor states' efforts against incitement of terrorists, according to the CTC, among the one-third of UN member countries submitted reports on the steps they had taken in order to implement Security Council resolution 1624 (2005). And these reports indicate 'a range of understandings of the steps needed to prohibit by law and to prevent incitement to commit a terrorist act or acts. While some states reported expressly prohibiting such incitement in their criminal laws, others provided the Committee with information on other kinds of measures that they had taken or were considering taking and that, in their view, represented implementation of this aspect of the resolution. See Report of the CTC to the Security Council on the implementation of Res. 1624(2005) in Doc. S/2006/737, 15 September 2006, annex.

[36] Luck, 2006, n.2, p.343; Millar and Rosand, 2006, n.38, pp.110-111

[37] Cortright et al, 2004, n.30, p.4. Acknowledging the problem of reporting fatigue, the CTC has pledged to

Table 2: **Break up reports submitted in compliance with Resolution 1373 to the CTC**

Year	States submitting reports	States submitting follow-on reports in the year
2001	96	
2002	158	20
2003	135*	9
2004	95	
2005	69	
2006	**70**	

*13 countries among them submitted reports for the first time in 2003, whereas 14 submitted after 2001.

5   Institutional Direction

The CTC was becoming more technical in its work programmes, leaving aside the political challenges. As rightly pointed out by Cortright, many problems facing the UN counter-terrorism programme are procedural as well as political.[38] One of the political challenges pertains to the issue area of human rights: how best to align countries' counter-terrorism commitments without infringing on human rights. It is a widely shared view that, in the name of combating terrorism, governments (not confined to the Global South) have trampled on individual and social rights threatening basic liberties. In general terms both the CTC and the General Assembly have stressed that the counter-terrorism goal needs to be pursued within the framework of international human rights/humanitarian law. Yet there are specifics about how to prevent or control human rights violations when counter-terrorism operations are on. Within the UN framework, it may be instructive to look at two nuanced positions. One view is that "[T]o compromise on the protection of human rights would hand terrorists a victory they cannot achieve on their own, the promotion and protection of human rights … should be at the centre of anti-terrorism strategies.[39] It can be distinguished from another view that, while states as well as

international organizations should be sensitive to the human rights implications of the counter-terrorism activities, protection of human rights cannot be construed as the priority of the CTC.[40]

Absence of an agreed definition of a terrorist act or terrorist has a bearing on the working of the CTC. For long, the deliberations in the Ad Hoc Committee of the General Assembly are deadlocked on the draft comprehensive convention on international terrorism, especially in regard to distinguishing those resisting foreign occupation forcibly from acts of terror - thereby pitting practically the Islamic countries against most others. The differences persisted for long even after the end of the cold war and are not likely to be ironed out in the near future.

It may be noted that the CTC is neither the first nor last body to deal with the problem of terrorism on behalf of the Security Council.[41] Given the fact that there are other terrorism-related committees[42] simultaneously requiring countries to report, naturally the problem of communication and coordination has arisen. It took two years for the CTC to begin exchanging information with the other two committees.[43] Each of them has its own executive arms, although the CTED is the biggest. Member countries (especially those not very well positioned to cater to this reporting burden) have found it problematic to report to these committees on the same or closely related subjects. Therefore, there is a strong case for doing more to achieve greater coordination among these bodies.[44] The CTC has made only a beginning now to coordinate with the sister committees while scheduling/planning visiting missions to states.[45] Outside of the Security

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take a fresh look at the reporting regime, while respecting the guiding principles of cooperation, transparency, and even-handedness. See Report of the CTC in Doc. S/2005/800, 16 December 2005, paragraph 31.

[38] David Cortright, *Can the UN Battle Terrorism effectively?, 2005,* available at http://www.fourthfreedom.org/Applications/cms.php?page_id=193 (accessed on 5/21/2007), p.5.

[39] Annan's remarks cited in Cortright, 2005, n.52, p.6.

[40] Remarks by Javier Ruperez in a conversation with the author at New York, 30 May 2007.

[41] Luck, 2006, n.2, p.343.

[42] They are the Committee on the Sanctions against Taliban and Al-Qaida set up consequent to Security Council Resolution 1267 (1999), and the Committee to implement Resolution 1540 (2004) on prohibition of terrorists' access to weapons of mass destruction. In addition, a Working Group was established under Security Council Resolution 1566 (2004), 8 October 2004 after the Beslan terrorist attacks in Russia to consider practical measures to be taken against terrorist groups other than those on the Al-Qaida and the Taliban consolidated list. But fortunately or unfortunately the working group has remained dormant.

[43] Cortright et al, 2004, pn.30, p.21.

[44] India was among the countries that successfully pressed in 2006 for a joint visiting mission instead of separate visits.

[45] The CTC has reported in 2006 that it and the 1267 Committee as well as the 1540 Committee provided access to each other's databases and working on a common strategy for non-reporting/late-reporting States. See Doc.S/2006/989, 18 December 2006, annex, paragraphs 56, 58. For a discussion of the problems in the function-

Council, in the UN system there are nearly 23 entities with notable operations of relevance to counter-terrorism. They, along with the CTED, are brought together in July 2005 under one mechanism - the Counter-Terrorism Implementation Task Force (CTITF)[46] - with a view to achieving the system-wide coordination of the counter-terrorism measures and activities through information sharing and reducing the reporting requirements.[47] By reining in the CTED into the CTITF, an attempt has been made to undercut the authority of the CTC.

A dilemma of political nature before the CTC concerns the question of naming the governments defaulting or defiant on reporting responsibilities. The situation of the Committee is unenviable. The Committee has a dilemma: if it wears the enforcement cap, it will lose whatever little confidence it has among certain governments. On the other hand, the present mode of cooperation is not taking the Committee very far either. Critics are unhappy that the CTC has failed to do no more than pushing papers. They poignantly asked, 'When is the CTC going to make a difference? When is it going to catch terrorists? How can it make a difference in the ground when it will not even say what terrorism is?'[48]

6   Proposals for Restructuring CTC

It is a moot question whether the CTC in its existing form is capable of promoting the goals of counterterrorism effectively and meet the enormous expectations from various quarters. Now that the CTC has completed six years and given that the mandate of the CTED will come up for

renewal in December 2007, the question arises whether it is time to think about a more effective counter-terrorism institution agreeable to a cross section of the world opinion. A few governments and think tanks have come up with certain ideas and proposals. Reference is made here to a few of them.

Switzerland and Costa Rica have shown interest in an office of high commissioner on terrorism. 14 others who formed the 'Group of Friends' endorsed the idea. Saudi Arabia has mobilized the Organization of Islamic Countries in favour of its brainchild, a centre on counter-terrorism. Others have suggested an agency with more of an information-sharing role, along the lines of the UN Environment Programme. The U.S. Council on Foreign Relations "Task Force on Enhancing U.S. Leadership at the UN" recommended in a November 2002 report that consideration be given to the need for an independent body to carry out the CTC's functions over the long term. Taking cue from this position, some have suggested a more robust arrangement similar to the IAEA.[49]

Guided by the prolonged and inclusive deliberations on many aspects of reforming the UN managerial/intergovernmental bodies, the above ideas do not seem practical.[50] At the same time, one is not clear how the proposals for creation of the centre on counter-terrorism or office of high commissioner are capable of making qualitative difference to the present scene. As a preferred forum of the privileged nuclear few, prospect of the IAEA becoming an attractive model seems to be far-fetched. To the U.S., 'a new global body, freed from the constraints and history of the UN, and with the flexibility and expertise to make a difference on the ground' might sound more subjective statement of preference than an objective assessment of possibilities.[51]

Given the global character of counter-terrorism project, it may not be desirable to push for an institutional set-up outside of the UN. This does not mean that the Security Council's control on CTC is sacrosanct. The trends in the General Assembly in the recent few years point to a preference for an institution more open and participatory. In this connection, the design of the Peacebuilding Commission (PBC) may present a

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ing of the Al-Qaida Committee, see Rosand, 'The Security Council's Efforts to Monitor the Implementation of Al Quaeda/Taliban Sanctions', *American Journal of International Law*, vol.98, no.4, October 2004, pp.745-763.

[46] The Task Force comprises, among others, the CTED, the Expert Staff of the 1540 Committee, the International Atomic Energy Agency, the International Civil Aviation Organization, the International Maritime Organization, the International Monetary Fund, the International Criminal Police Organization, the Monitoring Team of the 1267 Committee, the Office of the High Commissioner of Human Rights, the UN Development Programme, the UNODC, and the World Bank.

[47] Doubts are expressed that the CTITF might be unable to do the job because of inadequate resources and in the absence of ,necessary authority to get the different parts of the system to share information, cooperate and reduce overlapping mandates'. Rosand 2007, p.17. Kofi Annan proposed in 2006 authorization of a support office within the UN Secretariat to help the CTITF coordinate outcomes and efforts in furtherance of the global counter-terrorism strategy.

[48] Sir Jeremy Greenstock's statement in the Security Council, in Doc. S/PV.4734, 4 April 2003, p.4.

[49] Millar and Rosand, 2006, n.38, see chapter 7, pp.53-65.
[50] The European proposal to transform the UNEP into UN Environment Organization, for example, is nowhere near agreement.
[51] Millar and Rosand, 2006, n.28, pp.74-75.

worth-considering model for adaptation to the area of counterterrorism: The composition of its policy-making organ (the organizational committee) is diverse, democratic and weighted, in the sense three principal organs elect members and others are selected according to relevant functional criteria, while the composition of the other tier (the country-specific committees) is kept flexible and functional. The PBC has a modest support office and a fund.[52] However, the PBC is handicapped by notable limitations ranging from the smallness of the support office, the frugality of the funds, apart from its advisory nature completely bereft of any implementation capacity. Moreover, critics point out that the sub-optimal performance of the PBC so far may not be worthy of emulation in the sensitive area of counter-terrorism.

Rosand eloquently outlined three possible scenarios. The first refers to an agreement on creation of a new organization within or outside the UN. The second scenario concerns the consolidation of the counter-terrorism mechanisms within the UN with a built-in option of doing it at intergovernmental or administrative levels. Finally, the status quo marked by the continuation of the current arrangement as it exists with renewal of the mandate for the CTED/CTC for a certain period. Many small and less developed countries have favoured merger of the committees set up by the Security Council to deal with different aspects of terrorism. Secretary-General Kofi Annan lent support to the suggestion and the idea was incorporated in the 2005 World Summit Outcome document. However, some countries have reservations. India and the United States, among others, have viewed the proposals for merger of the three Security Council terrorism-related committees with skepticism. The United States, India and others have found use in the Al-Qaida Committee and would be wary of letting it lose its specificity of focus in the larger entity, wherein the CTC would gain. In view of uncertainty of agreement on the first and second set of scenarios, countries may go in for the lowest common denominator, that is, renewal of the mandate of the CTED for a few more years and as a result continued (but less coordinated) coexistence of the CTC and its siblings.

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[52] See C.S.R. Murthy, 'New Phase in UN Reforms: Establishment of the Peacebuilding Commission and the Human Rights Council', *International Studies*, vol.44, no.1, 2007, pp.39-56.

7   Concluding Observations

The swift creation of a mirror-reflection of the Security Council in the form of a Counter-Terrorism Committee in the aftermath of the September 2001 attacks should be seen against the backdrop of gradual evolution of the United Nations approach to the problem of international terrorism over decades with a stress on cooperation rather than coercion. The CTC tended to assume a larger-than-life stature, because of the circumstances of its creation, its profile centred on exclusive composition, and its variably interpreted powers. As the initial aura of the Committee ebbed, the aura around it dissipated. In the past six years, three overlapping phases characterize the CTC's functional orientation.

In the first phase up to 2004, the CTC concentrated on information-gathering from mainly member states about the legislative, executive and administrative capacities with a view to understanding their preparedness and problems in countering terrorism. The Committee showed patience in persevering with delays involving nearly 40 countries in submitting their reports or answering queries on the reports already submitted. At the same time, in this phase, the CTC weathered the teething problems to receive a dose of revitalization. The second phase (2004-06) spelled a clear shift in focus from the assessment of reports received by member countries to assisting them in enhancing their legislative and administrative infrastructure. The CTC devised several modest methodologies, such as linking the assistance seekers with assistance providers. In this phase of technical orientation, the CTC sought to diversify its sources of information beyond states by roping in international, regional and sub-regional organizations and by organizing visits to selected countries for an on-the-spot appreciation. The third phase which seems to have begun in 2006 looks for institutional renewal and reinforcement by restoring primacy of political over technical. In this phase, the key development is the growing role of the General Assembly coincided by brainstorming aimed at building better multilateral institutions for counterterrorism.

Of late the CTC has faced some critical attention for its inadequacies. There have been both exogenous and endogenous factors that explain the difficulties faced by the CTC in the effective pursuit of its elusive mandate to monitor the member states' commitment to stop financial, manpower and military supply-lines to terrorists. The reassertion by the General Assembly of interest in terrorism-related matters, as manifested in the

adoption of the Global Strategy, is not an accident. Aside from challenging the Security Council's pre-eminence as a policy driver, the Assembly may be hoping for institutionalizing follow-up to the Global Strategy. The criticism against the CTC may not be as strident as it was against, for example, the Commission on Human Rights, for the CTC has not existed as long. Hence, the various institutional alternatives mapped out to consolidate and strengthen the counter-terrorism operations under one umbrella – either within or outside the UN – sound somewhat premature. Since informal adaptation is a way of life in the story of institutional evolution of the UN, status quo of continuing with the CTC in its present form alongside other mechanisms may well emerge as a convenient choice for some more time till the situation ripens. Depending on their viewpoint, the protagonists of the various proposals may receive this outcome with disappointment or elation.

About the author

The author is Professor in International Organization and Chairperson, Centre for International Politics, Organization and Disarmament, School of International Studies, Jawaharlal Nehru University, New Delhi (India).
Email contact: csrmurthy@mail.jnu.ac.in

More information is available on:
www.fes-globalization.org