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Flawed Diplomacy: The United Nations and the War on Terrorism

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On November 15, 2010, Victor Comras, Alistair Millar, and Brian Wilson addressed a special Policy Forum luncheon at The Washington Institute. Mr. Comras is author of *Flawed Diplomacy: The United Nations and the War on Terrorism* (2010) and special counsel to the Eren law firm. Mr. Millar is director of the Center on Global Counterterrorism Cooperation. Mr. Wilson is the legal expert for the Analytical Support and Sanctions Monitoring Team of the UN's al-Qaida and Taliban Sanctions Committee. The following is a rapporteur's summary of their remarks.

Victor Comras

Recent events underscore the persistent and global nature of today's terrorist threat. Without question, transnational terrorism endangers international peace and security and therefore lies squarely under the UN's purview. No longer are groups such as al-Qaeda, the Taliban, Hizballah, Hamas, Lashkar-e-Taiba, and the Revolutionary Armed Forces of Colombia focused solely on local issues; rather, their worldwide reach necessitates UN attention.

Terrorism first appeared on the international agenda as a by-product of the Arab-Israeli conflict. Indeed, the Palestinians' near-monopoly on terrorism during the 1960s led the UN to treat the problem as a local issue. High-profile acts of terrorism did not extend beyond these bounds until July 1968, when members of the Popular Front for the Liberation of Palestine hijacked El Al Flight 426, which carried scores of non-Israeli citizens -- an incident that effectively laid the foundation for al-Qaeda's September 11 attacks decades later. Yet even after a series of plane hijackings in September 1970 and the murder of eleven athletes during the 1972 Munich Olympics, the UN Security Council (UNSC) still refrained from passing a resolution to crack down on terrorist groups. Not until the end of the Cold War, the drafting of the Oslo Accords, and the rise of al-Qaeda in the 1990s did the UN begin to view terrorism as something more than an Arab-Israeli issue.

The international geopolitical environment that emerged after the September 11 attacks spurred the UNSC's broadest counterterrorism initiatives. For example, Resolution 1373, adopted soon after the attacks, was an impressive measure that outlawed terrorism and terrorism financing and provided an unprecedented mandate for UN action. The resolution's shortcomings remain glaring, however: it is reactionary, not preventive (i.e., it can be invoked only in situations in which a terrorist act has already occurred), and it fails to define terrorism, leaving each signatory to rely on its own interpretation of the term and act accordingly.

Where 1373 provided a broad mandate, UNSC Resolution 1267 (1999) had already imposed targeted sanctions on al-Qaeda, its affiliates, and its supporters, as well as the Taliban. Yet this resolution has proven limited because entities must be designated before member states can take action against them, despite the general mandate against terrorism enshrined in 1373. To maintain the credibility of these resolutions, member states must be reminded that their counterterrorism obligations laid out in 1373 apply to offending entities even if those entities and individuals are not specifically designated under 1267.

For future success, the UN would be wise to build from former UN secretary-general Kofi Annan's 2005 five-pillar counterterrorism strategy:

- Dissuade groups from resorting to terrorism.
- Deny terrorists the means to carry out an attack.
- Deter states from supporting terrorist groups.
- Develop state capacity to prevent terrorism.
- Defend human rights in the context of terrorism and counterterrorism.

Indeed, a future UN platform might include these complements to Annan's list:

- Clarity: The terrorist enemy must be defined. Such a move does not require a comprehensive convention but rather -- at least in the interim -- a proposed definition by like-minded states that gains the support of others.
- Commitment: Sufficient political will must be generated to target terrorist groups.
- Capacity: Member states must have the resources necessary to target such groups.
- Accountability: States must be held accountable for not pursuing designated groups.

- Cooperation: Information flow must be enhanced to states lacking critical counterterrorism intelligence.
- Consequences: Failure by states to target designated groups must be accompanied by credible consequences.

Alistair Millar

The UN faces notable challenges in its efforts to counter terrorism. One such challenge remains the body's inability to hold member states accountable for failing to pursue designated terrorist organizations. Nonetheless, the UN can achieve better results by engaging in the following practices:

- Providing legitimacy for multilateral action, keeping terrorism on the global policy agenda, and sustaining political momentum for counterterrorism initiatives
- Providing political cover for U.S. actions so that American efforts do not appear to be enacted in isolation
- Drawing attention to deficiencies in international counterterrorism efforts and providing assistance to address those shortcomings (e.g., by drafting legislation to help member states with low capacity)
- Facilitating assistance between states, either bilaterally or multilaterally -- e.g., via the G-8. (Considering the UN's limited abilities, multilateral efforts should not take the place of targeted action, whether bilateral or by blocs.)

Among the UN's successes has been its promotion of the benefits of international cooperation to combat terrorism through intergovernmental organizations such as the Financial Action Task Force (FATF) and the International Monetary Fund (IMF). Yet the UN has failed to devote corresponding attention to compliance among member states. Even as the Counterterrorism Committee (1373) and the al-Qaida and Taliban Sanctions Committee (1267) share enforcement mechanisms and obligations originating in the UNSC, they lack agreed-upon standards on which to base noncompliance rulings. Further, while 1373 has proved to be an important mandate, certain states (e.g., in Africa) cannot be expected to implement counterterrorism initiatives if they lack all tools to do so. These underlying tensions between compliance and capacity building, dialogue and action, have perhaps constituted the most significant impediments to action for both committees.

In particular, the perceived UNSC role as "capacity builder" can create confusion against its more familiar role as enforcer. Here emerges a split personality between social worker and cop. As cop, the UNSC is responsible for cracking down on noncompliance, and an awareness of this role may well prevent states seeking development assistance from approaching the council for fear that the cop will levy punishment in return. Thus, in order to improve capacity building efforts, the cop and social worker roles must be defined clearly. Such a delineation may well require the creation of a trustworthy, International Atomic Energy Agency-like body responsible for overseeing intergovernmental counterterrorism efforts, including strengthening the capacity of member states along with their compliance-reporting mechanisms and information sharing.

Brian Wilson

Established in 1999 by UNSC Resolution 1267, the al-Qaida and Taliban Sanctions Committee is responsible for ensuring that member states (1) freeze the assets of designated supporters (both individuals and groups) and prevent the flow of money to their coffers; (2) prevent the travel of listed entities; and (3) prevent arms and related materiel from being sold, supplied, or transferred to such entities. The list -- which has now been updated more than four hundred times -- includes 488 entities. And although debate persists over the definition of terrorism, 1267 eludes such debate because the UN definition of al-Qaeda is at the heart of the resolution's enforcement, rather than a broader definition of terrorism.

Successes of the resolution include the travel ban, which has restricted terrorist movement and recruitment efforts, and new designations, which have prompted a desperate search by al-Qaeda and its affiliates for funding sources. Yet another indicator of the resolution's bite involves the Taliban, for which a chief grievance -- next to its demand that foreign troops leave Afghanistan -- involves its placement on the 1267 list. And a notable improvement in the sanctions regime entails an appeals process, which was implemented upon review of the committee's activities and has enhanced the committee's credibility in the eyes of member states.

In its efforts to engage member states, the committee has met with much success by conducting official state visits and conferences to explain the listing and delisting processes, as well as individual designations. Related conferences and evaluations of member states aimed at strengthening the effectiveness of the list include multilateral bodies such as Interpol, the World Bank, the IMF, and FATF. As a result, the committee is viewed favorably for its cooperative, rather than punitive -- or "naming and shaming" -- approach.

Indeed, given that 1267 relies on information provided by member states, the resolution's intent cannot be viewed as investigative. Nonetheless, compliance remains a challenge because implementation of these new legal structures -- across widely divergent legal systems -- takes time. The persistence of the terrorist threat does not signal pervasive noncompliance or ineffectual counterterrorism laws so much as the need to employ additional tools to counter the threat from varying angles.

This rapporteur's summary was prepared by Benjamin Freedman.