UNSC 1373 and the War against Terror:

An Important If Untested Tool

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Brief Analysis

On October 30, Iranian parliamentarian Elaheh Kula'i appeared before the Majlis and warned that a reluctance to implement UN resolutions regarding terrorism could result in "consequences" for the Islamic republic. Kula'i was specifically referring to UN Security Council Resolution (UNSC) 1373, which outlines the financial and legal measures that UN member-states must take against terrorists such as Osama bin Laden and Al Qaeda. That an Iranian official would express such anxiety over a UN resolution highlights its potential as a tool for assembling "all necessary means," force if need be, to pressure terror-supporting states.

Background

UNSC 1373 was approved unanimously on September 28, 2001. It focuses on areas of financing, intelligence sharing, and limiting terrorists' ability to travel. In terms of financing, Resolution 1373 enjoins all states to criminalize Al Qaeda financial activities and to freeze the group's monetary assets. Likewise, it mandates formalized and routine exchanges of intelligence between states-including operational information and sharing of evidence for criminal prosecution -- through international protocols and bilateral arrangements. In addition, the resolution requires states to take measures to prevent movement of terrorists via "effective border controls" and by denying refugee or asylum status, which are often claimed by terrorists.

Perhaps most important, Resolution 1373 was passed under Chapter VII of the UN Charter, which makes it mandatory upon member-states and which gives the Security Council wide latitude in seeking its enforcement. According to the charter, the Security Council can impose punitive measures against non-compliant states, ranging from non-military options (e.g., Article 41's authorization for "complete or partial interruption of economic relations" and/or diplomatic relations) to military operations (Article 42's authorization for "action by air, sea, or land forces").

The Work Plan

UNSC 1373 requires all member-states to report to the Security Council's Counter-Terrorism Committee (CTC) by December 27, 2001, on the "steps they have taken to implement this resolution." On October 19, the CTC issued a

detailed work plan to guide member-states' cooperation. The plan is divided into five subheadings: (1) contact points between the CTC and each member-state, (2) CTC plans for recruiting technical expertise, (3) the actual reporting requirements of the member-states, (4) the type of assistance to be provided by the CTC, and (5) details on how the CTC will disseminate information about its activities.

The key element of the work plan -- indeed, the heart of UNSC 1373 -- lies in the reporting requirements. It cites four specific areas in which member-states should provide full information to the CTC:

1. What relevant legislation is in place or is being contemplated.

2. What executive action has been taken or is being contemplated.

3. What other action, if any, has been taken to implement the letter and spirit of the resolution.

4. What steps have been taken or are being contemplated to enhance international cooperation in the area covered by Resolution 1373.

If the information provided is deemed insufficient, the CTC compliance monitoring committee -- composed of about two dozen diplomats and experts from various member-states -- may request additional reports to "ensure full implementation of the resolution."

Limitations

UNSC 1373 does not focus specifically on bin Laden or the Al Qaeda network, but rather on "terrorism" writ large. Indeed, during a press conference on October 19, CTC chairman Sir Jeremy Greenstock noted that it was not his committee's purview to try to "define terrorism," but rather to "establish the highest common denominator of action against terrorism in every territory of members of the United Nations." The broad nature of the resolution is useful, but as Greenstock acknowledged, there will be states who will try to "duck" the realities of the resolution. In this regard, a key problem facing the CTC will be the issue of definition.

There is a lack of clear consensus within the UN regarding the definition of terrorism. Whereas the U.S. government has cited seven countries as "state-sponsors of terrorism" and twenty-eight groups as "foreign terrorist organizations," the only terrorist entities recognized as such by the UN system are Afghanistan, Al Qaeda, and bin Laden. Until recently, Libya and Sudan had also been included among this group; Sudan was removed after government officials offered some conciliatory post-September 11 statements, and Libya after two suspects in the Lockerbie bombing were delivered to Scotland for trial.

Some standard definitions of terrorist activities do exist, most notably the twelve international conventions on terrorism (see the UN office for Drug Control and Crime Prevention at www.undcp.org). These conventions focus on actions -- e.g., hijacking, bombing, hostage-taking, and financing -- and not the specific individuals or organizations responsible for these acts. Perhaps more problematic for garnering UN consensus is the fact that few states have signed all twelve conventions.

Potential?

Even with the limitations of UNSC 1373 and the UN system itself, the resolution that passed in the wake of September 11 remains an important precedent for the type of positive contribution the UN could make in the war against terrorism. A sustained and effective campaign against terror will require significant legislative and even constitutional reform of some member-states on issues of extradition, refugee/asylum status, personal liberties, etc. In many countries, this will be a complex and timely process, requiring a significant and ongoing commitment of political will. This resolution, with its implicit threat of coercive measures, could serve as a powerful motivational tool for states that are reluctant to do what is necessary.

At the same time, however, it is unclear whether the Security Council has the unity and will to seek full enforcement of 1373's provisions. One UN official confided that 1373 was "revolutionary" because it "mandates norms." To a large degree, September 11 was a product of the permissive environment tolerated by many states. Even in the aftermath of September 11, many states will attempt to limit any change to the absolute minimum, either to preserve some of their indigenous terrorist infrastructure or to prevent external intrusion into their domestic affairs.

As Greenstock noted, the CTC is not "a law-enforcement" mechanism, it is a "monitoring and analytical committee." Regrettably, as became the situation with the UN Special Commission on Iraq, such monitoring committees do not always inspire confidence. In the end, the success or failure of UNSC 1373 will ultimately depend on the Security Council's willingness to enforce its Chapter VII resolution with all means necessary, from concerted international sanctions to the use of force. The legacy of two decades of largely unsuccessful U.S. efforts to prompt states out of the terrorist business through diplomacy has shown that these nations are rarely cowed by threats alone.

David Schenker is a research fellow at The Washington Institute.

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