Many policy-makers, analysts and commentators appear unaware of the important steps the United Nations has taken to combat terrorism. In fact, the UN Security Council has been at the centre of the international campaign against terrorism. It has made—and it can continue to make—important contributions to this effort. The United Nations can enhance the legitimacy of military actions and increase the effectiveness of economic and political sanctions. The UN can strengthen and sustain multilateral cooperation in the fight against terrorism, and it can be instrumental in establishing and maintaining international standards of accountability. Finally, through its efforts to resolve regional conflicts, foster economic and social development, develop the rule of law and standards of good governance, the UN can improve the political, economic and social conditions that terrorists seek to manipulate to their own advantage. The United Nations, therefore, has critical roles to play in combating terrorism and promoting international security.

I develop three sets of supporting arguments in this article. First, terrorism has been high on the agenda of the UN Security Council for years. Starting in the early 1990s—and guided by the United States—the Security Council started to impose economic sanctions in response to terrorist acts. These sanctions regimes were effective in changing the attitudes of state sponsors of terrorism. They were also important in stigmatizing terrorism as an illegitimate activity that needed to be countered through international action.

Second, after 11 September 2001 the UN Security Council became even more active in counter-terrorism. It made the fight against terrorism a global one by ordering every UN Member State to implement a wide array of measures that will help to stop terrorist activities. The Security Council also militarized the response to terrorism by legitimizing unilateral military actions by states in response to terrorist threats.

Third, the UN can continue to be an effective force against terrorism if the permanent members of the UN Security Council—particularly the United States—show leadership. This will require political restraint by the United States and a willingness to listen to the concerns of others. The UN’s track record since the end of the Cold War shows that when the United States demonstrates leadership and determination it frequently convinces other Council members to follow its lead and take effective multilateral action. Others will need to be receptive to such overtures. Only then will the diplomatic standoff in the UN over the 2003 war in Iraq remain an exception.
Dangerous developments

Although every permanent member of the Security Council has been the object of terrorist attacks, the United States has been the driving force behind the Security Council’s increasingly activist stance on terrorism. The greater attention paid by the United States and the Security Council to the issue of terrorism was motivated by new developments in international terrorist activities. Five trends stood out.

First, the average number of casualties per terrorist incident was increasing. Statistics from the United States State Department show that there was a four-fold increase in the number of casualties per attack in the latter half of the 1990s.¹

Second, an increasing proportion of terrorist attacks were aimed at American facilities or citizens. According to some calculations, attacks on American targets increased from about 20% of total attacks in 1993-1995 to almost 50% of the total in 2000.²

Third, terrorist groups seemed to be operating globally as part of a worldwide network. The attacks in 1998 on the American embassies in East Africa underscored the global reach of the Al-Qaeda network. In the mid- and late 1990s this network was estimated to have 4,000-5,000 well-trained fighters scattered around the world. Compared to the 500 members of the Abu Nidal organization, the 200-400 activists of the IRA and ETA, and the 50-75 hard-core members of the Red Brigades, Al-Qaeda was a significant larger and qualitatively different type of terrorist organization.³ After 11 September 2001 American officials estimated that 15,000-20,000 terrorists had been trained in Al-Qaeda camps in Afghanistan since 1996.⁴

Fourth, fears that terrorists might one day use chemical, biological or nuclear weapons were increasing. The 1995 sarin nerve-gas attack in the Tokyo subway by Aum Shinrikyo made such fears less of a theoretical proposition. The possibility of terrorists obtaining biological, chemical or nuclear weapons—either by buying, stealing or through collusion with states developing weapons of mass destruction (WMD)—was a growing concern.

Fifth, the United States was—and is—particularly concerned by the role played by certain states in supporting and sponsoring terrorism. State support enhances the reach and power of terrorist groups. It might also provide them with WMD. Additionally, states could use terrorist groups as proxies in their own fights.

In sum, the changing nature of the terrorist threat in the 1990s made it imperative to deal with this problem in concert with other states.

UN counter-terrorism actions in the 1990s

Throughout the 1990s economic sanctions were the main policy instrument in the fight against terrorism. In January 1992, at the Security Council’s first ever meeting of Heads of State and Government, the members of the Security Council ‘expressed their deep concern over acts of international terrorism and emphasized the need for the international community to deal effectively with all such acts.’⁵ In March 1992, the Security Council backed up its rhetorical commitment with action—adopting mandatory economic sanctions against Libya, accused of involvement in the 1988 and 1989 bombings of Pan Am flight 103 and UTA flight 772. This was a first. The Security Council went on to impose mandatory (as described in Chapter VII of the UN Charter) sanctions to fight terrorism on two other occasions in the 1990s: in 1996 against Sudan and in 1999 against the Taliban regime in Afghanistan.
By imposing sanctions the Security Council not only sought the extradition of certain individuals, it also hoped to send a more general message and change the behaviour of state sponsors of terrorism. The United States in particular viewed ‘this type of concerted multilateral response to terrorism … as an important deterrent to states considering support for terrorist acts or groups’.6

The UN sanction regimes were quite effective in the case of Libya and Sudan. The sanction regimes made the support of terrorist activities more costly, and both states were responsive to these changing incentives.7 More generally, sanctions helped to change the public (declaratory) attitudes of states towards terrorism—particularly, state sponsors of terrorism. This was recognized by the United States State Department in the late 1990s and again in 2001 when it noted the continuation of a slow trend away from state sponsorship of terrorism.8

Sanctions against the Taliban in Afghanistan were not effective. Afghanistan under the Taliban regime was not an active member of the global aboveboard economy. Its revenues derived mostly from the illegal opium and heroin trade and increasingly from Al-Qaeda—the terrorist group it had given safe haven. Hence sanctions had no impact on the Taliban’s economic situation. After 11 September 2001, sanctions were strengthened and since January 2002 sanctions no longer exclusively target Al-Qaeda and Taliban associates in Afghanistan, but cover designated operatives of Al-Qaeda and the Taliban wherever they may be.9

The most important effect of the UN sanction regimes of the 1990s was to stigmatize terrorist activities and consolidate a growing international consensus that saw terrorism as an illegitimate activity that needed to be countered through collective international actions. By designating terrorist activities ‘threats to international peace and security’, UN sanctions regimes also paved the way for more forceful international responses to terrorism after 11 September 2001.

UN counter-terrorism actions after 11 September 2001

The terrorist attacks of 11 September 2001 made terrorism a top priority for the Security Council. The Security Council reacted swiftly—within hours of the attacks—and with determination. Two resolutions were key in this regard—resolution 1368 adopted on 12 September 2001 and resolution 1373 adopted two weeks later. The first paved the way for military action (even if unwittingly), the second globalized the fight against terrorism and obligated all 191 UN Member States to take far-reaching domestic legislative and executive actions in order to prevent and suppress future terrorist activities.

Militarizing responses

With the passage of resolution 1368, the Security Council for the first time recognized the right of states to individual or collective self-defence in response to terrorist acts. In other words, it recognized the right of a unilateral or multilateral military response. In the past, such responses had often led to condemnations in the UN General Assembly. Most states (as well as most legal scholars) had condemned the use of force in self-defence against terrorist attacks.

In the 1960s, 1970s and 1980s discussions to come to a consensus on the phenomena of terrorism made little progress. Agreement was impeded mainly because of differences of opinion.
about the use of violence by national liberation and self-determination movements. Recognizing the depth of these ideological divides, Member States agreed to disagree on the big picture and settled instead on a piecemeal approach to the problem.

The General Assembly elaborated several conventions that addressed specific terrorist acts—such as aircraft hijacking, the kidnapping of diplomats and the taking of hostages—and considered such acts as criminal offences. It favoured a domestic law enforcement approach that obligated states to either prosecute or extradite those accused of terrorist acts.

The changing nature of terrorism in the 1990s—in particular, its more global reach—exposed this approach as less than effective. The increased lethality of terrorist acts also dampened long-standing definitional and ideological disagreements. As terrorism became increasingly seen as a threat to international peace and security, states started to favour a more muscular approach that allowed for the use of economic sanctions and military force.10 The Security Council’s resolutions in the 1990s, and especially resolution 1368, codified this approach.

Resolution 1368 therefore became a very important instrument—if not a blank check—legitimizing the unilateral use of force in response to terrorist acts.11 The United States indeed seemed to think of resolution 1368 as a blank check. In its letter to the UN Security Council informing the latter of its action against Al-Qaeda and the Taliban—as it is required to do by Article 51 of the UN Charter that allows for the use force in self-defence—the United States hinted that action might be taken against other targets. It stated, ‘Our inquiry is in its early stages. We may find that our self-defence requires further actions with respect to other organizations and other States.’12

Significantly, China and the Russian Federation were quick to endorse this view. China believed that it helped to legitimize its suppression of opposition groups in Xinjiang. The Russian Federation saw it as a useful precedent in its fight against Chechen rebels. Russian President Vladimir Putin invoked the resolution and its right to individual and collective self-defence in September 2002 when justifying Russia’s right to military intervention against Chechen rebels operating in Georgia, with or without authorization of the latter.13

While the right to self-defence is recognized in the UN Charter as an inalienable right of states, it is generally accepted that this right is not open-ended. In particular, it ceases to operate when the UN Security Council takes action. In addition, the use of force in self-defence is subject to conditions. Four questions are critical in judging the lawfulness of self-defence actions: Was there an armed attack? Was the response necessary? Was the response proportionate? Was the response timely?

The broader implications of resolution 1368 on the legality of the use of force have received little attention to date. Taken together with the debate in the 1990s on humanitarian intervention, it is clear that the general prohibition on the use of force is weakening. This is not necessarily a bad thing when there is a clear international political consensus on when and how to intervene militarily. Unfortunately, there is no such consensus at present—especially with respect to terrorism.

GLOBALIZING THE BAN AGAINST TERRORISM

On 28 September 2001 the UN Security Council adopted an American-sponsored resolution that obligated all 191 UN Member States to take a wide range of measures to prevent future terrorist activities. Resolution 1373 required states to change and/or adopt domestic legislation to:
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Criminalize terrorist acts, including the support and financing of such acts;

Deny safe haven to terrorists and prohibit any other support for terrorists, such as the provision of arms; and

Cooperate with other states in the implementation of these measures.

Many of the measures mentioned in the resolution were present in two important conventions negotiated in the late 1990s—the 1997 Convention for the Suppression of Terrorist Bombings, which entered into force in May 2001, and the 1999 Convention on the Suppression of Financing of Terrorism, which at that time had not yet entered into force. Resolution 1373 nonetheless made many of the provisions of these conventions binding on all states.

To monitor implementation, the Security Council established the Counter-Terrorism Committee (CTC). Jeremy Greenstock, the United Kingdom’s Permanent Representative to the UN, was elected by the Security Council as the CTC’s first chairman. In April 2003 Ambassador Inocencio Arias of Spain took over the chairmanship of the CTC.

Greenstock emphasized the technical nature of the CTC. In his words, the functions of the CTC ‘were to monitor, to be analytical and to report facts to the Security Council for consideration.’ The goal, he said was ‘to help the world system to upgrade its capability to deny space, money, support, haven to terrorism, and to establish a network of information-sharing and cooperative executive action.’

The CTC initiated a multi-stage programme. In the first stage, it reviewed existing legislative and executive measures in Member States to combat terrorism. Resolution 1373 had ordered states to provide the CTC with information on their counter-terrorism measures by 27 December 2001. The second stage focused on institutional mechanisms and assistance. By January 2002 the CTC had received 117 reports—a remarkable response by historical standards. By April 2003 only three states—Sao Tome and Principe, Swaziland and Vanuatu—had not filed reports with the CTC.

An initial reading of these reports pointed to several problems. First, states often had different interpretations of key terms and provisions. For example, the financing of terrorist activities and groups was frequently equated with money laundering and dealt with in that context. However, money used to finance terrorism is not necessarily generated by illegal business transactions; on the contrary, much of this money is legal and is acquired by legitimate means. Similarly, there was confusion about freezing, seizing, confiscating and suspending accounts. Second, many states dealt with terrorist activities on their own territories, but were silent with respect to terrorist acts carried out by their nationals elsewhere. Third, information on international cooperation was sketchy. It focused mainly on formal judicial issues—particularly extradition. Fourth, although many states lacked the legislative and administrative capacity to implement resolution 1373, few states requested implementation assistance from the CTC.

Some of these problems had surfaced in UN sanction regimes in the 1990s. For example, in their review of the UN sanctions regimes in the 1990s, two noted scholars estimated that only twelve countries had laws that enabled them to enforce financial sanctions. The UN group monitoring sanctions on the Taliban and Al-Qaeda reported in September 2002 that the latter continued to have access to considerable financial and other economic resources. It noted that while US$ 112 million was frozen in the first three months after the 11 September 2001 attacks, only US$ 10 million was blocked in the following eight months. It concluded ‘al-Qaeda is by all accounts “fit and well” and poised to strike again at its leisure.’ One year later its assessment was similarly pessimistic. It concluded that many of Al-Qaeda sources of funding still needed to be uncovered and frozen. In addition, the UN monitoring group argued that most of the funds frozen thus far were attributable to Al-Qaeda.
‘supporters or facilitators, rather than to the network’s own direct assets.’ Further reports also showed serious shortcomings in identifying and blocking Al-Qa’eda assets other than bank accounts.

The safe haven provisions of 1373 are similarly hampered by implementation problems. Border controls are weak in many countries. Indeed, many countries do not have the capacity to effectively police the territories under their jurisdiction. The travel bans imposed on members of Al-Qa’eda, the Taliban and associated groups are also difficult to implement because of the widespread use of false and forged travel documents and lack of details regarding the individuals concerned. Many states pointed to the deficiencies of the ‘consolidated list’, that is the list with individuals and entities associated with Al-Qa’eda. Problems ranged from uncertain spellings of names, to lack of details with regard birth dates, addresses or other identifying information.

Finally, as the work of the CTC becomes more complicated it takes more time to review follow-on reports. States—developing states, in particular—are also increasingly late in submitting their follow-on reports.

Problems and recommendations

By ordering all UN Member States to take legislative and executive measures to combat terrorism at home and abroad, the UN Security Council has made the fight against terrorism a global one. This resolve is to be applauded. Unfortunately, important problems remain.

First, although a consensus exists at the declaratory level on the importance of outlawing terror, states continue to have widely divergent views on the exact nature of these threats. The United States has designated seven states ‘state sponsors of terrorism’—Cuba, Iran, Iraq, Libya, North Korea, Syria and Sudan—but not everyone agrees with this designation. In addition, each of these states represents a unique policy challenge that calls for unique policy responses.

The United States should take the lead in forging a consensus on the nature of the terrorist threat. Sustained attention to the concerns of other states, consultation and genuine efforts to come to a multilateral understanding will help convince other states that the United States is concerned not only about its own national interests, but the international community as a whole.

Second, who will have the authority to determine if Security Council resolution 1373 is being violated, and who will have the authority to decide on policy responses to non-compliance? The United States and the Russian Federation have been the most outspoken in stating that the UN Security Council does not have an exclusive right to determine policy on this issue. They have argued that they can unilaterally decide whether other states are complying with resolution 1373, and that a unilateral determination of non-compliance would allow them to exercise their right to self-defence. However, unilateral responses to non-compliance with Security Council resolutions can set dangerous precedents: they can lead to abuse and provoke serious rifts among Security Council members. The contentious Security Council debate in early 2003 could be a forerunner of other debates as the campaign against terrorism unfolds.

The leading powers on the Security Council should not dodge discussion of this issue. They should recognize that when non-compliance with UN Security Council resolutions leads to imminent and direct security threats, individual states always retain the right to self-defence. However, if non-compliance does not lead to imminent and direct threats, states have an obligation to develop collective responses. The Security Council should define minimum compliance standards with respect to resolution...
1373 and develop guidelines on how to respond to cases of non-compliance. Behaviour below the minimum standard should trigger punitive measures such as political, economic and even military sanctions. Performance above and beyond minimum international standards should reap rewards. To avoid suspicion that punitive measures and rewards would be controlled by the political agenda of any one state—the United States, for example—the Security Council should decide on these matters collectively.

Third, the long-term implications of recent Security Council actions with respect to the use of force are problematic. By legitimizing the unilateral use of military force in response to terrorist attacks, the Security Council has broadened the conditions under which states can use military force in self-defence. Since there is no commonly accepted definition of terrorism, the possibilities for abuse are obvious and dangerous. American officials have argued that terrorist threats require pre-emptive and possibly covert military actions, which further complicates the issue of using military force for self-defence.25

The United States should take the lead in defining criteria for the use of force in self-defence, and it should engage the members of the Security Council in a discussion of this issue. When are terrorist acts the equivalent of armed attacks? Do imminent threats of attack always justify a military response? What constitutes an appropriate response? The United States needs to be careful in its handling of this issue: weakening the existing norm on the prohibition of the use of force is not in its long-term interest as it could lead to widespread regional and international instabilities.

Fourth, implementation of the UN’s counter-terrorism measures will continue to be difficult. Resolution 1373’s financial and safe haven provisions require monitoring and enforcement capabilities that most countries do not possess and may be too expensive for them to acquire. The Security Council’s response to this problem has been inadequate. The technical assistance that the CTC is able to provide is minimal because it too lacks resources. Most of this assistance therefore comes through bilateral channels. It will therefore be ad hoc and selective.

To minimize this problem, the CTC should be given more resources. The Security Council should also push for the establishment of a UN mechanism that could help finance counter-terrorism programmes in states that have capacity problems. Ultimately, if the members of the Security Council are serious in their determination to fight terrorism, they should provide the resources that will help states to implement counter-terrorism measures. This will entail equipping the CTC with more manpower, financial resources and analytical capabilities. Transforming the CTC into a Counter-Terrorism Organization—an independent UN agency—could address these technical and implementation issues and should therefore be considered. Such an organization should include the Terrorism Prevention Branch of the UN Office on Drugs and Crime and possibly the entire Office. Indeed, the links between organized crime and terrorism are growing. In many instances funds generated from these criminal activities help finance terrorist activities.

Fifth, as counter-terrorism measures become more complex and as more international organizations become involved in the fight against terrorism it is important to retain unity of purpose. It is imperative that the UN (particularly the CTC) retains a central coordinating role, so as to provide synergy—not duplication of efforts—and to make sure that measures are mutually reinforcing.

In recognition of this problem, in March 2003 the CTC organized a special meeting with some fifty-seven regional and other international organizations. This a good beginning, but deepening cooperation with these organizations will require resources and the political support of all concerned.

Finally, the fight against terrorism is a long-term fight against the ‘underlying conditions that promote the despair and the destructive visions of political change that lead people to embrace,
rather than shun terrorism.\textsuperscript{26} This involves tackling broader societal problems—poverty, social disorder, the lack of democracy and poor governance.

The UN has a limited but promising track record in dealing with these problems. Its capacities in these areas should be enhanced. Investing in social and development programmes will ultimately have significant payoffs in the campaign against terrorism. Terrorism is not just a military problem: it will require a wide range of policy responses. The United Nations can make important contributions in many of these areas.

The United States, as the most powerful state in the world, has a special responsibility—and a special interest—in making the UN Security Council an effective instrument in the fight against terrorism. The UN has great political and operational value in the war against terrorism, and the UN Security Council has been extremely responsive to American concerns since the end of the Cold War. The story of the UN’s involvement in the fight against terrorism attests to this. The UN could do more, however. Whether it does will depend to a large degree on the United States.

Notes

7. Sanctions on Libya were lifted on 12 September 2003; see Security Council resolution 1506. Sanctions on Sudan were lifted on 28 September 2001; see Security Council resolution 1372. For details on the sanctions record see Chantal de Jonge Oudraat, forthcoming, The Role of the UN Security Council, in Jane Boulden and Thomas Weiss (eds.), Terrorism and the UN: Before and After September 11\textsuperscript{th}, Bloomington, Indiana University Press.
9. UN Security Council resolutions require states to submit names of individuals and organizations associated with Al-Qaeda and the Taliban to the Security Council. These names are then placed on a so-called ‘consolidated list’ and subjected to a travel ban, financial sanctions and an arms embargo. The list is regularly updated. In November 2003 the list contained names of 273 individuals and ninety-nine entities.
10. This also explains why in the 1990s action moved from the General Assembly to the Security Council.
11. It must be noted that this had not been France’s intent when introducing resolution 1368. On the contrary it had wanted to underscore the role of the UN Security Council in this case.
14. This convention entered into force in April 2002. Prior to September 2001 only two states had ratified both conventions: Cuba and the United Kingdom.
15. See Press Briefing by the Chairman of the CTC, 19 October 2001.
16. They would do so subsequently. By 30 September 2003 all Member States of the United Nations had submitted their initial reports.
23. By 30 September 2003, forty-eight states were late in submitting their reports. All were mentioned in a report to the UN Security Council (see UN document S/2003/1056 of 31 October 2003) and, except for Sweden, all were developing countries. The committee overseeing sanctions on the Taliban and Al-Qaeda operatives (known as the 1267 Committee) also complained about the few numbers of states reporting. See UN documents S/2003/669 and S/2003/1070, op. cit.