

Multi-Lateral Counter-Terrorism Cooperation: The Emergence of a Regime?

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| 요약 |

저는 이 자리에서 테러리즘과 평화, 테러예방과 대책이라는 주제로 발표를 하라고 부탁을 받았습니다. 제가 어떤 노력이 지금 대두되고 있고, 다자적인 단체들이 무슨 일을 하고 있는지 말씀을 드리하고자 합니다. 어떻게 대테러 체제를 만들어 나가는지 말씀을 드리겠습니다. 한 가지 질문을 해보고자 합니다. 다자적인 차원에서 지금 대테러 단체가 만들어져 있는지, 만약에 있다면 이게 어디에서 생겨난 것인지, 어떤 업적을 이룩해 냈는지, 어떤 도전과제가 향후 있을지, 대테러 기구가 지속 될 가능성이 무엇인지 질문을 드려보겠습니다. 물론 이 답변은 없을 수 있겠지만 질문은 던지겠습니다.

대테러와 관련해 몇 가지 말씀을 드릴 수 있는 것이 있습니다. 먼저 이 레짐이 아직 태동 단계에 있는 레짐일 수가 있습니다. 다양한 활동이 UN과 기타기구에서 있었습니다. 여러 결의안, 법, 새로운 제도들이 생겨났습니다. 레짐이 새로운 레짐이고, 제도화되는 단계에서 새로울 수도 있습니다. 이 분야에서 한 10년 동안 일이 있었습니다. 새로운 제도들, 새로이 제도를 만드는 것은 그 노력이 아주 초기단계입니다. 대테러 레짐이 안보레짐일 수도 있습니다. 안보레짐이 드물기 때문에 반가운 소식입니다. 안보문제들은 국제시스템에서 국가들의 생존을 도모합니다. 생존과 관련된 안보문제이기 때문에 국가들이 협력을 하는 것이 쉽지 않고 구속력 있는 결의를 하기가 힘든 것이 사실입니다. 그러나 가능한 일입니다.

일부 학자는 공유하는 가치의 친밀감이 있을 경우 이 안보 레짐이 만들어진다고 말을 했습니다. 이 권력들이 주체가 되어 우호적인 국제환경을 원한다면, 자국의 이해에 적합하다면 이 안보레짐이 만들어진다고 말을 했습니다. 세 번째로 어떤 측면에서는 이게 강요된 레짐일 수도 있습니다. 제가 강요됐다고 말씀드린 것은 다른 학자의 말을 빌은 것입니다. 레짐이 어디서부터 기인이 됐는지에 관해 말씀을 드리면 먼저 자발적인 레짐입니다. 이 레짐들은 자발적으로 시장에서 생겨나는 것입니다. 예를 들어서 인터넷 규제 같은 것입니다. 아니면 특별한 시장의 활동 같은 것입니다. 두 번째로는 교섭 레짐이 있습니다. 이런 협상 레짐들은 아주 명백한 각인을 통해서 생겨나는 레짐입니다. 환경을 다루는 레짐들이 이런 교섭 레짐이라고 할 수 있습니다. 세 번째로 강요된 레짐이 있습니다. 강요 레짐은 강대국들이 강제로 협력을 요구를 하는 경우입니다. 그래서 대테러 활동에서는 교섭, 강요 레짐의 특징이 다 보여지고 있습니다.

이슈 쟁점들을 보면 1990년대 말에 가장 큰 두 개의 이슈가 있었습니다. 첫 번째가 테러리스트 폭탄 활동을 막기 위한 것이었고, 1999년 테러 자금조달과 관련된 그런 협정이었습니다. 그래서 모든 국가들이 국가법을 통과시키고 이런 테러와 관련된 형벌을 마련하게끔 되었습니다. 9.11사태 이후 이 대테러 협력을 위한 추진력이 바뀌었습니다. UN 총회와 안보리가 그 일을 맡게 된 것입니다. 다자인기구인 G8과 같은 기구들이 그 역할을 떠안게 된 것입니다. 대테러 의무들을 보다 구속적으로 만들기 위해 노력을 했습니다. 제도와 협력을 이 분야에서 제도화하기 위한 노력도 있었습니다.

이번에는 안보리가 지금까지 무슨 일을 했는지 확산금지과 관련된 어떤 일을 했는지 보겠습니다. 9.11 사태 후에 1368호 결의안을 통과 시켰습니다. 테러를 비난했고 또 국가들이 방어, 자신을 방어할 수 있는 권리를 강조했습니다. 그리고 1373 결의안을 통과시켰는데 이 결의안을 보면 테러국이 다수의 대테러 조취들을 취하도록 되어 있습니다. 그리고 또 국가를 돕기 위한 위원회를 만들었습니다. 바로 대테러위원회(CTC)죠. 그래서 테러단체들의 자산을 동결시키도록 하고 있고, 테러리스트들의 입국을 불허하는 내용도 있

고, 테러리스트의 인원보충을 막고, 무기 공급을 막고, 대테러 기관과의 협력을 촉구하는 것을 내용으로 하는 결의안입니다. 대량살상무기, 이런 대량살상무기의 전달체제가 잠재적인 테러집단의 손에 들어가지 못하게끔 하는 것이 중요합니다. 그래서 결의안 1540을 통과시켰습니다. 그래서 국가들이 대량살상무기와 관련된 안전장치를 더 강화하였고, 비국가주체들이 이 무기를 입수하지 못하게끔 했습니다. 그래서 1540위원회를 만들었는데, 이것은 대테러위원회와 유사한 것으로서 이런 새로운 규제를 집행하기 위한 그런 기구입니다.

방금 말씀 드렸다시피 UN 안보리가 확산금지에 관한 일을 하고 있습니다. 그래서 확산금지위원회가 1540위원회를 만들어 여기서 테러활동을 다루고 있고 대량살상무기가 테러리스트의 손에 들어가는 것을 막고 있습니다. 안보리의 활동보다 더 폭이 넓다고 할 수 있습니다. 또 접근방식을 보면 대테러를 접근하는 것이 보다 포괄적입니다. 근본적인 원인부터 탐색해 나가고 있습니다. 인권이라든지 경제발전 빈곤퇴치 좋은 지배구조 등등이 테러를 막는데 아주 중요한 요소라고 주장하고 하고 있습니다.

지역단체들 예를 들어서 EU, 미국, APEC 등등이 같이 모여서 이제 대테러 활동을 시작했습니다. 대테러 활동은 이런 그룹들의 우선 과제로 뽑혔고 법의 집행과 정보공유와 관련된 일을 특히 많이 하고 있습니다. 그 외에도 기능적 단체들이 대테러 노력에 앞장서고 있습니다. 국제시민기구, IMF 등등이 개입을 하고 있습니다. 이 단계에서 협력이 중요한데 정치적인 면이 적고 아주 기술적인 전문가들이 많이 참여하기 때문입니다. 뿐만 아니라 G8도 언급했다시피 대테러활동에 2003년부터 개입을 하고 있습니다. 대테러행위 그룹을 만들었습니다. 이 행위 그룹은 UN의 대테러위원회를 돕는 것입니다. 자금을 조성하는 등많은 일을 수행하고 있습니다. 뿐만이 아니라 국가와 지역간의 합의들이 많습니다. 예를 들어서 미국은 EU 쪽과 협약이 있고 그리고 또 아세안과 일본 간에도 그런 협약이 있습니다. 여기에는 국제법이라든지 국외추방 절차 등의 문제들이 논의된 것입니다.

이 레짐이 직면하고 있는 도전과제가 무엇인지 말씀드리겠습니다. 여러

가지가 있습니다. 이것은 아주 기본적인 문제들입니다. 먼저 테러리즘의 정의가 필요합니다. 지금 테러리즘은 하나로 정의가 되고 있지 않습니다. 너무 다양한 협약이 있고, 단체도 있고, 이런 협약과 단체들이 각각 테러리즘의 정의를 다르게 하고 있습니다. 미국정부와 같은 경우도 테러리즘, 국제테러가 무엇인지에 관한 정의가 각각 기구마다 다릅니다. 부처마다 다르기도 합니다. 예를 들어 FBI 같은 경우 국내보안을 다루고 있는데 테러 정의가 다르고, 국토안전부도 테러에 대한 정의를 다르게 하고 있습니다. 이게 문제입니다. 단순한 문장의 문제가 아니라 실제적인 집행과 관련된 문제입니다.

대테러 전략이 다른 것도 문제입니다. 국가마다 어떻게 대테러를 접근할 지 전략이 다릅니다. 어떤 쪽은 법집행을 하는 것을 좋아합니다. 예를 들어 EU가 그렇습니다. 또 다른곳은 군사적인 대응을 좋아합니다. 미국이 그렇습니다. 다른 국가들은 오히려 근본원인, 테러의 근본원인을 파악하는 것이 중요하다고 생각합니다. 다자간 커뮤니티에서도 국가의 의견들이 다릅니다. 테러가 과연 안보문제에 얼마나 중요한가의 문제에서 미국 같은 경우에는 테러를 외교 안보문제의 중요한 현안으로 삼고 있습니다. 다른 국가는 그렇지 않습니다. 테러리즘을 그냥 다양한 안보문제 중 하나로 여기는 국가도 있고, 개도국 같은 경우에는 테러보다는 훨씬 더 시급한 문제들이 있다고 생각합니다.

정당성에 대해서도 질문을 할 수 있습니다. 대테러단체들의 정당성이 과연 있는가. 왜냐하면 서구세력들이 주도를 하고 있기 때문입니다. 그래서 일부 국가들은 현재 이런 레짐이 정당한가 의심을 합니다. 안보리가 과연 구속력 있는 요구를 내걸 자격조건이 있는지 의문을 제기 하고 있는 것입니다. 테러리즘은 그 자체가 이슈가 아니라 그냥 하나의 전술일 수 있습니다. 그래서 테러리즘을 대응을 할 때 근본의 문제를 캐지 못하는 측면도 있습니다. 왜 테러가 생겨났는지 그 근본을 캐지 못한다는 지적도 있고 절차상의 문제도 있을 수가 있습니다. 일부국가들은 다자간 단체들이 참여해서 테러문제를 해결하는 것보다 오히려 양자간의 대화를 통해서 문제를 해결하고자 하는 경우도 있습니다.

세 번째로 대테러 레짐과 관련해서는 정치적인으로 인권이 희생이 될 수

도 있다는 것입니다. 인권에 희생이 있을 수 있다는 것입니다. 보안을 지키기 위해서 인권을 희생시킬 수 있다는 것입니다. 정부가 반정부 인사들의 입을 막기 위해서 대테러 정책을 사용할 경우가 있다는 것입니다. 미국에서도 이런 문제가 있었습니다. 애국행위가 오염되는 경우도 있었습니다. 중국, 말레이시아, 러시아, 이집트 등은 국가안보 내지는 대테러주의라는 이유로 지금 반정부 그룹들의 입을 막는 일을 했습니다. 이 분야의 성공을 어떻게 측정하는가도 어려운 일입니다.

그리고 레짐에 대해서 말씀드리자면 레짐은 국가들이 협력의 문제를 다루기 위해서 만들어지고, 조정의 문제를 다루기 위해서 만들어집니다. 이런 쪽으로 보자면 협력을 할 수 있는 여러 방법이 있습니다. 공통된 테러라는 문제를 해결하는 방법이 있습니다. 그런데 이러한 이슈들이 있을 때 여러분들을 힘들게 하는 몇 가지 이슈가 있습니다. 먼저 시간의 문제입니다. 이런 상황에서 시간이 더 많이 흐를수록 국가 간의 협력 가능성이 떨어집니다. 시간이 부족한 것이 적이라고 할 수 있습니다. 협력과 관련해서는 시간이 더 많을수록 협력이 적어질 수도 있습니다. 위기 같은 것이 시간을 줄일 수 있고, 또 이런 사태 때문에 협력을 할 수도 있습니다. 말씀드렸듯이 정당화 문제도 있고, 자원의 문제도 있습니다. 뿐만 아니라 지금 그 가치와 규범이 서로 상충되는 경우도 있습니다. 그래서 대테러 레짐의 미래는 본질을 살피고, 조정과 관련된 도전과제를 본다면 리더쉽이 필요하고, 규범적인 친밀감이 필요하고, 더 많은 자원이 필요하다고 말할 수 있습니다.

I. Introduction

Since September 11th 2001, the world has seen a number of new multilateral institutions, treaties, and resolutions designed to curtail the activities of terrorist groups and prevent future terrorists acts. While these efforts are recent and inchoate, it appears that a multilateral counterterrorism regime is taking shape. If so, then it may be appropriate to use insights from regime theory to better understand this phenomena and to appreciate its future challenges. After a brief discussion on the origins of regimes generally, I provide an overview of the current status of the multilateral counterterrorism regime. I conclude with a discussion of some of the challenges facing this emerging regime.

II. Regime Theory and the Origins of Regimes.

In the late 1970s and early 1980s, international relations scholars began producing a comprehensive body of literature on international regimes. Robert Keohane, writing in 1989, defined regimes as “institutions with explicit rules, agreed upon by governments, that pertain to particular sets of issues in international relations.”¹⁾ Stephen Krasner added, “In a world of sovereign states the basic function of regimes is to coordinate

1) Robert O. Keohane, *Neoliberal Institutionalism and State Power: Essays in International Relations Theory* (Boulder, CO: Westview Press, 1989), p. 4.

state behavior to achieve desired outcomes in particular issue-areas.²⁾ By this definition, the emerging collection of international agreements, laws, treaties, and organizations designed to combat terrorism appears to constitute a nascent security regime.

Much of the scholarly work on regimes has focused on economic or environmental regimes. There have been a few notable works that focus on security regimes, however. Robert Jervis, writing in 1982, was one of the first scholars to discuss security regimes. Although he discusses these regimes in the context of traditional European alliances and conflict, he provides a starting point for discussing the rise and fall of security regimes generally. Jervis maintains that for a security regime to be formed and maintained the great power(s) must be in support of the regime and must believe that a “regulated environment” is preferable to an environment where all states act individually.³⁾ Moreover, the states behind the formation of the regime must believe that other states have similar values and interests with regard to the regime.⁴⁾

These qualities are characteristic of the new counterterrorism regime. Since September 11th 2001, many of the agreements and

2) Stephen D. Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” in *International Regimes*, ed. Stephen D. Krasner (Ithaca: Cornell, 1983), p. 7.

3) Robert Jervis, “Security Regimes” in *International Regimes*, ed. Stephen D. Krasner (Ithaca: Cornell, 1983), p. 176.

4) Jervis, “Security Regimes,” p. 177.

institutions of this regime have been created and supported by the UN Security Council, the United States, and the G8. Furthermore, these powerful actors have clearly indicated a preference for a regulated environment where all states have to undertake certain measures to combat terrorism. Following the terrorist attacks on September the 11th, the United States Congress and President George Bush established the National Commission on Terrorist Attacks Upon the United States to create the definitive account of the attacks and to provide recommendations for the future. The report states that “practically every aspect of US counterterrorism strategy relies on international cooperation.” It recommends that the United States “engage other nations in developing a comprehensive coalition strategy against Islamist terrorism. There are several multilateral institutions in which such issues should be addressed ... but the most important policies should be discussed and coordinated in a flexible contact group of leading coalition governments.”⁵⁾ From this we can see that US leaders believe that cooperation among the most powerful states is essential in the fight against terrorism.

The scholar Oran Young maintains that regimes can arise in one of three different ways. First, there are “spontaneous” regimes, which form without the specific direction of states or groups, such as balance of power systems or market-based

5) *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: W. W. Norton), p. 379.

cooperation. Secondly, there are “negotiated” orders, which are explicit bargains between various states and actors, such as the agreements over the global commons. The last type of regime is the “imposed” regime. Imposed regimes are created when great powers or dominant actors compel the cooperation of uninvolved or reluctant participants.⁶⁾ Young believes that the different types of regimes are not mutually exclusive, and that an actual regime can include elements of all three.⁷⁾

The current counterterrorism regime has been the deliberate creation of states, the United Nations, and other international organizations, usually in response to specific terrorist acts. It contains elements of both “negotiated” and “imposed” regimes. The regime is, on one level, imposed because the United States and the UN Security Council have done much to foster the institutions and treaties involved, particularly since the catastrophic attack on US soil. Moreover, as noted below, there are several states that believe that a Security Council directed counterterrorism regime is unrepresentative and of questionable legitimacy. But the regime is also, in part, a negotiated regime and has been a vehicle for more positive relations between some of the participants. As one analyst observes, “US-EU cooperation against terrorism has led to a new dynamic in US-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral

6) Oran Young, “Regime Dynamics: The Rise and Fall of International Regimes,” *International Organization* 36 no. 2 (Spring, 1982), p. 284.

7) Young, “Regime Dynamics: The Rise and Fall of International Regimes,” p. 286.

discussions. Despite some frictions, most US policymakers and analysts view the developing partnership in these areas as positive and one of the relative bright spots in the recently much-strained transatlantic relationship.”⁸⁾

III. A Brief History of Multilateral Counter-Terrorism Cooperation

Both terrorism and multilateral cooperation against terrorism have gone through several phases. The earliest manifestation of international cooperation against terrorism occurred in the 1890s. A number of political figures were assassinated by the terrorist groups of the day, which prompted states to do a better job of policing borders and sharing information with each other.⁹⁾

The international terrorism of the 1960s and 1970s led to the first significant contemporary phase of international cooperation and law-making. These terrorist incidents eventually led to the passage of a dozen United Nations counterterrorism conventions over the course of the next several decades, each one dealing with a specific aspect of international terrorism. In addition to these UN conventions, a number of states began cooperating directly in response to specific terrorist events. For example, the

8) Kristin Archick, “US-EU Cooperation Against Terrorism.” *US Congressional Research Service*, (RS 22030, Jul. 12, 2005), p. 2.

9) David C. Rapoport, “The Fourth Wave: September 11 in the History of Terrorism,” *Current History* 100, no. 650 (2001), p. 422.

United States coordinated bombing attacks with Great Britain against Libya in response to Libyan-backed terrorism,¹⁰⁾ while the European Union simultaneously imposed an arms embargo against Libya.

Only since 9/11, however, has international cooperation against terrorism moved to the very top of the agenda of major international organizations such as the Security Council of the United Nations and the G8.¹¹⁾ Before September 11, the Security Council had been somewhat reluctant to focus on terrorism, believing that it was more a national rather than an international problem. The Security Council also believed that if terrorism were addressed by the United Nations it was more appropriately a matter for the General Assembly.¹²⁾

Since 9/11, however, the UN Security Council has passed a number of anti-terrorism resolutions, and, following September 11, international counterterrorism resolutions have become more compulsory and binding.¹³⁾ As will be discussed below, the Security Council passed Resolution 1368, which condemned

10) *Ibid*, p. 424.

11) Eric Rosand, "Global Terrorism: Multilateral Responses to an Extraordinary Threat," Coping With Crisis Working Paper Series. *International Peace Academy* (April 2007), p. 1.

12) Eric Rosand, "The UN-Led Multilateral Institutional Response to Jihadist Terrorism: Is a Global Counterterrorism Body Needed?" *Journal of Conflict and Security Law* 11, 399 (December 2006), p. 5.

13) Noelle Quenivet, "You are the Weakest Link and We Will Help You! The Comprehensive Strategy of the United Nations to Fight Terrorism," *Journal of Conflict and Security Law* 11, 3 (2006), p. 3.

terrorism and called for all countries to help bring terrorists to justice and Resolution 1373, which made it obligatory for states to take certain measure to combat terrorism.¹⁴⁾ To monitor these new efforts, it established the Counterterrorism Committee (CTC). There has also been a rise in the number of states who have ratified the two most important of the twelve UN counterterrorism conventions: the International Convention for the Suppression of Terrorist Bombings (1997) and the International Convention for the Suppression of the Financing of Terrorism (1999).¹⁵⁾

IV. Multilateral Counterterrorism Agreements and Institutions

1. United Nations Initiatives

At the UN level, there are several notable resolutions, conventions, and institutions designed to facilitate international cooperation in the fight against global terrorism. While the UN has long struggled with how to combat terrorism, its efforts have become more systematic and structured over the past decade.

14) Rosand, "Global Terrorism," p. 13.

15) David Cortright, Alistair Millar, Linda Gerber, and George A. Lopez, "An Action Agenda For Enhancing the United Nations Program on Counter-Terrorism," *Fourth Freedom Forum and the Joan B. Kroc Institution for International Peace Studies at the University of Notre Dame*, (2004), p. 6.

As these efforts have become more systematic, they have increasingly resembled a regime as defined in the literature.

2. UN Counterterrorism Conventions

As noted, from 1963 until 1999, the UN General Assembly promulgated 12 counter-terrorism conventions, which provide the foundation for interstate cooperation against terrorism in the areas of law enforcement, intelligence, and financial affairs. The resolutions establish the legal foundation for states to harmonize criminal justice standards and negotiate mutual legal assistance agreements.¹⁶⁾ Signatories to these conventions are required to criminalize the terrorist activity described in the conventions and to either punish or extradite the violators.¹⁷⁾

The General Assembly conventions have specific foci. The first conventions, which date from the 1960s and 1970s, address terrorism as it relates to civil aviation. Subsequent conventions deal with terrorism and hostage taking, protected persons, nuclear weapons, maritime navigation, and plastic explosives.¹⁸⁾

The two most important conventions are the International Convention for the Suppression of Terrorist Bombings (1997)

16) David Cortright, "Can the UN Battle Terrorism Effectively?" *USA Today Magazine*, January 2005, 2.

17) "Multilateral Responses to Terrorism: The United Nations" available at <http://www.adl.org/Terror/tu/tu_38_04_09.asp> (8 Nov 2004).

18) More details and the text of each convention can be found at http://www.unodc.org/unodc/en/terrorism_conventions.html

and the International Convention for the Suppression of the Financing of Terrorism (1999). The International Convention for the Suppression of Terrorist Bombings (1997) was the 11th counter-terrorism convention. The convention makes it an offense to plant an explosive/lethal device in a public place or infrastructure facility. It requires each state party to the convention create laws making such acts illegal and impose appropriate penalties on anyone who commits such an act. The International Convention for the Suppression of the Financing of Terrorism (1999) is the 12th UN counter-terrorism convention. It requires all parties to the convention to stop any groups (charitable, social, cultural, or otherwise) who are funding terrorism and terrorist groups. States must hold individuals or groups who provide funds for terrorism liable for their actions. States must freeze the funds and assets of any group that is providing terrorism financing, and can no longer use bank secrecy as an excuse not to cooperate.

3. UN Security Council Resolutions

There are several important Security Council resolutions dealing with terrorism. Resolution 1368, passed in 2001 immediately after the September 11 attacks, recognizes a state's right to exercise individual (or collective) self-defense in response to terrorism. It condemned those specific attacks and called on all member states and the international community to

bring the perpetrators of the acts to justice.

In short succession, the Security Council passed several key resolutions. Resolution 1373 *requires* countries to implement a number of counter-terrorism measures. It obligates countries to “freeze the financial assets of terrorists and their supporters, deny travel and safe havens for terrorists, prevent terrorist recruitment and weapons supply, and co-operate with other countries in information sharing and criminal prosecution.”¹⁹⁾ Notably, Resolution 1373 does not provide a definition of terrorism. Resolution 1373 also established the Counter-Terrorism Committee (CTC) to help monitor states’ efforts to implement the requirements of this resolution. Resolution 1373 was passed under Chapter VII of the UN Charter, “Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression,” which makes it binding on all UN members and it calls for all states to assent to the previously passed conventions on terrorism.

Resolution 1535 authorizes the CTC, through the Counter-Terrorism Executive Directorate (CTED), to make site visits (with the consent of the state involved) to discuss their implementation of Resolution 1373.²⁰⁾ This resolution came after the CTC acknowledged that having member states file their own

19) Rosand, “The UN-Led Multilateral Institutional Response to Jihadist Terrorism,” p. 5.

20) Eric Rosand, Alistair Millar, and Jason Ipe, “The UN Security Council’s Counterterrorism Program: What Lies Ahead,” *International Peace Academy* <www.ipacademy.org> (2007), p. 5.

written reports was insufficient.

Resolution 1540, passed in 2004, addresses the threat of so-called “catastrophic terrorism.” It requires all states to take the necessary steps to prevent weapons of mass destruction (WMD) from falling into the hands of terrorists. Specifically, Resolution 1540 prevents states from supplying non-state actors with WMD weapons and delivery systems. Moreover, states must take preventative measures to stop WMD materials from falling into the hands of non-state actors. States must also take steps to ensure that WMD materials are properly transported and stored. It too is a Chapter VII resolution. This resolution created the 1540 Committee and “assigned it largely the same tasks it had given the CTC in the context of the implementation of 1373.”²¹⁾

4. UN Institutional Performance in Counterterrorism

Currently, the Security Council is leading the UN’s program against terrorism and, as noted, it has spawned several important counter-terrorism institutions. The CTC is the main organization dedicated to the global fight against terrorism. It is a 15-member group comprised of the UN Security Council members and is responsible for helping member states implement the duties imposed by Resolution 1373. It has two main functions: 1) analyze the counterterrorism capacities of individual states; and 2) attempt to help outside donors

21) *Ibid.*

effectively address the needs of those states that are upgrading their counterterrorism capabilities. The CTC essentially conducts an international “audit” of the needs and capabilities of member states in their struggle against terrorism.²²⁾ It works with expert advisors to discover any vulnerabilities a state may have and then offers the state its recommendations.²³⁾ Although Resolution 1373 obligates states to comply with UN-led counter-terrorism measures, one observer notes that the CTC has not yet come to a point where “it would be appropriate or even possible to refer non-complying states to the Security Council for appropriate action.”²⁴⁾ It is “not a sanctions body” and does not have any comprehensive list of terrorists or terrorist groups.²⁵⁾ The CTC is more of an “incentive-oriented” body, which helps to provide states with the means to fight terrorism.²⁶⁾

The CTC can point to several accomplishments in its initial years. It has created and sustained a new level of political awareness regarding the implementation of counterterrorism

22) *Ibid.*, p. 6.

23) “CTC: About the CTC - How Does The CTC Work With States?” <<http://www.un.org/Docs/sc/committees/1373/work.html>> (8 Nov. 2007).

24) Alistair Millar, Jason Ipe, George A. Lopez, Tona Boyd, Linda Gerber, and David Cortright, “Recommendations for Improving the United Nations Counter-Terrorism Committee’s Assessment and Assistance Coordination Function,” *The Counter-Terrorism Evaluation Project of the Fourth Freedom Forum and the Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame* (Sept. 2005), p. 4.

25) “Counter-Terrorism Committee,” <<http://www.un.org/sc/ctc/>> (8 Nov. 2007).

26) Rosand, “The UN-Led Multilateral Institutional Response to Jihadist Terrorism,” p. 6.

measures. It has fostered compliance with the reporting requirements of member states, as all 191 UN Member States have, at a minimum, submitted first-round reports explaining their efforts to implement Resolution 1373. Taken together, the CTC has established a baseline for international cooperation and needs-assessments in counter-terrorism efforts.²⁷⁾

The Counter-Terrorism Executive Directorate was established in 2004 to provide permanent and professional support for the Counter-Terrorism Committee. The CTED is the expert body of the CTC. It conducts site-visits in specific countries to determine how a state should bolster its counterterrorism capabilities. Along with the CTC, the CTED has collected extensive data regarding terrorism and the state-level counter-terrorism measures.²⁸⁾ It is the arm of the CTC that provides states with specific technical assistance in implementing counterterrorism measures.²⁹⁾ The mandate for the CTED expires at the end of 2007, however, and its authority will need to be extended.

In addition to the CTC and the CTED, the UN Security Council has created several other committees, often in response to a particular event. Most notably, these include:

- The Non-Proliferation Committee is designed to help states implement the requirements of Resolution 1540. This committee evaluates state reports on compliance and identifies which

27) *Ibid.*

28) Rosand et al., "The UN Security Council's Counterterrorism Program," p. 1.

29) "CTC: About the CTC," <<http://www.un.org/Docs/sc/committees/1373/cted.html>> (8 Nov. 2007).

aspects of Resolution 1540 the state has fulfilled and which aspects require additional efforts. This committee has generated a great deal of information on the status of WMD safeguards the reporting countries have in place.³⁰⁾ The committee struggles with the issue of states' suffering from "reporting fatigue," as member states face an increasing number of reporting requirements in the area of counter-terrorism compliance.³¹⁾

- The Al-Qaeda and Taliban Sanctions Committee focuses specifically on countering the activities of al-Qaeda. This committee consists of the 15 members of the Security Council. As with the CTC, member states are represented by diplomats rather than technical experts. As with other sanctions committees, however, this committee is supplemented by a group of independent experts that help member states fulfill their requirements.³²⁾ This committee has created a master list of al-Qaeda related terrorists and groups, and member states are obligated under international law to freeze the assets of any group or individual on the list. There are currently 400 listed entities.

- The 1566 Working Group was formed in response to the attack on the school in Beslan, Russia, and the passage of

30) Peter Crail, "Implementing UN Security Council Resolution 1540: A Risk-Based Approach," *Nonproliferation Review* 13, no. 2 (July 2006), p. 368.

31) Rosand, "The UN-Led Multilateral Institutional Response to Jihadist Terrorism," p. 6.

32) Eric Rosand, "The Security Council's Efforts to Monitor the Implementation of Al Qaeda/Taliban Sanctions," *American Journal of International Law* 98, no. 4 (Oct 2004), p. 753.

Resolution 1566 condemning the attacks. The purpose of this group is to consider any practical measures that can be taken against non al-Qaeda-related terrorist groups and to debate the possibility of creating a special fund that would support the victims of terrorism. The group has run into a number of internal problems and has accomplished little.³³⁾ This working group convenes rarely, the members are reputed to not be able to cooperate, and are unable to reach a consensus.³⁴⁾ Moreover, this working group was not adopted under Chapter VII of the UN Charter and is not legally binding on UN member states.

Knitting together these efforts, in 2006, the UN adopted a Global Counter-Terrorism Strategy. The Strategy provides a blueprint for a multi-level and comprehensive international response to terrorism. It was adopted by the General Assembly and focuses both on the security-related aspects of terrorism as well as the root causes. This resolution is in response to the fact that the previous, post 9/11, UN initiatives on terrorism have been spearheaded by the Security Council and focus more exclusively on security issues. The Strategy document broadens the UN's response to terrorism and acknowledges that respect for human rights and the underlying causes of terrorism are also important issues. Specifically, it affirms "Member States' determination to continue to do all they can to resolve conflict, end foreign occupation, confront oppression, eradicate poverty,

33) Rosand, "The UN-Led Multilateral Institutional Response to Jihadist Terrorism," p. 8.

34) Rosand et al., "The UN Security Council's Counterterrorism Program," p. 6.

promote sustained economic growth, sustainable development, global prosperity, good governance, human rights for all and rule of law, improve intercultural understanding and ensure respect for all religions, religious values, beliefs or cultures.”³⁵⁾ The Global Strategy is designed to facilitate cooperation between the UN institutions designed to combat terrorism and other multilateral anti-terrorism organizations. It is also significant because it has been adopted by the General Assembly and thus represents a more global UN response to terrorism. Implementation of the Global Strategy is uncertain.³⁶⁾

5. Regional, Functional, and Ad-Hoc Cooperation

In addition to the UN bodies, there have been other regional, functional, and ad-hoc multilateral groupings designed to combat terrorism. Regional organizations that have established counterterrorism units include the Asia-Pacific Economic Co-Operation Forum (APEC), the African Union (AU), the Organization of American States (OAS) and others. The European Union (EU) provides an example of a regional body that has done a great deal to bolster its counterterrorism efforts. As the European coordinator for counter-terrorism stated, “9/11 changed our outlook and our policies: the fight against terrorism

35) “CTC: About the CTC,” <<http://www.un.org/terrorism/strategy-counter-terrorism.html>> (8 Nov 2007).

36) Rosand, “Global Terrorism,” p. 16.

became a top priority.”³⁷⁾ For example, the EU has created Eurojust, a law enforcement body designed to better coordinate the law enforcement activities of the EU member states, and has promoted several other initiatives that increase law-enforcement and intelligence gathering cooperation.³⁸⁾ In 2001, the EU also established a common definition of terrorism. According to this definition, a terrorist act is an act that seriously damages a country with the intent of “seriously intimidating a population, or unduly compelling a government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic, or social structures of a country or an international organization.”³⁹⁾

Functional organizations that have launched anti-terrorism efforts include the International Civil Aviation Organization, the International Maritime Organization, and the International Monetary Fund. Because these organizations are less entangled in interstate politics, they have been able to respond to potential terrorist threats more quickly and have often provided much needed technical expertise to various states. The CTC, for example, is dominated by “political officers” (i.e., diplomats)

37) *Ibid.*

38) http://europa-eu-un.org/articles/fr/article_3510_fr.htm

39) “Council Framework Decision of 13 June 2002 on Combating Terrorism,” <http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0475&model=guichett> (8 Nov. 2007).

who do not always have a great deal of technical expertise in a particular field. Thus, bodies like the CTC tend to focus more on the political, policy, and process aspects of a particular issue rather than the technical details. Functional organizations are much more likely to address these important technical matters.⁴⁰⁾

There have also been an increasing number of informal intergovernmental bodies that have become increasingly involved in counterterrorism. Notably, in 2003, the Group of Eight (G8) created the Counter-Terrorism Action Group. This group was created to support the CTC and help provide counter-terrorism assistance to states. The Action Group focused specifically on staunching terrorist financing. The finance ministers of the member states were directed to identify weak spots and take new steps to strengthen international cooperation in this area.⁴¹⁾

Finally, there is direct, country-to-country or county-to-region counter terrorism cooperation such as US-EU cooperation and ASEAN-Japan cooperation. Notable efforts in EU-US anti-terror cooperation efforts include intelligence sharing agreements as well as the Extradition and Mutual Legal Assistance Agreement. This latter agreement speeds up the extradition process, expands the number of extraditable offenses, and creates more avenues for contact between US and EU officials.⁴²⁾

40) Rosand, "Global Terrorism," p. 16.

41) "A Window on the G8: An Introductory G8 Reference Book," *Moscow Office of the World Bank*, (2006), p. 37.

42) "Speech by Gijs De Vries on the 'European Strategy in the Fight Against

V. Challenges to Counter-Terrorism Cooperation

1. A Definition of Terrorism

One of the fundamental challenges facing the counter-terrorism regime is codifying a definition of terrorism. The UN has long avoided a specific definition of terrorism and risks alienating important member states in the process of creating one. This problem is not limited to the UN. According to one survey, there are over 100 different definitions of what terrorism is in the many different international organizations and treaties dealing with the issue.⁴³⁾ This shortcoming creates the problem of identifying just which actors and groups should be added to international and multilateral terrorism watch lists. If states are unwilling to recognize certain actors as “terrorist” groups, then it will be harder to, say, freeze the assets of these groups. Even the United States and the European Union have had difficulties over defining terrorism and what constitutes a terrorist organization. The EU has in many cases been slower to add some groups to terrorist lists because it believes them to be more “revolutionary” organizations.⁴⁴⁾ Some European states

Terrorism and the Co-operation with the United States,’” <http://europa-eu-un.org/articles/fr/article_3510_fr.htm> (8 Nov. 2007).

43) “International Conference on International Terrorism and Counter-Terrorism Cooperation,” *Shanghai Academy of Social Sciences*, ICAS Special Contribution (No. 2002-1114-SAS), p. 4.

44) Kristin Archick, “Europe and Counter-Terrorism: Strengthening Police and

have also been reluctant to add groups like the Kurdistan Workers Party (PKK) and the Revolutionary Armed Forces of Columbia (FARC) to terrorist watch lists because the governments of these states have had spotty human rights records. There has also been a debate over whether to consider the military and political wings of Hamas as separate entities, with some states arguing that Hamas' political wing provides important humanitarian service in Palestine and should therefore not be included on lists of terrorist groups.⁴⁵⁾

2. Counterterrorism Strategies

States have differing attitudes about how the war against terrorism should be fought. Europeans tend to see terrorism as a phenomenon that should be dealt with using police, intelligence, and other methods that do not involve the use of military force, whereas countries like the US are much more likely to resort to military responses to the problem of terrorism.⁴⁶⁾ Likewise, a number of states, particularly Japan and several European countries, have been dealing with terrorism for decades and have come to see it as more of a nuisance and less

Judicial Cooperation," *US Congressional Research Service*, (RL 31509, Oct. 15, 2004), p. 17.

45) *Ibid.*

46) Joseph S. Nye, Jr., Yukio Satoh and Paul Wilkinson, "Addressing the New International Terrorism: Prevention, Intervention, and Multilateral Cooperation," *Task Force Report #56, The Trilateral Commission* (2003), p. 1.

of an existential threat requiring fundamental change in policies. There is also a perception among developing countries—Kenya, for example—that terrorism is a Western phenomenon and that developing states have other, more pressing concerns.⁴⁷⁾ Furthermore, initiatives that emanate from Western organizations, such as the G8, often lack legitimacy among developing and non-Western states and thus it may be harder to multilateralize those initiatives. Pakistan, as discussed below, is one such state that has expressed these concerns.

The problem of creating a counterterrorist strategy is compounded by the fact that terrorism is a tactic, not a strategy. Fighting specific terrorists or terrorist groups may do nothing to stop the underlying source of the dispute. In fact, some of the military operations that have been designed to fight terrorist groups may have only fanned the flames of discontent. Some scholars have argued instead that the fight against terrorism is really a “battle of ideas” between competing worldviews and thus requires a more comprehensive effort to staunch terrorism.⁴⁸⁾

In addition to substantive disputes, countries differ in their methods of meeting terrorist threats. Not every country wants to operate within the framework of a multilateral institution. France is one country that prefers bilateral counter-terrorism cooperation to multi-lateral counter-terrorism cooperation in

47) Rosand, “Global Terrorism,” p. 5.

48) *Ibid.*, p. 7.

many areas. For example, France would rather have bilateral intelligence sharing agreements instead of one general, multilateral, agreement among all EU member states.⁴⁹⁾

3. Political and Human Rights Considerations

Counterterrorism efforts in the name of national or international security often come at the expense of human rights and civil liberties. After September 11th, the world community largely focused on capturing and killing terrorists, cracking down on terrorist groups, and preventing future terrorist attacks. Several governments took advantage of this situation to curtail the human and political rights of minority groups. These incidents include: China's suppression of Uighur Muslims in the Northwestern provinces; Egypt's detention of hundreds of suspected Islamists; Malaysia's imprisonment of pro-democracy activists along with Islamic extremists; Russia's further crackdown on Chechen dissidents; and India's detention of political critics.⁵⁰⁾ In many instances, these governments claimed that they were acting in accordance with the UN's concern that terrorism must not be tolerated.⁵¹⁾

49) Kristin Archick, Carl Ek, Paul Gallis, Francis T. Miko, and Steven Woehrel, "European Approaches to Homeland Security and Counterterrorism," *US Congressional Research Service* (RL 33573, Jul. 24, 2006), p. 13.

50) Christopher C. Joyner, "The United Nations and Terrorism: Rethinking Legal Tensions Between National Security, Human Rights, and Civil Liberties," *International Studies Perspectives* 5 (2004), p. 244.

The Security Council and the United States in particular have been resistant to efforts to ensure that their counterterrorism efforts comply with international humanitarian law. According to one report, the Bush administration maintains that because it is engaged in a “war” against terror they are permitted to kill suspected enemies without regard to individual rights or due process. Moreover, the Bush administration believes that accidentally capturing or harming innocent citizens is an unavoidable byproduct of this fight.⁵²⁾

4. Measuring Success

Developing an appropriate measure of counterterrorism success is yet another challenge facing states. Nations can pursue vastly different counter-terrorism policies and yet still claim success in the counterterrorism struggle merely because each state or organization may have a different measure of what constitutes success.⁵³⁾ For example, the Bush administration has claimed a certain degree of success in the war on terror because the US has allegedly killed or captured 2/3 of al-Qaeda’s top leadership, seized over \$200 million in terrorist assets, and eliminated terrorist-harboring regimes in Iraq and Afghanistan.

51) *Ibid.*

52) Rosemary Foot, “The United Nations, Counterterrorism and Human Rights: Institutional Adaptation and Embedded Ideas,” *Human Rights Quarterly*, vol. 29 (2007), p. 11.

53) *Ibid.*

Other countries have different definitions of success, however, such a reducing the root causes of terrorism or the prevention of the spread of terrorist ideologies.⁵⁴⁾

5. Legitimacy of the Counterterrorism Regime

The various UN organizations also face a number of legitimacy challenges in implementing counter-terrorism measures. Not all countries consider the authority of the CTC and the post-September 11 measures regarding terrorism to be representative of the interests of the international community. A number of countries have questioned whether the Security Council has the authority to impose legally binding measures on UN member states.⁵⁵⁾ They see Security Council action as “circumventing the traditional international law-making process” which involves the consent of individual member states. Pakistan, for example, is a country that does not always see the Security Council as an appropriate body for dealing with terrorism-related issues. Although it has adopted the 1540 Resolution, it has been a vocal critic of the Resolution both before and after its adoption because of its origination in the Security Council.⁵⁶⁾ As one scholar notes, states like Pakistan cannot ignore Security Council

54) Raphael Perl, “Combating Terrorism: The Challenge of Measuring Effectiveness,” *US Congressional Research Service* (RL 33160, Nov. 23, 2005), p. 3.

55) Rosand et al., “The UN Security Council’s Counterterrorism Program: What Lies Ahead,” p. 7.

56) Crail, “Implementing UN Security Council Resolution 1540,” p. 359.

resolutions, but they can be slow to implement their provisions, or unwilling to follow all aspects of a resolution.⁵⁷⁾

6. Institutional Weakness

The UN-led regime also faces problems with monitoring and enforcement. For example, the CTC has lacked a way of independently checking whether individual member states are implementing the required counter-terrorism measures.⁵⁸⁾ If member states are unwilling to comply with the CTC's recommendations, the CTC has so far been unwilling to refer states to the Security Council because of their lack of compliance or even to exert pressure on a nonconforming state.⁵⁹⁾ Thus, even though the UN Security Council resolutions are legally binding on member states, in practice the CTC has had trouble in forcing the more uncooperative states to comply.

Moreover, the CTC does not actually provide counterterrorism assistance to states, it merely plays a role in matching donors with those states that need assistance. The demand for this assistance is rapidly exceeding the supply and over 100 countries have indicated that they would like assistance.⁶⁰⁾ Thus, even if states are actually willing to implement counter-terrorism measures, they may lack the necessary resources.

57) *Ibid.*

58) Cortright, "Can the UN Battle Terrorism Effectively?," p. 1.

59) Rosand et al., "The UN Security Council's Counterterrorism Program," p. 10.

60) Cortright, "Can the UN Battle Terrorism Effectively?," p. 3.

The CTED, as the body that is responsible for conducting site visits in individual countries, had visited 18 countries by 2007. Conducting site visits involves a long and formal process, however, thus slowing down the implementation of counterterrorism measures.⁶¹⁾

Institutional coordination is another challenge for the new multilateral bodies. Because there are several UN counterterrorism entities, there is jurisdictional overlap and it is not completely clear yet how the bodies should work together. There is also a concern that the UN will be “overburdened” if it tries to implement all of the counter-terrorism practices outlined in the Global Counter Terrorism Strategy.⁶²⁾

Procedural challenges plague both the UN and regional counter-terrorism organizations. Many of these organizations make decisions by consensus and find it hard to make quick, responsive decisions as a result of this decision-making process.

Bodies like the CTC also face public relations challenges. There are many states and areas around the world that do not fully understand or appreciate the mission or the value of the CTC. The CTC will have to build political support for its missions.⁶³⁾

61) Rosand et al., “The UN Security Council’s Counterterrorism Program,” p. 8.

62) Quenivet, “You are the Weakest Link,” p. 11.

63) Cortright et al., “An Action Agenda,” p. 22.

7. Concluding Thoughts

Academic literature can help us put these practical problems in perspective. Robert Jervis, discussing the Concert of Europe security regime of the 19th century, notes that one of the reasons for its decline was the fading of the “memories of the ravages of the Napoleonic Wars.”⁶⁴⁾ Regimes must sustain their momentum and do not last forever. Recent, high profile, terrorist attacks have ensured that terrorism is currently a central issue on the world stage and have provided an impetus for many of the laws and institutions of the counterterrorism regime. If enough time passes without any significant terrorist events, however, the great powers of the world may turn their attention to other issues, allowing counterterrorist initiatives to lapse.

The tension inherent between national security and human and civil rights can also undermine security regimes. During the Concert of Europe, Britain and France suspected that Russia, Austria, and Prussia were using the excuse of suppressing popular revolutions in the name of security and stability.⁶⁵⁾ There is certainly a concern that states party to the counterterrorism regime will use it only to further their own interests and increase state power at the expense of dissonant minorities. As noted above, it appears that several states have already used counterterrorism measures as a cover for cracking down on

64) Jervis, “Security Regimes,” p. 184.

65) *Ibid.*

domestic dissidents.

A security regime driven by the most powerful members of international community naturally invites suspicion. If the counterterrorism regime is, in part, an “imposed” regime that reflects predominantly the interests of the great powers, then, by its nature, it may not be fully responsive to the security needs of many states that face very different challenges. Speaking to the issue of regime formation, Oran Young notes that “powerful actors will exert whatever pressure they can in the effort to devise ‘constitutional’ contracts or legislative bargains favoring their interests.”⁶⁶⁾ The emerging multilateral regime reflects this coercive quality and it will need to respond to the broader interests of its members to sustain cooperation.

The nascent counterterrorist regime faces a dilemma of “common aversion.” That is, although states are interested in avoiding a terrorist attack and are willing to cooperate to prevent such an attack, particular states prefer different counterterrorism strategies and coordination is necessary to make sure that cooperation occurs and terrorist attacks are prevented. The keys to successful coordination are shared norms and sufficient resources and incentives. As discussed, the nascent counterterrorism regime faces serious challenges in both these respects.⁶⁷⁾

66) Oran Young, “Regime Dynamics,” p. 289.

67) Richard T. Cupit and William J. Long, “Multilateral Cooperation and Nuclear Nonproliferation,” *Security Studies*, 2, no. 3/4 (Spring/Summer 1993), p. 335.