

# The United Nations and Counterterrorism

The UN's counterterrorism framework and its accompanying institutional architecture have grown rapidly since the attacks on 11 September 2001. While UN counterterrorism has made important contributions to certain aspects of the global fight against terrorism, it is also plagued by a number of deep flaws.

By Fabien Merz

The devastating attacks on 11 September 2001 instantly catapulted terrorism to the top of the international agenda and heralded an era that would see a flurry of UN initiatives aimed at countering this threat. This resulted in the rapid growth of a dedicated legal and policy framework as well as the development of an accompanying institutional architecture within the organization. Such focus was placed on this issue that some observers now consider counterterrorism (CT) and its “softer cousin” PVE (Preventing Violent Extremism) as in the process of becoming an unofficial “fourth pillar” of the UN, alongside peace and security, human rights, and development, the three founding pillars enshrined in the UN Charter.

The UN CT framework and its institutional architecture undeniably have substantial achievements to show. Amongst others, it facilitated regional and international cooperation, helped fill important gaps in international and national law, and incentivized states to build CT capacities. But the rapid growth of this politico-legal framework and the creation of new institutions within the UN has also given rise to several grave concerns. Many observers fear that the seemingly ever-growing organizational focus on CT and PVE is making it more difficult for the UN to effectively



UN Secretary-General Kofi Annan addresses the General Assembly about his recommendations for combating global terrorism in New York, May 2, 2006. *Chip East / Reuters*

work towards the organization's initial *raison d'être*. Additionally, the lack of a legally grounded definition of what constitutes terrorism and insufficient guard rails have allowed some UN member states to instrumentalize the UN CT framework to crack down on dissent domestically and violate human rights under the guise of UN CT provisions.

## A Fourth Pillar?

The Security Council (UNSC), the UN's principal organ responsible for maintaining global peace and security, was the first to act after the devastating terrorist attacks on 11 September 2001. It unanimously passed Resolution 1368 on 12 September, condemning the attacks, declaring terrorism a threat to peace and security, and



recognizing the right of individual and collective self-defense. On 28 September, the UNSC, again unanimously, passed Resolution 1373. This was the first legally binding Chapter VII resolution related to counterterrorism that applied to all UN members. It required all states to, *inter alia*, deny terrorists and their supporters safe haven, criminalize the financing of terrorism at the domestic level, prevent acts of terrorism through international judicial cooperation and implement new financial as well as administrative measures. Resolution 1373 is widely considered to have laid the foundation for the UN's later involvement in counterterrorism and has been described as the "cornerstone" of the ensuing UN CT framework and institutional architecture. Since the end of 2001, the UNSC has passed more than 40 resolutions related to CT. These resolutions include a large number of provisions that all states are either obligated or expected to implement. They cover a growing range of areas, including (but not limited to) the criminalization of terrorism, cross-border law enforcement cooperation, border security, terrorist

financing, protecting critical infrastructure, and addressing the misuse of the internet.

The UNSC's response to 9/11 also created institutions. The UN Counter-Terrorism Committee (CTC) first emerged as a product of Resolution 1373. The CTC was initially set up as the Council's monitoring mechanism for implementing the resolution. Its mandate has since expanded to conducting country-specific assessments of terrorism threats and counterterrorism capacities, monitoring the implementation of key follow-on resolutions, and identifying emerging trends and dynamics. Additionally, the Counter-Terrorism Committee Executive Directorate (CTED) was set up in 2004 to aid the work of the CTC. CTED's main tasks include conducting assessments of member states counter terrorism capacities and needs, providing technical assistance and capacity-building support to improve these capacities, and facilitating cooperation and information-sharing among member states and relevant international organizations. The Council created two more institutions related to counterterrorism, a committee to monitor the implementation of sanctions against the Islamic State of Iraq and the Levant (ISIL, or IS for "Islamic State"), al-Qaida (AQ), and their affiliates; and one that focuses on preventing weapons of mass destruction from falling into the hands of terrorists. Each of these UNSC committees has an own group of experts to support its work, the largest one being CTC's CTED comprised of around 40 staff.

In 2006, the UN General Assembly (UNGA) – the organization's main deliberative, policymaking, and representative organ – followed suit and adopted the Global Counter-Terrorism Strategy (GCTS). Consisting of four main pillars, the strategy was designed to advance a wide range of measures, from strengthening state capacity to counter terrorist threats to better coordinating the UN system's counter terrorism activities. It has been described as a unique global instrument to strengthen national, regional, and international efforts to counter terrorism. Adopted by consensus, this was the first time that all UN member states agreed on a common approach to the fight against terrorism. The GCTS is revised every two years through intergovernmental negotiations and is in its seventh edition, with the eighth edition currently under negotiation. Similar to the UNSC, the UNGA and the UN Secretariat also

went the route of creating new institutions. The Counter-Terrorism Implementation Task Force (CTITF) was created in 2005 to enhance coordination and coherence in the UN's counterterrorism activities. The CTITF's mandate was later broadened to provide support to states in their efforts to implement the GCTS. To reinvigorate the initially sluggish and uneven implementation of the GCTS, the UN Counter-Terrorism Center (UNCCT) was established in 2011, aided by a large monetary contribution of Saudi Arabia, and began working hand-in-hand with the CTITF.

In 2015, during the rapid rise to power of IS, then Secretary-General Ban Ki-moon introduced Countering Violent Extremisms (CVE) to the UN, with slight modifications, as the "Preventing Violent Extremism" (PVE) agenda. This was marked with the UN Secretary General's Plan of Action to Prevent Violent Extremism in 2016. PVE can, in a nutshell, be described as "softer" measures aimed at addressing the root causes of terrorism instead of directly fighting its manifestations, as more classical "harder" CT measures usually do.

UN Secretary-General António Guterres further empowered and streamlined the UN CT architecture by establishing the United Nations Office of Counter-Terrorism (UNOCT) in 2017. The UNOCT is designed to provide leadership on UNGA-led counterterrorism mandates, enhance coordination and coherence among the more than 40 UN entities that are part of the "Global Coordination Compact", and marshal resources for UN counterterrorism efforts. UNOCT also oversees the UNCCT and the CTITF.

### The rapid growth of the UN's CT framework and its institutional architecture has given rise to grave concerns.

For a long time, the UN regular budget only covered a small percentage of UNOCT's annual funding, making it reliant on voluntary contributions. Despite this, UNOCT has grown rapidly since its establishment, often due to the substantial contributions of Gulf countries such as Saudi Arabia and Qatar. In just a few years since its founding, UNOCT has experienced what some observers have described as "spectacular growth" and evolved into one of the biggest entities at the UN headquarters in New York. It is staffed by 150+

## Switzerland and UN Counterterrorism

Switzerland has ratified 16 of the 18 universal conventions and protocols aimed at combating specific forms of terrorism the UN has adopted over the past 40 years. Switzerland is also among those UN member states **strongly emphasizing the importance of always respecting international law, particularly human rights, international humanitarian as well as refugee law**, when combating terrorism.

**Switzerland is particularly committed to continuously improving the procedural rights of individuals targeted by UN counterterrorism sanctions**, which have been repeatedly criticized for their lack of legal protection. As such, Switzerland is engaged with like-minded states to enhance due process in UN sanctions regimes since 2005. It was one of the countries pushing for the establishment of the Office of an Ombudsperson related to the UNSC's al-Qaida sanctions regime in 2009. Together with like-minded states, Switzerland continues to advocate for improvements of due process in sanctions regimes that do not have access to the Ombudsperson. Recent proposals submitted to the UN Security Council on 11 June 2021 with the group of like-minded states aim at the creation of an independent review mechanism for these other sanctions regimes. Switzerland has pledged to continue pushing for this while serving as a non-permanent member of the Security Council during 2023 and 2024. Furthermore, Switzerland also **advocates for and has contributed to a balanced implementation of the GCTS** and is amongst those member states **promoting a better and more thorough engagement with civil society**.

Switzerland has also co-financed a number of independent initiatives and reports that have critically assessed different aspects of UN counterterrorism. Two examples are the "Securing the Future Initiative", a joint project of the Fourth Freedom Forum and The Soufan Center, as well as the series of "Blue Sky" reports published by the Global Center on Cooperative Security.

personnel and led by an Under-Secretary-General. Unsurprisingly, this rapid growth of the UN's normative frameworks and accompanying CT architecture over the last two decades had far-reaching implications, not only for the nature of the global fight against terrorism but, at times, far beyond.

### Persistent issues

It is undeniable that this flurry of UN resolutions, new institutions, strategies, and action plans contributed to better confronting certain aspects of terrorism and terrorist radicalization. An excellent example is the facilitation of regional and international cooperation and coordination, an essential element for successfully countering the transnational nature of the modern terrorist threat. Furthermore, the UN's normative framework not only helped to fill important gaps in international law but also successfully incentivized member states to adopt domestic laws and measures. The dedicated UN CT institutions also aided capacity-building efforts by providing technical assistance, training, and support for the development of national counterterrorism strategies.

However, the rapid growth of the UN's CT framework and its institutional architecture has also given rise to grave and very legitimate concerns. The hasty adoption of Resolution 1373 after the attacks on 11 September led to significant shortcomings being incorporated into the very foundation of the UN CT framework. Reacting to the

9/11 attacks, the Council at the time seems to have prioritized swiftness of action and the demonstration of unity amongst its members before comprehensiveness. This led to the key concept of "terrorism" being insufficiently clearly defined and the lack of an explicit reference to the need to respect human rights standards while countering terrorism. The definitional shortcoming results from the notorious and long-lasting inability to agree on a commonly accepted definition of what constitutes terrorism among the international community (and academia alike). The latter shortcoming related to the absence of human rights guardrails can probably and at least partially be explained by the unique contextual factors of that moment in history that seemingly warranted a fast and univocal response to the atrocious 9/11 attacks.

These shortcomings have given some states leeway to instrumentalize the UN CT framework and its provisions to justify overly broad CT measures that are at times misused to crack down on domestic dissent, often in violation of human rights. This practice has been coined "bluwashing" by a number of NGOs and human rights advocates. Except for human rights-specific mandate holders, such as the dedicated UN Special Rapporteur and the Office of the High Commissioner for Human Rights (OHCHR), the UN and particularly its dedicated CT institutions have also been criticized for failing to forcefully speak up against this practice. Some critics

point out that this is not entirely surprising, due to the budgetary dependence of some of the key UN CT institutions on states with inconsistent or poor human rights records and minimally permissive environments for civil society. Additionally, the UN, its dedicated CT institutions, and many of the processes leading to key strategic UN CT documents have also been criticized for their lack of engagement with civil society actors. This is problematic for several reasons but seems particularly concerning considering that civil society often finds itself at the receiving end of overly broad and repressive national CT legislation made possible by the nature of the UN CT framework.

Moreover, domestic counterterrorism laws established under UN auspices have at times also criminalized activities such as peacebuilding, humanitarian relief, and protection efforts, in some instances even where those enterprises are protected under international humanitarian law (IHL). This makes it harder for a number of international actors engaged in those activities, including the UN's own dedicated institutions, to fulfil their mandate. Unsurprisingly, this has not only created tensions with a flurry of actors working towards these goals, but also within the UN itself, at times pitting those institutions focused on the organization's more traditional activities against those focused on CT. Many commentators fear that this is having an increasingly negative impact on the UN's ability to address its more traditional objectives, such as addressing other threats to international peace and security or the protection of human rights.

While NGOs, other UN bodies and some member states sounded the alarm regarding these shortcomings and their perverse effects relatively early on, adjustments to the UN CT framework and architecture only came slowly and have so far proven to be far from being comprehensive or far-reaching enough. This is partially due to diverging perspectives amongst member states, with mostly (but by no means exclusively) Western member states pushing for reform. While serving as a non-permanent member on the Security Council from 2020 until 2022, Norway, for example, made clear that it was "deeply concerned about the growing misuse of counterterrorism measures to silence human rights defenders, political opponents, and religious or ethnic minorities." Other UN member states either remain relatively passive or actively seem to want to prevent some of



these issues from being addressed. Russia, one of the five permanent UNSC members, has for example cautioned against the incorporation of more stringent human rights provisions in UNSC CT products. Despite empirical evidence to the contrary, countries such as Russia essentially argue that too much focus on the human rights aspects of counterterrorism ultimately comes at the expense of ensuring security. Similar disagreements permeate many of the other previously mentioned issues. Some member states, for example, prefer a

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more inclusive, decentralized, whole-of-society approach where civil society plays a central role alongside governmental actors and UN institutions, while others favour a centralized and government-driven approach.

These disagreements notwithstanding, the UNSC has attempted to address several of these shortcomings, including the lack of a sufficiently precise definition of what constitutes terrorism (Resolution 1566 in 2004). The Council has also clarified that all counterterrorism measures must comply with international law, including international human rights, humanitarian, and refugee law. In 2019, the UNSC took an important step forward and made more explicit the importance of protecting humanitarian activities in the context of counterterrorism in Resolutions 2462 and 2482. The Council has more recently also allowed for so-called humanitarian carve-outs – a standing humanitarian exemption – to the asset freeze measures imposed by the UN’s ISIL and AQ sanctions regimes (Resolution 2664 in 2022). Relatedly, the establishment of the Office of the Ombudsman has helped to mitigate longstanding concerns about the due process and human rights impacts of those same sanctions regimes (see box on p. 3). Additionally, the UN’s key CT institutions, the CTC, CTED and UNOCT, progressively began focusing more on the protection of human rights. In 2022, the UNOCT, for example,

set up a small human rights and gender section in order to mainstream human rights and gender considerations into all of their work. Recent changes have also ensured the UNOCT is financed more significantly from the regular UN budget, making it less dependent on individual donor states.

Despite these efforts, observers point out that the critical concept of “terrorism” remains not defined clearly enough and that the human rights provisions in more recent counterterrorism-related Council resolutions remain insufficient and ultimately only fulfil a “performative role.” The UNSC’s efforts towards diminishing tensions between its CT provisions and IHL, such as with the more recent humanitarian carve-outs, are seen by many observers as a good start but not going far enough. Regarding the lack of pushback against the practice of bluewashing, the record unfortunately seems to speak for itself. Despite a progressively increasing focus on protecting human rights, none of the key UN CT institutions has so far forcefully spoken out against states for instrumentalizing UN CT provisions to justify cracking down against domestic dissent. It still remains to be seen whether the more recent changes concerning the UNOCT will have any effects in this regard. While substantial progress has been made in terms of engagement with civil society over the last two decades, most observers seem to agree that it remains insufficient, in that it is often still opaque, ad hoc in nature, and driven by UN and member states’ interests and priorities.

### The Future looks Incremental

While the rapidly growing UN CT framework and its accompanying institutional architecture have undeniably made important contributions to certain aspects of the global fight against terrorism, it is also afflicted by a number of persistent issues. While most efforts to address these shortcomings seem to go in the right direction, they also seem neither comprehensive nor extensive enough. The UN, its institutions, as well as its policy and normative frameworks are ultimately a reflection of its member states’ priorities and preferences.

This is no different for the UN’s CT framework and architecture. Accordingly, the failure to systematically address these issues is, not exclusively, but at least to a large part, a result of the major discrepancies in member states’ positions on how the UN’s CT framework and architecture ought to look and how they ought to evolve. The current geopolitical context characterized by re-emerging Great Power competition and extreme international tensions seems to suggest that these fundamental discrepancies are not likely to vanish anytime soon, but rather risk deepening. Those member states acknowledging the need to decisively address these issues will thus have to continue navigating these constraints and working hand in hand with the UN and global civil society to continue making at least incremental improvements to the current regime.

Inertia, or possibly even sliding back, will be pernicious on a number of levels and may threaten the mission of the UN far beyond just the area of global counterterrorism. This is especially (but by no means exclusively) so regarding the misuse of the UN’s CT framework by some states to crack down on domestic dissent and violate human rights, as well as the failure of the UN’s key CT institutions to forcefully condemn this practice. Empirical evidence unequivocally shows that human rights-abusive counterterrorism ultimately reinforces the conditions that enable and sustain violence, making it counterproductive not only for the global fight against terrorism, but ultimately also for the UN’s more traditional domains of activity. If the persistent issues are not addressed, UN CT thus not only risks devolving into a Sisyphean task but also making it harder for the UN to live up to its initial *raison d’être* and work towards peace and security, the protection of human rights, and development.

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