

# **Resolution 1373**

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## Preface

During my internship at the Permanent Mission of the Kingdom of the Netherlands to the United Nations I was assisting the attaché who was responsible for all legal matters. Among others, we dealt with the counter-terrorism efforts of the United Nations, and more specifically, the efforts of the United Nations Security Council. After this internship I obtained a Master degree in International Public Law. While my internship taught me countering terrorism in practice, the LL.M. program offered me the legal references of counter-terrorism. Stimulated by, and with the consent of, Giliam de Valk, I used my first thesis\* as a basis for this thesis. With this thesis I hope to integrate the historical aspects of terrorism with the legal implications. Furthermore, I would not only like to give a historical and legal view on countering terrorism by the United Nations, but also to give a more political perspective on the implementation of the United Nations counter-terrorism measures.

I would like to thank my grandparents for providing me with the space and possibility to write this thesis in their house, surrounded by their love and support.

To end, I would like to thank Giliam for supervising me while writing this thesis.

November 2008,

Willemijn Aerdt

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\* *Resolution 1373, Cornerstone or 'cul de sac'?*, Willemijn Aerdt, April 2007.



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# **1. Introduction**

This thesis explores the possibilities and difficulties of United Nations Security Council Resolution 1373 in the light of history. What makes this Resolution 1373 'special' and what changed in the approach of the Security Council in countering terrorism after the adoption of Resolution 1373? How did international society react on terrorism before the adoption of this resolution? What are the aims of Resolution 1373? And what will be the challenges in reaching these aims? Why do some countries agree with the approach of the Council set out in Resolution 1373 and do others disagree? What will be the future of Resolution 1373, will the United Nations (UN) be able to reach the set goals?

## **1.1 Status questionis**

Since the attacks of September 11 on the World Trade Centre in New York City and the Pentagon in Washington, the subject of terrorism is high on the international political agenda. Scientist tried to explain the event from a scientific point of view; politicians tried to deal with the direct results and debated on how to prevent these attacks from happening in the future. This paragraph discusses the most important points of view of scholars that influenced this thesis.

### **1.1.1 Lack of an agreed definition of terrorism**

A very much-debated topic is the question whether an agreed definition of terrorism exists. One can distinguish two different movements. Some writers (e.g. Cassese 2004) are very strict on the evolution of the notion of terrorism; they state that a definition of terrorism has already existed for a long time. Furthermore they state that we cannot speak about the lack of a definition, but that we need to speak about the lack of agreement on the exceptions to this definition (Cassese 2004). Some international conventions and treaties speak of 'terrorism' and 'terrorist acts' without defining the term, so it must mean the drawers of these different conventions and treaties must have had a clear idea of what they were saying by using the term 'terrorism' (Cassese 2004).

Scholars of the second movement, where most writers belong to, state that no agreed definition exists because states could not agree on a definition of terrorism in any treaty or resolution (e.g. McWhinney 1987).

These scholars state that using the systematics of humanitarian law can solve the problem of the lack of an agreed definitional problem. This fits in with the statement of McWhinney (in his book "Aerial Piracy and International Terrorism", 1987), when he

states that when the United Nations can act free of psychological and practical political constraints that come with international arena, the UN can work at its best.

The ideal definition of terrorism should cover the following matters: every state has the duty to refrain from encouraging guerrilla activities in other states, prohibits acts of terrorism which strike at the stability of the international order and not those acts which merely undermine the political order in any particular country (international element), the definition should limit itself to death and bodily injury only, and the motive of an acts of terrorism should be irrelevant (Dugard 1974). Chapter 2 will discuss the definition of terrorism in depth and will try to answer the question how international society dealt with the issue of the definition of terrorism so far.

### **1.1.2 Multidisciplinary approach**

A lot is written about the counter terrorism efforts of international society. Some scholars (Borelli 2004 and Bruggeman 2004) mainly focus on one country or continent; others try to describe this phenomenon from a specific discipline. Some of them (e.g Horgan 2006) chose to use a legal perspective; others chose a different perspective, for example a sociological or historical perspective.

While reading the texts of the different writers, one can see that the issue of counter terrorism is very complex. It is almost impossible to discuss the matter of counter terrorism in international society from only one perspective. For example, the problem regarding the root causes of terrorism can be looked upon from the sociological, psychological or historical perspective (Crenshaw 1981, Mani 2004, Von Hippel 2002). Probably, one of the disciplines will not be able to formulate an answer to the different question. Only when one combines the answers found in the different disciplines, one will be able to come to a comprehensive approach.

The scientific debate lacks a multidisciplinary approach of the counter terrorism efforts of the United Nations in general and the United Nations Security Council in specific. As stated before, most scholars approach the issue of (counter-) terrorism from one specific angle. This thesis wants to look to the legal point of view from a historical perspective. In this way, we can draw lessons from past experiences.

### **1.1.3 Importance of Resolution 1373**

When one sees the amount of articles and books written about Resolution 1373, one can see why scholars (e.g. Rosand 2004 and Cassese 2004) call the resolution a 'cornerstone' of the UN counter terrorism efforts.



Most scholars (e.g. Rosand 2004) acknowledge that the Resolutions 1368 and 1373 officially declare international terrorism a threat to international peace and security.

However, scholars differ about the implicit goals of the Resolution. Some scholars (e.g. Rosand 2004) state that the goal of Resolution 1373, and the Counter-Terrorism Committee (see paragraph 4.3.1 for a more in depth analyses of the Counter-Terrorism Committee and its work), is to raise the level of government involvement against terrorism world-wide. What must be taken in mind when one cites Rosand, is that he was the Deputy Legal Counsel of the United States Mission to the United Nations in New York (2002-2005), now working in the Department of States of the United States of America and a non-resident fellow at New York University.

But how did international society react on terrorism before the adoption of Resolution 1373? And was the adoption of this Resolution a logical reaction to the preceding?

#### **1.1.4 Role of the United Nations regarding counter-terrorism**

Which role did the United Nation plays regarding counter-terrorism efforts? Scholars do not necessarily agree on the role the United Nations can or should play in the area of counter terrorism.

Scholars (e.g. Rosand 2004) state that Resolution 1373 is the cornerstone of counter-terrorism efforts of the United Nations and state the UN should play a vital role in the international struggle against terrorism. These scholars express the need that the United Nations should be a coordinating body that respects the needs of the different parties concerned.

Other scholars are positive about Resolution 1373, but are hesitant about the role the United Nations should and can play in the international struggle against terrorism. Luck (in his article "The Uninvited Challenge", 2005) agrees with Rosand when Rosand calls Resolution 1373 a cornerstone, when he states that Resolution 1373 is the most comprehensive counter-terrorism effort of the United Nations to date. But, although Luck is positive about the efforts of the United Nations while adopting Resolution 1373, he states that the United Nations plays a modest, even marginal, role in the global campaign against terrorism. The scholar states that there are limits to what the United Nations can contribute to this 'campaign'. First, the fact that the United Nations does not have the necessary resources to make a spectacular contribution limits the role of the UN. Second, the conflicting visions of member states and the UN Secretariat on the 'war on terror' fought by the United States makes it difficult to present a common vision. And

third, Luck states that the United States' (US) government only sees a limited role for the United Nations in the global struggle against terrorism.

Some scholars (e.g. McWhinney 1987) state that when the United Nations can act free of psychological and practical political constraints that come with international arena, the UN can work at its best and most effectively.

But how exactly did the United Nations react on terrorism? How did the approach of international society change over time?

#### **1.1.5 Sanctions as a instrument to counter terrorism**

Was the imposition of sanctions used as an instrument in the counter-terrorism efforts of international society? In the first twenty years of the existence of the United Nations, no sanctions were imposed on states; only since the 1990s the Security Council imposed sanctions on Libya, Sudan and Afghanistan for their support of terrorist activities (Gill 1995). Some scholars (e.g. Luck 2004) are sceptical about the effect of sanctions. Luck states that sanctions so far have an uneven record as a tool to discourage support for terrorism. The writer gives as a reason why the sanctions did not have the wanted effect the fact that the leaders were not asked to give up anything that really mattered to them and their base of power (Luck 2004).

Others, like Gill (in his article "Legal and some political limitations of the power of the UN Security Council to exercise its enforcement powers under Chapter VII of the Charter", 1995), state that the question of effectiveness of sanctions is not a legal matter, except when we speak about the compliance of member states with the decisions of the United Nations Security Council. De Jonge Oudraat (in her article "The Role of the Security Council", 2004) claims that the sanction regimes of the 1990s have had some effect on the global terrorist threat, because sanctions helped to stigmatise terrorism as an illegal activity that needs to be counted by international society. Furthermore, the imposition of sanctions makes the support by states of terrorist activities more costly for those states (De Jonge Oudraat 2004).

Some scholars (e.g. Gill 1995) state that there can be little doubt that sanctions will become a more important tool in the counter terrorism efforts of the United Nations. This is underlined by scholars (e.g. Rosand 2006) who state that the imposition of sanctions can be a powerful tool when stating that 200 million USD have been netted in assets of persons and entities with ties to terrorist networks.

Sanctions will be discussed in this thesis in the historical deliberations on how international society countered terrorism before the adoption of Resolution 1373 by the Security Council. Furthermore, in the recommendations in chapter 6, sanctions will be mentioned as a possible effective instrument to counter terrorism (see paragraph 6.5.6).

## **1.2 Inquiry question**

Paragraph 1.1 leaves us with a lot of questions. What is the status of an agreed definitions of terrorism, how did international society dealt with terrorism in the past, how will international society deal with the matter in the future? And what will be the role of the United Nations. To further deliberate on all the issues discussed in the *status questionis*, the following inquiry question is formulated:

*How did international society counter terrorism before the adoption of United Nations Security Council Resolution 1373, and what happened after the adoption of this Resolution?*

This question is chosen because it gives the possibility to explore what the effects can be of Resolution 1373 in the light of earlier counter terrorism measures taken by international society.

To answer the inquiry question of this thesis, the work is divided into four sub-questions. These sub-questions are:

- How is terrorism defined in science and international politics?
- How did society counter terrorism internationally before the adoption of Resolution 1373?
- How were the aims of Resolution 1373 defined and what has been accomplished so far?
- What are the challenges in reaching the objectives set out in Resolution 1373?

On the basis of the answers to the sub-questions, some recommendations to the Security Council and the CTC are formulated in the conclusion of this thesis.

This thesis will show the impact of history on the counter-terrorism efforts of the United Nations today. Because of the fact that this thesis takes into account not only recent counter-terrorism actions, but starts at the beginning of the 20<sup>th</sup> century, it puts the counter-terrorism efforts of international society into a historical perspective.

Furthermore, at the end of this thesis, recommendations to the United Nations Security Council and the Counter-Terrorism Committee are formulated.

### **1.3 Structure of the thesis**

In this introduction to the thesis, the outlines for the research will be explained. The second chapter will answer the question 'How is terrorism defined in science and international politics?'. This chapter will explain, among others, the development of the concept of terrorism in international society. In the third chapter of this thesis, the second sub-question will be answered. How did international society counter terrorism before the adoption of Resolution 1373 in 2001? Each paragraph starts with a short explanation of the so-called wave of international terrorism in question, and then continues with a description of the reaction of international society to that 'wave'. The fourth chapter gives a description of the aims of Resolution 1373, the Resolution itself and its accomplishments so far. The fifth chapter will go into the difficulties that the Security Council and the Counter Terrorism Committee are facing. The sixth, and last, chapter will give a short summary of the answers to the four sub-questions, an answer to the inquiry questions and tries to give a prognosis of the development of terrorism and Resolution 1373. Furthermore, the chapter will contain some recommendations.

This thesis will not always deal with events chronologically, because a choice is made to deal with the different organs and organisations separately. This creates a clear vision of the role of the different organs and organisations. Within the description of the different organs and organisations, a chronological order is followed.

In this thesis the terms 'counter-terrorism' and 'countering terrorism' are used when referring to the efforts of the United Nations to stop terrorism. This term is used because the United Nations itself uses this term too.<sup>2</sup> Because United Nations Security Council Resolution 1373 plays an important role in this thesis, there is chosen to use the term used by the United Nations throughout this thesis. The next chapter will discuss the different meanings and definition of terrorism in science and the evolution of the definition of terrorism in international politics.

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<sup>2</sup> It can be debated whether this is a correct term to use. Mostly, countering terrorism is used for direct action to stop a terrorist act from happening, or to indicate physical actions.

## 2. How is terrorism defined in science and international politics?

This chapter will answer the following question: 'How is terrorism defined in science and international politics?'. It is important to start this thesis with this question because before being able to answer the inquiry question and the other sub-questions it is important to know more about the concept of terrorism.

To this very day, there is no agreed definition of term terrorism. Like Rosand has stated: "The oft-repeated phrase: "one's man terrorist is another man's freedom fighter," unfortunately remains relevant."<sup>3</sup> Developing countries, contrary to most developed states, hold on to their view that the notion of terrorism should not include acts of violence perpetrated by these so-called freedom fighters. Furthermore, these countries stick to their principle that no treaty can be adopted without at the same time banning the causes of terrorism, like poverty en social inequality.<sup>4</sup> Another reason that makes it difficult to define terrorism is the fact that there is a more than two hundred-year-old history of the term terrorism. The meaning of the term has changed over the years (for example from 'government by intimidation' to 'intimidation of government').<sup>5</sup>

Most scholars and the UN itself state that there is no agreed definition of terrorism, because states could not agree on a definition in any treaty or resolution. One could wonder why a specific definition of terrorism is necessary. There are already treaties dealing with different crimes as genocide, trafficking, crimes against humanities and so on and so forth. Most acts of terrorism could fall under one of these existing treaties. However, using the term 'terrorism' and 'terrorist' can make a difference, not only for the victims and surviving relatives, but also regarding jurisdiction, prosecution and international co-operation.<sup>6</sup> Furthermore, it is important to have a common understanding of 'terrorism' because it will expand the possibilities of international society to combat terrorism.<sup>7</sup>

It is important to realise that the main resolution within the scope of this thesis, Security Council Resolution 1373, does not try to give an exact definition of terrorism, nor does it seek to identify specific terrorists (as for example United Nations Security Council Resolution 1390 (2002) does).<sup>8</sup> This is important to realise because although it can be

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<sup>3</sup> Rosand 2004, p. 605-606.

<sup>4</sup> Cassese 2004, p. 214.

<sup>5</sup> Schmidt 2004, pp. 398-399.

<sup>6</sup> Van Krieken 2002, p. 14.

<sup>7</sup> Schmidt 2004, pp. 379-380.

<sup>8</sup> Rosand 2004, p. 606.

important to have an agreed definition of terrorism (as will be further discussed in chapter 2 of this thesis), a lot of international treaties and resolutions (like Resolution 1373) did enter into force and work without this agreed definition.

## **2.1 Evolution of the definition of terrorism in science**

International legal scholars did not try to define terrorism as a general concept. The scholars defined specific actions (for example aeroplane hijacking and the taking of hostages) as terrorist acts. This specific way of defining is contrary to the 'general' or 'deductive' model of defining a definition. In the general model, a concept is defined by overarching criteria. By using this way to define terrorism, international law has avoided the political sensitivity. However, a consequence of this approach is that international society adopted 12 different conventions on the issue of terrorism (these conventions shall be discussed in depth in chapter 3 of this thesis).<sup>9</sup>

Despite the specific approach used by scholars to make a start with defining terrorism by specific acts, there is the political, as well as the scientific will, to develop one definition of terrorism.<sup>10</sup>

Scholars debate on what must be the 'minimal' definition of terrorism. The Academic Consensus Definition is based on the lowest denominators of 73 academic journals definitions and reads as follows:

*"Terrorism is a politically motivated tactic involving the threat or use of force or violence in which the pursuit of publicity plays a significant role."<sup>11</sup>*

The elements that can be deduced from this definition are: (1) politically motivated, (2) tactic, (3) threat or use of (4) force, violence, and (5) the role of publicity. The problem with deducing all the opinion to such a general definition is that it makes no reference to the perpetrators or their victims, it does not mention fear or terror, and that it does not mention the goal or motive explicitly.<sup>12</sup>

In 1988, one scholar, Alex Schmidt, tried to find an academic consensus definition. His definition consists of 16 elements<sup>13</sup>:

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<sup>9</sup> Golder & Williams 2004, p. 273.

<sup>10</sup> Ibidem, p. 274.

<sup>11</sup> Schmidt 2004, p. 381.

<sup>12</sup> Ibidem.

<sup>13</sup> The number of elements is between brackets.

*Terrorism is an (1) anxiety-inspiring method of repeated (2) violent action, employed by (semi-) (3) clandestine individual, groups, or state actors, for (4) idiosyncratic, criminal, or political reasons, whereby – in contrast to assassination- the direct targets of violence are not the main targets. The (5) immediate human victims of violence are generally chosen (6) randomly targets of opportunity or (7) selectively (representative or symbolic targets) from a target population, and serve as message generators. (8) Threat- and violence-based (9) communication processes between terrorist (organization), (imperilled) victims, and main targets are used to (10) manipulate the main target (audience(s)), turning it into a (11) target of terror, a (12) target of demands, or a (13) target of attention, depending on whether (14) intimidation, (15) coercion, or (16) propaganda is primarily sought.<sup>14</sup>*

Most of the time, not all of these elements will be present. One act or incident may have only five of the components, while others have eight or more of these components. Some of the acts of terrorism will not even have overlapping components. However, there should be a frequent overlap.<sup>15</sup>

Not all scholars agree with this definition, and some use a conflict model<sup>16</sup> to situate terrorism.<sup>17</sup> Others state that this definition cannot be exhaustive because it does not include nuclear terrorism or the financing of terrorist acts.<sup>18</sup>

If one sees the definition of Schmidt, the definition based on the lowest denominators of 73 academic journals and other definitions, three elements clearly stand out:

1. The element of terror<sup>19</sup>;
2. The element of opprobrium (criminal, illegal); and
3. The element of coercion.<sup>20</sup>

Another way to define terrorism is to define what terrorism is not. If one defines a term in this way, one excludes everything that is not considered terrorism, but without stating what terrorism exactly is. To give two examples of this negative approach of defining the term terrorism:

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<sup>14</sup> Schmidt 2004, p. 382.

<sup>15</sup> Ibidem, pp. 403-404.

<sup>16</sup> Conflict model: terrorism as a manifestation of conflict. Conventional warfare and guerrilla warfare are other manifestations of conflict. (Schmidt 2004, p. 382).

<sup>17</sup> Ibidem, p. 382.

<sup>18</sup> Van Krieken 2002, p. 18.

<sup>19</sup> Schmidt (2004) states that literature did not attention to an analysis of terror while trying to define terrorism. The Oxford dictionary defines terror as follows: very great fear or a person or thing that makes you feel afraid. To make somebody feel frightened by using or threatening to use violence against him or her is described as 'terrorise'.

<sup>20</sup> Schmidt 2004, p. 405.

- Excluding acts of war which do not qualify as war crimes (these take place in war time and should be governed by international humanitarian law); and
- Excluding acts of political violence which are spontaneous (because they are not part of a planned strategy).<sup>21</sup>

Some scholars see the use of international humanitarian law as a possible solution to the dilemma of the definition of terrorism. Most of the laws of war are agreed by the majority of the countries in the world, unlike the existing treaties on terrorism. These scholars suggest that rather than trying to negotiate new treaties on terrorism, which are not likely to be ratified or enforced, nations should apply the laws of war, to which almost all have agreed.<sup>22</sup>

### **2.1.1 The 'waves of terrorism'**

This thesis uses the classification of the 'waves of terrorism'. This classification is not undisputed. This thesis uses the classification of the different waves of terrorism as a framework to describe the counter terrorism efforts of international society.

Most of the time, there is no exact time when the different 'waves' start or end. This does not have to be a problem, because the characteristics of the so-called waves are more important. This is also the reason why some events can belong to a specific wave of terrorism, although they did not take place within the same time span of the wave. Sometimes events can be an omen or a last convulsion of a specific wave of terrorism.

Among the supporters of this classification is Rapoport.<sup>23</sup> Also Shughart adopts Rapoport's concept of the waves of terrorism.<sup>24</sup> However, Shughart adopts the classification of the waves of terrorism in his article, but renames three of the waves. He states that the second wave of terrorism can be labelled 'post-colonial' or anti-colonial, the third wave can be named 'New Left' and the scholars labels the contemporary wave of terrorism 'Religious'.<sup>25</sup> Another scholar who is using the classification of the 'waves of terrorism' is Hübschle in her article "The T-word: Conceptualising terrorism".<sup>26</sup>

However, different scholars dispute the classification of waves of terrorism. Some scholars criticise the classification because of the characteristics of the different waves,

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<sup>21</sup> Ibidem, pp. 408-409.

<sup>22</sup> Jenkins 1987, p. 408.

<sup>23</sup> Rapoport 2001, p. 419.

<sup>24</sup> Shughart 2006, p. 14.

<sup>25</sup> Ibidem.

<sup>26</sup> Hübschle 2006, p. 9.



others scholars have a different opinion about the exact period of the four waves of terrorism. For example, Bergesen & Han make a different classification of the waves of terrorism. They state that, until now, there are only two waves of terrorism. One period started in 1875 and ended in 1914, and the second wave starting in 1968 and lasting until today.<sup>27</sup> The writers do, however, ask some of the same questions as Rapoport does to determine whether a period can be classified as a wave of terrorism. Questions asked by Rapoport, Bergesen and Han are: Do terrorist incidents tend to cluster in certain areas? Or do they tend to cluster during various times in a certain wave of terrorism? In what countries do the terrorist acts take place? What kind of weaponry is used, etc.?<sup>28</sup> Another way to look at the waves of terrorism suggested by Rapoport is to look at them in a socio-historical context. The waves describe a certain period of time. In this period certain events took place that are connected to the characteristics of that certain period in time. This can explain, without directly looking at the characteristics given by Rapoport, why certain events occurred when they did. The next chapter will discuss this point of view in depth.

## **2.2 Evolution of the definition of terrorism in international politics**

In this paragraph the efforts of international politics to define terrorism are discussed in depth. The different international forums and their efforts are discussed chronologically. In this chapter the definitions of terrorism as set out by the international community will be discussed. It would be leading too far away from the subject to discuss the definitions of terrorism by different countries separately. But to give one example: in the Netherlands, there is a difference between 'politically violent activism' (violence directed towards property) and 'terrorism' (violence directed towards people). The United States of America do not use this strict differentiation.

### **2.2.1 Unification of criminal law before the 1930s**

In the 1920s and 1930s the topic of terrorism was mostly related to question of extradition. States started to make their own rules about how to handle requests for extradition in case of terrorist acts. The International Law Institute made an attempt to put the issue of terrorism on the international agenda. During its session in 1892, the International Law Institute adopted a resolution stating that "criminal acts directed against the basis of social organisation, and not solely against a given state or a given form of government' are not considered political crimes insofar as the application of the rule on extradition."<sup>29</sup>

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<sup>27</sup> Bergesen & Han 2005, p. 140.

<sup>28</sup> Bergesen & Han 2005, pp. 140-141.

<sup>29</sup> Zlataric 1975, p. 477.

The conference also adopted a definition of terrorism: "He, who with the scope of undermining the social order, employs any means whatsoever to terrorize the population, will be punished"<sup>30</sup>.

One could see the elements of terror, undermining the existing social order and the general audience as a target as elements of this definition. As already seen in paragraph 2.1, and will be seen in the coming paragraphs, these elements still play an important role.

### **2.2.2 League of Nations Convention for the Prevention and Punishment of Terrorism (1937)**

The League of Nations<sup>31</sup> tried to develop an internationally agreed definition of terrorism.<sup>32</sup> Some of the dilemmas the League of Nations had to work on are still relevant today. And the fact that, as mentioned in the beginning of this chapter, there is still no agreement on the definition shows the difficult task of the League.

The Convention for the Prevention and Punishment of Terrorism, adopted in 1937, contained the following definition of 'acts of terrorism':

"Criminal acts directed against a state and intended or calculated to create a state of terror in the mind of particular persons, or a group of person or the general public".

Article 2 of the Convention obliged all the contracting states to make the acts mentioned in article 2 a criminal offence in their own country:

*"2(1) any wilful act causing death or grievous bodily harm or loss of liberty to heads of state, their spouses, or persons holding a public position 'when the act is directed against them in their public capacity';*

*2(2) wilful damage to public property belonging to another contracting party;*

*2(3) any wilful act calculated to endanger the lives of members of the public;*

*2(4) any attempt to commit one of the above offences;*

*2(5) the dealing with arms and ammunition with a view to the commission of one of the above offences in any country whatsoever."<sup>33</sup>*

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<sup>30</sup> Ibidem, p. 480.

<sup>31</sup> The League of Nations was established on January 25 1919, just after the First World War ended. The goal of the League of Nations was to guarantee peace and security. The United Kingdom, Argentina, the Netherlands, Norway, Peru and Siam were among its initial member states. Although Woodrow Wilson played an important role in the establishment of the League of Nations, the US Congress prevented the United States from becoming a state member of the League. The League of Nations was dissolved in 1946.

<sup>32</sup> Saul 2005, pp. 61-66.

<sup>33</sup> Dugard 1974, p. 69.

This attempt of the League of Nations to define terrorism, as one will see, was the basis of later definitions of the concept of terrorism. In this paragraph only the definition of terrorism of the League of Nations is discussed. In chapter 3, the role of the League of Nations in countering terrorism internationally is discussed more in depth.

The definition of the League of Nations has proved to be a good start for a definition. Two of the following elements are present in the definition of the League: acts that causes death or harm to public figures, acts that cause damage of public property, acts calculated to endanger live, and attempt to commit an act as mentioned above and the dealing with arms to commit an acts as mentioned above.

In retrospect, this definition of the League of Nations proved to be a very useful attempt to define terrorism. In the next paragraph, one can see that this definition inspired the International Law Commission while drafting their Draft Code.

### **2.2.3 ILC Draft Code (1954)**

The International Law Commission (ILC)<sup>34</sup> took terrorism into account when drafting the 1954 Draft Code of Offences against the Peace and Security of Mankind. Article 2 of the Draft Code sums up all the offences against the peace and security of mankind. Article 2 (6) deals with terrorism and states:

*"The undertaking or encouragement by the authorities of a State of terrorist activities in another State, or the toleration by the authorities of a State of organized activities calculated to carry out terrorist acts in another State."<sup>35</sup>*

This Draft Code only covers conduct of persons acting on behalf of a state, not the activities of non-state actors. Furthermore, the Code only covers acts of actors that are sufficiently 'organised', excluding acts of persons without an organised connection. Also private terrorism (not directed against a state) is excluded from this Code.<sup>36</sup> This Draft Code dates from before the (height of the) decolonialisation movement.<sup>37</sup>

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<sup>34</sup> The ILC was set up during the second session of the General Assembly (1948) to realise the goal set out in article 13 of the UN Charter. Article 13 (1) (a) of the Charter of the United Nations, San Francisco 26 June 1945 states: "The General Assembly shall initiate studies and make recommendations for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law and its codification." The International Law Commission was established in 1948. Article 1 of the Statute of the International Law Commission states that the objectives of the Commission are as follows:

1(1) The International Law Commission shall have for its object the promotion of the progressive development of international law and its codification.

1(2) The Commission shall concern itself primarily with public international law, but is not precluded from entering the field of private international law.

<sup>35</sup> Article 2 (6) of the Draft Code of Offences against the Peace and Security of Mankind (1954).

<sup>36</sup> Article 2 (6) of the Draft Code of Offences against the Peace and Security of Mankind (1954) and Saul 2005, p. 66.

<sup>37</sup> Dugard 1974, p. 70.

One of the members of the ILC noted, during the process of coming to this Draft Code, that the terms 'terrorist activities' and 'terrorist acts' were not defined in this Draft Code. During the process, the ILC incorporated the 1937 definition of terrorism of the League of Nations into the Draft. However, in the final version of the Draft Code, this definition was omitted.<sup>38</sup>

What must be taken in mind is that this draft code is adopted by the ILC itself, but was never formally adopted by the UN General Assembly (GA) or adopted as a treaty. Due to the fact that there was disagreement on the definition of the crime of aggression, the General Assembly postponed further consideration of the ILC Draft Code on Offences against the Peace and Security of Mankind until a special committee on the issue of defining aggression was formed.<sup>39</sup>

The definition of terrorism in the Draft Code of Offences against the Peace and Security of Mankind is special because it only covers conducts of persons acting on behalf of a state (non-state actors are not included) and the definition of the Code only covers acts of actors that are sufficiently 'organised'. One could say that this definition is partly out of date; in contemporary times one should acknowledge that non-state actors commit acts of terrorism and this should be included in a definition of terrorism.

#### **2.2.4 ILC Draft Code of Crimes (1991 and 1996)**

The International Law Commission<sup>40</sup> provided a proposal for a definition of terrorism in the 1980s. The ILC stated that the following categories constitute terrorist acts:

- i. Any act causing death or grievous bodily harm or loss of liberty to a Head of State, persons exercising the prerogatives of the Head of State, their hereditary or designated successors, the spouse of such persons, or persons charged with public functions or holding public positions when the act is directed against them in their public capacity;*
- ii. Acts calculated to destroy or damage public property devoted to a public purpose;*
- iii. Any act likely to imperil human lives through the creation of a public danger, in particular the seizure of aircraft, the taking of hostages and any form of violence directed against persons who enjoy international protection or diplomatic immunity;*

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<sup>38</sup> Saul 2005, p. 67.

<sup>39</sup> Ibidem, pp. 66-68.

<sup>40</sup> See paragraph 2.3 for more information on the International Law Commission.

- iv. *The manufacture, obtaining, possession or supplying of arms, ammunition, explosives or harmful substances with a view to the commission of a terrorist act.*

Some scholars state that this definition cannot be exhaustive because it does not include nuclear terrorism or the financing of terrorist acts.<sup>41</sup>

The definition of terrorism in the Draft Code of Crimes of the ILC contained the following elements: acts that causes death or grievous bodily harm to public figures, calculated acts to destroy public property, acts likely to imperil human lives through the creation of a public danger, and the manufacturing, obtaining, possession or supplying of arms, ammunition, explosives or harmful substances to commit a terrorist act.

As one can see, this definition is built on the earlier definition of terrorism of the League of Nations (1937) and the ILC (1954). Elements of the definitions of this Draft Code are used in the Draft Rome Statute.

#### **2.2.5 Draft Rome Statute (1998)**

The Draft Rome Statute, which was presented to the 1998 Rome Diplomatic Conference, contained a definition of terrorism. In Article 5 'crimes of terrorism' are described as follows:

*'For the purposes of the present Statute, crimes of terrorism means:*

*(1) Undertaking, organizing, sponsoring, ordering, facilitating, financing, encouraging or tolerating acts of violence against another State directed at persons or property and of such a nature as to create terror, fear or insecurity in the minds of public figures, groups of persons, the general public or populations, for whatever considerations and purposes of a political, philosophical, ideological, racial, ethnic, religious or such other nature that may be invoked to justify them;*

*(2) An offence under the following Conventions:*

*(a) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;*

*(b) Convention for the Suppression of Unlawful Seizure of Aircraft;*

*(c) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;*

*(d) International Convention against the Taking of Hostages;*

*(e) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;*

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<sup>41</sup> Van Krieken 2002, p. 18.

*(f) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf;*

*(3) An offence involving use of firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or groups of persons or populations or serious damage to property.'*

This first offence resembles the ILC Draft Code of 1991 (mentioned in paragraph 2.2.4 of this thesis), see for example the persons charged with public functions. One can also see elements of the definition of the League of Nations of 1937, for example the mentioned state of terror in the mind of people (paragraph 2.2.2).<sup>42</sup>

During the discussions about the Rome Statute, at least 12 states were in favour of including the crime of terrorism in the Statute. Most of them were states that had been victims of terrorism. They stated that terrorism shocks the conscience of humanity and wanted to include terrorism in the statute to avoid jurisdictional disputes between states and provide the United Nations Security Council with a means to refer terrorist threats to the International Criminal Court.<sup>43</sup>

In the end, a definition of the term 'terrorism' was not included in the Rome Statute as adopted in 1998. There were different reasons for not including terrorism: its legal novelty and lack of an agreed prior definition; disagreement about what to do with national liberation violence; and a fear that it would politicise (the method of working of) the ICC.<sup>44</sup> As one can see, the reasons for not including terrorism in the final document are almost the same as the reasons why it is still not possible to adopt a definition of terrorism in general.

The Rome Statute included terrorist acts in a different manner. Article 7 of the Statute gives a list of all acts that are indicated as crimes against humanity. Paragraph 2 of that same article states that organisations who are committing acts as mentioned in article 7 (1) of the Statute are liable. In this way, terrorist organisations who conduct crimes against humanity (such as murder, extermination and torture) as mentioned in article 7 (1) of the Rome Statute are liable as long as the conduct is 'wide spread' or 'systematic'<sup>45</sup> and directed against any civilian population<sup>46</sup>.

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<sup>42</sup> Saul 2005, 72-73.

<sup>43</sup> Saul 2005, p. 73.

<sup>44</sup> Ibidem.

<sup>45</sup> Arsanjani 1999, p.31.

<sup>46</sup> Article 7 (1) of the Rome Statute of the International Criminal Court (1998) states: 'For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack....'.

The definition of terrorism in the Draft Rome Statute consisted out of already mentioned elements. In this definition targeted general public was mentioned as a possible element for an act of terrorism. This was the first time that the existing Conventions and Protocols on terrorism were specifically mentioned and that the acts included in those conventions and protocols were explicitly mentioned as acts of terrorism.

As can be seen in the next paragraph, this was not the last time that the existing Conventions and Protocols were specifically mentioned, the High Level Panel also states that the acts under the anti-terrorism conventions are terrorism.

### **2.2.6 High Level Panel on Threats, Challenges and Change (2004)**

The High Level Panel on Threats, Challenges and Change made a suggestion for a definition of terrorism in its report (2004). The High Level Panel was created by UN Secretary-General Kofi Annan to propose collective action to meet new global challenges, such as terrorism. The definition of terrorism proposed by the 16 eminent members<sup>47</sup> of the High Level Panel was as follows:

*"164. That definition of terrorism should include the following elements:*

*(a) Recognition, in the preamble, that State use of force against civilians is regulated by the Geneva Conventions and other instruments, and, if of sufficient scale, constitutes a war crime by the persons concerned or a crime against humanity;*

*(b) Restatement that acts under the 12 preceding anti-terrorism conventions<sup>48</sup> are terrorism, and a declaration that they are a crime under international law; and restatement that terrorism in time of armed conflict is prohibited by the Geneva Conventions and Protocols;*

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<sup>47</sup> The 16 members were: Anand Panyarachun (chairman, Thailand), Robert Badinter (France), Joao Clemente Baena Soares (Brazil), Gro Harlem Brundtland (Norway), Mary Chinery-Hesse (Ghana), Gareth Evans (Australia), David Hannay (United Kingdom), Enrique Iglesias (Uruguay), Amre Moussa (Egypt), Satish Nambiar (India), Sadako Ogata (Japan), Yevgenii Primakov (Russia), Qian Qichen (China), Nafis Sadik (Pakistan), Salim Ahmed Salim (United Republic of Tanzania), Brent Scowcroft (United States).

<sup>48</sup> These 12 preceding conventions are: Convention of Offences and Certain Other Acts Committed on Board Aircraft (1963), Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), International Convention against the Taking of Hostages (1979), Convention on the Physical Protection of Nuclear Material (1979), Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988), Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed platform Located on the Continental Shelf (1988), Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991), International Convention for the Suppression of Terrorist Bombings (1997), International Convention for the Suppression of the Financing of Terrorism (1999).

(c) Reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism<sup>49</sup> and Security Council resolution 1566 (2004)<sup>50</sup>;

(d) Description of terrorism as "any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act".<sup>51</sup>

This definition considers the motive to commit acts of terrorism as irrelevant. This is exactly what is done by making a distinction between *ius ad bellum* and *ius in bello*. The rules of the *ius ad bellum* govern the process of going to war. During a war (when *ius in bello* governs the actions) the motive, or cause of the conflict, is considered irrelevant as long as the rules of law, of for example the Geneva Conventions, are followed.

The disentanglement of the motive and the actual act of terrorism could be the solution for solving the problem of an agreed definition of terrorism. When one considers the motive of committing an act of terrorism irrelevant, the problems regarding freedom fighters et cetera can be left behind because one focuses on the committed acts instead of the precise motive behind it.

The definition of terrorism of the High Level Panel contains the following elements: the definition states that the Geneva Conventions govern humanitarian law, restating that

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<sup>49</sup> Article 2 (1) of the 1999 International Convention for the Suppression of the Financing of Terrorism states: 'Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

Article 2 (4) of the 1999 International Convention for the Suppression of the Financing of Terrorism states: Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.'

<sup>50</sup> Operative paragraph 3 of Resolution 1566 (2004) states: 'Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and *calls upon* all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.'

<sup>51</sup> Report of the High-level Panel on Threats, Challenges and Change: A more secure world: our shared responsibility, December 2004, p. 64.



acts under the 12 existing conventions and protocols are considered acts of terrorism, acts that are intended to cause death and serious bodily harm to civilians or non-combatants, with the purpose to intimidate a population or to compel a Government or an international organisation to do or to abstain from doing any act are considered acts of terrorism. This definition makes a clear distinction between humanitarian law and terrorism. Furthermore, this definition restates that acts under the existing conventions and protocols are considered terrorist acts. Furthermore, four important elements are mentioned: (1) acts to cause death and serious bodily harm, (2) to civilians or non-combatants, (3) with the purpose to intimidate a population or (4) to compel a Government or an international organisation to do or to abstain from accomplish doing any actions.

But although the High Level Panel definition was considered a good proposal by many United Nations member states, and there was no significant opposition against this proposal, the definition was not agreed on by the states. The High Level Panel proposed a broader package of measures; this definition was a part of this package. One can wonder whether, because there was no significant opposition against this proposal, we can speak of an emerging consensus on a definition of terrorism. "In a way, more than two thirds of all Member States of the United Nations have already implicitly accepted a common definition."<sup>52</sup>

### **2.2.7 Comprehensive Convention on Terrorism**

The Sixth Committee of the United Nations General Assembly is working on a Comprehensive Convention on Terrorism. The Commission started working on this convention already in the 1990s. Because it is the intention of the Commission that the Comprehensive Convention will include a definition of terrorism, one can imagine the amount of time and effort is needed to conclude this Convention. And as a scholar states: "The international community's failure to define terrorism is political, not technical."<sup>53</sup>

The Draft Comprehensive Convention on International Terrorism contains the following definition of terrorism:

*"2(1) Any person commits an offence within the meaning of this convention if that person, by any means, unlawfully and intentionally, causes:*  
*(a) Death or serious bodily injury to any person; or*

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<sup>52</sup> Schmidt 2004, p. 390.

<sup>53</sup> Flory 1997, p. 33.

- (b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or*
- (c) Damage to property, places, facilities, or systems referred to in paragraph 1(b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing an act.*<sup>54</sup>

Two very important issues to deal with remain. First of all, the proposed exclusion for the activities of armed forces in armed conflict and of state military forces in the conduct of their official duties from the scope of the convention. And second, “the demand of the Organisation of the Islamic Conference to legitimatise the activities (including terrorist acts, e.g. suicide bombings) of national liberation movements and peoples struggling against foreign occupation.”<sup>55</sup> Another issue remaining is whether military forces of a state exercising their official duties are excluded for the Comprehensive Convention.<sup>56</sup>

The adoption of the Comprehensive Convention on Terrorism would provide a blueprint for consistent UN policy regarding counter terrorism. The adoption of the definition proposed by the High Level Panel would ease the discussion about the Comprehensive Conventions on Terrorism. Because the problem of freedom fighters or terrorists is tackled by the approach of the High Level Panel of disconnecting intention and action, one of the main obstacles for adopting this Comprehensive Convention is removed. Parts of the recently adopted ‘The United Nations Global Counter-Terrorism Strategy’ could be part of the Comprehensive Convention on Terrorism.

### **2.3 Summary and conclusions**

International legal scholars did not define terrorism as a general concept. The scholars defined specific actions (for example aeroplane hijacking and the taking of hostages) as terrorist acts. By using this method to define terrorism, international law has avoided the political sensitivity. Despite the specific approach used by scholars to make a start with defining terrorism by specific acts, there is the political as well as the scientific will to develop one definition of terrorism.<sup>57</sup>

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<sup>54</sup> Article 2(1) of the Draft Comprehensive Convention on International Terrorism.

<sup>55</sup> Rosand 2004, p. 605.

<sup>56</sup> Saul 2005, p. 80.

<sup>57</sup> Golder & Williams 2004, p. 274.

If one sees the definition of Schmidt (1988), the definition based on the lowest denominators of 73 academic journals and other definitions, three elements clearly stand out:

- The element of terror;
- The element of opprobrium (criminal, illegal); and
- The element of coercion.

Some scholars see the use of international humanitarian law as a possible solution to the dilemma of the definition of terrorism. They suggest that rather than trying to negotiate new treaties on terrorism, which are not likely to be ratified or enforced, nations should apply the laws of war, to which almost all have agreed.<sup>58</sup>

International society started defining terrorism in the end of the 19<sup>th</sup> century. During its session in 1892, the International Law Institute adopted a resolution including a definition of terrorism. In this definition were the following elements: terror, undermining the existing social order and the general audience as a target.

The definition of the League of Nations has proved to be a good start for a definition. Two following elements are present in the definition of the League: (1) acts that causes death or harm to public figures, acts that cause damage of public property, acts calculated to endanger live, and (2) attempt to commit an act as mentioned above and the dealing with arms to commit an acts as mentioned above. As one has seen, later definitions are based on this 1937 definition of the League of Nations.

The definition of terrorism in the Draft Code of Offences against the Peace and Security of Mankind (1954) is special because it only covers conduct of persons acting on behalf of a state (non-state actors are not included) and the definition of the Code only covers acts of actors that are sufficiently 'organised'. This definition is partly out of date, in these times one should acknowledge that non-state actors commit acts of terrorism and this should be included in a definition of terrorism.

The definition of terrorism in the Draft Code of Crimes of the International Law Commission (ILC) (1991 and 1996) contained the following elements: acts that causes death or grievous bodily harm to public figures, calculated acts to destroy public property, acts likely to imperil human lives through the creation of a public danger, and the manufacturing, obtaining, possession or supplying of arms, ammunition, explosives or harmful substances to commit a terrorist act.

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<sup>58</sup> Jenkins 1987, p. 408.

As one can see, this definition is built on the earlier definition of terrorism of the League of Nations (1937) and the ILC (1954).

The definition of terrorism in the Draft Rome Statute (1998) consisted out of already mentioned elements. In this definition the general public was mentioned as a possible element for an act of terrorism. This was the first time that the existing Conventions and Protocols on terrorism were specifically mentioned and that the acts included in those conventions and protocols were explicitly mentioned as acts of terrorism.

The definition of terrorism of the High Level Panel on Threats, Challenges and Change (2004) contains the following elements: the definition states that the Geneva Conventions govern humanitarian law, restating that acts under the 12 existing conventions and protocols are terrorism, acts that are intended to cause death and serious bodily harm to civilians or non-combatants, with the purpose to intimidate a population or to compel a Government or an international organisation to disentangle the motives and the actual acts of terrorism. Furthermore, this definition restates that acts under the existing conventions and protocol are considered terrorist acts. Furthermore, four important elements are mentioned: (1) acts to cause death and serious bodily harm, (2) to civilians or non-combatants, (3) with the purpose to intimidate a population or (4) to compel a Government or an international organisation to do or to abstain from doing any act.

But although the High Level Panel definition was considered a good proposal by many United Nations member states, and there was no significant opposition against this proposal, the definition was not agreed by the members of the UN. As stated before, in some way, more than 66 percent of the UN member states have already implicitly accepted a common definition.

Until the Comprehensive Convention, or another definition of terrorism, is adopted, the following acts are identified as terrorist acts in the twelve existing conventions and protocols:

1. Acts of hijacking;
2. Acts of aviation sabotage;
3. Unlawful acts of violence at airports;
4. Unlawful acts against the safety of maritime navigation;
5. Unlawful acts against the safety of fixed platforms located on the continental shelf
6. Crimes against internationally protected persons;
7. Acts of unlawful taking and use of nuclear material;

8. Acts of hostage taking;
9. Acts of terrorist bombings;
10. Acts of support for front organisations serving as financial conduits for terrorist organisations.<sup>59</sup>

The adoption of the Comprehensive Convention on Terrorism would provide a blueprint for consistent UN policy on counter-terrorism. The adoption of the definition proposed by the High Level Panel would ease the discussion about the Comprehensive Conventions on Terrorism. Because the problem of freedom fighters or terrorists is tackled by the approach of the High Level Panel of disconnecting intention and action, one of the main obstacles for adopting this Comprehensive Convention is removed.

For this thesis, it is unnecessary to choose a specific definition of terrorism. As already stated in the introduction of this chapter, Security Council Resolution 1373 does not try to give an exact definition of terrorism, nor does it seek to identify specific terrorists.

The next chapter will put all the different definitions of terrorism into perspective. The third chapter discusses all the different (political) definitions into a broader perspective.

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<sup>59</sup> These conventions are: Convention of Offences and Certain Other Acts Committed on Board Aircraft, 1963, Convention for the Suppression of Unlawful Seizure of Aircraft, 1970, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971, Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973, International Convention against the Taking of Hostages, 1979, Convention on the Physical Protection of Nuclear Material, 1979, Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, Protocol for the Suppression of Unlawful Acts against the Safety of Fixed platform Located on the Continental Shelf, 1988, Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991, International Convention for the Suppression of Terrorist Bombings, 1997, International Convention for the Suppression of the Financing of Terrorism, 1999.

### **3. How did international society counter terrorism before the adoption of Resolution 1373?**

This chapter answers the following sub-question: 'How did international society counter terrorism before the adoption of Resolution 1373?'. It is important to see the role of international society before the adoption of Resolution 1373, because it shows the reactions and concerns of the international society. Furthermore, to be able to see what changed after the adoption of Resolution 1373 by the Security Council in 2001, one must know the situation before the adoption of this resolution. The definitions mentioned in the previous chapter of this thesis will be put into a broader perspective.

This thesis uses the classification of the 'waves of terrorism' of Rapoport. This classification is not undisputed (see paragraph 2.1.1). In this thesis the classification of the different waves of terrorism is used as a benchmark to describe the counter terrorism efforts of international society. The classification of the four waves of terrorism is chosen because it provides a clear timeframe to describe the social-historical context in the answer to the second sub-question of this thesis. Every period of time is dealt with in the same way. First, the socio-historical aspects of the wave will be explained; second specific characteristics of terrorism during that specific wave will be discussed. And third, the role and activities of international society during this period of time will be described.

This chapter is not build chronologically. The aforementioned four waves are dealt with in their chronological order. The different paragraphs, however, are not always chronological arranged, because the answers to the sub-questions are divided along the lines of the different international institutions or organisations.

#### **3.1 How was terrorism countered internationally during the first wave of terrorism?**

In this paragraph the so-called first wave of terrorism is discussed. What is the socio-historical context all this period of time? What were the characteristics of terrorism? And how did international society react to this first 'wave' of terrorism?

### **3.1.1 What is the socio-historical context of the first wave of terrorism?**

The first wave of terrorism started in the second half of the 19<sup>th</sup> century.<sup>60</sup> This was the era of the 'Concert of Europe'. Britain, Prussia, Austria and Russia cooperated in what could be seen as the predecessor of the League of Nations.<sup>61</sup>

This wave took place within the context of the dramatic rise of (the impact of) mass media.<sup>62</sup> This made it possible that the consequences of terrorist acts and the incident of the terrorist act itself were spread among large parts of the population. This caused a lot of fear amongst the people.

Furthermore, the first wave of terrorism can be divided into three distinct categories (the Russian Revolutionaries, the different radical nationalist groups and the anarchists).<sup>63</sup> These categories were connected by the rise of democracy and nationalism. All the different problems the populations hit upon, like the oppression of minorities, had existed for a long time already. But when the ideas of the Enlightenment spread over Europe, nationalism became very powerful and conditions that had been accepted for ages became intolerable.<sup>64</sup>

The Russian revolutionaries were fighting the autocratic tsarist regime in Russia. This was stimulated by the fact that the tsar proposed massive economic and political reforms but could not fulfill the expectations of the Russian people.<sup>65</sup>

Radical nationalist groups were, among others, found in Ireland, Spain and the Balkans. Some examples of radical nationalist groups are the international Macedonian revolutionary organization, young Bosnia and the Serbia Black Hand.<sup>66</sup> Most of these groups were fighting for autonomy and national independence.<sup>67</sup> The Serbia Black Hand originated from the semi-secret Narodna Odbrana (National Defense). In 1919 ten men came together and formed the Ujedinjenje ili Smrt (Union or Death, or Black Hand), with the purpose to recruit and train civilians for a possible war between Austria and Serbia. The ultimate goal of Black Hand (and its successor White Hand) was to unite all Slavic people (Pan-Slavism).<sup>68</sup>

This first period of terrorism ended with the assassination of Archduke Franz Ferdinand of Austria. The assassination triggered the outbreak of the First World War.<sup>69</sup>

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<sup>60</sup> Laqueur 2001, p. 11.

<sup>61</sup> Goldstein 2005, p. 29.

<sup>62</sup> Rapoport 2001, pp. 419-424.

<sup>63</sup> Laqueur 2001, p. 11.

<sup>64</sup> Ibidem.

<sup>65</sup> Rapoport 2001, p. 420.

<sup>66</sup> Ibidem.

<sup>67</sup> Laqueur 2001 p. 11.

<sup>68</sup> Shackelford, p. 1.

<sup>69</sup> Rapoport 2001, p. 420.

### **3.1.2 What were the characteristics of terrorism during this period of time?**

The Russian revolutionaries used dynamite and systematic assassinations of 'important people' as their weapons. This use of dynamite bombs distinguished the terrorists from the 'regular' criminals, because the thrower of a dynamite bomb usually killed not only its target, but also himself.<sup>70</sup> The Russian group Narodnaya Volya (People's Will) can be called the most important Russian terrorist group of that time, even though it only acted in the 1870s and 1880s.<sup>71</sup> Narodnaya Volya was also known as Chornyi Peredel (Black Repartition). One of the strengths of People's Will lays in the fact that a few very dedicated spirits that sincerely believed in martyrdom. Narodnaya Volya did use the same weapon in their struggle as anarchists (assassination) but did not share the anarchist aversion against all centralized (political) authority.<sup>72</sup>

The anarchist mounted different assassination campaigns.<sup>73</sup> The anarchist practised 'propaganda by deed'. Propaganda by deed is the idea that theoretical propaganda (newspapers, pamphlets) is of limited efficacy. Practical demonstrations, for example in the Paris communes, could present issues in a more dramatic way than thousands of leaflets or meetings ever could. Furthermore, when workers returned home after a long day of work, they were not interested in reading pamphlets. John Most was the most violent advocate of propaganda by deed.<sup>74</sup>

At the end of the 19<sup>th</sup> century, propaganda by the deed was decreasing. It was replaced by mass strikes by union- and workers organisations, except for in Russia, where officials were still being killed.<sup>75</sup> Also through the policy of European governments, political violence through propaganda by deed declined.

Furthermore, the rise of mass media also influences the characteristics of terrorism during that time because terrorist started to use the media as an instrument.

### **3.1.3 What did the international community do?**

During the time of the first wave of terrorism, there was no international organisation like the United Nations or its predecessor, the League of Nations. One could see the Concert of Europe as the predecessor of the League of Nations, but international society could not act easily as an 'international society' as it can today because of the established

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<sup>70</sup> Rapoport 2001, p. 420.

<sup>71</sup> Laqueur 2001, p. 11.

<sup>72</sup> Yarmolinsky 1956, pp. 1-5.

<sup>73</sup> Rapoport 2001, p. 420.

<sup>74</sup> Miller 1995, p. 43.

<sup>75</sup> Ibidem, p. 56.



international structures. Individual states had their own way to deal with terrorism in their country.

### **3.1.3.1 Piracy as a form of terrorism**

One of the examples of the way international society tried to counter terrorism prior to, and during, the first wave of terrorism is the way it dealt with international piracy.

Since the beginning, piracy is considered an enemy of humanity. As one of the first scholar to do so, Blackstone referred to piracy as "an offence against the universal law of society"<sup>76</sup>. An English lawyer, Edward Coke, described, already during the reign of James I, pirates as *hostis humanis generis*, meaning "common enemy of mankind".<sup>77</sup> Piracy of the sea is one of the first universally acknowledged 'international crimes'. They come to this conclusion because "from the Paris Declaration of 1856 to the Geneva Convention of 1958, the proliferation of treaties dealing with aspects of terror-violence on the high seas has helped to codify international law with regard to piracy."<sup>78</sup>

National courts confirmed this view of piracy as an international crime. For example, the Supreme Court of the United States of America stated in 1820 that piracy is "an offence against the law of nations"<sup>79</sup> and that pirates themselves were considered to be "an enemy of the human race"<sup>80</sup>. The World Court confirmed this judgment in 1927 in the Lotus Case.<sup>81</sup>

In contemporary terrorism, piracy still plays a role. Piracy on sea is becoming one of the tactics of terrorist groups. Today's pirates have, in contrast to the 'old pirates', not only a commercial interest, but more and more an ideological and political agenda. This connection between terrorism and piracy can be very dangerous for the international energy markets since most of the oil and gas is shipped through the world's most dangerous waters.<sup>82</sup> Furthermore, piracy expanded from only vessel to also aircraft piracy. Aircraft piracy is one of the tactics used by contemporary terrorists.<sup>83</sup>

### **3.1.3.2 State sponsored terrorism**

With piracy also came the first forms of what we would call today 'state sponsored terrorism'. Both England and America gave licenses to private ships (privateers) that were outfitted as war vessels allowing them "to make war on vessels flying foreign

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<sup>76</sup> Combs & Slann 2002, pp. 60-61.

<sup>77</sup> Ibidem, p. 161.

<sup>78</sup> Ibidem.

<sup>79</sup> United States Supreme Court 25 February 1820 The United States v. Smith, p. 18 U.S. 153, 155.

<sup>80</sup> Ibidem, 156.

<sup>81</sup> Permanent Court of International Justice 7 September 1927 The Case of the S.S. LOTUS (France v. Turkey).

<sup>82</sup> Luft & Korin 2004, p. 61.

<sup>83</sup> Combs & Slann 2002, p. 61.

flags."<sup>84</sup> The acts that both nations commissioned the pirates to carry out on the high seas would be deplored as 'offences against humanity' in their courts today.<sup>85</sup>

For example, Queen Elizabeth I of England gave the 'Elizabethan Sea Dogs' permission to carry out violent attacks against ships sailing under the Spanish fleet and Spanish ports. Another example of this 'state sponsored terrorism' is the role that both American and English privateers played during the American Revolution.<sup>86</sup>

### **3.1.4 Conclusions**

One can see that during this period of time, international society tried to act to prevent terrorism. However, action taken existed of halfway measures. First of all, measures to prevent terrorism were aimed mainly on the prevention of piracy, a minor share of the terrorists acts taking place at that time. Second, on the one hand, states tried to prevent piracy; on the other hand, states themselves were still supporting the pirates and therefore preserved the system.

## **3.2 How was terrorism countered internationally during the second wave of terrorism?**

In this paragraph the so-called second wave of terrorism is discussed. What is the socio-historical context and what were the main features of this wave? How did international society react to this second wave?

### **3.2.1 What is the socio-historical context of the second wave of terrorism?**

The second wave of terrorism began after World War I and reached its peak in the 1960s.<sup>87</sup> This second wave of terrorism runs parallel with the establishment of the League of Nations and later the United Nations. The League of Nations was established on 25 January 1919 during the Paris Peace Conference ending World War I. The United Nations is established, just after World War II, in June 1945 in San Francisco.

Between the two World Wars, there was the so-called calm before the storm. After the Second World War, some violent groups became political parties. Some of these violent parties even ruled countries (for example Spain). These organisations were, most of the time, dedicated to extreme nationalist ideologies. And once they were in power, the

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<sup>84</sup> Ibidem.

<sup>85</sup> Ibidem.

<sup>86</sup> Combs & Slann 2002, p. 61.

<sup>87</sup> Rapoport 2001, p. 420.

leaders of some of those organisations introduced state terrorism on an unprecedented scale.<sup>88</sup>

After the Second World War, the United States and the Soviet Union became adversaries in the Cold War. The world was divided along the lines of the two superpowers. Germany was even split into rival blocs, West Germany and East Germany.<sup>89</sup>

### **3.2.2 What were the characteristics of terrorism during this period of time?**

In contrast to earlier times (and to the coming 'waves of terrorism'), martyrdom and political targets were no longer the only important targets. Instead, police forces (who were called 'the eyes and ears' of the government), became more prominent targets. Another difference with the first wave of terrorism is the fact that there was greater support for the terrorist groups from civilians. Some terrorist groups gave warnings to civilians before attacks.<sup>90</sup>

Individual terrorism played a subordinate role in the European resistance movement during the Second World War. This is a perfect example of the fact that some people call acts 'acts of terrorism', while other like to think of it as 'acts of liberation'. This happened during World War II, but also during the decolonisation and even nowadays.<sup>91</sup>

### **3.2.3 What did the international community do?**

During the beginning of this second wave, the topic of terrorism was mostly related to questions of extradition. States started to make their own rules about how to handle requests for extradition in case of terrorist acts. The International Law Institute made an attempt to put the issue of terrorism on the international agenda. During its session in 1892, the International Law Institute adopted a resolution stating that "criminal acts directed against the basis of social organisation, and not solely against a given state or a given form of government are not considered political crimes insofar as the application of the rule on extradition."<sup>92</sup>

#### **3.2.3.1 International Congresses of Penal Law**

The International Congresses of Penal Law discussed the topic of terrorism into length. The conference adopted a definition of terrorism (see paragraph 2.2.1 of this thesis). The League of Nations was working, parallel to the International Congresses of Penal Law, on counter terrorism measures.

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<sup>88</sup> Miller 1995, pp. 56-57.

<sup>89</sup> Goldstein 2005, p. 29.

<sup>90</sup> Rapoport 2001, p. 420.

<sup>91</sup> Laqueur 2001, pp. 18-19.

<sup>92</sup> Zlataric 1975, p. 477.

During the VIth International Conference for the Unification of Criminal Law the topic of international terrorism was again on the agenda. One of the reasons for putting the subject on the agenda again was the fact that the League of Nations had also put the topic on their agenda. One particularity was that during this conference, it was the first time that a delegate from the USSR was present. This showed that international terrorism could, above all, been seen as a threat to the peace.<sup>93</sup>

### **3.2.3.2 League of Nations**

The first time that the League of Nations dealt with terrorism was in the 1930s, following the assassination of a Yugoslavian king and a French foreign minister by ethnic separatists. The League of Nations adopted several resolutions on the topic of counter-terrorism and established a committee. This committee existed out of 11 members and worked out two draft conventions; the draft 'Convention for the Repression of Terrorism', and the draft Convention for the 'Creation of an International Criminal Court'. This was the first time, after the attempt of the International Association of Penal Law, that an international organisation tried to establish a view on counter-terrorism on an international level.<sup>94</sup>

On November 16<sup>th</sup>, 1937 the Convention for the Prevention and Repression of Terrorism was signed by 24 states<sup>95</sup> in Geneva. Unfortunately, the Convention only obtained one ratification and never entered into force.<sup>96</sup> The Convention adopted in 1937 contained the following definition of 'acts of terrorism': "Criminal acts directed against a state and intended or calculated to create a state of terror in the mind of particular persons, or a group of person or the general public" (see paragraph 2.2.2 for a more in depth discussion on the definition of terrorism by the League of Nations).

The Convention first reaffirmed the principles of international law (among others the principle of state sovereignty). Article 2 states that all signatory parties are obliged to consider acts of terrorism in its criminal legislation when such acts are directed against another contracting state. The other articles deal with the incrimination of conspiracy, instigation and assistance and with the repetition of an international offence and the

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<sup>93</sup> Zlataric 1975, p. 481.

<sup>94</sup> Laqueur 2001, p. 18.

<sup>95</sup> Albania, Argentina, Belgium, India, Bulgaria, Cuba, Czechoslovakia, the Dominican Republic, Egypt, Ecuador, Estonia, France, Greece, Haiti, Monaco, the Netherlands, Norway, Peru, Romania, Spain, Turkey, USSR, Venezuela, Yugoslavia.

<sup>96</sup> Dugard 1974, p. 68.

private claim for damages, extradition and the principle of universality.<sup>97</sup> During this conference, the causes of terrorism were hardly discussed.<sup>98</sup>

The most controversial issue at the International Conference on the Repression of Terrorism was that of the extradition of offenders. Several Central- and Eastern European states were prepared to extradite all offenders under the Convention; Western countries (like the Netherlands, the United Kingdom and France) strongly rejected this view.<sup>99</sup>

### **3.2.3.3 United Nations**

After World War II, the United Nations was established. Scholars see the United Nations as the successor of the League of Nations. The main task of the United Nations is to maintain international peace and security. One important difference between the two international governmental organisations is that the United States of America became a member of the United Nations (the United States was not a member of the League of Nations, see paragraph 3.2.2.2).<sup>100</sup>

The Security Council (the Council) of the United Nations has, under Chapter VII of the UN Charter, the powers to enforce measures on UN member states in order to protect international peace and security. The next chapter will explore the subject more in depth.

The Security Council made its first reference to terrorism as a result of an incident in the Middle East. In 1948 the Council labelled the assassination of Count Folke Bernadotte (the UN mediator in Palestine) a "cowardly act" that appeared "to have been committed by a criminal group of terrorists"<sup>101</sup>. That this is the first reference of the General Assembly is remarkable because of the fact that a year before this first reference a large terrorist attack took place on the King David Hotel in Palestine. Almost hundred people were killed, but the United Nations never mentioned the incident. It is even more remarkable because in 1947 the United Nations adopted two resolutions, UN General Assembly's Resolutions 107 (15 May 1947) and Resolution 181 (29 November 1947), both condemning all violence in the Palestine Region.

### **3.2.4 Conclusions**

From the establishment of the United Nations in 1945 until 1990, the United Nations and especially the Security Council were paralysed by the Cold War. This has great influence on the way the United Nations reacted on acts of terrorism. This topic will be discussed more in depth in paragraph 3.3.2.2.

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<sup>97</sup> Zlataric 1975, pp. 482-484.

<sup>98</sup> Dugard 1974, p. 70.

<sup>99</sup> Dugard 1974, p. 70.

<sup>100</sup> Article 1 (1) of the Charter of the United Nations, San Francisco 26 June 1945.

<sup>101</sup> United Nations Security Council Resolution 57, September 18, 1948.

It seems arbitrary to what cases the United Nations chooses to respond. In some major (for that time) terrorist attacks, the UN did not choose to react, in other (sometimes minor) cases the United Nations did react.

### **3.3 How was terrorism countered internationally during the third wave of terrorism?**

In this paragraph the third wave of terrorism is discussed. What was the socio-historical context of that time and what were the main features of terrorism during this period? And how did international society react on this third wave?

#### **3.3.1 What is the socio-historical context of the third wave of terrorism?**

The war in Vietnam preceded the third wave of terrorism. New terrorist groups were inspired by the success of the guerrilla in Algeria and the South American Marighella movement. Furthermore, the fact that the Vietcong achieved successes against the powerful army of the United States showed that the 'West' was vulnerable. This made others hopeful that they could take up their arms against Western countries and that they possibly could even win.<sup>102</sup>

The third wave of terrorism was stimulated by national self-determination and the process of decolonisation. During the wave new states emerged. The term freedom fighter (instead of terrorist) was used frequently by supporters of the decolonisation. Groups in different European countries (such as the German Rote Armee Faction (RAF), the Italian Brigate Rosse, the American Weather Underground and the French Direct Action) saw themselves as spokespersons and fighters for the masses in the Third World.<sup>103</sup>

What must be taken in mind as well is that this 'wave' of terrorism was taking place during the Cold War. This influenced the capability of international society to react on this wave of terrorism (see paragraph 3.3.2.2).

The third wave ebbed in the 1980s. The co-operation of international society increased and the terrorists were defeated in one country after another.<sup>104</sup> The rising economy could have also helped stopping the so-called wave of terrorism. One must keep in mind, however, that the fourth wave of terrorism was already knocking on the door.

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<sup>102</sup> Rapoport 2001, p. 420.

<sup>103</sup> Ibidem, pp. 420-421.

<sup>104</sup> Ibidem, p. 421.

### **3.3.2 What were the characteristics of terrorism during this period of time?**

During this period of time, the term 'international terrorism' got a deeper meaning. Some of the groups, like the Palestine Liberation Organisation (PLO), were more active in Europe than in their own West bank. The PLO conducted training camps for terrorists. Also, the organisation educated individuals that related themselves to other terrorist groups, like the RAF. The evolutionary ethos propagated during these training camps also created a tight bond between the different groups and individuals.<sup>105</sup>

One of the new ways of conducting a terrorist act was by airplane hijacking. More than 100 planes were hijacked in the 1970s.<sup>106</sup> Paragraph 3.3.2.1.2 discusses this subject more in depth. Another 'new' phenomenon was the state sponsored terrorism. As can be seen in the second chapter of this thesis, this was not really a 'new' phenomenon, as it was already used in the 19<sup>th</sup> century by, for example, England and America. However, during this period of time, governments employed terrorist in other countries to obtain their own political agenda.

### **3.3.3 What did the United Nations do?**

In this paragraph the attention will be focused on the role of the United Nations. It would be too extensive to also pay attention to the counter-terrorism efforts of individual states and other (regional) international actors. This paragraph discusses the actions of the different bodies and committees of the United Nations regarding the third wave of terrorism.

#### **3.3.3.1 United Nations General Assembly**

The General Assembly (GA) is the only body of the United Nations where all the member states of the UN (as such, nearly all countries in the world are represented) are gathered and have equal votes. The Assembly does not have the power to command governments to take or avoid certain actions and does not have an own administrative body for the implementation of the decisions taken by the Assembly. Because the General Assembly is the body where almost all countries in the world are gathered, the GA is able to "serve as a developer of normative discourse and an encourager of cooperative action"<sup>107</sup>.

The General Assembly took three kinds of action to counter terrorism. First, the General Assembly adopted several resolutions concerning the subject of counter-terrorism. Second, the Sixth Committee of the General Assembly deals with the issue of counter-

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<sup>105</sup> Rapoport 2001, pp. 421.

<sup>106</sup> Ibidem.

<sup>107</sup> Peterson 2004, p. 173.

terrorism. And third, the GA established two *Ad Hoc* Committees on this subject (one in 1972 and the other in 1999).

The Sixth Committee of the UN General Assembly deals with legal issues, like terrorism. The name of the item of counter-terrorism on the agenda of the United Nations General Assembly used to be as follows:

*"Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes."*

Some scholars place their comments on the title of the item. First, the General Assembly focuses on the forms of terrorism that kill or endanger innocent lives or jeopardise fundamental freedoms, implying that there are other forms of terrorism with whom the Committee shall not deal. And second, the scholars believe that the UN needs to study the underlying causes of these forms of terrorism and include this in the name of the agenda item.<sup>108</sup> Since 1972, the UN (mandated by Resolution 3034 of 18 December 1972 of the General Assembly) studies the underlying causes of international terrorism and hopes to find practical, operational measures to combat it.<sup>109</sup>

In the 1980s Western-European countries came up with more straightforward texts on terrorism, while the Eastern-European countries tried to find a middle course. The non-aligned countries<sup>110</sup> wanted to include state terrorism (by Israel) in the wording of the different resolutions. This meant that the final wordings of the resolutions were compromises or "a fair blend, leaning towards the non-aligned point of view"<sup>111</sup>.

In 1973 the General Assembly presented the Convention on Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic agents. The planning of this resolution adopted by the General Assembly on December 14 1973 started directly following the taking hostage of a subsequent killing of members of the Israeli Olympic team during the Olympic Games in Munich in 1972. It is argued by some

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<sup>108</sup> Van Krieken 2002, p. 113.

<sup>109</sup> McWhinney 1987, p. 138.

<sup>110</sup> In the third world, many countries joined a non-aligned movement during the Cold War standing apart from the U.S.-Soviet rivalry. In 1992, the non-aligned movement agreed to stay in business, though its future is unclear. (Goldstein, 2005, p. 93.)

<sup>111</sup> Van Krieken 2002, p. 114.



scholars, that the inclusion of Heads of State weakened the political will to ratify this convention.<sup>112</sup>

What must be taken in mind, however, is that decisions taken by the General Assembly of the United Nations, and therefore also the adopted resolutions, and not binding upon members states. This in contrary to the decisions of the UN Security Council, which can be binding upon states.<sup>113</sup>

### **3.3.3.1.1 Ad Hoc Committee**

Resolution 3034 (1972) of the General Assembly established the first UN *Ad Hoc* Committee on Measures to Eliminate International Terrorism<sup>114</sup>. This first *Ad Hoc* Committee was responsible for the consideration of the observations made in the resolution and the Committee had to submit a report with "recommendations for possible co-operation for the speedy elimination of the problem"<sup>115</sup>.

The *Ad Hoc* Committee also concluded that, among others (because the already adopted international counter-terrorism conventions deal with the various aspects of terrorism), there should be a shift in emphasis to the underlying causes of international terrorism.<sup>116</sup> One could state that because the international community made a start with the formation of a legal framework to counter terrorism internationally, the United Nations started focussing on the root causes of terrorism. This contrary to, for example, the League of Nations Conference in 1937, where the causes of terrorism were hardly discussed.<sup>117</sup> Chapter 2 of this thesis is devoted to the different definitions of terrorism.

A group of twelve diverse Third World Countries submitted a working paper to the *Ad Hoc* Committee. This working paper on the "Underlying Causes of International Terrorism"<sup>118</sup> identified root causes of terrorism. These root causes were as well of a political character, as of an economic and social character. Among the political causes were colonialism and the maintenance of colonial domination, racism, racial discrimination, policy of apartheid and genocide. Other political causes mentioned were: aggression, use of force contrary

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<sup>112</sup> McWhinney 1987, pp. 135-139.

<sup>113</sup> Kooijmans 2000, pp. 172-175.

<sup>114</sup> Operative clause 9 of United Nations General Assembly Resolution 3034 (18 December 1972) states: "Decides to establish an Ad Hoc Committee on International Terrorism consisting of thirty-five members to be appointed by the President of the General Assembly bearing in mind the principle of equitable geographical representation;"

<sup>115</sup> Operative clause 10 of United Nations General Assembly Resolution 3034 (18 December 1972) states "Requests the Ad Hoc Committee to consider the observations of States under paragraph 7 above and submit its report with recommendations for possible co-operation for the speedy elimination of the problem, bearing in mind the provisions of paragraph 3, to the General Assembly at its twenty-eight session;"

<sup>116</sup> McWhinney 1987, p. 139.

<sup>117</sup> Dugard 1974, p. 70.

<sup>118</sup> Working paper on Underlying Causes of International Terrorism (A/AC.160/WG/R.1).

to the Charter of the United Nations and violation of the political independence, national sovereignty and territorial integrity of states. Among the economic and social causes were: persistence of an unjust and inequitable international economic order, foreign exploitation of natural resources of a country, massive violation of human rights, mass imprisonment, and the use of torture, reprisals, poverty and hunger.<sup>119</sup>

Just as the League of Nations, (see paragraph 2.2.2), the *Ad Hoc* Committee on International Terrorism, was not able to reach agreement on a comprehensive definition of terrorism. They did, however, reach a minimum working definition by listing the international convention already adopted dealing with the issue of international terrorism.<sup>120</sup>

### **3.3.3.1.2 Aerial piracy**

In the 1960s and 1970s aerial piracy was a popular means of committing terrorist acts. This created problems, not only for the international commercial airlines, but also for states and international organisations. Hijacking was not a problem that could be dealt with nationally, also because hijacking can be described as a type of terrorism, which is contrary to international law.<sup>121</sup>

The United Nations adopted three Aerial Piracy Conventions<sup>122</sup>. Some scholars state that these conventions were not intended to be anti-terrorism conventions. They think though, that these conventions are good examples of 'United Nations-based problem solving'<sup>123</sup>. The scholars states that when the United Nations can act free of psychological and practical political constraints that come with international arena, the UN can work at its best.<sup>124</sup>

Where in the 1960s and 1970s the aerial pirates also had commercial (financial) interest, in the 1980s, when aerial piracy re-emerged, aerial piracy could be seen as a strictly

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<sup>119</sup> McWhinney 1987, pp. 139-140.

<sup>120</sup> At that time, these conventions were: the Tokyo Convention 1963 (Convention of Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963), the The Hague Convention 1970 (Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970) and The Montreal Convention 1971 (Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (23 September 1971) and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (14 December 1973).

<sup>121</sup> Dugard 1974, p. 71.

<sup>122</sup> These conventions are: the Tokyo Convention 1963 (Convention of Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963), the The Hague Convention 1970 (Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970) and The Montreal Convention 1971 (Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (23 September 1971)).

<sup>123</sup> McWhinney 1987, p. 130.

<sup>124</sup> McWhinney 1987, p. 130.

international terrorism phenomenon. This phenomenon could be linked to the fact that terrorist started using 'direct action' way of committing acts of international terrorism.<sup>125</sup>

### **3.3.3.1.3 UN General Assembly Resolution on International Terrorism of 9 December 1985**

This resolution represents all the booked results of UN activity against terrorism of almost a decade. This resolution of the GA was adopted on 9 December 1985 without a vote.<sup>126</sup> This Resolution calls upon all member states of the UN, which had not yet done so, to become a party to the already existing counter-terrorism conventions.<sup>127</sup> Furthermore, the Convention calls upon states to take national measures to speedily eliminate terrorism<sup>128</sup> and to implement the recommendations of the *Ad Hoc* Committee<sup>129</sup>.

### **3.3.3.2 United Nations Security Council**

The first time that the UN Secretary General offered his good offices to counter terrorism was in 1968 and 1969 when U Thant used his good offices to address cases of aeroplane hijacking.<sup>130</sup>

For the first time, in September 1970, the United Nations Security Council adopted a resolution on terrorism, Resolution 286. This resolution "Calls on States to take all possible legal steps to prevent further hijacking or any other interference with international civil air travel"<sup>131</sup>.

As one can see, the Security Council did not play an enormous role during the third wave of terrorism. During the Cold War, that started in 1945 and lasted until 1990<sup>132</sup>, the Security Council was paralysed by the struggle between the Soviet Union and the United

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<sup>125</sup> McWhinney 1987, p. 3.

<sup>126</sup> McWhinney 1987, p. 142.

<sup>127</sup> Operative paragraph 4 of United Nations General Assembly Resolution 40/61 (9 December 1985). This paragraph states: "Appeals to all States that have not already done so to consider becoming party to the existing international conventions relating to various aspects of international terrorism;"

<sup>128</sup> Operative paragraph 5 of United Nations General Assembly Resolution 40/61 (9 December 1985). This paragraph states: "Invites all States to take all appropriate measures at the national level with a view to the speedy and final elimination of the problem of international terrorism, such as the harmonization of domestic legislation with existing international conventions, the fulfilment of assumed international obligations, and the prevention of the preparation and organization in their respective territories of acts directed against other States;"

<sup>129</sup> Operative paragraph 10 of United Nations General Assembly Resolution 40/61 (9 December 1985). This paragraph states: "Calls upon all States to observe and implement the recommendations of the *Ad Hoc* Committee on International Terrorism contained in its report to the General Assembly at its thirty-fourth session;"

<sup>130</sup> Luck 2004, p. 86.

<sup>131</sup> Operative paragraph 2 of the United Nations Security Council Resolution 286 (9 September 1970). This paragraph states: "Calls on States to take all possible legal steps to prevent further hijacking or any other interference with international civil air travel."

<sup>132</sup> Goldstein 2005, p. 39.

States of America. Because both are permanent members of the Council, they have the right to veto, so every decision could be scrutinised.<sup>133</sup>

### **3.3.4 Conclusions**

During this period of time, terrorism became more 'international'. This called for action by the international society. For the first time the United Nations seems to adopt a more coherent approach to terrorism. The General Assembly adopted several resolutions concerning the subject of countering terrorism, the Sixth Committee of the General Assembly deals with the issue of counter-terrorism and the Assembly established two *Ad Hoc* Committees dealing with this matter. The Security Council could not play a large role during this period of time because of the Cold War. Also, in the 1970s the United Nations started studying the underlying causes of international terrorism.

### **3.4 How is terrorism countered internationally during the fourth wave of terrorism?**

In this paragraph the so-called fourth wave of terrorism is discussed. What is the socio-historical context and what are the main characteristics of terrorism during this wave? And how does international society react?

#### **3.4.1 What is the socio-historical context of the fourth wave of terrorism?**

We find ourselves in the middle of the fourth 'wave' of terrorism. One could state that the Islamic Revolution in 1979 ignited this contemporary fourth wave of terrorism in Iran. Another event that marked the beginning of this wave of terrorism is the defeat of the Soviet troops in Afghanistan in 1989. The Sunnis, from all over the world, that fought in Afghanistan during the Russian dominance returned home after the 'victory' of the Taliban with as well the training, as the confidence to begin terrorist groups in their home countries. Among these people were some of the individuals that played a role during the attacks of September 11 2001. And one last event that can be seen in the beginning of this wave of terrorism is the drive out of the American troop in Lebanon by the suicide bombs of Shiite Muslims. This success of the suicide bombing encouraged other groups, for example the Tamil Tigers in Sri Lanka, to take up their own fight.<sup>134</sup>

Other examples of terrorist movements are the Japanese group Aum Shinrikyo, different right-wing extremist Jewish groups and several Christian Identity groups. These last groups believe that the white Anglo-Saxon people are the direct descendents of the chosen people as described in the bible. They also believe that Jewish people descend from the devil.

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<sup>133</sup> Kooijmans 2000, pp. 172-175.

<sup>134</sup> Rapoport 2001, p. 421.

One can see that it is complex to speak about the socio-historical context of this period of terrorism because the terrorist groups are very different and their characteristics are scattered. This, again, is one of the points of criticism on the classification of the 'waves of terrorism'.

The background of the Islamic extremist Islamic groups is described in the first part of this paragraph. One of the most visible terrorist movements of contemporary terrorism is Al Qaeda. The aims of Al Qaeda are: to drive out the American presence from the holiest shrines of the Islam and to make it impossible for Americans to support secular states created along national lines.<sup>135</sup>

The Japanese Aum Shinrikyo (nowadays also known as Aleph) is a religious organization that based many of its principles on Buddhism and Hinduism. Some see Aum only as a religious group or sect and believe that its followers did not know about the criminal activities of its leaders. Most people know Aum Shinrikyo for the nerve gas attack on the Tokyo subway in 1995.<sup>136</sup>

The active right wing Jewish extremists are organised in different smaller groups. One of the most known examples of an act committed by a right wing Jewish extremist is the assassinations of the Israeli prime minister Yitzhak Rabin by Yigal Amir on the 4<sup>th</sup> of November 1995.

The Christian Identity movement provides certain people with the ideological tools to commit acts of crime of terrorism. Especially in the United States of America, this movement gains terrorist. The beliefs of this religious movement are considered an outgrowth of the White supremacist philosophy. However, followers of this religion consider white, Anglo-Saxon protestants as the chosen people. The criminal efforts of this movement are not accommodated in one organisation, but the above-mentioned religious beliefs can be considered the bases of the binding element.<sup>137</sup>

### **3.4.2 What were the characteristics of terrorism during this period of time?**

Suicide bombing is one of the powerful weapons used during this period of time, therefore martyrdom reasserted.<sup>138</sup> Some scholars state that suicide terrorism is unlikely

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<sup>135</sup> Rapoport 2001, p. 422.

<sup>136</sup> Metraux 1995, pp. 1140-1154.

<sup>137</sup> Telfair Sharpe 2000, pp. 604-605.

<sup>138</sup> Rapoport 2001, p. 421.

to achieve ambitious goals. One scholar also states, however, that this may change if suicide terrorists acquire more destructive technologies.<sup>139</sup>

As seen in the previous paragraph, one of the contemporary characteristics of terrorism is that religion is sometimes seen as more useful than revolutionary ethos. Jewish terrorist attempted to blow up Islam's most sacred shrine in Jerusalem and waged an assassination campaign against Palestinian mayors. And in 1995 Aum Shinrikyo released nerve gas in a Tokyo subway, killing 12 persons and injuring another 3000. Another example to mention in this place is the Oklohoma City Bombings of April 19 1995. Timothy McVeigh drove with a truck filled with explosives into Alfred P. Murrah Federal Building and killed 168 persons. Christian Identity movements, among others, inspired this attack. These (American) movements, based on racial interpretation of the bible reject all authority of the state. They wait for the great racial war and the Second Coming.<sup>140</sup>

Some terrorists take the Islam as their basis for terrorist action. One must point out that this is a relatively very small group of extreme believers. For this group, the Islam is appealing to an ideal, namely, a single state, governed by the Islamic sharia, where all Muslims can live together.<sup>141</sup>

Education is a place to recruit potential terrorists. Schools like the Madrassas in Pakistan or Hamas-sponsored schools in Palestine are used as breeding grounds for new terrorists.<sup>142</sup>

### **3.4.3 What did the United Nations do so far?**

This paragraph discusses the actions of the different bodies and committees of the United Nations regarding the fourth wave of terrorism. However, one must take in mind that this wave has not ended yet, and that the measures taken by the United Nations are their actions taken so far.

#### **3.4.3.1 United Nations General Assembly**

The second *Ad Hoc* Committee of the General Assembly was established in 1997, and its initial mandate was to further develop a comprehensive legal framework of conventions dealing with international terrorism.<sup>143</sup> This *Ad Hoc* Committee operates under the Sixth

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<sup>139</sup> Pape 2003, pp. 355-356.

<sup>140</sup> Rapoport 2001, p. 422.

<sup>141</sup> Ibidem.

<sup>142</sup> Von Hippel 2002, pp. 28-30.

<sup>143</sup> Operative paragraph 9 of United Nations General Assembly Resolution 51/210 (16 January 1997) states: "Decides to establish an Ad Hoc Committee, open to all State Members of the United Nations or Members of specialized agencies or of the International Atomic Energy, to elaborate an international convention for the suppression of terrorist bombings and, subsequently, an international convention for the suppression of acts of

Committee of the General Assembly and meets once a year, usually for a period of one or two weeks. The Committee is open to all the members of the United Nations, to members of the International Atomic Energy Agency and members of specialised agencies of the UN. The present mandate can be described as follows:

- The *Ad Hoc* Committee shall continue to elaborate a comprehensive convention on international terrorism as a matter of urgency;
- The *Ad Hoc* Committee shall continue its efforts to resolve the outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism;
- The *Ad Hoc* Committee shall keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organised response of the international community to terrorism in all its forms and manifestations.<sup>144</sup>

Since the establishment of the second *Ad Hoc* Committee the work of this Committee led to the adoption of two treaties, the International Convention for the Suppression of Terrorist Bombing (adopted by the General Assembly in Resolution 52/164 of 15 December 1997) and the International Convention for the Suppression of the Financing of Terrorism (adopted by the General Assembly in Resolution 4/109 of 9 December 1999).<sup>145</sup>

In 1999 the General Assembly adopted Resolution 54/109. This resolution contained an agreement on the International Convention for the Suppression of Acts of Nuclear Terrorism.

After the 11<sup>th</sup> of September 2001 the General Assembly held a special session on the subject of the condemnations of terrorist attacks. This special session called upon states that had not signed or ratified the international conventions relating to terrorism to do so.

The Sixth Committee of the United Nations General Assembly (dealing with legal matters, see paragraph 3.3.2.1) is now working on a Comprehensive Convention on Terrorism. The Commission already started working on this convention in the 1990s of the last century. Because it is the intention of the Commission that the Comprehensive Convention will include a definition of terrorism, one can imagine the amount of time and

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nuclear terrorism, to supplement further developing a comprehensive legal framework of conventions dealing with international terrorism.”

<sup>144</sup> Van Krieken 2002, p. 120.

<sup>145</sup> Ibidem.

effort is needed to conclude this Convention. So far, twelve universal conventions to suppress international terrorism exist.<sup>146</sup>

### **3.4.3.2 United Nations Security Council**

Chapter VII of the Charter of the United Nations deals with the powers of the United Nations Security Council to take action with respect to threats to the peace, breaches of the peace, and acts of aggression. "The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the members of the UN"<sup>147</sup>, or, Chapter VII decisions taken by the Security Council can be binding for all the member states of the United Nations. This chapter gives the Security Council the power to take action when any threat to peace, breach of peace or act of aggression exists<sup>148</sup>. The Council's resolutions can be binding upon states and the Council has the authority to impose sanctions on states. This is one of the main differences with the competencies of the General Assembly; the Security Council is able to develop hard law, whether the General Assembly only has the authority to develop 'soft law'. What can be seen, though, is that the Security Council sometimes (for example in the text of Resolution 1269) bases its texts on a General Assembly resolution.<sup>149</sup>

Just as the *Ad Hoc* Committee of the General Assembly, the Security Council is working, by her resolutions, to create a comprehensive legal approach towards international terrorism. Pitfalls in this approach will probably relate to the issue of state terrorism.<sup>150</sup>

One scholar states that the Security Council's strategy to combat terrorism can be divided into four prongs: "condemnation of discrete acts of terrorism, imposition of binding counter-terrorism obligations on all states, capacity-building, and imposition of sanctions."<sup>151</sup> The Council condemned the discrete acts of terrorism by adopting resolutions or presidential statements following most major terrorist acts. These condemnations, however, have no legal effect. By adopting Resolution 1373, the Council imposed binding counter-terrorism obligations on all UN member states. The Security Council created obligations for all states. By doing this, the Council went beyond the already existing counter-terrorism treaties. These treaties only bind those that have become a party to the specific treaty. The Counter-Terrorism Committee (CTC), established in Resolution 1373 and by the 1540, represents the capacity building prong (non-proliferation) Committee. The Council is imposing sanctions by the adoption of

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<sup>146</sup> See footnote 47 for a list of the twelve conventions.

<sup>147</sup> Article 48 (1) of the Charter of the United Nations, San Francisco 26 June 1945.

<sup>148</sup> Article 39 of the Charter of the United Nations, San Francisco 26 June 1945.

<sup>149</sup> Van Krieken 2002, p. 143.

<sup>150</sup> *Ibidem*.

<sup>151</sup> Rosand 2006, p. 74.



different resolutions. Both the United Nations Secretary General and the High Level Panel on Threats, Challenges and Change, have indicated that everything must be done to ensure full enforcement of these sanctions.<sup>152</sup>

#### **3.4.3.2.1 Sanctions**

In the first twenty years of the existence of the United Nations, no sanctions were imposed on states.<sup>153</sup> In the 1990s of the last century the Security Council imposed sanctions on Libya, Sudan and Afghanistan for their support of terrorist activities. Some scholars are sceptical about the effect of sanctions, because "as with other applications of Council sanctions, their record as a tool to discourage support for terrorism has been uneven. They appeared to have made the biggest difference in the case of Libya"<sup>154</sup>. The writer gives as a reason why the sanctions did not have the wanted effect, the fact that the leaders were not asked to give up "anything really integral to their power base"<sup>155</sup>.

The question of effectiveness of sanctions is not a legal matter, except when we speak about the compliance of member states with the decisions of the United Nations Security Council.<sup>156</sup> The sanction regimes of the 1990s have had some effect on the global terrorist threat. "They were important in stigmatizing terrorism as an illegitimate activity that needed to be countered through international action. The sanction regimes made support of terrorist activities more costly, and the state sponsors of terrorists were responsive."<sup>157</sup> It is obvious that sanctions imposed by the Security Council under the mandate of Chapter VII are legally binding.<sup>158</sup>

Both the Secretary General and the High Level Panel on Threats, Challenges and Change indicated that more must be done to ensure that the sanctions imposed on states by the United Nations Security Council are fully enforced. There can be little doubt "that sanctions have become and likely will increasingly be an important tool in the Council's system of collective measures"<sup>159</sup>. The imposition of sanctions can be a powerful tool when stating that 200 million USD have been netted in assets of persons and entities with ties to terrorist networks.<sup>160</sup>

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<sup>152</sup> Rosand 2006, pp. 75-79.

<sup>153</sup> Gill 1995, p. 48.

<sup>154</sup> Luck 2004, p. 94.

<sup>155</sup> Ibidem, p. 95.

<sup>156</sup> Gill 1995, p. 50.

<sup>157</sup> De Jonge Oudraat 2004, p. 153.

<sup>158</sup> Gill 1995, p. 50.

<sup>159</sup> Ibidem.

<sup>160</sup> Rosand 2006, p. 79.

### **3.4.3.2.2 Resolutions**

Among the most important UN Security Council resolutions are Resolution 1269, Resolution 1368, Resolution 1373 and Resolution 1377. Resolution 1269 deals with the responsibility of the Security Council in the maintenance of international peace and security and is “updated” in 2001 by resolution 1373. Resolution 1377 merely confirms Resolution 1373 and welcomes the Special Session of the General Assembly on the subject of the condemnation of terrorist attacks Countering International Terrorism (see chapter 4). Resolutions 1540 and 1566 need to be added to the list of important resolutions regarding countering terrorism. The subject of resolution 1540 is non-proliferation of weapons of mass destruction. Resolution 1566 reaffirms resolutions 1267 and 1373 of the Security Council<sup>161</sup> and establishes a working group (the 1566 Working Group)<sup>162</sup>.

#### **3.4.3.2.2.1 Resolution 1368**

On September 12 2001 the United Nations Security Council adopted Resolution 1368, condemned global terrorism and recognised the right to self-defense under article 51<sup>163</sup> of the UN Charter. Operative paragraph 1 of Resolution 1368 reads: “Unequivocally condemns in the strongest terms the horrifying terrorists attacks which took place on 11 September 2001 in New York, Washington D.C. and Pennsylvania and regards such acts, like any act of international terrorism, as a threat to international peace and security”<sup>164</sup>.

Resolution 1368 is different from other resolutions condemning terrorism. In “traditional” resolutions regarding the condemnation of terrorist acts, the Council condemns the terrorist act in question and expresses its sympathy to the victims and their families (like the Council does in operative paragraphs 2 and 3 of Resolution 1368). These resolutions call on states to co-operate to bring to justice the perpetrators (see operative paragraph 3 and 4 of Resolution 1368). The Council breaks with these “traditional” resolutions in operative paragraph 5 of Resolution 1368. In this paragraph the Council “expresses its readiness<sup>164</sup> to take all necessary steps to respond to the terrorist attacks of 11 September

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<sup>161</sup> Introductory paragraph 1 of United Nations Security Council Resolution 1566 (8 October 2004). This paragraph states: “Reaffirming its resolutions 1267 (1999) of 15 October 1999 and 1373 (2001) of 28 September 2001 as well as its other resolutions concerning threats to international peace and security caused by terrorism,”.

<sup>162</sup> Operative paragraph 9 of United Nations Security Council Resolution 1566 (8 October 2004). This paragraph states: “Decides to establish a working group consisting of all members of the Security Council to consider and submit recommendations to the Council on practical measures to be imposed upon individuals, groups or entities involved in or associated with terrorist activities, other than those designated by the Al-Qaida/Taliban Sanctions Committee, including more effective procedures considered to be appropriate for bringing them to justice through prosecution or extradition, freezing of their financial assets, preventing their movement though the territories of Member States, preventing supply to them of all types of arms and related material, and on the procedures for implementing these measures;”.

<sup>163</sup> See appendix 3 for the text of article 51 of the Charter of the United Nations.

<sup>164</sup> Operative paragraph 1 of the United Nations Security Council Resolution 1368 (12 September 2001), see appendix 1 for the whole text of this resolution.

2001 and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations"<sup>165</sup>. The Council felt it was necessary to offer the United States of America "a stronger form of support than sympathy"<sup>166</sup>. Furthermore, the Security Council made a clear reference to the right of self-defence by including introductory paragraph 3 in the resolution that recognises "the inherent right of individual or collective self-defence in accordance with the Charter"<sup>167</sup> and by including operative paragraph 5 of Resolution 1373<sup>168</sup>.

This reference to the right of self-defence in Resolution 1368 was the first time that a Security Council made the direct link in a resolution between self-defence and a terrorist act.<sup>169</sup> It was also the first time that a resolution regarding international terrorism was adopted under Chapter VII of the United Nations Charter. What must be considered, however, is that the Security Council was already building on a framework to counter international terrorism before the adoption of Resolution 1368. For example, the Council already sanctioned the Taliban, adopted Resolution 1269 and condemned the attack on the American embassies in Africa.

In cases that were dealt by the Security Council prior to the adoption of Resolutions 1368 and 1373, the initial resolutions (e.g. Resolutions 731, 1044 and 1189) were not adopted under Chapter VII of the UN Charter and the wording of those resolutions was more restricted.<sup>170</sup> There seems to be a change in the position of the Security Council towards unilateral forcible action: Resolutions 1368 and 1373 recognise the inherent right of states of individual or collective self-defence in accordance with the Charter of the United Nations.

The only time that one can see as a precedent was Resolution 731 of the Security Council where "the right of all States, in accordance with the Charter of the United Nations and relevant principles of international law, to protect their nationals from acts of international terrorism that constitute threats to international peace and security"<sup>171</sup>, although this resolution was not adopted after (or in anticipation of) any military action.<sup>172</sup>

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<sup>165</sup> Operative paragraph 5 of the United Nations Security Council Resolution 1368 (12 September 2001), see appendix 1 for the whole text of this resolution.

<sup>166</sup> Fassbender 2004, p. 86.

<sup>167</sup> Operative paragraph 3 of the United Nations Security Council Resolution 1368 (12 September 2001), see appendix 1 for the whole text of this resolution.

<sup>168</sup> Fassbender 2004, p. 87.

<sup>169</sup> Ibidem, p. 86.

<sup>170</sup> Wouters & Naert 2004, p. 424.

<sup>171</sup> Introductory paragraph 2 of United Nations Security Council Resolution 731 (21 January 1992). This paragraph states: "Strongly deplores the fact that the Libyan Government has not yet responded effectively to the above requests to cooperate fully in establishing responsibility for the terrorist acts referred to above against Pan Am flight 103 and Union de transport aériens flight 772;"

<sup>172</sup> Wouters & Naert 2004, p. 425.

### 3.4.3.2.3 Special bodies

Rule 28 of the Provisional Rules of Procedure of the Security Council gives the Council the power to appoint a committee for a specified question.<sup>173</sup>

The Security Council created four bodies that are dealing with the subject of counter-terrorism. All four of the bodies are created under Chapter VII of the Charter. Resolution 1267 is the basis for the first body, the Al Qaeda and Taliban Sanctions Committee. This Committee is monitoring the progress made with regard to Resolution 1267 and is imposing measures and sanctions as mentioned in operative paragraph 4 of the resolution. This Committee consists of all the members of the Security Council.<sup>174</sup>

After September 11 2001 the Security Council condemned the attacks that took place on the 11<sup>th</sup> of September (see Resolution 1368 of the Security Council) and adopted Resolution 1373. This resolution created the second body, the Counter-Terrorism Committee. Chapters 4 and 5 of this thesis will consider at length the mandate, work and strengths and weaknesses of this Committee.

In 2004 the Security Council created two more subsidiary bodies on counter-terrorism: Committee 1540 and the 1566 Working Group. Resolution 1540 of the Security Council created a committee monitoring the implementation of this resolution, Committee 1540. The aforementioned resolution deals with proliferation of nuclear, chemical and biological weapons as well as their means of delivery. The last body created by the United Nations Security Council is based on Resolution 1566. This resolution created a committee (the 1566 Working Group) to "consider and submit recommendations to the council on practical measures to be imposed upon individuals, groups or entities involved in or associated with terrorist activities, other than those designated by the Al-Qaeda/Taliban Sanctions Committee, including more effective procedures considered to be appropriate for bringing them to justice through prosecution or extradition, freezing their financial assets"<sup>175</sup>.

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<sup>173</sup> Rule 28 of the Provisional Rules of Procedure of the Security Council (adopted by the Security Council at its 1st meeting at its 31st, 41st, 44th and 48th meeting, on 9 April, 16 and 17 May, 6 and 24 June 1946; 138th and 222nd meetings, on 4 June and 9 December 1947; 468th meeting on 28 February 1950; 1463rd meeting, on 24 January 1969; 1761st meeting, on 17 January 1974; and 2410th meeting, on 21 December 1982.

Previous versions of the provisional rules of procedure were issued under the symbols S/96 and Rev.1-6) reads: "The Security Council may appoint a commission or committee or a rapporteur for a specified question".

<sup>174</sup> Operative paragraph 6 of United Nations Security Council Resolution 1267 (15 October 1999). The first part of this paragraph states: "Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council consisting of all the members of the Council to undertake the following tasks and to report on its work the Council with its observations and recommendations:".

<sup>175</sup> Operative paragraph 9 of United Nations Security Council Resolution 1566 (8 October 2004). This paragraph states: "Decides to establish a working group consisting of all members of the Security Council to consider and submit recommendations to the Council on practical measures to be imposed upon individuals, groups or entities involved in or associated with terrorist activities, other than those designated by the Al-Qaida/Taliban Sanctions Committee, including more effective procedures considered to be appropriate for bringing them to justice through prosecution or extradition, freezing of their financial assets, preventing their movement though

### **3.4.4 Conclusions**

The United Nations plays a vital role in international societies counter-terrorism efforts. The work of the second *Ad Hoc* Committee of the General Assembly resulted in the adoption of different international conventions and the General Assembly adopted several resolutions on the proliferation of nuclear terrorism.

The actual strength of the United Nations is only visible after the Cold War (so actually, the Security Council has had a real chance to show its capabilities only during the fourth wave of terrorism). The Security Council is now creating a legal framework to counter terrorism.

### **3.5 Summary and conclusions**

How did international society counter terrorism before the adoption of Resolution 1373? This thesis uses the classification of the "four waves of terrorism". This classification is not undisputed. However, this thesis uses this classification because it provides a clear timeframe to look at the reaction of international society to terrorism and the characteristics of terrorism in the different periods of time.

The first so-called wave of terrorism, that started in the second half in the 19<sup>th</sup> century and lasted until the assassination of Archduke Franz Ferdinand of Austria, can be divided into three categories. These categories are: the Russian Revolutionaries, the radical nationalist groups, and the anarchists. The different categories were connected by the socio-historical context of the rise of democracy, nationalism, and the ideas of the Enlightenment.

The dramatic rise of mass media is an important characteristic of this 'wave'. Important instruments used by the terrorists of that time are dynamite, assassinations and propaganda by deed, mostly used by anarchists.

During this period in time, there was no international organisation (like the League of Nations or the United Nations). During this period in time international society could not act easily as an "international society" because there were no established structures as there are today.

Piracy was one of the international crimes handled by international society during that time. It was one of the first crimes to be declared as an international crime by different courts. One could say that the measures taken to prevent terrorism were not aimed at

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the territories of Member States, preventing supply to them of all types of arms and related material, and on the procedures for implementing these measures;".

the core of the fighting piracy. On the one hand, states were trying to stop piracy; on the other hand, states (like England and America) sponsored and allowed privateers to make war on vessels flying foreign flags. This sponsoring can be seen as a precursor of contemporary state sponsored terrorism.

The second so-called wave of terrorism began after World War I and reached its peak in the 1960s. This second wave of terrorism runs parallel with the establishment of the League of Nations and later the United Nations.

This 'wave' was taken place in the historical context of the two World Wars. Between the two World Wars, there was the so-called calm before the storm. After the Second World War, different violent groups became political parties. Some of these violent parties even ruled countries (for example Spain). These organisations were, most of the time, dedicated to extreme nationalist ideologies. Individual terrorism played a subordinate role in the European resistance movement during the Second World War. After the Second World War, the United States and the Soviet Union became adversaries during the Cold War.

To name some of the characteristics of that time: martyrdom and political targets were no longer the only important targets during this period of time. Instead, police forces (who were called 'the eyes and ears' of the government, became more prominent targets. There was greater support for terrorist groups from civilians.

The International Congresses of Penal Law discussed the topic of terrorism into length. The (in 1919 established) League of Nations was working, parallel to the International Congresses of Penal Law on counter terrorism measures and established a committee. This committee worked out two draft conventions; one for a 'Convention for the Repression of Terrorism', and another for the 'Creation of an International Criminal Court'. On November 16<sup>th</sup>, 1937 the Convention for the Prevention and Repression of Terrorism was signed by 24 states in Geneva. This Convention did not obtain enough ratifications and never entered into force.

After World War II, the United Nations was established. The UN Security Council made its first reference to terrorism as a result of an incident in the Middle East. In 1948 the Council condemned the assassination of Count Folk Bernadotte. The arbitrariness of the of the United Nations regarding the choices made regarding the reaction of the UN to terrorist incidents is remarkable, for example, the UN reacts on the assassination of Folk Bernadotte, but does not take action after the King David Hotel bombings in 1946.

From the establishment of the United Nations in 1945 until 1990, the United Nations, and especially the Security Council, was paralysed by the Cold War.

The war in Vietnam preceded the third so-called wave of terrorism. New terrorist groups were inspired by the success of the guerrilla Vietcong. The third wave ebbed in the 1980s, among others because of increased co-operation in international society. This 'wave' occurred within the socio-historical context of the decolonisation and self-determination. Furthermore, the world was influenced by the ongoing Cold War.

During this 'wave', the term "international terrorism" got a deeper meaning. Some of the terrorist groups of that time operated in different countries than their own. Terrorist training became a very important tool. Another new instrument of terrorist used during this wave is air plane hijacking.

The UN General Assembly took three kinds of action to counter terrorism. The General Assembly adopted several resolutions concerning the subject of counter terrorism; the Sixth Committee of the General Assembly deals with the issue of counter-terrorism and the Assembly established two *Ad Hoc* Committees dealing with this matter. In 1973 the GA presented the Convention on Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic agents. Furthermore, the General Assembly adopted the GA Resolution on International Terrorism of 9 December 1985 that calls upon states to become members of the existing counter terrorism conventions. Furthermore, the United Nations adopted three Aerial Piracy Conventions to end this new trend in international terrorism. In the 1970s the United Nations started studying the underlying causes of international terrorism.

The UN Security Council did not play an enormous role during the third wave of terrorism. During the Cold War the Security Council was paralysed by the struggle between the Soviet Union and the United States of America.

We find ourselves in the middle of the fourth so-called wave of terrorism. The wave was preceded by the Islamic Revolution in Iran, the defeat of Soviet troops in Afghanistan and the cast out of American troops in Lebanon. The 'wave' has not ended yet.

It is complex to speak about the socio-historical context of this period because the terrorist groups and their characteristics are very different. This is one of the points of criticism on the classification of the "waves of terrorism".

An important characteristic of terrorism in this period of time is the fact that religion is sometimes considered more useful than revolutionary ethos. Furthermore, suicide bombing and martyrdom are important features. Another important characteristic is that schools and other forms of education are seen as breeding grounds for new terrorists.

The United Nations plays a vital role in international societies' counter terrorism efforts. The work of the second *Ad Hoc* Committee of the General Assembly resulted in the adoption of the International Convention for the Suppression of Terrorist Bombing, as well as the adoption the International Convention for the Suppression of the Financing of Terrorism. Furthermore, the General Assembly adopted several resolutions on the proliferation of nuclear terrorism. The Sixth Committee of the Assembly is working on a Comprehensive Convention on Terrorism.

The Security Council is creating a legal framework to counter terrorism. The five most important resolutions to date are Resolution 1269, Resolution 1368, Resolution 1373, Resolution 1540 and Resolution 1566. Rule 28 of the Provisional Rules of Procedure of the Security Council gives the Council the possibility to appoint a committee to deal with a specified subject. The Security Council uses this competence and created four different special bodies dealing with counter-terrorism. Another possible way of the Security Council to counter terrorism is by the imposition of sanctions.

A big difference between the efforts of the General Assembly and the Security Council is the fact that the Security Council can adopt and impose binding measures on states (hard law), whereas the General Assembly can only make recommendations (soft law). However, the role of the General Assembly should not be underestimated. For example, large parts of the text of Resolution 1269 of the United Nations Security Council are based on texts earlier adopted by the General Assembly.

It is important to realise that the General Assembly, as well as the Security Council, cannot "create" international custom as such. But in the situation that all the other requirements for international custom are met, both United Nations organs can contribute to the emergence of customary law because the adoption of certain measures by the General Assembly or the Security Council can show wide-spread support or legitimacy for the measures and custom in question.

During the first 'wave', the counter-terrorism efforts of international society were minor efforts, not really aimed at terrorism (e.g. the efforts to fight piracy). During the second so-called wave, international society started their efforts to come up with an agreed definition of terrorism. The third 'wave' was characterised by the fact that international society focused on individual acts of terrorism (e.g. plane hijacking). These individual acts were condemned and action was taken to punish the terrorists that committed this specific crime. Nowadays, during the so-called fourth wave of terrorism, international society really starts to work on a legal framework to counter terrorism.



As one has seen, the adoption of Resolution 1373 by the Security Council was a turning point in the counter terrorism efforts of the United Nations. But what exactly changed after the adoption of this resolution? And why did Kofi Annan call this resolution the cornerstone of the counter terrorism efforts of the United Nations? The next chapter will answer these questions.

## **4. How were the aims of Resolution 1373 defined and what has been accomplished so far?**

This chapter will answer the following question: 'How were the aims of Resolution 1373 defined and what has been accomplished so far?'. As mentioned before, the adoption of Resolution 1373 can be seen as a turning point. Why this resolution is considered a turning point and what are the implications for UN member states? And what are the competencies of the United Nations? What are the aims of this resolution? What happened so far and what are the challenges in reaching the objectives set out in Resolution 1373?

### **4.1 Resolution 1373**

Resolution 1373 was unanimously adopted on September 28 2001. Some scholars (see paragraph 1.1.3) see Resolution 1373 as "the cornerstone" of the UN's efforts in countering terrorism<sup>176</sup> and a "departure for the institution"<sup>177</sup> because the Security Council not only officially declares international terrorism a threat to international peace and security (as was already done in Resolution 1368), but also imposes binding obligations to all the members of the United Nations. The goal of Resolution 1373, and the in Resolution 1373 established Counter-Terrorism Committee, is to increase the level of government involvement against terrorism world-wide.<sup>178</sup> Resolution 1373 is sometimes called "the most comprehensive and intrusive counter-terrorism resolution to date"<sup>179</sup>.

Because the United Nations Security Council declared acts of international terrorism a threat to international peace and security it was possible for the Council to adopt Resolution 1373 under their responsibilities as given to the Council in Chapter VII of the Charter of the UN.<sup>180</sup>

Resolution 1373 reaffirms Resolution 1269 (1999) and Resolution 1368 (2001)<sup>181</sup>. The adoption of this Resolution 1373 seems a logical follow-up of these two resolutions because the resolution adds new elements to the existing package of counter-terrorism measures.<sup>182</sup>

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<sup>176</sup> Rosand 2004, p. 604.

<sup>177</sup> Ibidem.

<sup>178</sup> Ibidem, p. 606.

<sup>179</sup> E.C. Luck, 'The Uninvited Challenge: Terrorism Target the United Nations', p. 10.

<sup>180</sup> Van Krieken 2002, p. 6.

<sup>181</sup> Introductory paragraph 1 of United Nations Security Council Resolution 1373 (28 September 2001), see appendix 2 for the whole text of this resolution.

<sup>182</sup> Van Krieken 2002, p. 6.

## **4.2 What makes Resolution 1373 different from other counter terrorism resolutions?**

Resolution 1373 goes beyond the already existing counter-terrorism treaties. The resolution requires that states adopt laws and regulations to implement the prescriptions set forth in those already existing conventions. The existing counter-terrorism treaties only bind those states which have voluntarily become parties to them.<sup>183</sup> Many of the specific measures of Resolution 1373 were present in the 1997 Convention on the Suppression of Terrorist Bombing and the 1999 Convention on the Suppression of Financing of Terrorism. The first convention entered into force in May 2001, the second one did not enter into force before September 11 2001.<sup>184</sup> Just a small number of states had signed and ratified the above-mentioned two conventions at this time. Still the United Nations Security Council included these specific measures in its binding resolution. This is why some countries protested to the adoption of this resolution.

## **4.3 What are the competencies of the United Nations according to Resolution 1373 and what happened so far?**

Not only states have obligations resulting from Resolution 1373, there are also tasks assigned to the United Nations. In this paragraph more information on the competencies of the United Nation under Resolution 1373. Also, attention will be paid to what happened since the adoption of Resolution 1373 on the 28<sup>th</sup> of September 2001.

### **4.3.1 The Counter-Terrorism Committee and its method of working**

Operative clause 6 of Resolution 1373 established the Counter-Terrorism Committee<sup>185</sup>. What are the objectives and tasks of the Committee? And what is the method of working of this Counter-Terrorism Committee?

#### **4.3.1.1 The Counter-Terrorism Committee**

Resolution 1373 established, in accordance with rule 28 of the Provisional Rules of Procedure of the Security Council, the Counter Terrorism Committee (CTC).<sup>186</sup> Rule 28 of the Provisional Rules gives the Council the power to appoint a committee for a "specified question".<sup>187</sup> The specified task for the CTC is, according to Resolution 1373, as follows: to monitor the implementation of Resolution 1373.<sup>188</sup> The Counter-Terrorism Committee

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<sup>183</sup> Rosand 2006, p. 74.

<sup>184</sup> De Jonge Oudraat 2004, p. 161.

<sup>185</sup> Operative paragraph 6 of United Nations Security Council Resolution 1373 (28 September 2001), see appendix 2 for the whole text of this resolution.

<sup>186</sup> Ibidem.

<sup>187</sup> Rule 28 of the Provisional Rules of Procedure of the Security Council reads: "The Security Council may appoint a commission or committee or a rapporteur for a specified question."

<sup>188</sup> Operative paragraph 6 of United Nations Security Council Resolution 1373 (28 September 2001), see appendix 2 for the whole text of this resolution.

consists of all the members of the Security Council.<sup>189</sup> Accordingly, the composition of the Committee changes every time the composition of the Council changes.

To help the CTC in dealing with its specified question, operative clause 6 of Resolution 1373 "calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution"<sup>190</sup>.

Resolution 1373 did not provide further guidance to the CTC on its method of working and the exact role that the Committee should play. The first chairman of the CTC, the British Ambassador Sir Jeremy Greenstock, composed a draft method of working. Most of his ideas were taken into account and were adopted by the Committee. The Committee operates on the bases of consensus<sup>191</sup> and transparency<sup>192</sup>.

In Resolution 1377, adopted on 12 November 2001, the Security Council provided direct guidance to the Counter-Terrorism Committee. Resolution 1377 invites the CTC "to explore ways in which States can be assisted, and in particular to explore with international, regional and sub regional organizations:

- the promotion of best-practices in the areas covered by Resolution 1373 (2001), including the preparation of model laws as appropriate,
- the availability of existing technical, financial, regulatory, legislative or other assistance programmes which might facilitate the implementation of Resolution 1373 (2001),
- the promotion of possible synergies between these assistance programmes."<sup>193</sup>

The second time the Security Council provided the CTC with direct guidance was in 2003. The Council adopted Resolution 1456 that states that the CTC "must intensify its efforts to promote the implementation of all aspects of Resolution 1373"<sup>194</sup>. This resolution helped the CTC to intensify its technical assistance programmes. Also, these indications given by the Security Council led to deeper involvement of the CTC with other organisations involved in countering terrorism.<sup>195</sup>

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<sup>189</sup> Operative paragraph 6 of United Nations Security Council Resolution 1373 (28 September 2001), see appendix 2 for the whole text of this resolution.

<sup>190</sup> Ibidem.

<sup>191</sup> Paragraph 7 (a) of the Guidelines of the Security Council Committee established pursuant to Resolution 1373 (2001) concerning Counter-Terrorism (16 October 2001).

<sup>192</sup> Paragraph 8 of the Guidelines of the Security Council Committee established pursuant to Resolution 1373 (2001) concerning Counter-Terrorism (16 October 2001).

<sup>193</sup> United Nations Security Council Resolution 1377 (12 November 2001)

<sup>194</sup> Operative paragraph 4 of United Nations Security Council Resolution 1456 (20 January 2003).

<sup>195</sup> Rosand 2004, p. 609.

The CTC consists of three sub-committees. These three committees are assigned to review the reports of UN member states. The CTC has hired eleven experts, eight who assist the three sub-committees in reviewing the reports and three that co-ordinate the CTC's technical assistance program. Following the submission of the state reports by the states, the different sub-committees of the CTC review the reports and draft a letter from to the specific state. In this letter the CTC asks follow-up questions to be answered in the state's next report. Before the letter is sent to the appropriate state, representatives of the state in question have the opportunity to meet with the relevant sub-committee of the Counter-Terrorism Committee to provide clarification on the submitted report and to discuss the draft of the letter of the CTC.<sup>196</sup>

The Counter-Terrorism Committee decided to break up its work into three stages. During Stage A the CTC looks whether a state has effective counter-terrorism legislation in place, covering all areas of activity related to Resolution 1373. Specific attention is paid to combating terrorist financing.<sup>197</sup>

Stage B focuses on the implementation of the legislation set in place during Stage A. During this phase the CTC will also verify whether states have the executive machinery in place to cover all aspects of Resolution 1373.<sup>198</sup> Stage B might include activities preventing recruitment of terrorist groups, the movement of terrorists, the establishment of terrorist safe havens and any other forms of passive or active support of terrorist or terrorist groups.<sup>199</sup>

During Stage C the CTC will focus on building on Stage A and B and the remaining areas of resolution 1373.<sup>200</sup> This stage will also include a focus on (judicial) co-operation on the bilateral, regional and international level.<sup>201</sup>

As mentioned before, the first chairman of the CTC was the British Sir Jeremy Greenstock (2001-2003). The Spaniard Inocencia F. Arias (2003-2004) was the next chairman. In 2004 the Russian Federation took up the chairmanship with Alexander V. Konuzin (2004) and Andrey I. Denisov (2004-2005). In 2005-2006 the Danish Ambassador Ellen Margrethe Løj was appointed chairperson of the CTC. In January 2007 the Permanent Representative of Panama, Ricardo Alberto Arias, took up the chairmanship.<sup>202</sup> At this time Neven Jurica (the permanent representative of Croatia) is the chairperson of the

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<sup>196</sup> Rosand 2004, pp. 608-611.

<sup>197</sup> <http://www.un.org/sc/ctc/page1.html> (23 September 2008).

<sup>198</sup> Rosand 2004, p. 611.

<sup>199</sup> <http://www.un.org/sc/ctc/page1.html> (23 September 2008).

<sup>200</sup> Ibidem.

<sup>201</sup> Rosand 2004, pp. 611-612.

<sup>202</sup> Ibidem.

CTC.<sup>203</sup> All the chairpersons were at the time of their chairmanship the permanent representatives of their respective countries to the United Nations.<sup>204</sup>

Greenstock emphasised the technical nature of the CTC. The functions of the CTC are to monitor, to analyse and to report facts to the Security Council for consideration. This means that the political assessment of these facts and reports remains in the hands of the United Nations Security Council.<sup>205</sup> Greenstock states in his statement before the Security Council "the CTC is not a tribunal and does not judge States, but it does expect every State to work at its fastest possible speed to implement the far-reaching obligations of Resolution 1373 (2001)"<sup>206</sup>. The view of Greenstock that the CTC is not a sanctions committee, nor prosecutes possible violators, nor condemns state, was endorsed by the CTC. The fact that the chairman did not want to target or condemn individual states and that, instead, he wanted to focus on technical capacity building, saw to the fact that he was able to gain support from all the states. This largely non-confrontational approach shall have a positive impact on the states that are willing, but unable to implement resolution 1373. On the other hand, because of this non-confrontational approach, the CTC shall be limited in its influence towards the states that are unwilling to implement the resolution.<sup>207</sup>

#### **4.3.1.2 Counter-Terrorism Committee Executive Directorate**

After two years of work of the CTC, it became clear that the Committee "had reached its limits as it was then organized"<sup>208</sup>. The chairman Arias of the CTC proposed a plan for the revitalisation of the Committee. One of his proposals was to create a Counter-Terrorism Committee Executive Directorate (CTED), with an Information and Administrative Office (IAO) and an Assessment and Technical Assistance Office (ATAO) of up to 20 experts. The goal of the establishing the CTED was to handle the growing demands for technical assistance and capacity building.<sup>209</sup> After this proposal of the chairman, the UN Security Council adopted Resolution 1535 (March 2004) that established the CTED.<sup>210</sup>

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<sup>203</sup> <http://www.un.org/sc/ctc/aboutus.html> (30 November 2008).

<sup>204</sup> Paragraph 2 (b) of the Guidelines of the Security Council Committee established pursuant to Resolution 1373 (2001) concerning Counter-Terrorism (16 October 2001).

<sup>205</sup> De Jonge Oudraat 2004, p. 161.

<sup>206</sup> United Nations Security Council, 57<sup>th</sup> Session, 4618<sup>th</sup> Meeting (4 and 8 October 2002), p. 5.

<sup>207</sup> Rosand 2004, pp. 608-613.

<sup>208</sup> Rosand 2006, p. 77.

<sup>209</sup> Luck, 'The Uninvited Challenge: Terrorism Target the United Nations', p. 16.

<sup>210</sup> Operative paragraph 2 of United Nations Security Council Resolution 1535 (26 March 2004). This paragraph states: "Decides that the revitalized Committee will consist of the Plenary- composed of the Security Council member States- and the Bureau, the later composed of the Chair and the Vice-Chairs, assisted by the Counter-Terrorism Committee Executive Directorate (hereinafter "CTED") to be established as a special political mission, under the policy guidance of the Plenary, for an initial period ending 31 December 2007 and subject to a comprehensive review by the Security Council by 31 December 2005, so as to enhance the Committee's ability to monitor the implementation of resolution 1373 (2001) and effectively continue the capacity-building work in which it is engaged;".

The revitalised CTC exists of a plenary meeting, consisting of all the member states of the Security Council and the Bureau. The revitalised CTC shall be assisted by the CTED. Executive Director, Mike Smith, heads the CTED with the rank of Assistant Secretary-General of the United Nations. The CTED is fully staffed since September 2005. Since 2005, the mandate of the CTED also includes the monitoring of the implementation of United Nations Security Council Resolution 1624, on incitement to commit acts of terrorism, by member states.<sup>211</sup>

In Resolution 1535, the Council also recognises the need for the CTC to visit states "to engage in a detailed discussion to monitor the implementation of Resolution 1373"<sup>212</sup>. The Council states that such visits to states should be conducted in close co-operation with the relevant organisations.<sup>213</sup> The CTC has visited Morocco and Kenya during the beginning of 2005. These visits were taken to supplement the written reports of the states and to inform the CTC on the capacity building efforts of both states.<sup>214</sup>

#### **4.3.1.3 Assistance program**

The Security Council realised soon after adopting Resolution 1373 that implementing this resolution would impose a burden on most states. The above-mentioned directions given to the CTC by the Council made that the CTC became engaged "in working to promote cooperation between States that need technical or other assistance to implement Resolution 1373, and other States or organisations in a position to provide it."<sup>215</sup> The CTC itself is not a direct provider of the above mentioned capacity building assistance, the Committee acts as broker between states that have requested assistance for the implementation of Resolution 1373 and states or groups who have the relevant capacities.<sup>216</sup> On the United Nations website representatives of states can find more information about how the CTC can help their state.<sup>217</sup> In addition to this website, the Counter-Terrorism committee maintains a "Matrix of Assistance Requests" that contains a comprehensive overview of all the assistance requests and needs and contains

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<sup>211</sup> <http://www.un.org/sc/ctc/aboutus.html> (30 November 2008).

<sup>212</sup> Introductory paragraph 10 of United Nations Security Council Resolution 1535 (26 March 2004). This paragraph states: "Recognizing also the need for the Committee, where appropriate, to visit States, with the consent of the State concerned, and to engage in a detailed discussion to monitor the implementation of resolution 1373 (2001)".

<sup>213</sup> Introductory paragraph 11 of United Nations Security Council Resolution 1535 (26 March 2004). This paragraph states: "Recognizing that such visits should be conducted, when appropriate, in close cooperation with relevant international, regional and sub regional organizations and other United Nations bodies, including the United Nations Office on Drugs and Crime, in particular with its Terrorism Prevention Branch, taking special care of the assistance that might be available to address States' needs,".

<sup>214</sup> Luck, 'The Uninvited Challenge: Terrorism Target the United Nations', p. 12.

<sup>215</sup> Rosand 2004, p. 614.

<sup>216</sup> Luck 2004, p. 96.

<sup>217</sup> <http://www.un.org/sc/ctc/aboutus.html> (30 November 2008).

information on assistance currently being provided to states regarding counter-terrorism.<sup>218</sup>

#### **4.3.2 Co-operation of United Nations member states**

So far, all the UN member states have submitted their first reports, as asked for in Resolution 1373<sup>219</sup>. More than 150 states have also submitted their second-round reports, and about 50 states submitted their third-round reports.<sup>220</sup> The fact that all the states submitted their reports shows a certain will to co-operate; this is a certain surplus value of this resolution and the CTC.

One could argue that submitting a report (and unfortunately, not all the reports have the expected quality) is not the same as fully co-operating, but the fact that states submitted these reports shows an increased level of compliance with the Security Council and raised awareness among most countries about the requirements of an effective counter-terrorist campaign.<sup>221</sup> This is also one of the important goals of the CTC. If states decide not to co-operate and go along with the CTC, the CTC will not be able to fulfil the role of “centre of global effort to fight terrorism”, as former Secretary-General Kofi Annan liked to call the Counter-Terrorism Committee.

The speed with which the states submitted their reports shows the effectiveness of the method of working. On the other side, some states did not respond despite of their willingness to co-operate, but because of the fear of being attacked (in case of Libya) or because they wanted to make their wishes and expectation of the CTC clear (this happened in case of Somalia).<sup>222</sup> This is a certain given that occurs within the United Nations. Some states will co-operate within certain policies because they think that these policies will help solve certain problems, other states will co-operate because they are afraid of the consequences of non-co-operation.

#### **4.3.3 Increase of the amount of state parties to the international conventions and protocols on counter-terrorism**

One of the most objective and reliable indicators of compliance of member states with the CTC is the increase in the number of countries joining the 12 international counter-terrorism conventions (the number of states who are member to all the 12 conventions rose from 2 to some than two-thirds of the UN member states).<sup>223</sup> As already mentioned in this thesis, together all these conventions and protocols form a framework to counter

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<sup>218</sup> Rosand 2004, p. 614.

<sup>219</sup> Operative paragraph 6 of United Nations Security Council Resolution 1373 (28 September 2001), see appendix 2 for the whole text of this resolution.

<sup>220</sup> Rosand 2004, pp. 615-616.

<sup>221</sup> Von Hippel 2004, pp. 112-113.

<sup>222</sup> Ibidem, p. 112.

<sup>223</sup> <http://www.un.org/sc/ctc/laws.html> (30 November 2008).



terrorism. The fact that more and more states become a party to these conventions because of the efforts of the CTC shows the surplus value of both Resolution 1373 and the Counter-Terrorism Committee.

#### **4.3.4 Ensuring that counter-terrorism stays high on the agenda**

The former ambassador of the United States of America to the United Nations, Mr. Negroponte stated during a meeting of the Security Council in 2003 that "perhaps one of the Committee's most important contributions has been to ensure that the issue of counter-terrorism remains high on the Council's agenda. Through its steady work and quarterly briefings to the Council the CTC has ensured that the Council remains at the forefront of the world-wide effort to develop counter-terrorism capability."<sup>224</sup> The CTC itself also made it its goal to keep the subject high on the UN agenda. Some worry that it will be difficult to sustain the initial momentum of the Counter-Terrorism Committee. Luck is one of them; he worries that while the Counter-Terrorism Committee itself is making progress, other circumstances may still cause the CTC efforts to be a "cul de sac"<sup>225</sup>.

#### **4.3.5 International co-operation between organisations**

The message of the CTC to regional and sub-regional organisations has been threefold. First, the organisations should be determined to put countering terrorism on their agenda and the organisations should develop mechanisms to keep the subject on their agendas. Second, the organisations should facilitate discussions on the subject of countering terrorism in order to ensure expertise and best practices are being shared. And third, the organisations should develop their own counter-terrorism assistance plans.<sup>226</sup>

In March 2003, the Counter-Terrorism Committee organised a CTC Special Meeting for a broad range of international, regional and sub-regional organisations and institutions. Part of the outcome was that a broad range of these organisations has adopted their own counter-terrorism programs and is now actively engaged in countering terrorism.

Furthermore, also other UN organisations have begun to reorganise these counter-terrorism activities and strategies. For example, the International Maritime Organisation is making efforts to confront threats to shipping, the International Civil Aviation Organisation is making efforts to improve airport and airline security and the World Health Organisation (WHO) is making efforts to prepare for potential chemical and biological weapons attacks. Within the United Nations system, former Secretary General

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<sup>224</sup> United Nations Security Council, 58<sup>th</sup> Session, 4792<sup>th</sup> Meeting (23 July 2003), p. 14.

<sup>225</sup> Luck, 'The Uninvited Challenge: Terrorism Target the United Nations', p. 12.

<sup>226</sup> Rosand 2004, p. 613.

Kofi Annan has established eight subcommittees to promote greater understanding and reform between the international secretariats.<sup>227</sup>

#### **4.3.6 Roadmap for the implementation of resolution 1373**

The Counter-Terrorism Committee developed a roadmap for the implementation of Resolution 1373 and effective capacity building, based on the more than 550 reports submitted by states about their efforts and challenges on the subject of countering terrorism.<sup>228</sup> The CTC developed criteria, often by borrowing standards that are developed by different other organisations, for assessing domestic legislation of states. An example of these criteria is the "Eight Special Recommendations on Terrorist Financing" of the Financing Task Force. The CTC has determined that "effective implementations of sub-paragraph 1 (d) of Resolution 1373 requires States to have a mechanism in place to register, audit, and monitor the collection and use of funds and other resources, charitable, and other associations, with a view to ensuring that such funds are not diverted to purposes other than their stated purposes, in particular the financing of terrorism and has sought to ensure that each State has such a mechanism in place"<sup>229</sup>.

Another criterion is the fact that the CTC stresses the importance of ensuring that the government of a state regulates all the formal and informal money transfer systems.

Furthermore, through analysing of the reports submitted by the states, the CTC had learned that some states just lack the necessary authority to comply with sub-paragraph 1 (c) of Resolution 1373, because they lack the authority to freeze the financial assets of economic resources of terrorists "without delay". In other states, such authority is limited to the freezing of assets or resources of individuals and groups listed by the 1269 Committee.<sup>230</sup>

#### **4.3.7 Co-ordinating body**

The Counter-Terrorism Committee functions as "a coordinating body to monitor the provision of counterterrorism assistance, to prompt new requests for help in areas identified as gaps by the CTC or other organisations, and to match need with donors, the CTC has essentially become the hub of global, long-term effort to combat terrorism"<sup>231</sup>.

As already mentioned in the other paragraphs of this chapter, the CTC plays a key role in the implementation of Resolution 1373 and therefore in the counter-terrorism efforts of the United Nations. Before 11 September 2001 no organisation like the CTC existed and the fact that there is now a single organisation (the CTC) that has universal support (see

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<sup>227</sup> Von Hippel 2004, p. 113.

<sup>228</sup> Rosand 2006, p. 76.

<sup>229</sup> Rosand 2004, p. 618.

<sup>230</sup> Ibidem, pp. 619-620.

<sup>231</sup> Ibidem, p. 617.

the beginning of this chapter) and a broad mandate (see the text of Resolution 1373 in appendix 2 and the beginning of this chapter) "significantly enhances the global campaign against terrorism"<sup>232</sup>. The added value of having a co-ordinating body is that now there is a committee who has an overview of all the accomplishments and challenges states face regarding the implementation of Resolution 1373.

#### **4.4 Summary and conclusions**

The aims of Resolution 1373 are to establish the Counter-Terrorism Committee (CTC), and to increase the amount of state parties to the international conventions and protocols on the issue of counter-terrorism and to ensure that the topic of counter-terrorism remains high on the political agenda.

Operative clause 6 of Resolution 1373 established the Counter Terrorism Committee. The CTC consists of all the members of the Security Council and works on the bases of consensus and transparency. The Committee divided its work into three phases. At this time, the CTC is still working on the first phase. During this stage the CTC shall investigate whether states have effective counter-terrorism legislation in place, covering all the areas of activity related to Resolution 1373. So far, all states met their obligation under Resolution 1373 to hand in a first report on their national situation regarding Resolution 1373. The first chairman of the CTC made very clear that the Committee will leave political decisions and condemnations up to the Security Council, the CTC will specifically focus on technical capacity building.

This approach gained the support of the state members of the United Nations. But, to comment on that, this approach will have a positive impact on the states that are willing, but unable to implement resolution 1373. On the other hand, because of this non-confrontational approach, the CTC will be limited in its influence towards the states that are unwilling to implement the resolution.

Important accomplishments of Resolution 1373 and the CTC so far are: the establishment of the Counter Terrorism Executive Directorate (CTED), the establishment of the assistance program, the increased co-operation of the state members of the United Nations with the counter-terrorism efforts of the UN, an increase of the amount of state parties to the international conventions and protocols on countering terrorism. Furthermore, the CTC ensures that the issue of counter-terrorism remains (high) on the agenda of the United Nations, increased of co-operation between different organisations, and elaborations on a roadmap for the implementation of Resolution 1373. Finally, the CTC acts as a co-ordinating body on the subject of counter-terrorism.

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<sup>232</sup> Rosand 2004, p. 617.

Unfortunately, despite the adoption of Resolution 1373, no answer is found the problem of a lack of an agreed definition of terrorism. In the next chapter, this and other challenges both the Security Council and the Counter-Terrorism Committee face shall be discussed.

## **5. What are the challenges in reaching the objectives set out in Resolution 1373?**

This chapter will answer the following sub-question: 'What are the challenges in reaching the objective set out in Resolution 1373?'. In the previous chapter, the aims of Resolution 1373 are discussed in depth. In this chapter, the problems of reaching those aims shall be discussed. Because before you can tackle certain challenges, you first must recognise and distinguish these challenges.

### **5.1. CTC's focus on written reports**

Before starting the field visits, the CTC could only base its work on the submitted reports by the member states. After finishing Stage A (the different stages are discussed in paragraph 4.3.1.1.), the CTC will, as a matter of course, move beyond the reports and start with the more implementing part of its job. With the adoption of Resolution 1535 the CTC/CTED has the possibility to visit certain states to supplement their written reports and to inform the CTC/CTED on the capacity building efforts of states.<sup>233</sup>

The challenge will be whether the CTC/CTED will be able to move beyond Stage A (and the written reports) towards Stages B and C. This will only be possible if the necessary resources are available and the expertise of the CTC/CTED will be brought into action.

Furthermore, not just the CTC, but also the 1267 Committee and Committee 1540 call on the member states to report on the implementation of both resolutions.<sup>234</sup> One can imagine that this lays a burden on states that have not large machinery in place focusing on these kinds of reports. As Luck states: "reporting fatigue has begun to grow, as a portion of countries responding to each subsequent has shrunk."<sup>235</sup>

### **5.2 Overlap between different SC bodies**

Nowadays there are four committees working on counter-terrorism issues (the CTC, the Al Qaeda and Taliban monitoring Committee (the 1269 Committee), the 1540 committee and the 1566 Working Group). This raises the need of co-operation between the CTC and the other committees. The overlap appears to be getting worse because of the underlying problems of having overlapping mandates (most apparent in the context of the financing of terrorism) and because the different committees have different staff bodies, each with a different head, and overlapping mandates.<sup>236</sup> The chairpersons of the different committees are consulting each other on the work of their committees, but it remains the

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<sup>233</sup> Luck, 'The Uninvited Challenge: Terrorism Target the United Nations', p. 12.

<sup>234</sup> Ibidem, p. 13.

<sup>235</sup> Ibidem, p. 12.

<sup>236</sup> Rosand 2006, p. 81.

question whether the current consultations of all the chairpersons of the different special bodies of the Security Council will be sufficient to stop the growing overlap.

### **5.3 Resources**

So far, the United Nations General Assembly provided the Counter-Terrorism Committee with the necessary resources.<sup>237</sup> The funding of the CTC and other initiatives of the Security Council has no basis in the United Nations Charter and therefore this funding is based on voluntary contributions of the UN member states. This means that the contributions can be ad hoc and uncertain. Luck describes the situation as follows: it leaves the "Committees gaining a stronger reputation for identifying capacity gaps than for producing funds or technical assistance to fill them"<sup>238</sup>.

Money is being spent on, for example, the translation of all the submitted reports into the six official UN languages.<sup>239</sup> Also, all meetings of the CTC and its subcommittees require interpretation in all the six United Nations languages. Furthermore, the UN Secretariat hired several experts to assist and support the CTC. The number of hired experts will probably increase as the more of the CTC moves from stage A to the stages B and C.<sup>240</sup>

The risk exists that, while time passes, programs like the CTC shall not receive the same amount of attention and high placement on the agenda as the programs receive today.

The fact that the CTC has no independent budget can cause problems. Especially because now that more and more international and regional organisations (for example the G8) establish their own counter-terrorism units, countries shall spend their money on these units as well.

The CTC should be given more financial support and the Security Council must put pressure on the establishment of a United Nations-wide mechanism that would help states to finance their national counter terrorism-programs. If the members of the Council are serious in their determinations to counter terrorism, they are obliged to provide funding for states to help them with the implementation of Resolution 1373. The transformation of the CTC/CTED into a CTO (Counter-Terrorism Organisation, an independent UN agency) to address the technical assistance for the implementation of Resolution 1373 could help to solve this issue.<sup>241</sup>

A solution for this problem could be to provide the CTC/CTED or CTO with a permanent place within the UN system. The General Assembly should authorise this Committee/Organisation and in this way, the Committee/Organisation is more sure of its annual funding. This possibility also brings along different risks. If the General Assembly

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<sup>237</sup> Rosand 2004, p. 621-622.

<sup>238</sup> Luck, 'The Uninvited Challenge: Terrorism Target the United Nations', p. 15.

<sup>239</sup> The six official UN languages are: Arabic, Chinese, English, French, Russian and Spanish.

<sup>240</sup> Rosand 2004, p. 621.

<sup>241</sup> De Jonge Oudraat 2004, pp. 163-164.

needs to give its permission, the Assembly will probably try to influence the objectives of the CTC/CTED.

Another issue to take into account is the fact that most of the UN committees and organisations will never be dissolved, which leaves the UN with quite a large administrative body.

#### **5.4 Assistance**

The Security Council recognised the fact that not all countries (actually, only relatively few countries do) have the extensive legal, administrative and regulatory wherewithal needed to implement Resolution 1373. Already more than 80 states have expressed the need to receive technical assistance to enable them to fully implement Resolution 1373. Some scholars express the need for "a strong, respected coordinating body to help ensure that the various needs are being met and to minimise overlap and duplication".<sup>242</sup>

In the summer of 2003, the CTC decided to change its approach and to face two important challenges. The one mentioned here is the fact that the CTC had to move beyond the 'switchboard role' and that it should adopt a more proactive role in providing technical assistance. "The Committee must be able to ensure that the needs of those countries (who ask for assistance to implement Resolution 1373) are truly met"<sup>243</sup>. Furthermore, the CTC developed two instruments: the 'Directory of Counter-Terrorism Information and Sources of Assistance' and the 'Matrix of Assistance'.<sup>244</sup> This matrix contains all the requests regarding technical and financial assistance of states of and the all the possible contributing states and organisations.<sup>245</sup>

One answer already established with regards to this challenge is the Counter-Terrorism Action Group. The G8<sup>246</sup> established the G8 Counter-Terrorism Action Group (CTAG) in 2003<sup>247</sup>. The CTAG comprises the major counter-terrorism assistance providers and will support the work of the CTC.<sup>248</sup> An important task of the CTAG will be to expand regional assistance. The work of the CTAG could boost the CTC assistance efforts because the CTAG will "focus on building political will and on co-ordinating capacity building assistance where necessary"<sup>249</sup>. Furthermore the members of the CTAG will provide funding, expertise and training facilities.<sup>250</sup>

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<sup>242</sup> Rosand 2004, p. 622.

<sup>243</sup> United Nations Security Council, 58<sup>th</sup> Session, 4792<sup>th</sup> Meeting (23 July 2003), p. 3.

<sup>244</sup> Ibidem.

<sup>245</sup> <http://www.un.org/sc/ctc/aboutus.html> (30 November 2008).

<sup>246</sup> The G8 (Group of Eight) consist of Canada, France, Germany, Great Britain, Italy, Japan, Russia and the United States of America.

<sup>247</sup> Building International Political Will and Capacity to Combat Terrorism, a G8 action plan, 2003, G8 Summit.

<sup>248</sup> Rosand 2004, pp. 623-624.

<sup>249</sup> Building International Political Will and Capacity to Combat Terrorism, a G8 action plan, 2003, G8 Summit.

<sup>250</sup> Ibidem.

## **5.5 Absence of an agreed definition**

The subject has already been touched upon in the second chapter and the fourth chapter of this thesis, but this paragraph explains why the absence of an agreed definition of terrorism is a challenge for Resolution 1373 and the CTC.

The lack on an agreed definition of terrorism among United Nations member states is a challenge to the CTC because "it could run into a situation where a State is not prosecuting an individual or group for acts that the majority of countries on the CTC believe are terrorist acts, but the country in question does not."<sup>251</sup>

As pointed out by Judge Guillaume, the fact that there is no agreed definition of terrorism means that there is also no agreement on which acts should be prosecuted as acts of terrorism and that there is no agreement on who the alleged perpetrators are.<sup>252</sup> In this way it is not possible to draw one line and criminalise terrorist acts in every member state.

As mentioned in paragraph 2.1, some international scholars see the laws of war as a possible solution to the dilemma of definition. They suggest that rather than trying to negotiate new treaties on terrorism, which are not likely to be ratified or enforced, nations should apply the laws of war, to which almost all have agreed.<sup>253</sup>

Possibly, the problem of the lack of the agreed definition can be solved with the adoption of the Comprehensive Convention on Terrorism. In the draft of the convention, the definition proposed by the High Level Panel is used. This definition of the Comprehensive Convention on Terrorism is discussed more in depth in paragraph 2.2.7 of this thesis.

## **5.6 Protection of human rights**

Resolution 1373 laid down very general prohibitions. This is a problem because of the fact that because the prohibitions are very general, it can be difficult to implement these prohibitions while at the same time respecting basic human rights.<sup>254</sup> The implementation of Resolution 1373 may not be the reason for the infringement of human rights. The Security Council should act in accordance with the 'Purposes and Principles' of the United Nations.<sup>255</sup> Article 1 of the UN Charter states that protecting and maintaining human rights is one of the distinct purposes of the United Nation.<sup>256</sup> Although the

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<sup>251</sup> Rosand 2004, p. 626.

<sup>252</sup> Flory 1997, p. 31.

<sup>253</sup> Jenkins 1987, p. 408.

<sup>254</sup> De Jonge Oudraat 2004, p. 162.

<sup>255</sup> Article 24 (2) of the UN Charter states: 'In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these powers are laid down in Chapters VI, VII, VIII and XII.' See appendix 3 for the whole text of article 24 of the Charter of the United Nations.

<sup>256</sup> See appendix 4 for the text of article 1 of the Charter of the United Nations.



protection of human rights is not specifically mentioned in Resolution 1373, this does not mean that the Council can pass over human rights. In January 2002 Amnesty International published an open letter to the CTC in which it urged to hire an human rights expert to advice the CTC on human rights issues.<sup>257</sup> The UN High Commissioner for Human Rights also took action and offered the CTC an expert on human rights.<sup>258</sup>

In the beginning of its existence some committee members of the Counter-Terrorism Committee stated that Resolution 1373 did not give a mandate to the CTC to monitor states' observance on the human rights obligations of those member states. This argument could be refuted with the statement made above, that the Council should always act in accordance with the Purposes and Principles of the organisation.<sup>259</sup>

Another argument used was the fact that different human rights mechanisms already existed within the UN. The first chairman of the CTC described the following compromise: the CTC would remain aware of human rights concerns, but would not actively address them or include them in their dialogue with member states.<sup>260</sup>

The Counter Terrorism Committee agreed in May 2003 to include a paragraph in its letter to all the state members of the United Nations stating that the states have to make sure that all the measures they take to counter terrorism should comply with their obligations under international law, and in particular international human rights, refugee law and humanitarian law.<sup>261</sup>

Still, the United Nations High Commissioner for Human Rights and the different human rights organisations (for example Human Rights Watch and Amnesty International) keep pressing the CTC to pay more attention to human rights issues.<sup>262</sup>

Two developments did bring human rights into the frame of reference of the Security Council, the adoption of Resolution 1535 and the adoption of Resolution 1624. Resolution 1535 revitalised the CTC. Among others, the CTC expanded and hired a senior human rights expert. Resolution 1624 was adopted largely in response to the terrorist attacks in London in July 2007, but also raised important human rights issues concerning the respect for the right of free speech.<sup>263</sup> The resolution calls upon the CTC to include Resolution 1624 in its dialogue with states, to work with states on capacity building and the report to the Council on the results of this dialogue.<sup>264</sup> In 2006 the CTC adopted

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<sup>257</sup> Flynn 2007, p. 376.

<sup>258</sup> Rosand 2004, p. 627.

<sup>259</sup> Flynn 2007, p. 377.

<sup>260</sup> Ibidem.

<sup>261</sup> Rosand 2004, p. 628.

<sup>262</sup> Ibidem, p. 627.

<sup>263</sup> Flynn 2007, p. 381.

<sup>264</sup> Operative paragraphs 5 and 6 of United Nations Security Council Resolution 1624 (14 September 2005), see appendix 3 for the whole text of this resolution.

'Conclusions for policy guidance' on the topic of human rights. The Committee has agreed on the following guidance to CTED in this policy guidance regarding human rights:

*When analysing States' implementation of resolution 1373, preparing draft letters to States, and organising visits, the CTED should, as appropriate:*

*a. provide advice to the CTC, including for its ongoing dialogue with States on their implementation on resolution 1373 (2001), on international human rights, refugee and humanitarian law, in connection with identification and implementation of effective measures to implement resolution 1373 (2001).*

*b. advise the CTC on how to ensure that any measures States take to implement the provisions of resolution 1624 (2005) comply with their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.*

*c. liaise with the Office of the High Commissioner for Human Rights and, as appropriate, with other human rights organizations in matters related to counter-terrorism.*

*The CTC and CTED, under direction of the Committee, should incorporate human rights into their communications strategy, as appropriate, noting the importance of States ensuring that in taking counter-terrorism measures they do so consistent with their obligations under international law, in particular human rights law, refugee law and humanitarian law, as reflected in the relevant Security Council resolutions.<sup>265</sup>*

As one scholar states: "The full story of the integration of human rights into the program of the Counter-Terrorism Committee cannot yet be told- it is a work in progress."<sup>266</sup> One must be alert, because although all these measures taken are a start, the Resolution is laid down in very general prohibitions and states must be cautious not to infringe with human rights while meeting the conditions laid out in Resolution 1373.

## **5.7 Maintenance of support**

Will the CTC be able to maintain the overwhelming support it has received from virtually all Member States as its work advances?

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<sup>265</sup> Conclusions for policy guidance regarding human rights and the CTC, 25 May 2006, S/AC.40/2006/PG.2.

<sup>266</sup> Flynn 2007, p. 384.

The speed with which the member states of the United Nations submitted their reports shows the political will of states to co-operate with the CTC<sup>267</sup>. This is already discussed in a previous chapter of this thesis.

It will be the question, however, whether this support of states of the CTC will continue after the CTC finished Stage A and will look more in depth into the counter-terrorism legislation and the executive machinery of states (or, to put it more bluntly, whether states will bring alleged terrorist to justice or whether the state provides them a safe haven). The challenge for the Committee shall be to maintain the support it has established so far, while it moves beyond the first stage of its work.<sup>268</sup>

This shall also be a challenge because most United Nations member state governments prefer to keep the sensitive matters linked to terrorism out of sight of the United Nations. The states fear politicisation of local issues. Once the General Assembly, or even the Security Council, becomes involved in a local issue, the course of deliberation tends to become increasingly difficult to predict or to control.<sup>269</sup>

### **5.8 Consistent UN policy**

The United Nations does not have a consistent policy regarding countering terrorism. Some writers even see a modest role for the United Nations in the global campaign against terrorism. To give an example: Luck mentions that there are limits to what the United Nations can contribute to this "campaign". First, the fact that the United Nations does not have the necessary (financial) resources to make a spectacular contribution limits its role. Second, the conflicting visions of member states and the UN Secretariat on the 'war on terror' fought by the United States makes it difficult to present a common vision. And third, Luck states that the United States government only sees a limited role for the United Nations in the global struggle against terrorism.<sup>270</sup> And because the United Nations is an organisation with state members and the United States is a permanent member of the Security Council, this statement of the United States government will play a role in determining what role the UN can play regarding the subject of counter-terrorism.

Also the Secretary-General's Policy Working Group acknowledges that the United Nations is not able to play a large role in the global campaign against terrorism. Some states are afraid to share sensitive intelligence information with the UN because they think that a body of 192 countries, some member states with history of sponsoring terrorism, cannot give states the guarantee that this information is safe within the United Nations

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<sup>267</sup> Von Hippel 2004, p. 112.

<sup>268</sup> Rosand 2004, p. 628.

<sup>269</sup> Luck, 'The Uninvited Challenge: Terrorism Target the United Nations', p. 5.

<sup>270</sup> Ibidem, pp. 20-24.

system.<sup>271</sup> This political will to share this kind of information is absolute necessary if the United Nations wants to play a major role in the field of countering terrorism. Question is whether the UN, as an organisation with all these member states, will ever be able to play this role.

Still the aforementioned High-level Panel on Threats, Challenges and Change called on the UN Secretary General to promote a global strategy to counter terrorism.<sup>272</sup> During the International Summit on Democracy, Terrorism and Security in Madrid, United Nations SG Kofi Annan unfolded his plan that is based on the following five pillars:

1. Dissuading disaffected groups from choosing terrorism as a tactic to achieve their goals
2. Denying terrorists the means to carry out their attacks
3. Deterring states from supporting terrorists
4. Developing state capacity to prevent terrorism
5. Defending human right in the struggle against terrorism<sup>273</sup>

One could state that these five pillars represent "the first reasonable coherent and compelling statement of UN doctrine for the long-term struggle against terrorism."<sup>274</sup>

## **5.9 Non-compliance of states**

States disagree on what to do with states that do not comply with Resolution 1373 and with the question that will have the authority to determine whether Security Council resolutions are being violated and who will have the authority to determine what the appropriate response to non-compliance will be?

Today, member states still do not agree on what to do with states that do not comply with Resolution 1373.<sup>275</sup> None of the Security Council's special bodies countering terrorism have recommended 'naming and shaming' of any state. Discouraging may work for a while, but the risk exist that at some time states will take matters into their own hands and shall try to enforce the obligations and measures of Resolution 1373.<sup>276</sup>

The Counter-Terrorism Committee itself also has difficulties with deciding how to deal with non-compliance of member states of the UN. Which category of states should meet the standards set out in Resolution 1373? Will this be only the states that fail to meet the standards set out and reject help, or should also the states that do not comply with the standards but are seeking technical assistance?<sup>277</sup>

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<sup>271</sup> Luck, 'The Uninvited Challenge: Terrorism Target the United Nations', p. 20.

<sup>272</sup> Report of the High-level Panel on Threats, Challenges and Change: A more secure world: our shared responsibility, December 2004, p. 48.

<sup>273</sup> SG/SM/9757, 10 March 2005.

<sup>274</sup> Luck, 'The Uninvited Challenge: Terrorism Target the United Nations', p. 19.

<sup>275</sup> De Jonge Oudraat 2004, p. 163.

<sup>276</sup> Luck, 'The Uninvited Challenge: Terrorism Target the United Nations', pp. 21-22.

<sup>277</sup> Rosand 2006, p. 78.

But who has the authority to determine whether Security Council resolutions are being violated? And who will have the authority to determine what the correct response to non-compliance with Resolution 1373 should be?

The Security Council itself decides what to do with non-compliance of member states. This arises from the functions and powers of the Council stated in article 24 and 25<sup>278</sup> of the Charter. The Charter also gives the Council the instruments to deal with non-compliance (see articles 39-43 of the Charter<sup>279</sup>). Article 41 provides the Security Council a wide variety of non-military coercive measures to deal with non-compliance.<sup>280</sup>

### **5.10 Summary and conclusions**

What are the challenges in reaching the objectives set out in Resolution 1373? The challenges in reaching the objectives of the Security Council as stated in Resolution 1373 are political as well as practical.

The work of the four different special bodies of the Council regarding the subject of counter-terrorism has overlapping mandates. This has proven to contribute to the fact that states have 'reporting fatigue'. States have to deliver different reports to the different committees. This has caused that the amount of states responding to the call of the commissions to hand in reports has inclined. This is not always because states are unwilling; some states simply do not have the administrative machinery to write these kinds of reports. Therefore, the fact that the CTC still focuses mainly on written reports can be a challenge.

So far, the resources to fund the work of the CTC were provided by the General Assembly. The fact that the work of the CTC has no basis in the Charter of the United Nations means that the funding is based on voluntary contributions. This means that the CTC is very vulnerable. When countries do not put the issue of counter-terrorism high on the agenda anymore, chances are that the funding of the counter terrorism organs will decline.

The issue of financing is also very important with regard to the technical assistance program of the CTC. Since the CTC tried to move beyond its 'switchboard role' and adopted a more pro-active approach, the CTC tries to help states that do not have the extensive administrative, legal and regulatory instruments to implement Resolution 1373.

A problem faced by the Security Council as well as by the CTC, is the fact that there is no agreed definition of terrorism, nor an agreement in the exceptions in this definition.

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<sup>278</sup> See appendix 3 for the text of articles 24 and 25 of the Charter of the United Nations.

<sup>279</sup> See appendix 3 for the text of articles 39-43 of the Charter of the United Nations.

<sup>280</sup> Gill 1995, p. 48.

However, most acts of terrorism could fall under one of the existing twelve conventions and protocols. Using the term 'terrorism' and 'terrorist' can make a difference. For the victims as well as in case of prosecution of the perpetrators, it is important to have a definition of terrorism. Preferably, the solution handed to us by the High Level Panel on Threats, Challenges and Change would be accepted by all states. This definition considers the motive to commit acts of terrorism irrelevant. This distinction between the reason why someone commits an act of terrorism and the committed act itself could be the solution for solving the problem of an agreed definition of terrorism. If the motive of committing an act of terrorism is let loose, the problems regarding freedom fighters et cetera can be left behind and one can focus on the acts of terrorism itself.

Furthermore, attention should be given to the protection of human rights while implementing Resolution 1373. It is important to make sure that states comply with their duties under the different human rights treaties, not at least because otherwise (see for example in the case of the prison in Guantanamo Bay and the public support for the United States government) the public opinion will turn against the counter-terrorism efforts of the United Nations.

Another challenge the United Nations Security Council and the CTC face is the question how to maintain the support of states. As seen before, almost all state members of the United Nations started to work on the implementation of Resolution 1373. The risk is, for example because of the 'reporting fatigue' or the lack of (technical) assistance, that states will stop supporting the United Nations in its work to counter terrorism. This challenge is also closely connected to the next challenge: how do the Council and the CTC know whether co-operation of states with the organs is sincere? However, one could wonder if co-operation needs to be sincere in international politics. Do the states co-operate because they want to counter terrorism, or because they are afraid of the consequences when they do not co-operate. Does the intention for co-operation matter in this instance? Perhaps it is enough if states co-operate, although they might have the 'wrong' intentions. And what to do with states who use all these counter-terrorism measures for other reasons than what they were intended for (*detournement de pouvoir*<sup>281</sup>)?

At this time, states do not agree what to do with states that do not comply with Resolution 1373 and who has the authority to decide whether a state does or does not comply with the resolution. The next, and final, chapter, of this thesis will formulate some recommendations to the United Nations Security Council and the CTC regarding the answers given in this thesis.

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<sup>281</sup> *Detournement de pouvoir* can be described as the misuse of the assigned competence (Kooijmans, 2000, p.281.)

## **6. Conclusions and recommendations**

This chapter will give a short summary of this thesis. Furthermore, in this chapter the inquiry question, as well as the sub-questions, will be answered. In the third paragraph of this chapter the research done in this thesis will be put into a broader perspective. On the basis of the answers to these questions some recommendations to the United Nations Security Council and the Counter-Terrorism Committee will be formulated.

### **6.1 Short summary**

This paragraph will give a very short summary of the different chapters of this thesis (see the last paragraph over every chapter for a more detailed analysis). In this summary the sub-questions asked in the chapters will be answered.

#### **6.1.1 How is terrorism defined in science and international politics?**

International legal scholars did not try to define terrorism as a general concept. The scholars defined specific actions as terrorist acts. This resulted in twelve different Conventions and Protocols on terrorism, all containing their own definition of terrorism.

International society started defining terrorism at the end of the 19<sup>th</sup> century. The International Law Institute (1892), the League of Nations (1937), the International Law Commission (1954, 1991 and 1996), the Committee for the Establishment of the International Criminal Court (1998) and the High Level Panel on Threats, Challenges and Change (2004) tried to define terrorism.

The adoption of the Comprehensive Convention on Terrorism would provide a blueprint for consistent UN policy on counter-terrorism. The adoption of the definition proposed by the High Level Panel on Threats, Challenges and Change (HLP) would make the discussion about the Comprehensive Conventions on Terrorism easier, because it removes one of the main obstacles for adopting this Comprehensive Convention because the definition of the HLP considers the motive to commit acts of terrorism as irrelevant. This distinction between the reason why one commits an act of terrorism and the committed act itself could be the solution for solving the problem of an agreed definition of terrorism. Until the Comprehensive Convention, or another definition of terrorism, is adopted, the acts identified as terrorist acts in the twelve existing conventions and protocols are acts of terrorism.

### **6.1.2 How did society counter terrorism internationally before the adoption of Resolution 1373?**

In this thesis, the classification of the 'waves of terrorism' is used. This classification is not undisputed. However, the chosen classification provides a clear timeframe to answer the sub questions. For every 'wave' as well the socio-historical context as the characteristics of that specific period of time are described.

The first so-called wave of terrorism, that started in the second half of the 19<sup>th</sup> century and lasted until the assassination of Archduke Franz Ferdinand of Austria in 1914. During this period in time international society could not act easily as an 'international society' because there were no established structured as there are today. The international community fought the peripheral phenomena of terrorism, like piracy, during that time. The fact that states sponsored and allowed privateers to make war on vessels flying foreign flags could be seen as a precursor of contemporary state-sponsored terrorism.

The second so-called wave of terrorism began after World War I and reached its peak in the 1960s. This second wave of terrorism runs parallel with the establishment of the League of Nations and, later, the United Nations. The social-historical context of this period of time was marked by the end of the First World War, the Second World War and the beginning of the Cold War. Martyrdom and political targets were no longer the only important targets during this period of time. Instead, police forces (who were called "the eyes and ears" of the government, became more prominent targets. There was greater support for terrorist groups from civilians.

Both the International Congresses of Penal Law and the League of Nations worked on a definition of terrorism. After World War II, the United Nations was established. The UN Security Council made its first reference to terrorism in 1948. From the beginning of the Cold War until the end in 1990 the United Nations, and especially the Security Council, was paralysed.

The so-called third wave of terrorism was preceded by the beginning of the war in Vietnam and ebbed in the 1980s, among others because of increased co-operation of the international community. This 'wave' occurred within the socio-historical context of the decolonisation and self-determination. Furthermore, the world was influenced by the Cold War. Terrorist training became a very important tool and aeroplane hijacking was one the new tactics used.



The UN General Assembly adopted several resolutions concerning the subject of counter terrorism, the Sixth Committee of the General Assembly deals with the issue of counter-terrorism and the Assembly established two *Ad Hoc* Committees dealing with this matter. The United Nations adopted three Aerial Piracy Conventions to end the new trend of airplane hijacking. In the 1970s the United Nations started studying the underlying causes of international terrorism. The Security Council did not play an enormous role because the Council was paralysed by the Cold War.

The so-called fourth wave of terrorism was preceded by the Islamic Revolution in Iran, the defeat of Soviet troops in Afghanistan and the cast out of American troops in Lebanon. The wave has not ended yet. It is complex to speak about the socio-historical context of this period because the terrorist groups and their characteristics are very different. This is one of the points of criticism on the classification of the "waves of terrorism". An important characteristic of terrorism in this period of time is the fact that religion is sometimes considered more useful than revolutionary ethos. Furthermore, suicide bombing, martyrdom and education as a breeding ground for terrorists are important characteristics. The United Nations plays a vital role in international societies counter terrorism efforts. The General Assembly adopted different resolutions on this issue and the Sixth Committee of the Assembly is working on a Comprehensive Convention on Terrorism. The Security Council is creating a legal framework to counter terrorism. The five most important resolutions to date are Resolution 1269 (1999), Resolution 1368 (2001), Resolution 1373 (2001), Resolution 1540 (2004) and Resolution 1566 (2004).

### **6.1.3 How were the aims of Resolution 1373 defined and what has been accomplished far?**

The adoption of Resolution 1373 was one of the most important steps in creating a legal framework to counter terrorism. The resolution establishes the Counter-Terrorism Committee and aims to increase the amount of state parties to the international conventions and protocols on the issue of counter-terrorism and to ensure that the topic of counter-terrorism remains high on the political agenda.

Important accomplishments of Resolution 1373 and the CTC so far are: the establishment of the Counter Terrorism Executive Directorate (CTED), the establishment of the assistance program, the increase of co-operation of the state members of the United Nations with the counter-terrorism efforts of the UN, and an increase of the amount of state parties to the international conventions and protocols on countering terrorism. Furthermore, the CTC ensured that the issue of counter-terrorism remains

(high) on the agenda of the United Nations, the increase of co-operation between different organisations, and the elaboration on a roadmap for the implementation of Resolution 1373. Finally, the CTC acts as a co-ordinating body on the subject of counter-terrorism.

#### **6.1.4 What are the challenges in reaching the objectives of Resolution 1373?**

As one can see in the previous paragraph, there have been several accomplishments to far on behalf of Resolution 1373. However, there remain challenges in reaching the objectives of the Security Council as stated in Resolution 1373 are political as well as practical. These challenges are the following: the overlapping mandates of the four different special bodies of the Security Council regarding the subject of counter-terrorism have overlapping mandates, the CTC focus on written reports (reporting fatigue) and the vulnerable financial position of the CTC due to the fact that the work of the CTC is not based in the UN Charter.

Furthermore, the fact that there is no agreed definition of terrorism, nor an agreement on the exceptions of this definition, the struggle of the CTC with human rights, the issue of keeping the support of the member states of the UN, no agreement on how to handle *detournement de pouvoir* by member states and the fact that states do not agree what to do with states that do not comply with Resolution 1373 and who has the authority to decide whether a state does or does not comply with the resolution are challenges the CTC faces.

### **6.2 Answer to the inquiry question**

This paragraph will answer the inquiry question of this thesis.

*How did international society counter terrorism before the adoption of United Nations Security Council Resolution 1373, and what happened after the adoption of this Resolution?*

The actual question is answered already in the previous paragraph. This paragraph will give an in depth analyses of the answers to the question.

#### **6.2.1 'Waves' of terrorism**

The distinction made in this thesis between the four waves of terrorism, give us the opportunity to look at the similarities and the differences between the stated periods of time.

The different waves of terrorism took place in different periods of time in a different socio-historical context. Also, the different periods of time show different characteristics regarding terrorism. These two factors, amongst others, determine the reaction of international society to terrorism during that specific 'wave'. The first two aspects (the socio-historical context and the characteristics of terrorism) are dealt with in this paragraph. The next paragraph, paragraph 6.2.2, is dedicated to the reaction of international society on terrorism.

#### **6.2.1.1 Socio-historical context**

The different "waves" of terrorism took place during different periods of time. As already stated, it is not the concept of the waves of terrorism itself that make this classification useful for this thesis, but the fact that this classification provides an easy point of reference to describe the different periods of time, their socio-historical contexts and the different characteristics.

The socio-historical context of the so-called waves of terrorism is always influenced by the movements on the global level. During the first wave the context was influenced by the Enlightenment, during the second wave the context was influenced by the Second World War and the beginning of the Cold War, during the third wave the context was influenced by the process of deloconisation and the during the fourth wave the context is influenced by War on Terror and the war in Afghanistan.

A difference between the first wave of terrorism and the other waves of terrorism is the support the terrorists get from the population. Starting with the second wave, parts of the population sympathise with the terrorists, sometimes the population was even warned by the terrorists before an attack would take place. Of course, this support the terrorists get from the populations differs around the world and also depend on the means used by the terrorists.

During the second and third "waves" of terrorism, the world was under the influence of the conflict between the United States of America and the Soviet Union. This Cold War between the two superpowers (with right of veto) made it difficult to see the actual strengths and weaknesses of the United Nations. More on this subject in paragraph 6.2.2.

Terrorist are inspired by the success of other terrorist groups. This started during the third 'wave' when terrorist were inspired by the successes of different guerrilla groups, like the Vietcong and the Marighella movement. One can still see the results of this

development, for example in the terrorist attacks that took place in India in November 2008.

The contemporary wave of terrorism is difficult to analyse. First of all, because this period of time has not come to an end yet, we are still in the middle of the so-called fourth wave of terrorism. And second, it is complex to speak about the socio-historical context of this period because the terrorist groups and their characteristics are very different. This is one of the points of criticism on the classification of the "waves of terrorism".

The reaction of international society to terrorism today is very different from the earlier reactions of the international community. During the so-called second wave of terrorism, international society like we know it today, started to develop. The League of Nations, and later the United Nations, was established. The reaction of the international community is influenced by the socio-historical context, but also by the different characteristics of terrorism. The next paragraph will deal with the characteristics of terrorism and paragraph 6.2.2 will give an in-depth analysis of the reactions of international society to terrorism.

#### **6.2.1.2 Characteristics of terrorism**

The different waves of terrorism show different characteristics. This results in the fact that different approaches are necessary for international society to deal with the waves of terrorism. This paragraph speaks about the different characteristics of terrorism, the next paragraph deals with the reaction of international society to these specific characteristics (and their socio-historical context).

During the first and the fourth wave, martyrdom is a very important method of committing terrorist acts. This in contrast to the second and the third wave, when others means were more important. During the first wave of terrorism, regicide was an important terrorist tactics. Assassinations were not only aimed at kings, but also at other highly placed persons. In the following waves, martyrdom and political targets were not longer to only important targets; ordinary people also became targets to the terrorists (e.g. during airplane hijacking and in the case of suicide bombings).

During the first so-called wave of terrorism, some forms of piracy could be considered state-sponsored terrorism. During the other waves, state-sponsored terrorism was developing. An example of this state-sponsored terrorism is the Libyan government

sponsoring the attacks on the flights above Lockerbie and the assumed interference of the government of Iran with Al Qaeda.

Since the first wave of terrorism is use of mass media had an influence on terrorism. During the first wave, the use of pamphlets was one of the first ways the media was used as a weapon of by terrorists, but also as a way to prevent terrorism. Over time, other media (like radio, television and nowadays, the internet and mobile phones) are being used by the terrorists as well as by the persons combating terrorism.

Furthermore, the methods used by terrorists are evolving: during the first wave, assassination campaigns directed at the highly placed persons did terrorists use a popular method. During the second wave, martyrdom and political targets were no longer to only important targets. During the third wave, airplane hijacking became a very popular method used by terrorists and during the contemporary wave of terrorism; suicide bombing is a popular method.

### **6.2.2 International society**

With the above-mentioned socio-historical contexts and the characteristics of terrorism in mind, it is difficult to make a comparison between the different international counter terrorism approaches. As seen, the international community changed over the last century. During the first wave, European states were not really co-operating in their counter terrorism measures. To put it more bluntly, some states even helped other states' terrorist to escape. Nowadays one can see that states, some states excepted, are building a legal framework to counter terrorism.

Although during the first wave of terrorism no international organisation like the League of Nations or the United Nations existed, a start was made with the codification of law to fight terrorism. In its Lotus verdict, the World Court stated that piracy is an offence against the law of nations. During the beginning of the second wave of terrorism, this codification process continued. The International Congresses of Penal Law adopted a definition of terrorism and was working on counter terrorism measured. In 1919 the League of Nations was established. The League established a committee which starting working on the Convention for the Prevention and Repression of Terrorism. After the World War II (still during the second wave of terrorism) the United Nations was established. During the second wave of terrorism, the UN was not very active yet. The first time the United Nations made a reference to terrorism was in 1948, as the result of an incident in the Middle East. During the third wave of terrorism the United Nations was partly paralysed by the Cold War. This made is hard to take a stand against terrorism.

However, the UN General Assembly adopted several resolutions concerning the subject of counter terrorism, the Sixth Committee of the GA dealt with the subject and the Assembly established different *Ad Hoc* Committees dealing with the matter. During the fourth wave of terrorism the United Nations plays a very important role in the counter terrorism efforts of international society. The Cold War has ended and the different bodies of the UN have more room for their counter terrorism efforts.

As one can see, the international society changed over the years. At the end of the 19<sup>th</sup> century and in the beginning of the 20<sup>th</sup> century, no international organisation like the League of Nations or the United Nations existed. But since the first "wave of terrorism", international society started working on the legal framework to counter terrorism. During the first wave, the US Supreme Court and the World Court stated that piracy could be considered a crime against the law of nations. During the second wave the International Congresses of Penal Law and the League of Nations worked on legislation to counter terrorism. During the third wave, the United Nations General Assembly worked on the legal framework by adopting several resolutions (Resolution 1269, 1368, 1373, 1540 and 1566) and by the establishment of the *Ad Hoc* Committees. The Security Council was not very active, among others because it was paralysed by the Cold War. During the contemporary wave of terrorism the Security Council plays a very active role in the development of the legal framework to counter terrorism. The Council adopted several resolutions dedicated to this subject.

The actual strength of the United Nations is only visible after the Cold War (so actually, the Security Council has had a real chance to show its capabilities only during the fourth so-called wave of terrorism). This makes it difficult to draw conclusion only from experiences in the past. However, it is clear that the General Assembly of the United Nations also plays a vital role in the debate on international terrorism, among others because the Security Council draws from different Assembly resolutions and conventions to compose its own, binding, resolutions.

One of the characteristics of the counter-terrorism efforts of international society is that over time the international community always wanted to act upon acts of terrorism, but most of the time focused their counter-terrorism efforts on the peripheral phenomena instead of creating an overall strategy. With the adoption of Resolution 1373, the United Nations Security made a solid start with the adoption of a counter-terrorism legal framework. And although the United Nations is definitely not there yet, the counter-terrorism approach of the United Nations is a big step forward compared to, for example, the approach of the League of Nations.

It is interesting to see that it takes more than a century to work on a comprehensive approach of a phenomenon like terrorism. This supports the argument that politics is about long term strategies instead of short term solutions.

### **6.2.3 Future role of the United Nations**

The fact that the United Nations pays a lot of attention to its counter terrorism effort is commendable. The only pitfall is, and shall remain that way if the United Nations does not reform, that the United Nations is an organisation with member states, and that those states have different interests. National interests will probably always prevail over the interests of the international organisation. Furthermore, it is the question whether a problem as complex as terrorism will be solvable by an organisation like the United Nations. However, it is beyond dispute that contemporary terrorism cannot be countered on a national level.

On the other hand, the United Nations is the best option there is at this time. And the fact that there is an organisation that brings almost all states in the world together makes it possible to make an inventory of all the efforts of the different countries regarding counter-terrorism. This inventory can, for example, help the donor states to decide where they want to put their development aid and how to distribute their resources.

The fact that terrorism and the methods used by terrorists are evolving shall also be a challenge for the United Nations. As one has seen, different times and different waves of terrorism show different characteristics. These different times and waves need different approaches by international society. The fact that the United Nations is working on a legal frame to counter terrorism is very important, especially if the UN decides to adopt a definition of terrorism that is applicable to all times and does not give a value judgement.

## **6.3 Status questionis**

In this paragraph the value of the thesis will be discussed in the light of the *status questionis* (see paragraph 1.1 of this thesis).

### **6.3.1 Lack of an agreed definition of terrorism**

Most scholars and the UN itself state that there is no agreed definition of terrorism, because states do not agree on a definition of terrorism in any treaty or resolution. These scholars state that using the systematics of humanitarian law can solve the problem of

the lack of an agreed definitional problem. They state that when the United Nations can act from psychological and practical political constraints it could work at its best.

As stated in chapter 2 of this thesis, more and more scholars and states are coming closer to reaching a consensus about the definition of terrorism. The definition of the High Level Panel on Threats, Challenges and Change was considered a good practice and was included in the definition of the Draft Comprehensive Convention. This definition includes a large amount of the elements as agreed on by scholars.

### **6.3.2 Multidisciplinary approach**

This thesis can be a start of a more multidisciplinary approach regarding counter-terrorism efforts in international society. To have a true multidisciplinary approach, one should cover the root causes of terrorism as well.

### **6.3.3 Role of the United Nations regarding counter-terrorism**

Scholars do not necessarily agree on the role the United Nations can or should play in the area of counter terrorism.

Presently, the Security Council focuses on four points within their counter-terrorism efforts. These four points are: the condemnation of discrete acts of terrorism, the imposition of binding counter-terrorism obligations on all states, capacity building and imposition of sanctions.

It is important that the Council focuses on the last two points. Besides the issue of the definition (where the General Assembly should decide upon to make sure that as many member states as possible agree with the definition), harmonisation is reached on the first two issues. Whenever an act of terrorism has taken place, the Council will condemn this act of terrorism. Furthermore, Resolution 1373 and other resolutions impose binding counter-terrorism obligations on all states and constitute to the legal framework.

On the point of capacity building, a lot of work should be done before one can speak about effective capacity building to counter terrorism by the United Nations. And last, to make sure that states obey the framework set out by the Council, the Security Council should start to impose effective sanctions on states that do not comply with the measures taken by the Council to counter terrorism. Furthermore, the Council should also make sure that these sanctions are fully enforced (see paragraph 6.5.6).

The Security Council should continue its work on the legal framework on counter-terrorism. One must keep in mind, however, that some states do not want the United Nations and the Security Council to be the global actors in the field of countering



terrorism. Furthermore, because of the unique position of the United Nations as the only forum in the world where (almost) all countries are represented, the United Nations does have an important role in this matter. The United Nations should develop itself to be the institution that offers countries assistance regarding their counter-terrorism efforts. The already existing assistance program shall perform a very important role within this area.

#### **6.3.4 Sanctions as a instrument to counter terrorism**

The effectiveness of sanctions depends on political willingness. Both the Secretary General and the High Level Panel on Threats, Challenges and Change indicated that more must be done to ensure that the sanctions imposed on states by the United Nations Security Council are fully enforced. Sanctions will become a more important tool for the Security Council.

The topic of sanctions will be discussed more in depth in paragraph 6.5.6 of this conclusion.

#### **6.4 Importance of Resolution 1373**

As one can see in the previous paragraphs, Resolution 1373 plays an important role in the counter-terrorism efforts of the United Nations. Furthermore, when one sees the amount of articles and books written about Resolution 1373, one can see why some scholars call the resolution a 'cornerstone' of the UN counter terrorism efforts. This thesis shows that Resolution 1373 can be seen as a turning point, but that also must be taken into account that this was not the only effort of the United Nations regarding counter-terrorism. One could state that it was a turning point, a moment that changed the policy of the United Nations and its member states regarding counter-terrorism. What must be taken into account, however, is that this change was, among others, caused by the attacks on the 11th of September 2001.

#### **6.5 Recommendations**

On the basis of the aforementioned answers to the inquiry questions and the sub-questions, this paragraph will formulate some recommendations to both the Security Council and the Counter-Terrorism Committee.

##### **6.5.1 Consistent UN policy on countering terrorism**

The United Nations does not have a consistent policy regarding counter-terrorism yet. With the adoption of "The United Nations Global Counter-Terrorism Strategy" on the 8<sup>th</sup> of September 2006 the General Assembly made a start with the creation of consistent UN policy. The United Nations Global Counter-Terrorism Strategy is, among others, based on the five pillars mentioned by former UN Secretary General Annan in 2005.

The problem is that this strategy, as adopted by the General Assembly, cannot be binding upon member states. However, the Strategy is an attempt to create consistent UN policy regarding counter-terrorism. The challenge will be to implement this strategy. Furthermore, in order to create an effective and consistent counter-terrorism strategy, this strategy should also contain a legal framework.

Counter-terrorism should be a part of all UN policy. To be effective, also in, among others, the development policy of the United Nations, counter-terrorism should be included.

### **6.5.2 Adoption of the definition of terrorism proposed by the High Level Panel on Threats, Challenges and Change by the United Nations General Assembly**

Why is this definition proposed by the High Level Panel on Threats, Challenges and Change recommendable to solve the issue of a lack of an agreement of a definition of terrorism? This definition considers the motive for committing a terrorist act irrelevant. Instead, the definition defines what the elements are that the definition should contain. The disentanglement of the motive and the action could be the solution for the problem of a lack of an agreed definition. One can focus on the acts of terrorism itself, instead of focussing on the motive. This could solve the problems regarding freedom fighters/terrorists.

### **6.5.3 Comprehensive Convention on Terrorism**

The Sixth Committee of the United Nations General Assembly is working on a Comprehensive Convention on Terrorism. The Commission started working on this convention already in the 1990s of last century. Because it is the intention of the Commission that the Comprehensive Convention will include a definition of terrorism one can imagine the amount of time and effort needed to conclude this Convention.

The adoption of the Comprehensive Convention on Terrorism would provide a blueprint for consistent UN policy regarding counter-terrorism. The adoption of the definition proposed by the High Level Panel on Threats, Challenges and Change would ease the discussion about the Comprehensive Conventions on Terrorism. Because the problem of freedom fighters or terrorists is tackled by the approach of the High Level Panel of disconnecting intention and action, one of the main obstacles for adopting this Comprehensive Convention is removed. Parts of the recently adopted "The United Nations Global Counter-Terrorism Strategy" could be part of the Comprehensive Convention on Terrorism.

#### **6.5.4 One international body dealing with terrorism**

Counter-terrorism is one of the few global issues that is not addressed by one international body. Four special committees of the Security Council are working on the issue of counter-terrorism. Streamlining the different mandates would not only stop the overlap and double work, it would also enlarge the decisiveness of the United Nations against terrorism. This Counter Terrorism Organisation (CTO) should be authorised by the General Assembly. In this way, the organisation is more sure of its annual funding. This possibility also brings along different risks, if the General Assembly needs to give its permission, the Assembly will probably try to influence the objectives of the CTO.

One additional advantage can be is that the United Nations shows its will to reform. Most of the UN committees and organisations established by the Security Council have never been dissolved, which leaves the UN with quite a large administrative body. By dissolving all the committees dealing with the matter of counter-terrorism, the United Nations shows that it sees the need to reform itself. This could persuade the states members of the UN to also invest their money in this counter-terrorism body. And as stated before, the lack of resources is a big problem in the struggle against terrorism. Another advantage shall be that the decisiveness of one organisation, will keep the issue of countering terrorism high on the international agenda.

#### **6.5.5 Root causes**

The root causes of terrorism are not discussed in this thesis. However, it is clear that more research on the root causes of terrorism should be done. Furthermore, the Security Council should try to tackle the root causes of terrorism by focussing on four issues. The first issue is the assumed (although not proven) link between terrorism and poverty. A direct link is not proven by any research, but because of the fact that terrorist often claim to speak on behalf of the poor and underprivileged, further research is necessary. The second point of focus should be that the United Nations should focus on the strengthening of weak states and the rebuilding of states. These states are attractive places for terrorists. Terrorist organisations use these countries, among others, for the financing of terrorist acts, and the training and recruiting for terrorist actions. Third, the Council should end war perceived as threatening the Islam and play a vital role in the future prevention of these conflicts. Last, as the Council is already doing, it should focus on the prevention of the financing of terrorism.

#### **6.5.6 Imposition of sanctions**

Last, the Security Council should start to impose measures on countries that are not implementing obligations imposed by Resolution 1373. The Council should sanction the countries that are in the position to implement the obligations but are unwilling. Only

when the United Nations itself has its capacity building in order, the Council should sanction the countries that are not able to implement the obligations. Only then one can see that these countries are not only unable to implement, but also unwilling to fulfil their obligations under Resolution 1373.

Especially because almost all countries co-operated with the CTC in the first place it is important to keep the good will of the different countries by giving them the possibility to implement their obligations before sanctioning them for not implementing.

On the issue of sanctions it is also very important that the imposed sanctions are also enforced. The United Nations Secretary General and the High Level Panel on Threats, Challenges and Change, have indicated that everything must be done to ensure full enforcement of these sanctions.

Finally, after concluding that sanctions are most effective when leaders are asked to give up something integral to their power base, the Council should strive to impose sanctions that meet these conditions.

## **6.6 Discussions**

There are certain limitations to the research done in this thesis. This research does not take into account the causes of terrorism. To do research with a true multidisciplinary approach, one should cover the root causes of terrorism as well. However, like in case of the definition of terrorism, there is no agreement on the causes of terrorism. Scientists do not agree on the matter of these root causes of terrorism.

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## 8. Appendices

### **Appendix 1: United Nations Security Council Resolution 1368 (12 September 2001).**

Adopted by the Security Council at its 4370<sup>th</sup> meeting, on 12 September 2001

The Security Council,

*Reaffirming* the principles and purposes of the Charter of the United Nations,

*Determined to* combat by all means threats to international peace and security caused by terrorist acts,

*Recognizing* the inherent right of individual or collective self-defence in accordance with the Charter,

1. *Unequivocally condemns* in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C. and Pennsylvania and regards such acts, like any act of international terrorism, as a threat to international peace and security;
2. *Expresses* its deepest sympathy and condolences to the victims and their families and to the people and Government of the United States of America;
3. *Calls on* all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable;
4. *Calls also on* the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementations of the relevant international anti-terrorist conventions and Security Council resolutions, in particular resolution 1269 (1999) of 19 October 1999;
5. *Expresses* its readiness to take all necessary steps to response to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations;
6. *Decides* to remain seized of the matter.

## **Appendix 2: United Nations Security Council Resolution 1373 (28 September 2001).**

Adopted by the Security Council at its 4385<sup>th</sup> meeting, on 28 September 2001

The Security Council,

*Reaffirming* its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

*Reaffirming* also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

*Reaffirming* further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

*Reaffirming* the inherent right of individual or collective self-defence as recognised by the Charter of the United Nations as reiterated in resolution 1368 (2001),

*Reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

*Deeply concerned by* the increase, in various regions of the world, of acts of terrorism motivated by the intolerance or extremism,

*Calling* on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

*Recognising* the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

*Reaffirming* the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organising, instigating, assisting or participating in terrorist acts in another State or acquiescing in organised activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* that all States shall:
  - a. Prevent and suppress the financing of terrorist acts;
  - b. Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
  - c. Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds

derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

- d. Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. *Decides* also that all States shall:

- a. Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
- b. Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
- c. Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- d. Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
- e. Ensure that any persons who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
- f. Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;
- g. Prevent the movement of terrorists or terrorist groups by effective border controls and control on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. *Calls upon* all States to:

- a. Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; gorged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
- b. Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
- c. Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
- d. Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism including the International Convention for the Suppression of Financing of Terrorism of 9 December 1999;
- e. Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

- f. Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;
  - g. Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists;
4. *Notes with concern* the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, sub regional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security’;
  5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning an inciting terrorist acts are also contrary to the purposes and principles of the United Nations;
  6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this;
  7. *Directs* the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;
  8. *Expresses* its determinations to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;
  9. *Decides* to remain seized of this matter.

### **Appendix 3: United Nations Security Council Resolution 1624 (14 September 2005).**

Adopted by the Security Council at its 5261<sup>st</sup> meeting, on 14 September 2005

The Security Council,

*Reaffirming* its resolutions 1267 (1999) of 15 October 1999, 1373 (2001) of 28 September 2001, 1535 (2004) of 26 March 2004, 1540 (2004) of 28 April 2004, 1566 (2004) of 8 October 2004, and 1617 (2005) of 29 July 2005, the declaration annexed to its resolution 1456 (2003) of 20 January 2003, as well as its other resolutions concerning threats to international peace and security caused by acts of terrorism,

*Reaffirming also* the imperative to combat terrorism in all its forms and manifestations by all means, in accordance with the Charter of the United Nations, and also *stressing* that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights law, refugee law, and humanitarian law,

*Condemning* in the strongest terms all acts of terrorism irrespective of their motivation, whenever and by whomsoever committed, as one of the most serious threats to peace and security, and *reaffirming* the primary responsibility of the Security Council for the maintenance of international peace and security under the Charter of the United Nations,

*Condemning also* in the strongest terms the incitement of terrorist acts and *repudiating* attempts at the justification or glorification (*apology*) of terrorist acts that may incite further terrorist acts,

*Deeply concerned* that incitement of terrorist acts motivated by extremism and intolerance poses a serious and growing danger to the enjoyment of human rights, threatens the social and economic development of all States, undermines global stability and prosperity, and must be addressed urgently and proactively by the United Nations and all States, and *emphasizing* the need to take all necessary and appropriate measures in accordance with international law at the national and international level to protect the right to life,

*Recalling* the right to freedom of expression reflected in Article 19 of the Universal Declaration of Human Rights adopted by the General Assembly in 1948 ("the Universal Declaration"), and recalling also the right to freedom of expression in Article 19 of the International Covenant on Civil and Political Rights adopted by the General Assembly in 1966 ("ICCPR") and that any restrictions thereon shall only be such as are provided by law and are necessary on the grounds set out in paragraph 3 of Article 19 of the ICCPR,

*Recalling in addition* the right to seek and enjoy asylum reflected in Article 14 of the Universal Declaration and the non-refoulement obligation of States under the Convention relating to the Status of Refugees adopted on 28 July 1951, together with its Protocol adopted on 31 January 1967 ("the Refugees Convention and its Protocol"), and also *recalling* that the protections afforded by the Refugees Convention and its Protocol shall not extend to any person with respect to whom there are serious reasons for considering that he has been guilty of acts contrary to the purposes and principles of the United Nations,

*Reaffirming* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations,

*Deeply concerned* by the increasing number of victims, especially among civilians of diverse nationalities and beliefs, caused by terrorism motivated by intolerance or extremism in various regions of the world, *reaffirming* its profound solidarity with the victims of terrorism and their families, and *stressing* the importance of assisting victims of terrorism and providing them and their families with support to cope with their loss and grief,

*Recognizing* the essential role of the United Nations in the global effort to combat terrorism and *welcoming* the Secretary-General's identification of elements of a counter-terrorism strategy to be considered and developed by the General Assembly without delay with a view to adopting and implementing a strategy to promote comprehensive, coordinated and consistent responses at the national, regional and international level to counter terrorism,

*Stressing* its call upon all States to become party, as a matter of urgency, to the international counter-terrorism Conventions and Protocols whether or not they are party to regional Conventions on the matter, and to give priority consideration to signing the International Convention for the Suppression of Nuclear Terrorism adopted by the General Assembly on 13 April 2005,

*Re-emphasizing* that continuing international efforts to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures, and addressing unresolved regional conflicts and the full range of global issues, including development issues, will contribute to strengthening the international fight against terrorism,

*Stressing* the importance of the role of the media, civil and religious society, the business community and educational institutions in those efforts to enhance dialogue and broaden understanding, and in promoting tolerance and coexistence, and in fostering an environment which is not conducive to incitement of terrorism,

*Recognizing* the importance that, in an increasingly globalized world, States act cooperatively to prevent terrorists from exploiting sophisticated technology, communications and resources to incite support for criminal acts,

*Recalling* that all States must cooperate fully in the fight against terrorism, in accordance with their obligations under international law, in order to find, deny safe haven and bring to justice, on the basis of the principle of extradite or prosecute, any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or commission of terrorist acts or provides safe havens,

1. *Calls upon* all States to adopt such measures as may be necessary and appropriate and in accordance with their obligations under international law to:
  - a. Prohibit by law incitement to commit a terrorist act or acts;
  - b. Prevent such conduct;
  - c. Deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct;
2. *Calls upon* all States to cooperate, inter alia, to strengthen the security of their international borders, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures with a view to preventing those guilty of the conduct in paragraph 1 (a) from entering



their territory;

3. *Calls upon* all States to continue international efforts to enhance dialogue and broaden understanding among civilizations, in an effort to prevent the indiscriminate targeting of different religions and cultures, and to take all measures as may be necessary and appropriate and in accordance with their obligations under international law to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent the subversion of educational, cultural, and religious institutions by terrorists and their supporters;
4. *Stresses* that States must ensure that any measures taken to implement paragraphs 1, 2 and 3 of this resolution comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law;
5. *Calls upon* all States to report to the Counter-Terrorism Committee, as part of their ongoing dialogue, on the steps they have taken to implement this resolution;
6. *Directs* the Counter-Terrorism Committee to:
  - a. Include in its dialogue with Member States their efforts to implement this resolution;
  - b. Work with Member States to help build capacity, including through spreading best legal practice and promoting exchange of information in this regard;
  - c. Report back to the Council in twelve months on the implementation of this resolution.
7. *Decides* to remain actively seized of the matter.

## **Appendix 4: Charter of the United Nations San Francisco 26 June 1945, relevant articles**

### **Article 1 of the UN Charter states:**

"The purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends."

### **Article 24 of the UN Charter states:**

1. "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII and XII.
3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration."

### **Article 25 of the UN Charter states:**

"The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

### **Article 39 of the UN Charter states:**

"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

### **Article 40 of the UN Charter states:**

"In order to prevent an aggravation of the situation, the Security Council may, before making the recommendation or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures."

### **Article 41 of the UN Charter states:**

"The Security Council may decide what measures not involving the use of armed forces are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

**Article 42 of the UN Charter states:**

"Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstration, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

**Article 48 (1) of the UN Charter states:**

"The action required to carry out the decisions of the Security Council for the maintenance of international peace and security taken by all the Members of the United Nations or by some of them, as the Security Council may determine."

**Article 51 of the UN Charter states:**

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain international peace and security."