

Multilateral Cooperation in Counter-Terrorism: Kenya and the UN

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Dissertation Submitted in Partial Fulfillment of the Requirements for the Award of the Degree of Master of Arts in International Studies at the Institute of Diplomacy and International Studies (IDIS), University of Nairobi

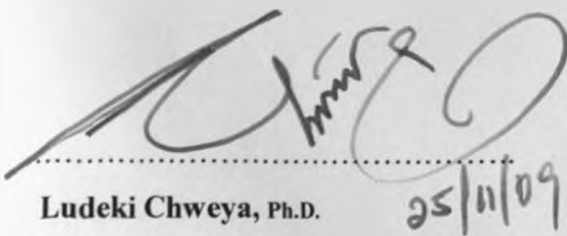
DECLARATION

This dissertation is my original work and has not been submitted for award of a degree in any other university.



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My sincere most thanks to my supervisor Dr. Ludeki Chweya for offering guidance and keeping a close scrutiny to this dissertation throughout the process. My respondents and colleagues at my workplace have been particularly supportive to the course of this dissertation.

DEDICATION

To my late parents and family for their initial mentorship and momentum by offering me the best education they could invaluable afford. Constant advice and encouragement from my friends and relatives

My girl-friend Catherine Wokabi Wanjiku for her priceless support throughout this study

ABSTRACT

This thesis examines Kenya's cooperation levels in fighting terrorism as outlined in the United Nations Security Council Resolution 1373, 2001 on counter-terrorism.

The study has revealed that Kenya has cooperated on two fronts: At the national level and with external partners in so far as implementing UNSCRES 1373, 2001. At the national level, domestic actors, in particular the members of parliament and the civil society have voiced strong opposition to both the draft Suppression of Terrorism Bill, 2003 and the draft Proceeds of Crime and Anti-Money Laundering Bill, 2008 and this has largely stalled their progress into becoming law in Kenya. The Government of Kenya established the Anti-Terrorism Police Unit (ATPU) as a special division of the Kenya Police in February 2003 to carry out specific investigations and arrests related to terrorism, conduct specialist operations while the NSIS has been transformed to focus more on criminal intelligence, counter-terrorism, money laundering, narcotics trafficking and proliferation of illicit arms.

In external cooperation, Kenya has ratified the twelve international conventions relevant to the fight against terrorism. The East African Counterterrorism Initiative (EACTI) and CJTF-HOA is the foundation for U.S. counterterrorism programs in so far as US – Kenya partnership in counter-terrorism is concerned. Kenya has ratified Africa Union's Convention on the Prevention and Combating of Terrorism 1999 and its 2002 Protocol which has developed a "Plan of Action on the Prevention and Combating of Terrorism in Africa which specifically references the obligations set out under UNSC RES1373.

Some impediments, internal and external, still exists in the so far as Kenya's internal and external cooperation towards the implementation of UNSC Resolution 1373 is concerned

ACRONYMS

ACHPR	African Charter on Human and Peoples Rights
ACOTA	African Contingency Operations Training and Assistance
AI	Amnesty International
ATA	Anti-Terrorism Assistance
ATB	Anti-Terrorism Bill
ATPU	Anti terrorism Police Unit.
CID	Criminal Investigations Department
CJTF-HOA	Combined Joint Task Force-Horn of Africa
CTC	Counter-Terrorism Committee
CTFP	Regional Defense Counter terrorism Fellowship Program
DoD	Department of Defense
DS/ATA	Diplomatic Security's Office of Anti terrorism Assistance
EAC	East Africa Community
EACTI	East Africa Counter terrorism Initiative
FBI	Federal Investigations Department
FDI	Foreign Direct Investments
GDP	Gross Domestic Product
GoK	Government of Kenya
GSU	General Service Unit
GWOT	Global War on Terror
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Supreme Council of Kenya Muslims.
JTTF	Joint Terrorism Task Force
JTTF	Joint Terrorism Task Force
KAA	Kenya Airport Authority
KANU	Kenya African National Union
KCAA	Kenya Civil Aviation Authority
KHRC	Kenya Human Rights Commission
KPA	Kenya Ports Authority
LSK	The Law Society of Kenya

UNSCRES

United Nation Security Council Resolution

USG

U.S. Government

NADR-ATA	Anti-Terrorism Assistance program
NCTC	National Counter terrorism Center
NGOs	Non-governmental organizations
NS CS	National Counter Terrorism Strategy,
NSAC	National Security Advisory committee
NSIS	National Security Intelligence Services
SOT	The Suppression of Terrorism
SUPKEM	Supreme council of Kenya Muslims
UNHRC	United Nations Human Rights Committee

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CHAPTER ONE: INTRODUCTION TO MULTILATERAL COOPERATION IN COUNTER-TERRORISM: KENYA AND THE UN

Background to the Study

The General Assembly of the United Nations, by consensus of the 189 member states, called for international cooperation to prevent and eradicate acts of terrorism and to hold accountable the perpetrators and those who harbor or support them. On its part the United Nations Security Council unanimously determined, for the first time ever, any act of international terrorism to be a threat to international peace and security and expressed its readiness to take all necessary steps to respond to the terrorist attacks and to combat all forms of terrorism, in accordance with its responsibilities under the Charter on the day after September 11 terrorist attacks in Washington and New York. This determination laid the foundation for Security Council action to bring together the international community under a common set of obligations in the fight to end international terrorism.¹

The Security Council adopted a more concrete and action-oriented resolution against acts of terror – United Nations Security Council Resolution 1373². UNSC RES1373 was passed unanimously on September 28, 2001, and focuses on areas of financing, intelligence sharing, and limiting terrorists' ability to travel. In terms of financing, UNSC RES1373 enjoins all states to criminalize Al Qaeda financial activities and to freeze the group's monetary assets. Likewise, it mandates formalized and routine exchanges of intelligence between states, including operational information and sharing of evidence for criminal prosecution through international protocols and bilateral arrangements. In

¹ See United Nations, First Resolution of the 56th UN General Assembly (2001), 12 September 2001 and the UN Security Council Resolution 1368.

² See Appendix 1.0 on UNSC Resolution 1373

addition, the resolution requires states to take measures to prevent movement of terrorists via "effective border controls" and by denying refugee or asylum status, which are often claimed by terrorists.

Most important, UNSC RES1373 was passed under Chapter VII of the UN Charter, which makes it mandatory upon member-states and gives the Security Council wide latitude in seeking its enforcement. According to the charter, the Security Council can impose punitive measures against non-compliant states, ranging from non-military options (e.g., Article 41 authorization for "complete or partial interruption of economic relations" and/or diplomatic relations) to military operations (Article 42's authorization for "action by air, sea, or land forces").

The UNSC unanimously adopted a wide-ranging, comprehensive resolution³ outlining immediate steps and strategies to combat international terrorism by reaffirming its unequivocal condemnation of the terrorist acts of 11 September 2001 on 28 September 2001. It can therefore be argued that a global and deep multilateral approach, rather than a shallow unilateral strategy, was developed to counter the emerging trend of global catastrophic terrorism.

The UNSC RES1373 established the Counter-Terrorism Committee (CTC) to monitor its implementation to best practices, identify gaps, and help coordinate advice and assistance to states that need it to underscore the mandatory nature of its prescriptions. The CTC was given exceptional power to compel governments to explain their actions, setting up a mandatory counterterrorism reporting system for all UN member states.

³ See Resolution 1373 of 2001 par 3 c

The Research Problem

Full implementation of UNSC RES 1373 will require each UN member state to take specific measures to combat terrorism. Most states will have to make changes in their laws, regulations, and practices. Those with the capacity to assist in these changes will be needed to help those who lack the expertise and resources to achieve full implementation.

The provisions of UNSC RES 1373 require, among other things, that all member states prevent the financing of terrorism and deny safe haven to terrorists. States will need to review and strengthen their border security operations, banking practices; customs and immigration procedures, law enforcement and intelligence cooperation, and arms transfer controls. All states are called upon to increase cooperation and share pertinent information with respect to these efforts. In general, UNSC RES 1373 aims at imposing new legal obligations on states and mobilizing the international community for a campaign of nonmilitary cooperative law enforcement measures to combat global terrorism. UNSC RES 1373 focuses on areas of financing, intelligence sharing, and limiting terrorists' ability to travel. In terms of financing, it enjoins all states to criminalize terrorist group's financial activities and to freeze the group's monetary assets. Likewise, it mandates formalized and routine exchanges of intelligence between states-including operational information and sharing of evidence for criminal prosecution through international protocols and bilateral arrangements. In addition, the resolution requires states to take measures to prevent movement of terrorists via "effective border controls" and by denying refugee or asylum status, which are often claimed by terrorists, deny them travel or safe haven, prevent terrorist recruitment and weapons supply.

Kenya has experienced many terrorist attacks. The first major attack of the modern era was the Norfolk Hotel bombing in December, 1980, which killed sixteen people and injured more than one hundred. The Palestine Liberation Organization (PLO) claimed responsibility. Most believe the attack served as retaliation for Kenya's decision to allow the launch of the 1972 Israeli military raid on Entebbe, Uganda from Kenyan soil.⁴

The most devastating terrorist attacks witnessed by Kenya occurred nearly two decades later, on August 7, 1998, when terrorists attacked the American Embassy in Nairobi with a truck-bomb. The attack killed some 220 people and injured roughly 5,000 Embassy staff, passers-by and people in neighboring buildings.⁵ Al-Qa'ida simultaneously attacked the U.S. Embassy in Dar-es-Salaam, Tanzania, killing 11 and injuring another 70. An attempt to destroy the American Embassy in Kampala, Uganda, was reportedly foiled on this same date.⁶ All three embassies were accessible and relatively unprotected, making them particularly attractive targets. The Kenyan attack also produced the first known al-Qa'ida operative from Kenya, Sheikh Ahmad Salem Swedan, from Mombasa, as well as Abdullah Muhammad Fazul (henceforth 'Fazul'), a Comorian who reportedly holds a Kenyan passport, though his legal citizenship remains unclear.⁷

⁴ The choice of the specific target appears to reflect the fact that the hotel was then owned by a well-known Jewish-Kenyan family; ironically, today it is owned by a prince in the Saudi royal family.

⁵ The bomb-laden vehicle attempted to enter the underground parking area, but security guards prevented it from doing so. Had they not, the number of Embassy casualties would have been far higher, and the "collateral damage" far less.

⁶ All 20 people arrested in connection with the alleged Kampala plot were apparently released after being held for a month. "All but one of nine arrested over blasts to be released," *Agence France Press: International News*, February 17, 1999; Arye Oded, *Islam & Politics in Kenya* (Boulder, CO: Lynne Rienner Publishers, 2000), 82.

David H. Shinn, "Fighting Terrorism in East Africa and the Horn," *Foreign Service Journal* (September, 2004).

⁷ Swedan was among those indicted, as was Fazul. *United States of America vs. Usama Bin Laden, et al.*, Indictment S (9) 98 cr. 1023 (LBS), available at <http://cns.miiis.edu/pubs/reports/pdfs/binladen/indict.pdf>. Both of these individuals remain at large.

The imperative to cooperate in this global effort against terrorism has extended to the Africa Union as well. At the African Union level, Kenya has ratified the Convention on the Prevention and Combating of Terrorism 1999 and its 2002 Protocol. In 2002, a “Plan of Action on the Prevention and Combating of Terrorism in Africa” was developed.⁸ The Plan specifically references the obligations set out under UN Security Council Resolution 1373.⁹

Sub-Saharan African governments almost universally maintained their commitment to fight global terrorism through both national and multilateral efforts in 2002. To this end, the African States signed, under the auspices of the Organization of African Unity, the Convention on the Prevention and Combating of Terrorism in Algeria, in September 2002 the African Union (AU) held a counter terrorism conference in Algiers in July 1999¹⁰. The Convention entered into force on 6 December 2002. The September meeting also produced a plan of action to implement the 1999 OAU Convention on Preventing and Combating Terrorism and agreed to establish an African Terrorism Study and Research Center to be based in Algeria.

The signing of this convention has led to other initiatives in the region aimed at strengthening the mechanisms to combat terrorism in the African continent such as the Bamako Declaration of December 2000, on African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons; the West African States Moratorium on the importation, exportation and manufacture of small arms and light weapons in West Africa; and the Nairobi Declaration of March 2000 and the Ministerial Follow up in August 2002 on the problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa. These

⁸African Union. “Plan of Action of the African Union High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa” Mtg/HLIG/Conv.Terror/Plan. (I) (11 – 14 September 2002). See also, African Union, Second High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa, “Declaration of the Second High-Level Intergovernmental Meeting on the Preventing and Combating of Terrorism in Africa” Mtg/HLIG/Conv.Terror/Decl. (II) Rev.2 (13 – 14 October 2004).

⁹ Id. at Para. 8.

¹⁰ The Organization of African Unity OAU became the African Union in 2002.

instruments and initiatives can only make a difference if they are followed by concrete actions to implement them.

The AU also supports UN Security Council Resolution 1269, which reaffirms that the suppression of acts of international terrorism, including those in which states are involved, is an essential contribution to maintaining international peace and security. Kenya has moved to become parties to the 12 international conventions and protocols relating to terrorism, as UNSCR 1373 calls on states to do.¹¹

Cooperation is key to success. It can be noted from analyzing the resolution, for example, that states shall cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts¹² increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001).¹³ Following the 9-11 and the subsequent resolutions UN resolutions the Horn of Africa has come under increased scrutiny as a strategic focal point in the war against terrorism.

This study will investigate cooperation measures which Kenya has taken, including ratification of any relevant regional or international legal instruments; cooperation between law enforcement personnel; harmonization and development of a national legislative framework; identification and promotion of interaction between the various

¹¹ See United Nations Security Council Letter S/2002/856

¹² See Resolution 1373 of 2001 par 3, e

¹³ See Resolution 1373 of 2001 par 3, e

actors such as between the police, military, and immigration officials; and a strategy to address the root causes of terrorism, in addition to any specific measures such as: policing and border control; financing of terrorism; information exchange; protection of human rights; and enhancing public support through education.

The study will attempt to answer three questions: what counter terrorism measures has Kenya taken? What is the level of Kenya – UN cooperation in its counter terrorism efforts? How successful has Kenya – UN cooperation in implementing UNSC Resolution 1373?

Objectives of the Study

This study aims to analyze Kenya's cooperation in implementation of United Nations Security Council resolution 1373 on counter-terrorism. Especially, the study will examine: The patterns of Kenya's cooperation in fighting terrorism and to investigate the nature of assistance Kenya has received in order to effectively implement cooperation aspect of United Nations Security Council Resolution 1373

.Justification of the Study

The UNSC RES 1373 currently functions as the veritable blueprint for establishing, implementing, and sustaining global counter-terrorism measures. And yet, both the UN-system and UNSC RES 1373 have their limitations.

The UN has established, over the years a large collection of counter-terrorism resolutions and conventions, yet most, if not all are intrinsically weak in a definitional manner, and thus less-than instructive as policy tools.¹⁴ The problem rests principally on the simple argument that no set of UN policy guidelines, however engrossing, function actively and properly if the target of the policy is poorly understood and UN-defined.

The United Nations has been developing a successful strategy for global counter-terrorism; this paper offers both applause and a critique of the United Nations Security Council and UNSC RES 1373 as a means to analyzing its role in maintenance of peace and security. The subsequent argument is presented in four parts. The first section will offer a brief description and overview of UNSC RES 1373.

Furthermore, unlike previous situations, UNSC RES 1373 does not have an implicit time limitation because while it was inspired by the attacks of 11 September 2001, it is not specifically related to this act alone and encompasses terrorism broadly speaking. Thus, the Security Council has taken upon itself to reshape the manner in which the UN approaches global terrorism while suggesting a limitless campaign of counter-terrorism that must be accepted and incorporated by all states.

Secondly, as briefly expressed above, UNSC RES 1373 took the unprecedented step of imposing binding obligations on all 191 UN member states as opposed to the many counter-terrorism conventions and protocols that are only legally binding to those states that have become parties to them that requires all states to review their domestic laws and

¹⁴ See evolution of UN counter-terrorism measures, Chapter 2

practices to combat the financing and harboring of terror groups.¹⁵ Thus with UNSC RES 1373, the UN began meddling in the sovereign affairs of states in order to advance a global agenda.

Thirdly, the involvement of the Security Council rather than the General Assembly on issues involving global terrorism after 11 September 2001 was a novel development. Hitherto, the topic of terrorism had been dealt with to various degrees of limited success, by the Assembly, so that Security Council involvement post-11 September 2001 indicates the development of a more robust and top-heavy approach to steering the UN's global counter-terrorism strategy. Incidentally, the GA's reception of the UNSC RES 1373 has been tepid at best, with Paul Szasz noting that the Assembly's own later resolution 'Measures to eliminate international terrorism' (December 2001) barely mentions the Council's Resolution and only superficially attempts to incorporate elements of UNSC RES 1373 into a comprehensive convention on international terrorism.¹⁶

Literature Review

The literature review will be further divided into the various definitions of terrorism by different scholars; The Debates on Terrorism; Structure v. Process; Modern Terrorism; International Terrorism; Religious Terrorism; Expressions of Terrorism; Causes and impact of terrorism; The Experience of Terrorism in Africa and Kenya and Counter-Terrorism.

¹⁵ *Ibid.*, pp.2-3

¹⁶ Szasz, 'The Security Council Starts Legislating', pp. 903

The meaning of terrorism

Terrorism is not new, and even though it has been used since the beginning of recorded history, it can be relatively hard to define. The terms "terrorism" and "terrorist" (someone who engages in terrorism) carry a strong negative connotation. These terms are often used as political labels to condemn violence or threat of violence by certain actors as immoral, indiscriminate, or unjustified. Those labeled "terrorists" rarely identify themselves as such, and typically use other euphemistic terms or terms specific to their situation, such as: separatist, freedom fighter, liberator, revolutionary, vigilante, militant, paramilitary, guerrilla, rebel, jihadi or mujaheddin, or fedayeen, or any similar-meaning word in other languages.

Terrorism, in the modern sense, is violence against civilians to achieve political or ideological objectives by creating fear.¹⁷ Most definitions of terrorism include only those acts which are intended to create fear (terror), are perpetrated for an ideological goal (as opposed to a lone attack), and deliberately target or disregard the safety of non-combatants (civilians). Many definitions also include only acts of unlawful violence and acts of war. Terrorism is also a form of unconventional warfare and psychological warfare. Few words are as politically or emotionally charged as terrorism.¹⁸ This greatly compounds the difficulty of providing a precise definition. A person who practices terrorism is a terrorist. Terrorism has been used by a broad array of political

¹⁷ Adrian Humphreys, "One", National Post, 2006-01-17, pp. 1. "The divergent assessments of the same evidence on such an important issue shocks a leading terrorism researcher. 'The notion of terrorism is fairly straightforward — it is ideologically or politically motivated violence directed against civilian targets.'" said Professor Martin Rudner, director of the Canadian Centre of Intelligence and Security Studies at Ottawa's Carleton University."

¹⁸ Bruce Hoffman, "*Inside Terrorism*" (Columbia University Press 1998), p 32.

organizations in furthering their objectives; both right-wing and left-wing political parties, nationalistic, and religious groups, revolutionaries and ruling governments.¹⁹

Terrorism is indeed one of the major threats to international peace and security. Terrorism is a complex and global phenomenon and no country should underestimate the threat it poses to all.²⁰ It has become synonymous with the operations of al Qaeda whose characteristic terror techniques include use of suicide attacks and simultaneous bombings of different targets.²¹ Activities ascribed to it may involve members of the organization, who have taken a pledge of loyalty to bin Laden, or the much more numerous "al-Qaeda-linked" individuals who have undergone training in one of its camps in Afghanistan or Sudan but not taken any pledge.²² Following 9/11 and the launching of the war on terrorism it is thought al-Qaeda's leadership has "become geographically isolated", leading to the "emergence of decentralized leadership" of regional groups using the al-Qaeda "brand name."²³

On one point, at least, there is some agreement: terrorism is a pejorative term. It is a word with intrinsically negative connotations that is generally applied to one's enemies and opponents, or to those with whom one disagrees and would otherwise prefer to ignore. 'What is called terrorism,' Brian Jenkins has written, "thus seems to depend on one's point of view. Use of the term implies a moral judgment; and if one party can successfully

¹⁹ Terrorism. Encyclopedia Britannica

²⁰The role of the UN in the fight against terrorism available at <http://www.un.int/mexico/2005/Terrorism.pdf> on May 15 2008

²¹Lawrence Wright, *Looming Tower: Al-Qaeda and the Road to 9/11* (2006), p.185, 270-1, 107-8

²² Ibid p.270

²³Scott Atran, The Moral Logic and growth of suicide Terrorism, *The Washington Quarterly*, *The Washington Quarterly* Spring 2006, Vol 29:2 pp. 127-147.

attach the label terrorist to its opponent, then it has indirectly persuaded others to adopt its moral viewpoint.' Hence the decision to call someone or label some organization 'terrorist' becomes almost unavoidably subjective, depending largely on whether one sympathizes with or opposes the person/group/cause concerned. If one identifies with the victim of the violence, for example, then the act is terrorism. If, however, one identifies with the perpetrator, the violent act is regarded in a more sympathetic, if not positive (or, at the worst, an ambivalent) light; and it is not terrorism.²⁴

Therefore, a controversial term with no internationally agreed single definition, there are however several international conventions on terrorism with somewhat different definitions. Since there are common factors, it ought to be possible to define terrorism. In the 1960s the UN General Assembly embarked on an attempt to do this. Initially little progress was made, partly because many states were reluctant to go far along the road of outlawing terrorism unless at the same time the 'causes of terrorism' were addressed. Other states saw this approach as implying that terrorism was a response to real grievances, and thereby insinuating that it was justified. To be sure, the UN has established, over the past four decades, a large collection of counter-terrorism resolutions and conventions, yet most, if not all, are intrinsically weak in a definitional manner, and are thus less-than instructive as policy tools. The problem rests principally on the simple argument that no set of UN policy guidelines, however engrossing, can function actively and properly if the target of the policy is poorly understood and un-defined. How can the UN, its many institutions, and the states that constitute its organization provide effective counter-terrorism measures if they can not settle on a common definition of the act? This

²⁴ see Bruce Hoffman. "*Inside Terrorism*" op.cit

dilemma is based on the old adage “One person’s ‘terrorist’ is another’s ‘freedom-fighter’” that has plagued the UN-system since the 1960s.²⁵

Bruce Hoffman²⁶ notes that the difficulties in defining terrorism are because it is an emotional and politically charged term. Partisan considerations further complicate the task of defining terrorism. The concepts of terror and terrorism are slippery and much abused, and their relation to other forms of political violence and criminality is often ambiguous explains terrorism expert John Thackrah.²⁷ One famous study identifies 109 different definitions of terrorism.²⁸ The United Nations formally adopted a definition of terrorism in 1996: criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes that are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them²⁹

The Debates on Terrorism

Debates on terrorism have been on-going. Two main debates have been discussed in this study.

Structure v. Process

One way to study violent political conflict and terrorism within countries is to focus on the structural conditions that impact the chance that a country will experience such

²⁵ Alex S. Wilner, The United Nations, Resolution 1373, and Counter-Terrorism: Problems of Definition, Problems of Action, CIA Student Symposium: Visions and Voices 2 March 2005.

²⁶ Bruce Hoffman, *"Inside Terrorism"* (Columbia University Press, 1998), p 32

²⁷ John Richard Thackrah, *Encyclopedia of Terrorism and Political Violence* (1987), 63.

²⁸ See Alex Schmid and Albert Youngman, *Political Terrorism* (1988).

²⁹ UN General Assembly, A/RES/51/210, 17 December 1996.

phenomena. Another way is to analyze the behavioral relationships among parties to potential conflicts, how they make decisions, how such decisions impact other parties' decisions, and how the sequences of behavioral interactions escalate and de-escalate across various thresholds of violent political conflict or as Harry Eckstein put it over 25 years ago, we can distinguish between "contingency" and "inherency" approaches to the study of violent conflict.³⁰ The first perspective assumes that conflict is contingent on unusual or irregular conditions that cause disruptions in conventional politics. The contingent approach leads one to study the political, economic, and social attributes of countries to explain variation in their conflict experiences. The inherent perspective assumes that violent political conflict emerges out of low-level contentious interactions among a set of political players. This approach leads researchers to focus on the conditional behavior of parties to conflict and how that behavior changes over time. While Eckstein laid out these two approaches in 1980, the past 25 years have borne witness to few scholars taking the latter path.

Prior to the turn of the century, the study of intrastate conflict was much more focused on the former approach than the latter. While studying the political, economic, and social attributes of countries is a useful approach for understanding and highlighting general patterns of conflict, it is ill-suited to address conflict processes because such approaches "are essentially static 'input-output' or 'stimulus-response' type models, not dynamic

³⁰ Harry Eckstein. "Theoretical Approaches to Explaining Collective Political Violence." In T.R. Gurr (ed.) *Handbook of Political Conflict*, pp. 135-166. 1980. New York: The Free Press.

models of interaction.”³¹ Charles Tilly argues that because “collective action is dynamic... its outcomes depend very strongly on the course of interaction.”³²

A recent wave of scholarship turns its back on the structural attributes approach and instead focuses attention on the escalation and de-escalation processes of political conflict instantiated by actors’ strategic behavioral interactions.³³ A common thread running through this new generation of conflict scholarship is a shift from countries as the unit of analysis to the parties to the conflict and their behavior. This work focuses on competition between governments and various dissident groups over policy, control of the state, and—especially—the support of the population.

This shift is important because it means that theory becomes much more useful to policy makers: the emphasis on parties to the conflict leads this research to develop hypotheses about the conflictual behavior of dissidents in response to government behavior and vice versa. By moving away from thinking about the impact of democratic v. autocratic institutions, the size of GNP/capita, and the ethnic composition of society these scholars have begun to ask the following sorts of questions:

³¹ Will H. Moore. “Action-Reaction or Rational Expectations? Reciprocity and the Domestic-International Conflict Nexus During the ‘Rhodesia Problem.’” *Journal of Conflict Resolution*. 1995. Vol. 39, No. 1, p.132.

³² For example, see MaCartan Humphreys. “Natural Resources, Conflict, and Conflict Resolution: Uncovering the Mechanisms.” *Journal of Conflict Resolution*. 2005. Vol. 49, Num. 4, pp. 508-537; Stathis Kalyvas. *The Logic of Violence in Civil War*. 2006. New York: Cambridge University Press; and Jeremy Weinstein. *Inside Rebellion: The Politics of Insurgent Violence*. 2007. New York: Cambridge University Press.

³³ Recent reviews of this literature can be found in Christian Davenport. “State Repression and Political Order.” *Annual Review of Political Science*. 2007. Vol. 10, pp. 1–23, and Mark I. Lichbach. “Internal Wars Over the State: Rational-Choice Institutionalism and Contentious Politics.” M.I. Midlarsky (ed.) *Handbook of War Studies, Volume III*. Forthcoming. University of Michigan Press

Modern Terrorism

Robert O. Keohane has branded post-9/11 terrorism as an emerging trend towards the “globalization of informal violence.”³⁴ Joseph Nye calls modern terrorism the “privatization of war”³⁵ and Frank P. Harvey simply refers to modern terrorism as “catastrophic... globalised terror.”³⁶ In each case, modern international terrorism is considered a newly developing phenomenon that diverges from the historical trend.

Elie Wiesel, at an International Peace Academy (IPA) Conference, the fight against terrorism for humanity, in September 2003, remarked that “unlike their distant predecessors of...the nineteenth century, and the early years of the twentieth, the nihilist, anarchist, and other revolutionaries [modern terrorists] attack people, any people, all people at a certain place, simply because they happen to be there, at that moment.”³⁷

Global terrorism, then, has evolved into a much less benign animal. The continued global proliferation of weapons of mass destruction (WMD) capable of indiscriminately killing millions of civilians and the increasing technological ease of WMD use by sub-state actors as a result of the so-called ‘miniaturization of weaponry’ further signifies the potential and future destructive nature of terrorism.³⁸

³⁴ Robert T. Keohane, “The Globalization of Informal Violence, Theories of World Politics, and the “Liberalism of Fear”, *International Organization*, (Spring 2002), pp.29-35

³⁵ Joseph Nye “Divided We War”, *The Globe and Mail*, (Monday, March 23, 2003), A15.

³⁶ Frank P. Harvey, “Addicted to Security: Globalised Terrorism and American Unilateralism” (Draft Copy), *International Journal*, (Forthcoming 2004), pp.1-3.

³⁷ Elie Wiesel, “Why Terror Must be Unmasked and Defeated”, *International Peace Academy: Fighting Terrorism for Humanity*, (Conference Proceedings), 22 September 2003, pp.13.

³⁸ Frank P. Harvey, “Addicted to Security: Globalised Terrorism and American Unilateralism” (Draft Copy), *International Journal*, (Forthcoming 2004), pp.2.

The age of modern terrorism could be said to have begun in 1968 when the Popular Front for the Liberation of Palestine (PFLP) hijacked an El Al airliner en route from Tel Aviv to Rome. While hijackings of airliners had occurred before, this was the first time that the nationality of the carrier (Israeli) and its symbolic value was a specific operational aim. Also a first was the deliberate use of the passengers as hostages for demands made publicly against the Israeli government.

The combination of these unique events, added to the international scope of the operation, gained significant media attention. The founder of PFLP, Dr. George Habash observed that the level of coverage was tremendously greater than battles with Israeli soldiers in their previous area of operations.

International Terrorism

Dyson (2001: 20 – 31) divides terrorism into two broad categories: domestic and international: “Domestic terrorism is politically extreme violence that is perpetuated by residents of a country within that country.”

The term ‘international terrorism’ was coined in the 1980s. In 1981 the American Secretary of State, Alexander Haig, accused the Soviet Union of “training, funding and equipping international terrorists”, and thus the concept of international terrorism was born. Published in 1982, Claire Sterling’s book. The terror network epitomized the new interpretation of the concept. Sterling sketched a vast, unified global organization not only inspired but also directly controlled by the Union of Soviet Socialist Republics

(USSR). The occurrence of right-wing extremism can best be demonstrated by using the US as an example.

International terrorism has international or trans-national consequences in which terrorists strike targets outside and beyond their country of origin such as the 11th September World Trade Centre attack. International Terrorism also implies that such terrorist groups, e.g. JEI, Al Qaeda, etc. have an organization network linkage in a number of countries. A global research report *An Inclusive World* prepared by an international team of researchers from all continents has analyzed causes of present day terrorism. It has reached the conclusions that terrorism all over the world functions like an economic market. There is demand for terrorists placed by greed or grievances. Supply is driven by relative deprivation resulting in triple deficits - developmental deficit, democratic deficit and dignity deficit.³⁹ Mark Sageman⁴⁰ observes that these groups benefited from the free flow of information and efficient Telecommunications to succeed where others had failed. Terrorism is a criminal act that influences an audience beyond the immediate victim. The strategy of terrorists is to commit acts of violence that draws the attention of the local populace, the government, and the world to their cause. The terrorists plan their attack to obtain the greatest publicity, choosing targets that symbolize what they oppose. The effectiveness of the terrorist act lies not in the act itself, but in the public's or government's reaction to the act. For example, in 1972 at the Munich Olympics, the Black September Organization killed 11 Israelis. The Israelis were the

³⁹See Sundeep Waslekar. *An Inclusive World*, (Mumbai: Strategic Foresight Group, 2007).

⁴⁰Mark Sageman, *"Social Networks and the Jihad"*. (Philadelphia: University of Pennsylvania Press). 2004. Ch. 5 pp. 166-167

immediate victims. But the true target was the estimated 1 billion people watching the televised event.⁴¹

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⁴¹International Terrorism and Security Research, available at Terrorism Research - What is Terrorism

⁴²See Sundeep Waslekar, *An Inclusive World*, (Mumbai: Strategic Foresight Group, 2007).

⁴³Mark Sageman, *"Social Networks and the Jihad"*. (Philadelphia: University of Pennsylvania Press), 2004. Ch. 5 pp. 166-167

immediate victims. But the true target was the estimated 1 billion people watching the televised event.⁴⁴

Religious Terrorism

Religious terrorism is terrorism by those whose motivations and aims have a predominant religious character or influence. According to Mark Juergensmeyer, religious terrorism consists of acts that terrify, the definition of which is provided by the witnesses - the ones terrified - and not by the party committing the act; accompanied by a religious motivation, justification, organization, or world view.⁴⁵

Religious-inspired terrorism is terrifying acts motivated by religion. The terms 'religious terrorism' and 'religious-inspired terrorism' raise critical questions, though, for example around whether one actually can measure religious motivation. The attacks on the World Trade Centre and the Pentagon on September 11 confirmed that terrorism had acquired a new face. Terrorists were now engaged in a campaign of suicide and mass murder on a huge scale. Previously it had been possible to believe that there were limits beyond which even terrorists would not go. After the thousands of deaths on September 11, it was evident that at least one group would stop at nothing.⁴⁶ Terrorist proved their capacity and

⁴⁴International Terrorism and Security Research, available at [Terrorism Research - What is Terrorism](#)

⁴⁵Juergensmeyer 2004, pp. 4-10.

⁴⁶Adam Roberts, *The Changing Faces of Terrorism* Available at http://www.bbc.co.uk/history/recent/sept_11/changing_faces_01.shtml

willingness to cause murderous destruction at an unprecedented and seemingly limitless proportion, initiating what might be considered emergence of a new species of terrorism⁴⁷ Political leaders, conflict theorists, and academics alike have asserted as much; Prime Minister Tony Blair – in his statement in response to the 11 September attacks on the United States – specified the acts as “mass terrorism” that represented “the new evil in our world.”⁴⁸

The terrorist campaigns of the Ku Klux Klan, for example, indicate the long history of right-wing extremist movements in the US. Initially right-wing extremists were driven by religious and political motivations. Right-wing terrorism is not exclusive to the North American domain; in recent years the European Union has witnessed the terrorist pendulum swinging from extreme left to far right. In the former East Germany (formerly known as the German Democratic Republic) an alarming increase in violent right-wing activities has been noted. The attacks are often aimed at foreign workers and asylum seekers. Most Western theorists seem to concur that today’s terrorism is by and large linked to right-wing extremism, religious nationalism or religious extremism.

Expressions of Terrorism

Terrorist acts or the threat of such action have been in existence for millennia as discussed above. Despite having a history longer than the modern nation-state, the use of

⁴⁷Lawrence Ziring, Robert E. Riggs, and Jack A. Plano, the United Nations: International Organization and World Politics (4th Edition), (Wadsworth Publishers, 2005). pp.530.

⁴⁸ Prime Minister Tony Blair Statement in Response to Terrorist Attacks in the United States, 11 September 2001, 10 Downing Street-DirectGov, <<http://www.number-10.gov.uk/output/Page1596.asp>>, Accessed February 23, 2005.

terror by governments and those that contest their power remains poorly understood. While the meaning of the word terror itself is still contested, when it is applied to acts and actors in the real world it becomes confused. Part of this is due to the use of terror tactics by actors at all levels in the social and political environment. In an era in which the threat of international terrorism is greater than ever, we believe it is important that single application of expressions of terrorism is adopted.

Terrorism has been described variously as both a tactic and strategy; a crime and a holy duty; a justified reaction to oppression and an inexcusable abomination. Obviously, a lot depends on whose point of view is being represented. Terrorism has often been an effective tactic for the weaker side in a conflict. As an asymmetric form of conflict, it confers coercive power with many of the advantages of military force at a fraction of the cost. Due to the secretive nature and small size of terrorist organizations, they often offer opponents no clear organization to defend against or to deter. That is why preemption is now so important. In some cases, terrorism has been a means to carry on a conflict without the adversary realizing the nature of the threat, mistaking terrorism for criminal activity. Because of these characteristics, terrorism has become increasingly common among those pursuing extreme goals throughout the world. But despite its popularity, terrorism can be a nebulous concept.⁴⁹

While acts of terrorism are criminal acts as per the UNSC RES 1373 and domestic jurisprudence of almost all countries in the world, terrorism refers to a phenomenon

⁴⁹*International Terrorism and Security Research, what is terrorism, available at <http://www.terrorism-research.com/on> May 15, 2008*

including the actual acts, the perpetrators of acts of terrorism themselves and their motives. There is disagreement on definitions of terrorism. However, there is an intellectual consensus globally, that acts of terrorism should not be accepted under any circumstances.

Unlike war crimes, crimes against humanity, and other violations of the rules of armed conflict, terrorism has no legal basis in international law. Beyond the general characterization of terrorism as criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes. In 1996, the United Nations has been unable to agree on a consensus definition of terrorism. Without an international standard that defines acts of political terrorism, international law becomes impotent when confronted with terrorist crimes.⁵⁰

In the view of many, however, the lack of international consensus on legal definitions of terrorism is neither the result of neglect nor of error, but of deliberate design. According to Abraham Sofaer, former legal adviser to the Department of State (1985-90): International terrorism is still supported by many nations as a legitimate means of struggle against regimes deemed by them to be colonial, alien, or racist. At the behest of these states, and by the acquiescence of others, international law has been systematically and intentionally fashioned to give special treatment to, or to leave unregulated, those activities that cause and are the source of most acts of international terror.⁵¹

⁵⁰National Inter agency Civil Military Institute, *The Foundations of Modern Terrorism*, p. 3.

⁵¹Abraham G. Sofaer, .Terrorism and the Law,. in Walter Laquer and Yonah Alexander. eds. *The Terrorism Reader* (1987), 377-78

There are three perspectives of terrorism: the terrorist's, the victim's, and the general public. The phrase "one man's terrorist is another man's freedom fighter" is a view terrorists themselves would accept. Terrorists do not see themselves as evil. They believe they are legitimate combatants, fighting for what they believe in, by whatever means possible. A victim of a terrorist act sees the terrorist as a criminal with no regard for human life. The public's view is the most unstable. The terrorists take great pains to foster a "Robin Hood" image in hope of swaying the public's point of view toward their cause. This sympathetic view of terrorism has become an integral part of their psychological warfare and needs to be countered vigorously.

Causes and impact of terrorism

Examining possible causes of terrorism is also a key to enhancing counter terrorism efforts. For years, social scientists, politicians, security specialists and others have struggled to identify the cause and by extension, potential remedies for terrorism. Acts of terrorism can be carried out by individuals, groups, or states. According to some definitions, clandestine or semi-clandestine state actors may also carry out terrorist acts outside the framework of a state of war. However, the most common image of terrorism is that it is carried out by small and secretive cells, highly motivated to serve a particular cause and many of the most deadly operations in recent times, such as 9/11, the London underground bombing, and the 2002 Bali bombing were planned and carried out by a close clique, comprised of close friends, family members and other strong social networks.

Research literature on causation and diverse goals that drive people to resort to carry out terrorist acts is inconclusive. Probably the most contested cause of terrorism is an aggrieved group resorting to violence for nationalist or separatist reasons; depending on one's point of view, this can be considered as resistance against an (external) oppressor thus far, only Mahatma Gandhi and his followers of the freedom movement have managed to liberate themselves from foreign occupation by peaceful means⁵² whereas in most other previously colonized states "nationalism movements commonly turned to terrorism. Another view that traditionally has dominated much of the literature maintains that terrorism is a response to repressive social, economic, and political conditions, such as economic deprivation, political repression, colonialism, and so on. Proponents of this view contend that such iniquities and repressive conditions represent the root causes behind the sort of social marginalization, political extremism, or religious fanaticism that animate terrorist ideologies and organizations. Thus an important factor may be the social stratification.

Extensive contemporary media and literature simplify this to the poverty argument⁵³ and Nicholas Kristof⁵⁴ argues that when a group is absolutely or relatively deprived they rebel. Rubenstein's posits a different thesis, that the main cause of terrorism are disgruntled, disaffected, intelligentsia who are in a social and moral crisis unable to mobilize the masses. This is a primary internal cause of terrorism, dictating to a degree its

⁵²Eugen Drewermann, *'Terrorismus und Krieg'*. Transcript of the Paderborner Rede, 27-10-2001. <http://www.uni-kassel.de/fb10/frieden/themen/Terrorismus/drewermann.html>.

⁵³Joanne Murphy, *'End Terrorism List Archive: Focusing on Shadow Theory/Causes of Terrorism'*. Global Learning Group, Education Development Center Inc, 10-9-2001. <http://www.edc.org/GLG/end-terrorism/archive/0028.html>

⁵⁴Nicholas Kristof, *'What Does and Doesn't Fuel Terrorism'*. Global Policy Forum - 9/11, 8-5-2002. <http://www.globalpolicy.org/wtc/terrorism/2002/0509terr.htm>

philosophy. Martha Crenshaw⁵⁵ on the other hand emphasizes the instrumental nature of terrorism. Terrorism is an attractive strategy for small organizations that want to attract attention, provoke the government, intimidate opponents, appeal for sympathy, impress an audience, or maintain the adherence of the faithful.

According to Paul Wilkinson, political terrorism cannot be understood outside the context of the development of terroristic, or potentially terroristic, ideologies, beliefs and lifestyles.⁵⁶ The terrorist ideology explanation emphasizes the primacy of ideological indoctrination, the development of cultures of incitement and violence, and the social psychology of prejudice and hatred.⁵⁷

It is now argued by some scholars that the conflict between ideologies has been replaced by a conflict between those who want to promote democracy and those who want to shape the world with an absolutist vision of Islam. Extremist Islamist groups do not recognize sovereignty of states; they seek to establish divine sovereignty. And they pray that the kingdom of God in their absolutist vision is to be realized by using force. They justify a rule based on religion in the name of justice since the rule of men is corrupt and repressive. Islamic fundamentalism is a term used to describe religious ideologies seen as advocating a return to the "fundamentals" of Islam: the Quran and the Sunnah.⁵⁸ Most Western theorists seem to concur that today's terrorism is by and large linked to right-

⁵⁵See Martha Crenshaw, The logic of terrorism: Terrorist behavior as a product of strategic choice, Walter Reich, ed., *Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind* (1998), 7-24. See also Martha Crenshaw, 'The causes of terrorism'. *Comparative politics*, 13(4) (1981), 379-399: 383.

⁵⁶Quoted in Rex A. Hudson, *The Sociology and Psychology of Terrorism: Who Becomes a Terrorist and Why?* Federal Research Division, Library of Congress (September 1999).

⁵⁷Ibid

⁵⁸Lewis Bernard, *Islam and the West*, (New York: Oxford University Press, 1993)

wing extremism, religious nationalism or religious extremism. The terms 'religious terrorism' and 'religious-inspired terrorism' raise critical questions, though, for example around whether one actually can measure religious motivation.

Hoffman⁵⁹ suggests that religious terrorism has a set of core characteristics. First, it displays a transcendental function rather than a political one: it is executed in direct response to a theological demand or imperative. Second, religious terrorists tend to seek the elimination of broadly defined categories of enemies⁶⁰ ignoring the political consequences of indiscriminate killings. Hoffman also maintains that religious terrorists do not attempt to appeal to any constituency other than themselves. He argues that theories that identify religion as the sole motivation for certain acts of terror display a mono-causal fallacy.

The Experience of Terrorism in Africa and Kenya

Samuel Makinda has suggested that terrorism is based on a wide range of factors: political, religious, social, cultural, economic or environmental factors⁶¹. But not all these factors have been behind every terrorist attack in Africa.

Anneli Botha asserts that Africa is under threat as an 'agent' or 'facilitator' of terrorism. Non-state actors that include individuals and organizations who participate, facilitate,

⁵⁹Bruce Hoffman, Defining terrorism, in R D Howard & R L Sawyer, *Terrorism and counterterrorism*, (Connecticut, McGraw-Hill/Dushkin, 2002), 128–130.

⁶⁰ Ibid, p 130.

⁶¹ Samuel M. Makinda. History and Root Causes of Terrorism in Africa, in Wafula Okumu and Anneli Botha (Eds) *Understanding Terrorism in Africa: Searching For an African Voice*, (Institute for Security Studies, 2007), pp 15 – 22:18

fund, provide safety and other forms of support in terror campaigns.⁶² In addition, Africa countries have resource constraints to the implementation of an effective counter-terrorism policy.⁶³ Further, there is the challenge of Somalia, a failed state in Africa, which has the potential to offer attractive venues for terrorist groups seeking to evade counter terrorism efforts of the partners in the Global War on Terror (GWOT).⁶⁴ State failure involving the disintegration, among its other features, the disintegration and criminalization of public security forces, collapse of state administrative structures responsible for overseeing such forces, and erosion of infrastructure that supports their effective operation. Identification of terrorist groups operating within a failed state has therefore very difficult, and action against such groups, once identified, problematic. The problem has been especially prevalent in economically depressed and politically unstable areas of Sub-Saharan Africa, where by Liberia, Sierra Leone, and Somalia provide concrete illustrations of state failure.⁶⁵

International Crisis Group (ICG) study of Somalia describes an area in which state collapse is endemic and persistent, observing "its lack of a functioning central government" and "the absence of functioning police, immigration, customs, and

⁶² Anneli Botha, Africa's vulnerability to terrorism and its ability to combat it in Wafula Okumu and Anneli Botha (Eds.) *Understanding Terrorism in Africa: Searching for an African Voice*, op.cit p 28.

⁶³ Ibid

⁶⁴ Thomas Dempsey, *counter terrorism In African Failed States: Challenges and Potential Solutions* US army Strategic Studies Institute (SSI) monographs, April 2006.

⁶⁵ For more on this see for example, Robert H. Dorff, "Responding to the Failed State: The Need for Strategy," *Small Wars and Insurgencies*, Vol. 10, No. 3, 1999, pp. 63-64. Gerald Helman and Stephen Ratner, "Saving Failed States," *Foreign Policy*, Vol. 89, Winter 1992, pp. 3-20; I. William Zartman, ed., *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, Boulder: Lynne Rienner Publishers, Inc., 1995

intelligence agencies and where terrorists operate freely.⁶⁶ Ken Menkhaus, in his 2004 study of terrorism in Somalia, describes a collapsed state in which conditions are so chaotic and violent that even terrorist groups find it a difficult venue in which to operate.⁶⁷ Terrorist groups have operated in Somalia since it experienced state collapse in the early 1990s. The most prominent of these groups include Al-Ittihad al-Islamiya (AIAI), Al Qaeda itself, and Al-Shabaab, a small, recently emerged, extremely violent jihadist cell founded by Al-Shabaab military commander, Aden Hashi 'Ayro'.⁶⁸ In addition, it is argued that absence of a responsible government, administrative apparatus, organized politics and government or private business in Somalia, became a haven for the fundamentalists to fill the vacuum and gave them a comparative advantage over the other forces that lacked any kind of ideology. This brought the threat of jihad terrorism from Somalia to Kenya.⁶⁹ It is important not to overstate the significance of the direct participation by Somali Al Qaeda cells in the series of attacks in Kenya. That direct participation—Al Qaeda cells operating as nodes rather than hubs—was a function of porous contiguous borders between Kenya and Somalia that facilitated easy and clandestine movement of groups and individuals between the two countries. It was also a function of local (Kenyan) ethnic Somali populations sympathetic to the agendas of groups inside Somalia that Al Qaeda had links to and an ideological agenda in common

⁶⁶ See the following International Crisis Group Reports "Somalia: Countering Terrorism in a Failed State," *ICG Africa Report*, No. 45, International Crisis Group, May 23, 2002; "Somalia: Continuation of War by Other Means?" *ICG Africa*, Report No. 88, International Crisis Group, December 21, 2004; "Counter Terrorism in Somalia: Losing Hearts and Minds." *ICG Africa*, Report No. 95, International Crisis Group, July 11, 2005

⁶⁷ Ken Menkhaus, "Somalia: State Collapse and the Threat of Terrorism," *Adelphi Papers*, Vol. 364, No. 1, March 2004, p. 60.

⁶⁸ Alex de Waal, "Chasing Ghosts: The Rise and Fall of Militant Islam in the Horn of Africa," *London Review of Books*, Vol. 27, No. 16, August 18, 2005.

⁶⁹ For accounts on Islamic fundamentalists' involvement in Somali see for example, International Crisis Group, *Counter-Terrorism in Somalia: Losing Hearts and Minds?*, Africa Report N°95, 11 July 2005. see also International Crisis Group, *Somalia: Countering Terrorism in a Failed State*, Africa Report N°45, 23 May 2002

with. The ability of Somali-based Al Qaeda cells to operate as terrorist nodes in areas outside this immediate region is highly suspect.

The emergence of Al Qaeda in Liberia and Sierra Leone occurred during the interregnum that followed the collapse of both states. Al Qaeda's appearance was related to the easy availability of gemstone-quality diamonds in the Sierra Leone diamond fields, and the black marketing of those diamonds in large quantities as governance in both countries largely disappeared. There has been revelation of sophisticated Al Qaeda operation in which Al Qaeda operatives participated in the illicit diamond trade in Liberia and Sierra Leone.⁷⁰ More recent evidence supporting Al Qaeda presence and operations in Sierra Leone and Liberia was provided by David Crane, Chief Prosecutor for the Special Court for Sierra Leone, in October 2004. Crane, responsible for interviewing and prosecuting rebels accused of war crimes during the fighting in Sierra Leone.⁷¹

Consequently, Makinda ⁷² argues that the key challenge for African states is to establish institutions that address the primary causes of terrorism; the ideal situation is for individual African states to develop the capacity to address terrorist threats effectively. Therefore, given the lack of expertise and institutional infrastructures in much of Africa,

⁷⁰ Douglas Farrah, "Al Qaeda Cash Tied to Diamond Trade," *Washington Post*, November 2, 2001, p. A01; Douglas Farrah, "Report Says Africans Harbored Al Qaeda," *Washington Post*, December 29, 2002, p. A01.

⁷¹ David M. Crane, "Dancing with the Devil: Prosecuting West Africa's Warlords: Building Initial Prosecutorial Strategy for an International Tribunal after Third World Armed Conflicts," *Case Western Reserve Journal of International Law*, Vol. 37, No. 1, p.2. see also Senate Committee on Governmental Affairs, "Illicit Diamonds, Conflict and Terrorism: The Role of U.S. Agencies in Fighting the Conflict Diamond Trade," Hearing Before the Oversight of Government Management, Restructuring, and the District of Columbia Subcommittee of the Committee on Governmental Affairs, 107th Congress, Washington, DC: U.S. Government Printing Office, February 13, 2002.

⁷²Samuel M. Makinda, *History and Root Causes Of Terrorism in Africa*, in Wafula Okumu and Anneli Botha op. cit, p 19.

there is need for collective action at bilateral, sub-regional, and regional levels. The broad approach to combating terrorism in Africa has involved two types of activities at the level of the African Union and at the level of sub-regional organizations: the design of instruments to facilitate action at the national level and cooperation between states and undertaking operational measures to prevent, deter and combat terrorist's acts.⁷³

OAU member states also agreed to establish an African Terrorism Study and Research Center to be based in Algeria following the signing of the 1999 OAU Convention on Preventing and Combating Terrorism by African countries. The signing of this convention has led to other initiatives in the region aimed at strengthening the mechanisms to combat terrorism in the African continent such as the Bamako Declaration of December 2000, on African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons; the West African States Moratorium on the importation, exportation and manufacture of small arms and light weapons in West Africa; and the Nairobi Declaration of March 2000 and the Ministerial Follow up in August 2002 on the problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa. These instruments and initiatives can only make a difference if they are followed by concrete actions to implement them.

Acts of terrorism have had grave economic, political, and social implications in Kenya. Human lives, tourism, agriculture, and the transportation sectors have been severely affected. Tourism, which is the driving force of the economy, accounts for 25 percent of the Gross Domestic Product (GDP) and has been paralyzed because of on-again/off-again travel bans imposed by the United States, Germany, Great Britain, and other countries

⁷³ African Orbit, "Has Africa Any Role In The Current Efforts Against World Terror?" Vol. 1, Number 2 November/December. 2004, p 7

since 11 September 2001⁷⁴ Germany and Great Britain have lifted the ban completely, but the United States continues to issue advisories periodically. Because of the travel bans, many Kenyans have lost their jobs, which directly affect the economy. Terrorism can hurt the tourist sector by reducing tourist arrivals.

Over time, continued terrorist attacks may also reduce Foreign Direct Investments (FDI) significantly. Besides such direct short- and long-term costs, indirect costs of terrorism include the need for greater advertising expenses to attract new or more tourists, reconstruction costs for damaged tourist facilities, and security enforcement expenses to lessen terrorist threats.⁷⁵ The government also has lost a major source of revenue from its formal sector of the economy. According to Chacha⁷⁶ weakening of Kenya's counter-terrorism institutions happened because of the decay and politicization of the security apparatus during the rule of Kenya African National Union (KANU).

Counter-Terrorism

Responses to terrorism are broad in scope. They can include re-alignments of the political spectrum and reassessments of fundamental values. The term counter-terrorism has a narrower connotation, implying that it is directed at terrorist actors. Specific types of responses include: Legal means, criminal procedures, deportations, and enhanced

⁷⁴Marc Lacey, *Threat of Terrorism Hurts Kenya's Tourism*. *The New York Times* 2004, January. Available on-line from <http://proquest.umi/pqdweb?>

⁷⁵ See 'The Costs of Terrorism and the Benefits of Cooperating to Combat Terrorism', Paper presented by Dr Geoff Raby, Deputy Secretary, Department of Foreign Affairs and Trade to APEC Senior Officials Meeting, Chiang Rai, 21 February 2003 and submitted by Australia to the Secure Trade in the APEC Region (STAR) Conference, 24 Feb 2003. Economic Analytical Unit.

⁷⁶Babere Kerata Chacha, *From Local Conflicts to Global Terrorism: Can Refugees and Regional Security Problems Jeopardise the Renewal of Kenya?* *African Journal of International Affairs*, Vol. 7, Nos.1&2, 2004, pp. 57-79:63.

operational measures, police powers, target hardening, such as locking doors or adding traffic barriers, pre-emptive or reactive military action, increased intelligence and surveillance activities, pre-emptive humanitarian activities, more permissive interrogation and detention policies, official acceptance of torture as a valid tool.

As a conflict method that has survived and evolved through several millennia to flourish in the modern information age, terrorism continues to adapt to meet the challenges of emerging forms of conflict, and exploit developments in technology and society. Terrorism has demonstrated increasing abilities to adapt to counter-terrorism measures and political failure. Terrorists are developing new capabilities of attack and improving the efficiency of existing methods. Additionally, terrorist groups have shown significant progress in escaping from a subordinate role in nation-state conflicts, and becoming prominent as international influences in their own right. They are becoming more integrated with other sub-state entities, such as criminal organizations and legitimately chartered corporations, and are gradually assuming a measure of control and identity with national governments. Terrorists have shown the ability to adapt to the techniques and methods of counter-terror agencies and intelligence organizations over the long term. The decentralization of the network form of organization is an example of this. Adopted to reduce the disruption caused by the loss of key links in a chain of command, a network organization also complicates the tasks of security forces, and reduces predictability of operations.

Terrorists have also been quick to use new technologies, and adapt existing ones to their uses. The debate over privacy of computer data was largely spurred by the specter of terrorists planning and communicating with encrypted data beyond law enforcement's ability to intercept or decode this data. To exchange information, terrorists have exploited disposable cellular phones, over the counter long-distance calling cards, Internet cafes, and other means of anonymous communications. Embedding information in digital pictures and graphics is another innovation employed to enable the clandestine global communication that modern terrorists require. Terrorists have also demonstrated significant resiliency after disruption by counter-terrorist action. Some groups have redefined themselves after being defeated or being forced into dormancy. Terrorists are improving their sophistication and abilities in virtually all aspects of their operations and support. The aggressive use of modern technology for information management, communication and intelligence has increased the efficiency of these activities. Weapons technology has become more increasingly available, and the purchasing power of terrorist organizations is on the rise. The ready availability of both technology and trained personnel to operate it for any client with sufficient cash allows the well-funded terrorist to equal or exceed the sophistication of governmental counter-measures.

Consequently, there has to be adequate responses to terrorism. Counter-terrorism or counter terrorism refers to the practices, tactics, techniques, and strategies that governments, militaries, and other groups adopt in order to fight terrorism. Counter terrorism is not specific to any one field or organization; rather, it involves entities from all levels of society. For instance, businesses have security plans and sometimes share

commercial data with the government. Local police, firefighters, and emergency medical personnel (often called "first responders") have plans for dealing with terrorist attacks. Armies conduct combat operations against terrorists, often using Special Forces. Building a counter terrorism plan involves all segments of a society or many government agencies. Because propaganda and indoctrination lie at the core of terrorism, understanding their profile and functions increases the ability to counter terrorism more effectively.

Counter-terrorism requires specialized structures and dedicated resources. They can therefore utilize three strategies⁷⁷ firstly; anti-terrorism measures that involve the use of strategies to reduce the vulnerability of individuals and property to terrorist attacks, secondly, counter-terrorism measures which include offensive strategies to prevent terrorism through the prior identification of the threat and perpetrators, this involves international cooperation to enhance international, regional and sub-regional cooperation on terrorism. Ratify and adopt conventions and protocols and incorporate these instruments into national legislation. And enable cross-border cooperation, including mutual legal assistance and extradition. Thirdly, crisis management measures focus on resolving and stabilizing the situation after a terrorist attack, and involve disaster and emergency management.

Fostering international dialogue, promoting interstate cooperation, and constructing global counter-terrorist institutions are one of the ways by which Kenya and the world can protect itself against terrorism. A global strategy and deep-multilateral approach,

⁷⁷ P Fluri and A B Johnson, *Parliamentary Oversight of the Security Sector: Principles, mechanisms and practices – handbook for parliamentarians*, No. 5, Inter-Parliamentary Union? Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2003, pp 111 - 112

rather than a shallow-multilateral or unilateral strategy, must be developed to counter the emerging trend of global catastrophic terrorism. Such an international counter-terror strategy is necessarily multifaceted. It must simultaneously target the 'root causes' of terrorism (poverty, illiteracy, illiberal education, religious fanaticism, totalitarianism, and so on) and attempt to alleviate them,⁷⁸ help dismantle the state and sub-state networks that support terrorist formation, while also restricting the availability of weapons and limiting the monetary resources that are made available for terrorism's promotion and use. An international strategy of such breadth and scope depends, most fundamentally, on the creation of a clear and precise set of international guidelines that can identify, support, and direct the interests and behaviour of states towards a unified and global counter-terrorism policy.

The United States, arguably the global leader currently galvanizing the development of a comprehensive and global-oriented counter-terrorism strategy, established, in its February 2003 National Strategy for Combating Terrorism, four counter-terrorism goals; defeating terrorist organizations with global reach; denying support, sponsorship, and sanctuary to terrorists; diminishing the underlying conditions (root causes) terrorists exploit; and defending American citizens and interests from terrorist attacks.

Theoretical Framework

This study is about the UN initiative to facilitating international cooperation in counter-terrorism and the ability of a single country, Kenya, to fit into the UN framework for the

⁷⁸Collin Powell, "*No Country Left Behind*", *Foreign Policy*, (February 2005), pp.28-35

same purpose. The role of the UN and other international and regional organizations in the pursuit of a collective agenda has been the subject of intense theoretical activity

The liberal intuitionism theory fits into the study. Robert O. Keohane and Lisa L. Martin assert that institutions matter in the conduct of state behavior and the task is to “discover how, and under what conditions” (Keohane and Martin, 1995:40). Keohane and Martin further claim that institutions could subsume realism by specifying the conditions for cooperation to occur.

The theory states that in so far as international institutions and international actors facilitate cooperation and constrain conflict; States seek multiple aims, not just security: economic growth, environmental protection, human rights, in addition to being obliged to rely on multiple intergovernmental and non-governmental organizations to achieve their multiple aims and interests

Realists contend that institutions reflect the distribution of power in the world order and exert little independent effect on state behavior. Depending on their narrowly defined interests, the great powers create institutions to prop up their interests and once interests are achieved, or unlikely to be achieved, they discard or declare the death of institutions. The world is essentially a competitive and conflictual arena where anarchy prevails and inhibits cooperation between states. The realists draw attention to the central role power plays in shaping the calculations and preferences of states. States maintain peace and security based on their positions of power and by forming balances of power. For realists,

balance of power is the independent variable while institutions are merely an intervening variable with limited capacity to promote cooperation, peace and security

In contrast, liberal scholars usually have a benign attitude towards international institutions and cooperation among states. Institutions, according to them, play the main mediating role and act as the principal means to achieve and maintain cooperation between states. Mutual interests of states minimize differences, pave the avenues for cooperation. States become willing to cooperate once institutions (sets of rules and practices that prescribe roles, constrain activity and shape the expectations of actors) are seen as beneficial. States are rational actors; they maximize absolute gains through cooperation and are less concerned about relative gains made by other states. In brief, institutions are treated as independent variables having significant impact on state behavior in terms of formulating or reformulating preferences and choices. Liberal institutional scholars insist that institutionalism could subsume realism by specifying the conditions for cooperation to occur and thus the theory is relevant because of the regime to counter terrorism provided by UN under resolution 1373.⁷⁹

Theorists trace the origin of the concept back to the 18th century, when it was popularized during the French Revolution. According to the 1798 supplement of the Dictionnaire of the Académie Française, the words 'terrorism' 'terrorist' stemmed from the 'régime de la terreur', a period in French history that followed the storming of the Bastille and the uprisings of 1789. Initially, terrorism embraced a positive suggestion.

⁷⁹ see, for example, Keohane, 1984, 1989; Keohane and Nye, 2000; Axelrod and Keohane, 1985; Haas, Keohane and Levy, 1993, Lipson, 1984; Milner, 1992

The Jacobins had used the term 'régimede la terreur' in a positive sense when speaking and writing about themselves.⁸⁰ Until World War I, terrorism was by and large regarded as a left-wing strategy. The concept was directly linked to revolutionary change. It was perceived to be a strategy that would ultimately lead to a seizure of political power from the established regime of a state, with the aim of causing fundamental political and social change.⁷ This kind of terrorism was a new phenomenon and was distinct from the political assassinations that had been practiced throughout history. It was distinct in terms of the roles the terrorists believed they fulfilled and the perceived significance of their actions.

Walter Laqueur observes that a marked change occurred in the 1920s and 1930s, when right-wing elements became the main perpetrators of terrorism. The German Freikorps was an example of this new trend. They consisted of ex-soldiers and students claiming to defend their fatherland against foreign and domestic dangers. Among their victims were Rosa Luxemburg and Karl Liebknecht and German Foreign Minister Walther Rathenau. Terrorism again came to be associated with revolutionary objectives in the aftermath of World War II. The Western world used the concept to refer to struggles for independence and self-determination by various nationalist/anti-colonialist groups that emerged in Asia, Africa and the Middle East during the 1940s and 1950s. This form of revolutionary terrorism was also referred to as ethno-nationalist/separatist terrorism. Kenya, Cyprus and Algeria are just a few countries that owe their independence, at least in part; to nationalist political movements that employed 'terrorism' against colonial powers. A new wave of

⁸⁰C Townshend, *Terrorism: A very short introduction*, Oxford University Press, Oxford, 2002, p 54.

left-wing-inspired terrorism occurred in Europe in the late 1960s in the wake of the student revolt of 1968. In Germany, the Rote Armee Fraktion (Red Army Faction, RAF, also known as the Baader-Meinhof Group) gained notoriety.

Hypothesis

Domestic-level interest groups inhibit the implementation of the relevant national-level initiatives that form the foundation for the success of Kenya's cooperation in the fight against terrorism as outlined in the UNSC RES 1373.

Alternatively, the success of Kenya's external cooperation in the fight against terrorism is determined by the degree of appreciation on the threat due to international terrorism.

Research Methodology

The research utilized both primary and secondary data; the researcher intends to construct and utilize questionnaires and conduct some personal interviews, the questions will be open ended and this will enable the interviewer to get deep into the peoples opinions, ideas and experiences about the problem under study. Further, the interviewer will probe during the interview with a view of articulating and clarifying issues. The study sample will be drawn from interviews from renowned scholars and researchers in terrorism, selected lawyers who have researched on terrorism in Kenya, governmental and non-governmental organizations involved in counter terrorism.

The research also relies on information from individuals in Kenya's counter terrorism center that provided valuable insight on the GoK's response to the threat of transnational terrorism and Kenya's security forces officials such as the National Security Intelligence Services (NSIS); Department of Defense (DoD).

The study will also seek to get information from Government departments such as the Kenya Revenue Authority, KRA; the Customs office, foreign affairs ministry, Kenya Ports Authority (KPA); the ministry of Tourism; the Anti-terrorist Police Unit; the National Counter-Terrorism Center; prominent lawyers who have/are handling terrorism-related cases in Kenya; Amnesty International; the Kenya Human Rights Commission (KHRC); The Muslim Lawyers Trust; Known individual victims of counter-terrorism measures in Kenya; tourism related businesses such as major airlines plying Kenya, hotels, known tour and travel agents in Kenya, etc that are being affected by counter-terrorist measures; the immigration department of Kenya; Collection of primary data will enable the researcher collect first hand information and hence assist in reaching the objectives and testing the hypothesis, it also supplements the secondary data.

Secondary sources of data included library, data from books, pamphlets, publications, US government press releases, research papers, journals (printed and electronic), magazines, newspaper, articles, conference reports and Internet will be consulted in line with the research. The secondary data will be critically analyzed and provides a solid background and an appreciation of prior research in the area under study as well as compliment the primary data

Chapter Outline

Chapter one is the introduction to the study and includes statement of the problem, hypothesis, objectives of the study, justification of the study, theoretical framework, literature review, methodology and Chapter Outline.

Chapter two will analyze the role of the United Nations in Fighting Terrorism with subsections dealing specifically in UN Counter Terrorism Measures before 9/11; evolution of United Nations Counter Terrorism Measures; the role of the Security Council; the impact of 9/11 on counter terrorism measures; adoption of UNSC RES 1373; analysis of UNSC RES 1373, and conclusion.

Chapter three will discussed Kenya's Cooperation in Implementing Resolution 1373 with in-depth concentration on: the historical evolution of UN measures to counter terrorism; In Country Programs Domestic Legislation; Anti Terrorism Police Unit (ATPU)-Function and Structure, Powers and Duties; other anti-terrorism policing in Kenya such National Counter Terrorism Center; Bilateral Relationships; Multilateral Cooperation, and Conclusion

Chapter four will analyze the opportunities of Kenya's cooperation in the war against terror as enshrine in the UNSC RES 1373; UN Funding; Military Assistance; Terrorist Finance - Training Programs; Port Security; Overland Transport; Technical Expertise; Customs Initiatives: National and Regional; The challenges of counter terrorism in Kenya. Chapter five concludes the study by giving a brief summary of the whole study, lessons learnt and recommendations for further study.

CHAPTER TWO: THE UNITED NATIONS IN THE FIGHT AGAINST TERRORISM

Introduction

The objective of this chapter is to examine the contribution of the UN and its specialized agencies in the control of international terrorism. The chapter has traced the entry of anti-terrorism in the agenda and activities of the UN and assessed the interventions of the UN Security Council and the General Assembly as well as the different conventions and resolutions that have been reached in counter-terrorism. The chapter has paid special attention to UNSC RES 1373. This is the resolution that anchored international collaboration in the fight against terrorism and is the main subject of the present study

The U.N. is the only general rulemaking body in the world. The Security Council is the body that can, by a single act, bind through international law to member and non-member countries as well.

The Evolution of UN Counter-Terrorism Measures

The UN is a critical organ in the fight against terrorism. Its efforts to deal with the new emergent international terrorism was first highlighted by Resolution 635 which was adopted in reaction to the Lockerbie tragedy (Pan Am Flight 103) on 21 December 1988, on plastic or sheet explosives, it was adopted unanimously and called upon all states to co-operate in devising and implementing measures to prevent all acts of terrorism, including those involving explosives,...also urges all states, and in particular the producers of plastic or sheet explosives, to intensify research into means of making such

explosives more easily detectable, and to co-operate in this endeavor.⁸¹ Since the 1960s, UN organs have sponsored and established different instruments designed to define the crime of 'terror', prohibit its development in the systemic arena, and punish its occurrence when it did occur.

Twelve international agreements relating to terrorism – that is, international legal documents – existed before 11 September 2001 and UNSC RES 1373. For instance, the UN established measures to outlaw the hijacking of aircraft (Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963) and the Convention for the Suppression of Unlawful Seizure of Aircraft (1970)), the attacking of civilian airports (Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) and the Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988)), the posing of threats against maritime navigation (Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988)), the taking of hostages (International Convention against the Taking of Hostages (1979)), the harming of diplomatic agents (Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973)), the bombing of civilians (International Convention for the Suppression of Terrorist Bombings (1997)), the financing of terrorist activities (International Convention for the Suppression of the Financing of Terrorism (1999)), the making and distribution of

⁸¹UN Security Council, S/RES 635 (1989), accessed on the website of the United Nations at <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/557/72/IMG/NR055772.pdf?OpenElement>.15 March 2006.

'unmarked' plastic explosives (Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)) and for the protection of nuclear materials and corresponding technology (Convention on the Physical Protection of Nuclear Material (1980)).⁸²

The point here is to draw attention to the fact that the UN has had an impact on the development and institutionalization of a norm-based regime of counter-terrorism. These twelve legal documents represent the foundation upon which the post-9/11 UN strategy (enshrined in UNSC RES 1373) rests. Within hours of the attacks on New York and Washington, D.C., the Security Council President, French ambassador Jean-David Levitte, distributed a draft resolution that strongly condemned the terror attacks.⁸³ Security Council Resolution 1368 was adopted unanimously on 12 September 2001, and, condemning "the horrifying terrorist attacks" and "recognizing the inherent right to...self-defense," called on all states to "work together urgently to bring to justice the perpetrators, organizers, and sponsors."⁸⁴

UNSC RES 1368 recognized the right of collective self-defense under Article 51 of the UN Charter and therefore paved the way for legal military action to be taken to combat global terrorism. Furthermore, while using force in response to terrorism had been legally

⁸² For a full list and detailed description of these, and other, UN Conventions, See United Nations Treaty Collection: Conventions on Terrorism, <<http://untreaty.un.org/english/terrorism.asp>>. Accessed February 24, 2005.

⁸³ Chantal de Jonge Oudraat, "Combating Terrorism", *The Washington Quarterly*, Vol.26, no.4 (Autumn 2003), pp.167

⁸⁴ United Nations Security Council Resolution 1368, "Threats to International Peace and Security Caused by Terrorist Acts", (S/RES/1368), <<http://www.un.org/Docs/scres/2001/sc2001.htm>>, Accessed February 20, 2005

frowned upon and even condemned prior to 11 September, Resolution 1368 acted as a harbinger for new interpretations regarding the right to self-defense and offered a legal basis from which the use of coercion against terrorism could take place.⁸⁵

The UN adopted UNSC RES 1373, the “cornerstone” of the institution’s counter-terrorism effort on 28 September 2001. For various reasons, UNSC RES 1373 represents a significant departure from the UN. First, adopted under Chapter VII of the UN Charter⁸⁶ UNSC RES 1373 declares international terrorism a threat to “international peace and security” and therefore mandates the use of coercive force to combat it.⁸⁷ While the sanctioning of force under a Council mandate is not a novel development, per se, the ‘targets’ identified by UNSC RES 1373 as revolutionary. The “Security Council” writes Paul C. Szasz, “broke new ground by using, for the first time, its Chapter VII powers under the Charter to order all states to take...specified actions in a context not limited to disciplining a particular country.”⁸⁸

Advent of Anti-Terrorism Agenda

Terrorism has been on the agenda of the United Nations for decades. Thirteen international conventions have been elaborated within the framework of the United

⁸⁵ Jonge Oudraat, “Combating Terrorism”, pp.168

⁸⁶ Chapter VI of the UN Charter calls on the Security Council to resolve international disputes peacefully through the use of “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement,” and so on, while Chapter VII mandates the conditions under which the Security Council is justified to organizing and employing coercive force to meet threats to, or breaches of, international peace and stability.

⁸⁷ Eric Rosand, “Security Council Resolution 1373, The Counter-Terrorism Committee, and the Fight Against Terrorism”, *The American Journal of International Law*, Vol.97, no.2 (2003), pp.333.

⁸⁸ Paul C. Szasz, “The Security Council Starts Legislating” *The American Journal of International Law*, Vol.96, no.4 (2002), pp.901. (Italics added)

Nations system relating to specific terrorist activities. Member States through the General Assembly have been increasingly coordinating their counter-terrorism efforts and continuing their legal norm setting work. The Security Council has also been active in countering terrorism through resolutions and by establishing several subsidiary bodies. At the same time a number of programmes, offices and agencies of the United Nations system have been engaged in specific operational actions against terrorism further assisting Member States in their efforts. This chapter looks at these efforts with particular interest on UNSC RES 1373.

UN Counter Terrorism Measures before 9/11

All organs of the UN have been involved in the fight against terrorism; the General Assembly has focused on terrorism as an international problem since 1972. In the 1970s and 1980s it addressed the problem through resolutions. During this period the General Assembly also adopted two counter-terrorism related conventions: the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons in 1973 and the International Convention against the Taking of Hostages in 1979. It was in December 1994 that the Assembly once again redirected attention to the issue of terrorism through a Declaration on Measures to Eliminate International Terrorism. A supplement to this Declaration established an Ad hoc Committee on terrorism in 1996. Since the adoption of this Declaration the Assembly has been addressing the terrorism issue consistently. For example, in the framework of the Assembly's Ad Hoc Committee (on terrorism) as well as the Working Group of the Sixth Committee, considerable progress has been made in the elaboration of international instruments.

Member States have completed work on three specific counter-terrorism instruments, covering specific types of terrorist activities since 1997: the 1997 International Convention for the Suppression of Terrorist Bombings, the 1999 International Convention for the Suppression of the Financing of Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism.

On its part, the Security Council passed its first resolution on terrorism when Resolution 635, on plastic or sheet explosives, was adopted unanimously. Resolution 635 was adopted in reaction to the Lockerbie tragedy (Pan Am Flight 103) on 21 December 1988 and states that: The Security Council, Conscious of the implications of acts of terrorism for inter-national Security,...Mindful of the important role of the United Nations in supporting and encouraging efforts by all States and intergovernmental organizations in preventing and eliminating all acts of terrorism, including those involving the use of explosives, Determined to encourage the promotion of effective measures to prevent acts of terrorism,...Calls upon all States to co-operate in devising and implementing measures to prevent all acts of terrorism, including those involving explosives,...and Urges all States, and in particular the producers of plastic or sheet explosives, to intensify research into means of making such explosives more easily detectable, and to co-operate in this endeavor.⁸⁹ Significantly, Resolution 635 established the United Nations and the Security Council as a venue for dealing with terrorism. It asserted that terrorism is a threat to international peace and Security, the main area of concern for the Security Council, and laid the groundwork for the Security Council's future work on terrorism.

⁸⁹ UN Security Council, S/RES 635 (1989), accessed on the website of the United Nations at <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/557/72/IMG/NR055772.pdf?OpenElement>, 15 March 2006.

The actions by the Security Council took the form of sanctions against states considered to have links to certain acts of terrorism in the 1990s such as: Libya (1992); Sudan (1996) and the Taliban (1999 - expanded to include Al-Qaeda in 2000 by resolution 1333. In resolution 1269 of 1999, the Security Council called on countries to work together to prevent and suppress all terrorist acts; a precursor to the intensification of its counter-terrorism work since 2001 9/11.

Therefore it can be noted that the Security Council has been dealing with terrorism throughout the 1990s this was motivated by new developments in the activities of international terrorism: more attacks were aimed at U.S. facilities and citizens; the number of casualties per incident increased; terrorism became global, with transnational networks; the threat of terrorists using chemical, biological, or nuclear weapons seemed more real; and the role of State-supported terrorism became more visible.

Prior to 11 September 2001, the Security Council had established a strong counter-terrorism tool: the 1267 Committee – made up of all Council members -- established in 1999 by resolution 1267 and tasked with monitoring the sanctions against the Taliban and subsequently Al-Qaeda as of 2000. Additionally, at the request of the Security Council, the Secretary-General appointed an Analytical Support and Sanctions Monitoring Team to assist the Committee. The Team comprises experts in counter-terrorism and related legal issues, arms embargoes, travel bans and terrorist financing.

The impact of 9/11 on counter terrorism measures

The September 11 attacks (often referred to as 9/11) were a series of coordinated suicide attacks by Al-Qaeda upon the United States on September 11, 2001. On that morning, 19 Al-Qaeda terrorists hijacked four commercial passenger jet airliners. The hijackers intentionally crashed two of the airliners into the Twin Towers of the World Trade Center in New York City, killing everyone on board and many others working in the buildings. Both buildings collapsed within two hours, destroying nearby buildings and damaging others. The hijackers crashed a third airliner into the Pentagon in Arlington, Virginia, just outside of Washington, D.C. The fourth plane crashed into a field near Shanksville in rural Somerset County, Pennsylvania, after some of its passengers and flight crew attempted to retake control of the plane, which the hijackers had redirected toward Washington, D.C. There were no survivors from any of the flights. 2,974 victims and the 19 hijackers died in the attacks.

The overwhelming majority of casualties were civilians, including nationals of over 90 different countries. In addition, the death of at least one person from lung disease was ruled by a medical examiner to be a result of exposure to dust from the World Trade Center's collapse.

There have been efforts to fight terrorism for along time within the UN as the events of 9/11 elevated the response UN and member states substantially. The number of countries that ratified anti-terrorist conventions after 11 September 2001 was larger than ever before 11 September 2001. For example, a total of 27 countries had ratified the

convention for the Suppression of Terrorist Bombings, afterward; an additional 118 states ratified the convention, bringing the total to 145.⁹⁰

Second, the work of the Security Council, there is a difference in the number and nature of terrorism-related resolutions passed before and after 11 September 2001. Prior to September 11, the Security Council had passed a total of 13 resolutions classified as dealing with terrorism, according to the United Nations an average of about one a year.⁹¹ These conventions and protocols were negotiated from 1963 to 1999. Most are penal in nature with a common format. Typically, they define a particular type of terrorist conduct as an offense under the convention, such as seizure of an aircraft in flight by threat or force; require state parties to penalize that activity in their domestic law; identify certain bases upon which the relevant state parties are required to establish jurisdiction over the defined offense, such as registration, territoriality, or nationality; and create an obligation on the state party in which an accused offender is found to establish jurisdiction over the offense and to refer the offense for prosecution if the party does not extradite pursuant to other provisions of the convention.

Terms of UNSC Resolution 1373

UNSC RES 1373 was approved unanimously on September 28, 2001. UNSC RES 1373⁹² focuses on areas of financing, intelligence sharing, and limiting terrorists' ability to travel.

⁹⁰Rosand, Security Council Resolution 1373 and the Counter-Terrorism Committee, 623.

⁹¹Organization for Economic Co-operation and Development, A Development Co-operation Lens on Terrorism Prevention: Key Entry Points for Action. DAC Guidelines and Reference Series (Paris: OECD, 2003).

⁹² See Appendix I.0

In terms of financing, UNSC RES 1373 enjoins all states to criminalize Al Qaeda financial activities and to freeze the group's monetary assets. Likewise, it mandates formalized and routine exchanges of intelligence between states-including operational information and sharing of evidence for criminal prosecution through international protocols and bilateral arrangements. In addition, the resolution requires states to take measures to prevent movement of terrorists via "effective border controls" and by denying refugee or asylum status, which are often claimed by terrorists. UNSC RES 1373 particularly stresses this principle and obligates all states to "deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens."

Most important, UNSC RES 1373 was passed under Chapter VII of the UN Charter, which makes it mandatory upon member-states and which gives the Security Council wide latitude in seeking its enforcement. According to the charter, the Security Council can impose punitive measures against non-compliant states, ranging from non-military options (e.g., Article 41's authorization for "complete or partial interruption of economic relations" and/or diplomatic relations) to military operations (Article 42's authorization for "action by air, sea, or land forces"). UNSC RES 1373 particularly stresses this principle and obligates all states to "deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens."

United Nations Security Council Resolution 1373

None of the counter-terrorism goals can be successfully achieved without multilateral action. Under such conditions, the United Nations, by its very nature, seems to have a

likely and pivotal role in leading the international system in establishing, forwarding, and defending a set of policy guidelines for multilateral counter-terrorism. It is, after all, a world body, and though UN critics – quite accurately – question the bureaucratized and lumbering manner in which it institutionalizes legal mandates,⁹³ the UN system as a whole, when provided with strong state leadership, nevertheless provides a venue for global dialogue and international cooperation. In the emerging era of global terrorism, the UN can contribute to global demands and needs.

It is plausible that the United Nations should concentrate its direct role in counter-terrorism on the areas in which the Organization has a comparative advantage. In general terms, the United Nations should uphold, bolster and reassert the leading principles and purposes of the United Nations Charter, the core of which are undermined and threatened by terrorism. The Organization's activities should be part of a tripartite strategy supporting global efforts to: (a) Dissuade disaffected groups from embracing terrorism ;(b) Deny groups or individuals the means to carry out acts of terrorism ;(c) Sustain broad-based international cooperation in the struggle against terrorism.⁹⁴

The United Nations at the same time must ensure that the protection of human rights is conceived as an essential concern. Terrorism often thrives where human rights are violated, which adds to the need to strengthen action to combat violations of human rights. Terrorism itself should also be understood as an assault on basic rights. In all

⁹³See Rosemary Righter, *Utopia Lost: The United Nations and World Order*, (New York: Twentieth Century Fund Press, 1995), pp.44-66.

⁹⁴ United Nations, *Report of the Policy Working Group on the United Nations and Terrorism*, Annex to A/57/273S/2002/875

cases, the fight against terrorism must be respectful of international human rights obligations. In its public pronouncements, the United Nations should project a clear and principled message, underscoring the unacceptability of terrorism, highlighting the Organization's role in addressing and preventing it, and ensuring that the fight against terrorism does not obscure the core work of the United Nations. These messages must be targeted to key audiences - particularly to achieve a greater impact in dissuading would-be supporters of terrorist acts. The work of the Department of Public Information and the United Nations information centres must be enhanced to this end.

The United Nations has provided the international community with some remarkable developments in counter-terrorism. The UN system has enacted several resolutions since that have since become the mantle from which global cooperation against modern terrorism has sprung. UNSC RES 1373, for instance – along with the provisions it stipulates and institutions it has helped create – represents the UN's most recent addition to the institution's broad agenda to counter global terrorism. The Resolution currently functions as the veritable blueprint for establishing, implementing, and sustaining global counter-terrorism measures.

In the aftermath of the terrorist acts that took place in the USA on September 11 2001, the Security Council unanimously adopted UNSC Resolution 1373, a wide-ranging, comprehensive resolution with steps and strategies to combat international terrorism, reaffirming the need to combat by all means, in accordance with the UN Charter, threats to international peace and security caused by terrorist acts. Because UNSC RES 1373

was passed under the Security Council's Chapter VII powers, it is considered binding on all UN member states.

UNSC RES 1373 is a novel, then, as it deals with the broad issue of 'global terrorism' while also "calling" on all states to take certain actions that comply with the Security Council's counter-terror objectives, and has enforcement mechanism.⁹⁵ Furthermore, unlike previous situations, UNSC RES 1373 does not have an implicit time limitation, because, while it was inspired by the attacks of 11 September, it is not specifically related to this act alone and encompasses terrorism broadly speaking. Thus, the Security Council has taken upon itself to reshape the manner in which the UN approaches global terrorism while suggesting a limitless campaign of counter-terrorism that must be accepted and incorporated by all states. Second, as briefly expressed above, UNSC RES 1373 took the unprecedented step of imposing binding obligations on all 191 UN member states – as opposed to the many counter-terrorism conventions and protocols that are only legally binding to those states that have become parties to them – that requires all states to review their domestic laws and practices to combat the financing and harboring of international terror groups.⁹⁶

Thus with UNSC RES 1373, the UN began meddling in the sovereign affairs of states in order to advance a global agenda. Third, the involvement of the Security Council rather than the General Assembly on issues involving global terrorism after 11 September was a

⁹⁵ United Nations Security Council Resolution 1373, "Threats to International Peace and Security Caused by Terrorist Acts", (S/RES/1373 (2001)), <<http://www.una-uk.org/terrorism/sc1373.pdf>>, Accessed November 16, 2004

⁹⁶ Ibid, pp.2-3.

novel development. Hitherto, the topic of terrorism had been dealt with – to various degrees of limited success – by the Assembly, so that Security Council involvement post-11 September indicates the development of a more robust and top-heavy approach to steering the UN’s global counter-terrorism strategy. Incidentally, the General Assembly’s reception of UNSC RES 1373 has been tepid at best, with Szasz noting that the Assembly’s own later resolution “Measures to eliminate international terrorism” (December 2001) barely mentions the Council’s Resolution and only superficially attempts to incorporate elements of UNSC RES 1373 into a comprehensive convention on international terrorism.⁹⁷

Fourth, UNSC RES 1373 demands immediate multilateral action by all UN members and institutional bodies, and “calls” on all states to “become parties as soon as possible to the relevant international conventions and protocols.”⁹⁸

Analysis of UNSC Resolution 1373

In general, UNSC RES 1373 aims at imposing new legal obligations on states and mobilizing the international community for a campaign of nonmilitary cooperative law enforcement measures to combat global terrorism. Succinctly, UNSC RES 1373 focuses on areas of financing, intelligence sharing, and limiting terrorists' ability to travel. In terms of financing, it enjoins all states to criminalize Al Qaeda financial activities and to freeze the group's monetary assets. Likewise, it mandates formalized and routine

⁹⁷ Szasz, “The Security Council Starts Legislating”, pp.903.

⁹⁸ UNSC Resolution 1373, Article 3 (d).

exchanges of intelligence between states-including operational information and sharing of evidence for criminal prosecution.⁹⁹ Through international protocols and bilateral arrangements. In addition, the resolution requires states to take measures to prevent movement of terrorists via "effective border controls" and by denying refugee or asylum status, which are often claimed by terrorists, deny them travel or safe haven, prevent terrorist recruitment and weapons supply.

UNSC RES 1373 aims to place barriers on the movement, organization and fund-raising activities of terrorist groups. UN member states were encouraged to share their intelligence on terrorist groups in order to assist in combating international terrorism. The resolution also calls on all states to adjust their national laws so that they can ratify all of the existing International conventions on terrorism.

Most significantly, it "reaffirmed the inherent right of self-defense in accordance with Article 51 of the UN Charter," and represented the first time that self-defense was acknowledged by the Security Council as a legitimate response to terrorism.¹⁰⁰ It is worth noting that the qualification of acts of terrorism as a threat to international peace and security, as contained in paragraph 3 of the preamble to UNSC RES 1373, is not an innovation. A similar reference may already be found in SC Resolution 731 addressing the consequences of the attacks carried out against Pan American flight 103 and Union des transports aériens flight 772.¹⁰¹

⁹⁹ United Nations Security Council, *Security Council Resolution 1373 (2001)*, S/RES/1373, New York, 28 September 2001

¹⁰⁰ Rostow, "Before and After," 481

¹⁰¹ See Para. 2 of the preamble to SC Resolution 731 (1992) of 21 January 1992, affirming the "right of all States, in accordance with the Charter of the United Nations and relevant principles of international law, to

Furthermore, paragraph 9 of UNSC RES 1373, quoting the text of Principle 1 of the Friendly Relations Declaration,¹⁰² displays strong parallels with paragraph 6 of SC Resolution 748 (1992) in which the Council reaffirmed with respect to the Libyan Government that 'every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another state or acquiescing in organized activities within its territory directed towards the commission of such acts, when such acts involve a threat or use of force.

UNSC RES 1373 imposed a number of binding commitments on all member states of the United Nations.¹⁰³ These obligations required states to prohibit both active and passive support for terrorists, to deny terrorists financing, and to freeze the assets of terrorists and their supporters. Likewise, states were required to deny safe haven to terrorists, to increase their vigilance against passport and identification forgery, to tighten their border controls, and to work toward enhancing international cooperation against terrorism.

This was therefore, an unprecedented and far-reaching resolution, which imposed on all states, obligations that are usually contained only in treaties¹⁰⁴ In contrast to the other conventions on terrorism, which are binding only on those states that ratify them, UNSC RES 1373 established for the first time uniform obligations for all 191 member states.

protect their nationals from *acts of international terrorism that constitute threats to international peace and security*' (emphasized added).

¹⁰²See General Assembly Resolution 2625 (XXV) of 24 October 1970, UN Doc. A/8018 (1970)

¹⁰³Oudraat argues that "resolution 1373 would not have been adopted were it not for the precedents set with the sanctions regimes in the 1990s" in "The Role of the Security Council," 158.

¹⁰⁴Rostow, "Before and After," 482

Not only did UNSC RES 1373 impose far-reaching legal obligations on member states, it also established a mechanism for monitoring the commitment and progress of the members—the Counter-Terrorism Committee (CTC) which was fashioned as a committee of the whole, consisting of all fifteen members of the Security Council.¹⁰⁵ As Edward Luck points out, this was the “principal innovation of the post-September 11 period.”¹⁰⁶ The key function of CTC is to strengthen the counter-terrorism capacity of UN member states.¹⁰⁷ The Committee also serves to facilitate the delivery of technical assistance to states trying to carry out counter-terrorism mandates.¹⁰⁸ It is also involved in coordinating the counter-terrorism efforts of international, regional, and sub regional organizations.¹⁰⁹ The resolution calls on all states to report to the CTC on how they are carrying out the implementation of the resolution no later than 90 days from the date of adoption, and afterward according to a CTC-mandated timetable.

CTC received priority attention within the UN and was described by Kofi Annan as the “center of global efforts to fight terrorism.”¹¹⁰ The primary function of the CTC has been to strengthen the counter-terrorism capacity of UN member states. Its mission, wrote one observer, is to “raise the average level of government performance against terrorism

¹⁰⁵ <http://www.un.org/Docs/sc/committees/1373/> (accessed 14 June 2004)

¹⁰⁶ Luck, “another Belligerent,” 99

¹⁰⁷ David Cortright, George A. Lopez, Alistair Millar, and Linda Gerber, *An Action Agenda For Enhancing the United Nations Program on Counter-Terrorism* (Notre Dame and Goshen: Fourth Freedom Forum and Joan B. Kroc Institute for International Peace Studies at the University of Notre Dame, 2004), accessed at Kroc Institute at http://kroc.nd.edu/polbriefs/Action_Agenda.pdf, 22 May 2006, 3–4.

¹⁰⁸ *Ibid.*

¹⁰⁹ Rostow, *Before and After*, 485

¹¹⁰ See United Nations Security Council, *High-level Meeting of the Security Council: Combating Terrorism*, S/PV.4688, New York, 20 January 2003

across the globe."¹¹¹ The committee has served as a "switch-board," helping to facilitate the provision of technical assistance to countries needing help to implement counter-terrorism mandates.

The CTC has received high levels of cooperation from UN member states, but it has also faced significant challenges. The committee's staff has been engaged in a continuous paper chase with officials in member states, analyzing and responding to hundreds of written reports in a process that has reached the limits of its usefulness. Until recently the committee relied exclusively on reports from member states and lacked independent means of determining whether countries are actually implementing counter-terrorism mandates in full.

Beginning in March 2005, the CTC started to conduct site visits to selected countries. This has increased the committee's capacity to provide independent evaluation of counter-terrorism capacity needs. Through the first four years of the Security Council's CTC program, the United States and Great Britain have remained firmly in control of its political direction. U.S officials largely wrote UNSC RES 1373, 1535, 1540, and other key documents. The only exception was Resolution 1566, which was a concession to Russian initiative, but implementation of that measure has been lax. The working group

¹¹¹Eric Rosand, *Security Council Resolution 1373 and the counter-terrorism Committee: the Cornerstone of the United Nations Contribution to the Fight Against Terrorism*, in *Legal Instruments in the Fight Against International Terrorism* 603, 606 (Cyrille Fijnaut, Jan Wouters, and Frederik Naert eds., Brill Academic Publishers 2004).

established by the resolution has not met recently, and little progress is foreseen in the near future.¹¹²

The resolution itself has faced two challenging problems, the first is that the sanction regimes themselves are either too general or they are too narrowly applied. Resolution 1373 sets out to criminalize terrorism. It requires countries to take a series of punitive preventive measures against the terrorists, including freezing their assets and halting their travel, and bringing them to justice. But the absence of a clear definition of terrorism has seriously undercut this objective. Each country is free to determine for itself who it considers the terrorists, and there is no compulsion because of that. They are free to act or to choose to apply the measures as they wish. The result is a very general proscription that has produced far less results than was intended.¹¹³ Therefore, it is imperative that the Security Council act quickly to pass a clear definition of terrorism. I do not believe it requires them to wait for a comprehensive convention.

The Security Council itself can do the job by defining terrorism within the scope of UNSC RES 1373, and applying that within the realm of UNSC RES 1373. The second major problem is the lack of accountability. Neither the Al-Qaeda Committee nor the Counter-Terrorism Committee has an effective compliance mechanism. They cannot

¹¹²Victor D. Comras, "*The United Nations and the Fight Against Terrorism and Nonproliferation*" (statement, Committee on International Relations, U.S. House of Representatives, Washington, D.C., 17 March 2005), 4

¹¹³United States Government Printing Office, *The United Nations and The Fight Against terrorism*, Hearing And Briefing before The subcommittee on International terrorism and non-proliferation of the committee on international Relations house of Representatives one Hundred Ninth Congress first Session Serial No. 109-20, 2005.

even compel countries to provide reports on the actions they are taking to implement the sanctions measures.¹¹⁴

Also, while some countries and regions have the capacity to identify and implement their counter terrorism priorities, many others still do not. Consequently, while substantial progress has been made in many countries, a lack of technical capacity still inhibits the ability of many countries to comply fully with their counter terrorism-related obligations.¹¹⁵ In fact, lack of capacity is a problem in a number of the countries and regions identified by the US 9/11 Commission as likely bases of operation for some of the most dangerous international terrorist networks.¹¹⁶

Conclusion

UN organs have sponsored and established various international agreements, including twelve legal documents that represent the foundation upon which the post-9/11 UN strategy (enshrined in UNSC RES 1373). These instruments are designed to prohibit terrorism and its development in the systemic arena, and punish its occurrence when it did occur.

The UN Security Council has taken upon itself to reshape the manner in which the UN approaches global terrorism while suggesting a limitless campaign of counter-terrorism

¹¹⁴Ibid

¹¹⁵Maurice R. Greenberg, chair, "Update on the Global Campaign Against Terrorist Financing," Second Report of an Independent Task Force on Terrorist Financing Sponsored by the Council on Foreign Relations, June 15 2004. Available online at the Council on Foreign Relations <http://www.cfr.org/content/publications/attachments/Revised_Terrorist_Financing.pdf>

¹¹⁶The 9/11 Commission Report: *Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington, D.C.: U.S. Government Printing Office, 2004), p. 366.

that must be accepted and incorporated by all states. The chapter has examined UNSC RES 1373 and how the UN has countered terrorism over time.

The chapter has paid close examination to the CTC, whose key function is to strengthen the counter-terrorism capacity of UN member states, by focusing on CTC's institutional framework and international mandate in UN's war on global terrorism.

CHAPTER THREE: DOMESTIC-LEVEL ADJUSTMENTS IN IMPLIMENTATION OF UNSC RESOLUTION 1373

Introduction

The previous chapter traced the historical evolution of the UN counter terrorism activities with special focus on UNSC RES 1373. The chapter concluded that UNSC RES 1373 was an invitation by the international community to cooperate in the struggle against terrorism.

The present chapter seeks to examine this cooperation through the Kenyan. Specifically, the chapter shows that Kenya has instituted anti-terrorism measures in compliance with UNSC RES 1373, including establishing specialized anti-terrorism agencies, instituted financial legislation aimed at curbing money laundering and terrorism, and increased counter-terrorism policing. The chapter shows also that while Kenya has made progress in international cooperation against terrorism, some important steps are outstanding due to competing interests between the appreciation of the threats of terrorism and the concern for respect for human rights that strict implementation of the terms of UNSC RES 1373 appears to infringe upon.

The dynamics of implementation amidst competing interests can help us understand the challenge of national cooperation in international arena. The delicate balance between interests of domestic actors and internal obligations under UNSC RES 1373 holds the key to the successful implementation of the resolution. Kenya's supplementary report to the CTC states clearly the country's official position with regard to the fight against

terrorism, in which it elaborated the various legislative and executive measures to ensure compliance with UNSC RES 1373, and also to enhance global implementation of the resolution.¹¹⁷

The first part of this chapter will deal with special legislations that the GoK has drafted in an attempt to put in place relevant laws aimed at combating terrorism, the use of narcotics and money laundering as enshrined in the UNSC RES 1373, 2001 on counter-terrorism. The second part of this chapter will focus on the civil society reactions to the proposed draft legislations, in particular the reactions by the Law Society of Kenya, the East Africa Law Society, Amnesty International, the Members of Parliament, and the United Nations.

The third part of this chapter will analyze the institutions put in place such as the special anti-terror police unit, the National Counter-Terrorism Centre; enhancement of National Port Security; The Customs and Excise initiatives, and the Overland transport.

Kenya has submitted three reports to the Counter-Terrorism Committee as required by paragraph 6 of UNSC RES 1373,¹¹⁸ and has ratified the entire twelve international.¹¹⁹

¹¹⁷ See Appendix 5.0: Supplementary Report by Kenya to Counter-Terrorism Committee

¹¹⁸ Security Council, "Letter dated 4 March 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) Concerning Counter-Terrorism addressed to the President of the Security Council" UN Doc. S/2004/181 (10 March 2004) (containing Kenya's third report); Security Council, "Letter dated 25 March 2003 from the Chairman of the Security Council Committee established pursuant to Resolution 1373 (2001) Concerning Counter-Terrorism Addressed to the President of the Security Council" UN Doc. S/2003/384 (31 March 2003) (containing Kenya's second report to the Committee); Security Council, "Letter dated 29 July 2002 from the Chairman of the Security Council Committee established pursuant to Resolution 1373 (2001) concerning Counter-Terrorism Addressed to the President of the Security Council" UN Doc. S/2002/856 (31 July 2002) (containing Kenya's first report to the Committee)

¹¹⁹ Wanjuki Muchemi, GA/L/3319: <http://www.un.org/News/Press/docs/2007/gal3319.doc.htm>

The Counter-Terrorism Committee visited Kenya in 2005 and praised it for its honest reporting and its plans to establish a unit to combat the financing of terrorism. During this visit, the Executive Director of the Counter-Terrorism Committee's Executive Directorate "stressed the importance of having in place in Kenya 'legislation for the criminalization of terrorism as well as instruments to control the financing of terrorism.'"¹²⁰ The fifth special meeting with international, regional and sub-regional organizations of the Counter-Terrorism Committee on "Prevention of Terrorist Movement and Effective Border Security" was also held in Nairobi in October 2007.¹²¹

Domestic Anti-Terrorism Legislation

Kenya has attempted to implement aspects of the resolution regarding the enactment of a national legislation. Attorney General, Amos Wako, published the draft Suppression of Terrorism Bill, 2003¹²² in April 2003. Though the name of the Bill is, "Suppression of Terrorism", the purpose of the Bill is to provide measures for "the detection and

See also Appendix 2 on a report from Kenya to the chairman of the Security Council Committee established pursuant to resolution 1373, 2001 submitted pursuant to paragraph 6 of resolution 1373 (2001)

¹²⁰ "UN Counter-terrorism Experts Praise Kenya's Cooperation" (3 May 2005)

¹²¹ "Joint Statement" The Fifth Special Meeting of the Counter-Terrorism Committee with International, Regional and Sub regional Organizations on "Prevention of Terrorist Movement and Effective Border Security", Nairobi (29 to 31 October 2007). For documents from the meeting, see <http://www.un.org/sc/ctc/specialmeetings/nairobi/docs.html>

¹²² See Appendix 4 on Suppression of Terrorism Bill, 2003

See Appendix 3 on the Third Report of the Republic of Kenya submitted to the Counter-Terrorism Committee, CTC

prevention of terrorist activities and for related purposes.”¹²³ The Bill went through the first reading but was did not pass to the second and subsequent stages. The bill has now been shelved, pending presentation of a revised version to Parliament.

The Suppression of Terrorism Bill, 2003 was published in a special issue of the Kenya Gazette as Supplement No. 38 on the 30th April 2003. In its 2002 report to the Counter-Terrorism Committee, Kenya noted that, “[a]fter September 2001, the Government of Kenya realized that the existing domestic legislative framework was inadequate to effectively deal with the multifaceted aspects of terrorism”.¹²⁴ As a result, the Attorney-General prepared the Suppression of Terrorism Bill in April 2003 which later lapsed.¹²⁵

The Bill contains 44 Sections and 4 Schedules and is divided into 9 parts. Part I deals with preliminaries, Part II with Terrorist Offences, Part III with Declared Terrorist organizations, Part IV with Terrorist Property, Part V with Terrorist Investigations, Part VI with Exclusion orders, Part VII with Mutual Assistance and Extradition, Part VIII with Amendments and Part IX with Miscellaneous Provisions.

The First Reading of the Bill occurred on the 30th April 2003. The Bill was read for the first time and referred to the relevant Committee. The then Vice-President and Minister for Home Affairs, Moodi Awori (Funyula MP) proposed to have the Bill be referred to the relevant Committee (Finance and Administration of Justice).

¹²³ Suppression of Terrorism Bill, 2003, paragraph 1

¹²⁴ Security Council, “Letter dated 29 July 2002 from the Chairman of the Security Council Committee established pursuant to Resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council” S/2002/856 (31 July 2002) (containing “Report of the Republic of Kenya submitted to the Security Council Committee established pursuant to resolution 1373 (2001).”)

¹²⁵ Kenya Gazette Supplement, “The Suppression of Terrorism Bill, 2003” 38 Kenya Gazette Supplement Nairobi, 30 April 2003 at 443

The Kenya Law Society drafted another entitled the Anti-Terrorism Bill 2006¹²⁶ as a response to criticisms against the SOT Bill 2003. Similarly, the Anti-Terrorism Bill 2006 was also reported to have been dismissed by a parliamentary committee on the basis that it was an “American priority”.¹²⁷ The Bill was proposed but was not formally introduced before Parliament. Both bills have been criticized as a matter of policy and on specific human rights and constitutional grounds. While neither bill has been formally reintroduced, some members of civil society sharply criticized the draft laws.

Responses to the Suppression of Terrorism Bill 2003

The most outstanding of these were: Muslim leaders, the Law Society of Kenya, East Africa Law Society, Amnesty International – Kenya Chapter, and Members of Parliament

Muslim Leaders

Muslim leaders argue that the bill specifically targets members of their community. In June 2004, the Council of Imams and Preachers of Kenya, referring to the arrest of some 30 Muslims on terrorism charges, accused the Government of targeting Muslims and applying the bill even before it is enacted. Kenyan Muslim leaders dismissed their version of the law as a "draconian" document drafted in the United States with the intention of "oppressing" the Muslim community. "It is a bill that uses shock and awe tactics on its citizens while purporting to fight terrorism," said Billow Kerrow, a Muslim Kenyan opposition politician.¹²⁸ Indeed, the SUPKEM has threatened to mobilize Kenyans to hold peaceful demonstrations against the bill

¹²⁶ Draft Anti-Terrorism Bill, 2006

¹²⁷ "House Team Dismisses Revised Anti-Terrorism Bill" The East African Standard (6 June 2006)

¹²⁸ The Nation, December 7, 2003

The Law Society of Kenya

Pressure was however mounted in the country against the anti-terrorism bill officially known as The Suppression of Terrorism Bill 2003. In addition to the public campaign against the bill, human rights organizations lobbied parliamentarians to reject the bill when it presented to parliament for debate. Through a network of civil societies, they collected signatures from Kenyans, to petition the government to withdraw the bill. The Law Society of Kenya (LSK), the International Commission of Jurists (ICJ) Kenya chapter, the Supreme Council of Kenya Muslims, and opposition have also voiced their concern against the bill. The LSK offered to re-write a bill for the government if such a law is badly needed in the country.

In 2003, the Law Society of Kenya produced an amended version of the bill that eliminated or revised the articles to which the religious and human rights groups most objected

The East Africa Law Society, EALS

The East African Law Society noted with respect to The Suppression of Terrorism Bill 2003, “[the Bill’s definition of “terrorism” is so absurdly wide as to mean anything, and thus nothing. In its current form it would include domestic violence, street and school fights, sports melees or bar brawls. All of these are offences, but none of them amount to terrorism.”¹²⁹

¹²⁹ EALS statement on Kenya’s draft Anti-Terrorism Law (29 May 2003)

Both the Bills also contain other provisions dependant on the definition of “terrorism”, such as the offence of “incitement” to commit terrorist acts under Clause 8 of both bills; the criminalization of the support or aiding of “terrorism” under Clauses 11, 14 and 17 of the 2003 Bill and 13, 15, 17 and 18 of the 2006 Bill; and the declaration of an organization as “terrorist” if the Minister for Security “believes that it is concerned in terrorism” under Clause 9 of the 2003 Bill and 11 of the 2006 Bill.¹³⁰

Amnesty International – Kenya Chapter

Amnesty International expressed concern that the enactment of the 2003 Bill “could encourage the creation of a two-tier justice system, providing the legal framework for arbitrary arrests, illegal detention and searches and a flawed judicial system.”¹³¹ Amnesty International notes that, “[starting from the argument that “terrorism” itself is vaguely defined, how would a court of law adjudicate a case of incitement to commit an act of “terrorism”?”¹³² As a result, AI has made the following specific observations:

“Uniforms” (Clause 12 of the 2003 Bill)

Clause 12(2) of the 2003 Bill enabled a member of the police force to “arrest a person without a warrant if he has reasonable grounds to suspect that the person is guilty of an offence under this section”. The offence set out in 12(1) was that “a person who, in a

¹³⁰ Amnesty International, “Kenya: Memorandum to the Kenyan Government on the Suppression of Terrorism Bill 2003,” AI Index: AFR 32/003/2004 (September 2004) (noting its concern that the power to declare an organization as a terrorist organization “is being given on a fundamental right issue without any checks and balances, contrary to the concept of the rule of law. No right of review of the Minister’s decision is provided for in the Bill.”)

¹³¹ Amnesty International, “Kenya: Draft anti-terrorism legislation may undermine Kenyan constitution and international law,” AFR 32/004/2004 (9 September 2004) at 2.

¹³² Amnesty International, “Kenya: Draft anti-terrorism legislation may undermine Kenyan constitution and international law,” AFR 32/004/2004 (9 September 2004) at 13.

public place – (a) wears an item of clothing; or (b) wears, carries or displays an article, in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a declared terrorist organization.”

The offence carried the penalty of a fine or up to six months’ imprisonment or both despite the vague nature of the offence, its infringement on the right to freedom of expression and its potential to result in discriminative practices and profiling of communities thought to be ‘associated’ with ‘terrorists’. This provision was removed from the 2006 Bill.

Powers of Search and Seizure (Clause 26 of 2003 Bill; 27 of 2006 Bill)

The vague definition of “terrorism” set out in both bills also has serious implications with respect to the powers of search and seizure granted to a police officer above the rank of inspector in “a case of urgency” where “communication with a judge to obtain a warrant would cause delay that may be prejudicial to the maintenance of public safety or public order”. In such circumstances, the bills grant police officers wide powers to enter and search premises, persons and vehicles and arrest and detain persons “if he has reason to suspect” that an offence is being committed or likely to be committed or there is evidence of the commission of an offence. The 2006 Bill requires the matter to be brought before a judge within 48 hours.

Incommunicado Detention (Clause 30 of 2003 Bill)

The 2003 Bill provided that a person arrested “under reasonable suspicion of having committed an offence” could be held in “police custody for a period not exceeding thirty-six hours from his arrest, without having access to any person other than a police officer of or above the rank of inspector or a government medical officer.” The 2006 Bill did not contain such a provision. Referring to the 2003 Bill, Amnesty International commented that the “[p]rovisions ... are drastic and would amount to legitimising incommunicado detention, which can increase the risk of torture, ill treatment and “disappearances.” The 2006 Bill did not contain such a provision. Referring to the 2003 Bill, Amnesty International commented that the “[p]rovisions ... are drastic and would amount to legitimizing incommunicado detention, which can increase the risk of torture, ill treatment and “disappearances”.”¹³³

Exclusion Orders (Clause 31(3) of both bills)

The 2003 Bill provided that the Minister could issue an exclusion order against any person who “is or has been concerned in the commission, preparation or instigation of acts of terrorism in Kenya; or is attempting or may attempt to enter Kenya with a view to being concerned in the commission, preparation or instigation of acts of terrorism”. Clause 31(3) provided that an exclusion order could not be made against a Kenyan national, “unless such a person is a citizen of more than one country”. The 2006 Bill removed the ability of the Minister to exclude dual nationals under Clause 31(3).

Extradition of Terror Suspects without Legal Safeguards (Clause 37 of both bills)

¹³³ Amnesty International. “Kenya: Memorandum to the Kenyan Government on the Suppression of Terrorism Bill 2003,” AI Index: AFR 32/003/2004 (September 2004) at 11.

Clause 37 provided for the extradition of individuals suspected of offences under the bills without setting out any legal safeguards to ensure the rights of the individual to be extradited, particularly in relation to the absolute principle of non-refoulement.

Immunity of Police Officers (Clause 40(3) of the 2003 Bill)

Clause 40(3) of the 2003 Bill set out the powers of police officers which include the use of force “as may be necessary for any purpose, in accordance with this Act” and provides them with immunity from criminal and civil proceedings “for having, by the use of force, caused injury or death to any person or damage to or loss of any property.”

Despite the failure to enact either piece of legislation, members of civil society continue to express the concern that the establishment of a range of agencies and institutions with counterterrorism mandates but about which very little is known has created an environment in which counterterrorism measures can be pursued covertly and without compliance with Kenya’s international human rights obligations.

Concerns by UN Special Rapporteur on the Protection and Promotion of Human Rights

The UN Special Rapporteur on the Protection and Promotion of Human Rights while Countering Terrorism underscored his concerns about the definition of “terrorism” contained in the Bill and its implications for other sections of the Bill, noting that: the Special Rapporteur pointed to the overly broad definition of terrorism as contained

CHAPTER 4: EXTERNAL COOPERATION

Introduction

The previous chapter covered the national response and outcomes of initiatives that Kenya as a country has instituted in accordance with UNSC RES 1373. This chapter will focus on the Kenya's regional and international cooperation in the global fight against terrorism including: countries, regional and sub-regional organizations as enshrined in the UNSC RES 1373.

Kenya has acceded to all thirteen conventions that set the foundation for the full implementation of the UNSC RES 1373.¹⁷¹ These conventions are found in table 1.0 below:

No	Convention	Year
1	Convention on Offences and Certain Other Acts Committed on Board Aircraft	1963
2	Convention for the Suppression of Unlawful Seizure of Aircraft	1970
3	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	1971
4	International Convention against the Taking of Hostages	1979
5	Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (supplementary to the Convention for Suppression of Unlawful Acts against the Safety of Civil Aviation)	1988

¹⁷¹ See, Counter-Terrorism Committee, "International Law and Terrorism" available at: <http://www.un.org/sc/ctc/law.shtml>

6	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	1988
7	Convention on the Physical Protection of Nuclear Material	1980
8	Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf	1988
9	Convention on the Marking of Plastic Explosives for the purpose of Detection	1991
10	International Convention for the Suppression of Terrorist Bombings	1997
11	International Convention for the Suppression of the Financing of Terrorism	1999
12	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Individual Diplomatic Agents	1993
13	Convention for the Suppression of Acts of Nuclear Terrorism	2005

Table 1.0 showing all the thirteen conventions that Kenya has acceded to

The chapter will deal with Kenya-UN cooperation; Kenya-AU cooperation; Kenya-US cooperation; Funding; The combined Joint Task Force for Horn of Africa; Cooperation with other European states, and Cooperation with other countries in Africa outside the Horn of Africa. This chapter will assess the responses and outcomes of the initiatives.

The Solicitor General of Kenya, Wanjuki Muchemi notes that not only has Kenya ratified the thirteen conventions; Kenya has urged states to move towards the ratification of the Convention for Suppression of Acts of Nuclear Terrorism, adding that the international legal framework for the suppression and combating of terrorism would not be fully effective until the international community's desire for a comprehensive convention on international terrorism was fully realized.

Kenya has submitted three reports to the Counter-Terrorism Committee as required by paragraph 6 of UNSC RES 1373.¹⁷² The Counter-Terrorism Committee visited Kenya in 2005 and praised it for its honest reporting and its plans to establish a unit to combat the financing of terrorism. During this visit, the Executive Director of the Counter-Terrorism Committee's Executive Directorate "stressed the importance of having in place in Kenya 'legislation for the criminalization of terrorism as well as instruments to control the financing of terrorism.'" ¹⁷³ The fifth special meeting with international, regional and sub-regional organizations of the Counter-Terrorism Committee on "Prevention of Terrorist Movement and Effective Border Security" was also held in Nairobi in October 2007.¹⁷⁴ In implementing their obligations under UNSC RES 1373, states can receive technical

¹⁷² Security Council, "Letter dated 4 March 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) Concerning Counter-Terrorism addressed to the President of the Security Council" UN Doc. S/2004/181 (10 March 2004) (containing Kenya's third report); Security Council, "Letter dated 25 March 2003 from the Chairman of the Security Council Committee established pursuant to Resolution 1373 (2001) Concerning Counter-Terrorism Addressed to the President of the Security Council" UN Doc. S/2003/384 (31 March 2003) (containing Kenya's second report to the Committee); Security Council, "Letter dated 29 July 2002 from the Chairman of the Security Council Committee established pursuant to Resolution 1373 (2001) concerning Counter-Terrorism Addressed to the President of the Security Council" UN Doc. S/2002/856 (31 July 2002) (containing Kenya's first report to the Committee)

¹⁷³ "UN Counter-terrorism Experts Praise Kenya's Cooperation" (3 May 2005)

¹⁷⁴ "Joint Statement" The Fifth Special Meeting of the Counter-Terrorism Committee with International, Regional and Sub regional Organizations on "Prevention of Terrorist Movement and Effective Border Security", Nairobi (29 to 31 October 2007). For documents from the meeting, see <http://www.un.org/sc/ctc/specialmeetings/nairobi/docs.html>

assistance through the dissemination of “best practices; identifying existing technical, financial, regulatory and legislative assistance programmes; promoting synergies between the assistance programmes of international, regional and sub regional organizations; and, through its Executive Directorate (CTED), serving as an intermediary for contacts between potential donors and recipients and maintaining an on-line directory of assistance providers.”¹⁷⁵ Kenya has received assistance through this mechanism on a number of occasions in relation to financial law and practice; police and law enforcement; military counterterrorism training; training and capacity-building for the judiciary; maritime security; civil aviation and customs and border control.¹⁷⁶

Kenya – United Nations Cooperation

The Kenya – UN cooperation deals with the United Nations Development Programme and United Nations Office of Drugs and Crime. The Kenya Government is a beneficiary of an on-going national project funded and closely coordinated by both the UN agencies. The UNDP and UNODC are jointly running a \$431,000 one-year project on ‘Strengthening counter-terrorism capacity for a safer Kenya’ which is funded by the Government of Denmark. In a bid to Strengthening counter-terrorism capacity for a safer Kenya, a joint United Nations Development Programme, UNDP, and the United Nations Office of Drugs and Crime, UNODC national project is currently on-going in Kenya with

¹⁷⁵ On 12 November 2001 the Security Council adopted Resolution 1377 (2001) UN Doc. S/RES/1377 (2001), which “recognizes that many States will require assistance in implementing all the requirements of resolution 1373 (2001), and invites States to inform the Counter-Terrorism Committee of areas in which they require such support”. See, Counter Terrorism Committee, “Technical Assistance” at <http://www.un.org/sc/ctc/page2.html>

¹⁷⁶ UN Counter-Terrorism Committee Executive Directorate, “Technical Assistance Matrix: Kenya” (25 October 2007), available at: <http://www.un.org/sc/ctc/matrix/reports/KEN.pdf>

a budget of US\$ 431,000 funded by the Danish Government. The project is scheduled to cover the years 2008 to 2009.¹⁷⁷

This project constitutes the UNODC component of a joint UNDP/UNODC programme aimed at strengthening counter-terrorism in Kenya with the Kenyan National Counter-terrorism Centre (NTCT), Office of the President, as the main government counterpart. The long-term objective of the project is to reduce incidences of terrorism, financing of terrorism, and money laundering in Kenya. The immediate objective is to strengthen national capacity to more effectively and comprehensively prevent, investigate and prosecute terrorism, counter-terrorism financing and money laundering in Kenya.

The project is aimed at assisting in the development of national counter-terrorism and anti-money-laundering legislation and regulations in line with international standards and norms, and at strengthening Kenya's capacity to implement the said legislation on counterterrorism under the broad framework of respect for civil liberties and human rights by training the judiciary, prosecutors and investigators in the application of the legislation.

The aim includes the establishment of a control mechanism to combat counter-terrorism financing and money laundering, i.e. of a Financial Reporting Centre (FRC) or Financial

¹⁷⁷ Source: UNODC Annual Report, 2008-9

Intelligence Unit (FIU), as well as training of relevant government authorities and private banks on the implementation of the new legislation.¹⁷⁸

Kenya – Africa Union Cooperation

At the African Union level, Kenya has ratified the Convention on the Prevention and Combating of Terrorism 1999 and its 2002 Protocol. In 2002, a “Plan of Action on the Prevention and Combating of Terrorism in Africa” was developed.¹⁷⁹ The Plan specifically references the obligations set out under UN Security Council Resolution 1373¹⁸⁰; emphasizes the common objectives of member states to eradicate terrorism through the “exchange of information among Member States on the activities and movements of terrorist groups in Africa; mutual legal assistance; exchange of research and expertise; and the mobilization of technical assistance and cooperation, both within Africa and internationally, to upgrade the scientific, technical and operational capacity of Member States”¹⁸¹; and mandates states to take specific action in relation to police and border control¹⁸², legislative and judicial measures¹⁸³ and exchange of information.¹⁸⁴

¹⁷⁸UNODC, “Project Portfolio of UNODC Regional Office for Eastern Africa” <http://www.unodc.org/kenya/en/projects.html>

¹⁷⁹ African Union, “Plan of Action of the African Union High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa” Mtg/HLIG/Conv.Terror/Plan. (I) (11 – 14 September 2002). See also. African Union, Second High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa, “Declaration of the Second High-Level Intergovernmental Meeting on the Preventing and Combating of Terrorism in Africa” Mtg/HLIG/Conv.Terror/Decl. (II) Rev.2 (13 – 14 October 2004).

¹⁸⁰ Id. at Para. 8.

¹⁸¹ Id. at Para. 2.

¹⁸² Id. at Para. 11.

¹⁸³ Id. at Para. 12.

¹⁸⁴ Id. at Para. 14.

The Peace and Security Council of the African Union is the central body responsible for overseeing the implementation of the Convention on the Prevention and Combating of Terrorism¹⁸⁵ and states must submit annual reports to the Council in this respect.¹⁸⁶ The Commissioner for Peace and Security in the Commission is also vested with the responsibility to: examine the reports submitted by Member States in relation to paragraph 16.b. of the Plan of Action; Review and make recommendations to update the Plan of Action; Provide advice on matters pertaining to counter-terrorism action including preparation of model legislation and guidelines to assist Member States, and follow-up with Member States and any other States on decisions taken by the Peace and Security Council and other organs of the Union on terrorism and activities of terrorist groups.¹⁸⁷

The African Centre for the Study and Research on Terrorism has also been established as a “structure of the Commission of the African Union and the Peace and Security Council (PSC), which shall serve to centralize information, studies and analyses on terrorism and terrorist groups and develop training programs by organizing, with the assistance of international partners training schedules, meetings, and symposia.”¹⁸⁸

The AU hired a consultant to draft a model law on counterterrorism and has also created a counterterrorism unit in Addis Ababa in 2005. Kenya, like all states, therefore, is

¹⁸⁵ Article 7(i) of the Protocol relating to the Establishment of the Peace and Security Council of the African Union.

¹⁸⁶ Plan of Action supra note 158 at para. 16(b)

¹⁸⁷ Plan of Action supra note 158 at para. 18.

¹⁸⁸ African Union, Second High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa, “Declaration of the Second High-Level Intergovernmental Meeting on the Preventing and Combating of Terrorism in Africa” Mtg/HLIG/Conv.Terror/Decl. (II) Rev.2 (13 – 14 October 2004).

obliged to develop and implement counterterrorism strategies as a result of its international and regional commitments.

Kenya – US Cooperation

In East Africa, the East African Counterterrorism Initiative (EACTI) and CJTF-HOA provide the base for U.S. counterterrorism programs. The key goals of U.S. CT policy in East Africa are containment in Somalia; counterterrorism and the promotion of peace and stability in Sudan, and security partnerships with Kenya and Ethiopia.¹⁸⁹

As a result of the attacks against US interests in Kenya and its geographical proximity to Somalia, the US has identified Kenya as a key strategic ally in its “war on terror,”¹⁹⁰ and has provided Kenya with substantial funding in this regard. Kenya receives a range of assistance from the US to pursue its counterterrorism strategies, including: Military training for border and coastal security, programs to strengthen control of the movement of people and goods across borders, aviation security capacity-building, and assistance for regional efforts against terrorist financing, and police training.

Military Training

Programs aimed directly at countering terrorist finance have almost no military components. These programs are primarily bilateral and include initiatives managed by the FBI and Treasury Department. The FBI’s Terrorist Finance Operations Section (FTOS) runs training sessions on combating terrorist finance in regions around the world,

¹⁸⁹ J. Stephen Morrison, “Somalia and Sudan’s Race to the Fore in Africa,” *The Washington Quarterly* 25, no.2 (Spring 2002), 191-205

¹⁹⁰ “Steep Rise in US Military Aid” *The Nation* (Nairobi) (9 September 2007) (depicting Kenya as a “frontline” state in the US-led “war on terror”)

yet African participation is minimal and in 2003, Kenya was the only country to receive this training.¹⁹¹ International Law Enforcement Agency (ILEA) located in Gaborone, Botswana, run by the Federal Bureau of Investigations (FBI) discussed previously figures in the FBI's arsenal to combat terrorist finance, though its full impact across Africa may be limited. Housed in Gaborone, Botswana, the African ILEA primarily serves countries in the Southern African region, which limits its impact in strengthening the capacity of East African law enforcement agencies. Kenya, Ethiopia, Djibouti and Uganda have been invited to send officials to Gaborone for training at the ILEA, and the first East Africans graduated a three-month course in June 2003.¹⁹² This could indicate that in the future the ILEA will help to strengthen the capacity of the East African governments as well. Financial crimes are among the many courses taught at the ILEA (the others courses involve, among other subjects, counterterrorism in general, anti-corruption, border security, drug enforcement, firearms).

Strengthening law enforcement capacities could help area governments uncover and then successfully prosecute money-launderers and other terrorist financiers. For example, seminars organized by the Department of Justice's Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) provide training to help participating countries to develop action plans to strengthen counterterrorism efforts and draft counterterrorism legislation. Djibouti, Kenya and Tanzania have sent representatives to receive training in combating terrorist financing from OPDAT. Since capacity and

¹⁹¹ "U.S. Bilateral Assistance Efforts," *INCSR 2003 Report*, March 1, 2004.

¹⁹² Information on the International Law Enforcement Academy (ILEA) in Gaborone, Botswana was obtained from the State Department website at: <http://www.state.gov/p/inl/ilea/c11283.htm>.

enforcement abilities to combat TF in these countries is particularly low (see below), there should be indirect benefit to the efforts of these countries to combat TF.

Military Funding

The US Ambassador to Kenya announced the donation of six boats to the Kenyan Navy, estimated at \$3 million USD to “help the Government of Kenya combat insecurity and terrorism in 2006. This is timely in view of heightened concerns by Kenya about potential exploitation of the Kenyan coast by criminal groups and terrorists. The donation of the boats is part of a much broader effort to help the Government of Kenya protect its borders. This is particularly important in view of the deteriorating situation within Somalia.”¹⁹³

The US and Kenya announced \$14 million USD of “new funding to Kenya’s security forces aimed at countering “terrorist activities” in the Horn of Africa in May 2007.”¹⁹⁴

The assistance was described as including: Training and equipment of various Kenyan law enforcement and security; Programs, \$5.5 million; Training and equipping of four coastal security patrol units, \$1.5 million; Construction of Coastal Maritime Training Facility on Camp Manda. \$3 million.

¹⁹³ “Ambassador Ranneberger to Dedicate Boats for Kenyan Navy” Press Release, US Embassy in Nairobi (5 October 2006).

¹⁹⁴ “Kenya Gets US Anti-Terror Funds” BBC News (4 May 2007).

Through Port Security Initiative, the USG has provided training on security management and planning at Mombasa, worth \$450,000, and by giving a grant for the purchase of two equipped boats for Mombasa port worth \$260,000.¹⁹⁵ The EACTI also includes an education program to counter extremist influence and a robust outreach program.”¹⁹⁶ According to the Kenyan media, the US “has increased its military aid to Kenya by nearly 800 per cent since the September 11, 2001 terrorist attack.”¹⁹⁷

Increasing border security, better surveillance of coastal traffic, increased customs efficiency and seaport security could all work to reduce the ability of terrorist organizations to operate and move about the region, particularly in Sudan and Somalia. Established in June 2003 as a program of the Department of State, the \$100 million East Africa Counterterrorism Initiative (EACTI) provides key states in the Horn of Africa with military training to strengthen coastal, border, customs, airport, and seaport security. In addition, the Initiative plans to train law enforcement officials in East Africa.”¹⁹⁸ Finally, the program includes assistance for regional efforts against terrorist financing and police training, as well as an education program to counter extremist influence.¹⁹⁹

¹⁹⁶ William Popc, Deputy Coordinator for Counterterrorism US State Department Speaking at the East African Counterterrorism Initiative Conference 21 April 2004 <http://www.state.gov/s/ct/rls/rm/2004/31731.htm>

¹⁹⁷ “Steep Rise in US Military Aid” The Nation (Nairobi) (9 September 2007) (citing a report by the Center for Defence Information).

¹⁹⁸ Ted Dagne, “Africa and the War on Terrorism: Update,” CRS Report for Congress, catalog no. EBTER213, September 24, 2004; William P. Pope, “Eliminating Terrorist Sanctuaries: The Role of Security Assistance,” Testimony before the House International Relations Committee, Subcommittee on International Terrorism and Nonproliferation, Washington, DC, March 10, 2005. Also author’s conversations with MGen Samuel Helland (October 2005, Naval Postgraduate School, Monterey, CA) and RADM Richard Hunt (October 2005, at the Mayport Naval Station, Mayport Florida). RADM Hunt is the current commanding officer of the CJTF-HOA

¹⁹⁹ Ambassador Cofer Black, Coordinator for the Office of Counter Terrorism (Department of State), “The Prevention and Combating of Terrorism in Africa,” remarks at the Second Intergovernmental High-Level Meeting on the Prevention and Combating of Terrorism In Africa Algiers, Algeria, 20 October 2004.

The Combined Joint Task Force – Horn of Africa

Kenya is a member of the Combined Joint Task Force – Horn of Africa (CJTF-HOA) that has been established in Camp Lemonier (formerly the headquarters of the French Foreign Legion) in Djibouti serves as the focal point for DoD efforts in the region. CJTF falls under the jurisdiction of the United States Central Command (USCENTCOM). On average, the staff of the CJTF numbers around 250, and the assigned troops between 1,200-1,800,200 and the navy often conducts surveillance missions in the Red Sea.²⁰¹ The “combined” aspect of the CJTF is at the staff level only; there are no non-US troops assigned to the U.S. command.

The Combined Joint Task Force Horn of Africa (CJTF-HOA) was set up by the United States government in late 2002 in order to confront terrorists directly, to help the nations of the region identify and capture terrorists, and to help host nations control their ungoverned spaces, especially borders and coastlines. About 1400 U.S. military personnel to oversee a region that encompasses Kenya, Somalia, the Sudan, Eritrea, Djibouti, Yemen, and Ethiopia, and the coastal waters of the Red Sea, Gulf of Aden, and Indian Ocean. CJTF-HOA is based in Djibouti, in part because of its location on the Bab al-Mandeb Strait, the second busiest shipping lane in the world and a potential conduit for terrorist activity.

At CJTF-HOA’s inception, there were three to five terrorist organizers and about twenty-five supporters who were being sought by the United States government. By 2004, sixty-

²⁰⁰ Dagne, *Op. Cit.*: CJTF-HOA falls under CENTCOM’s jurisdiction.

²⁰¹ See Al J. Venter, “Red Sea Anti-Terror Force,” *Jane’s Terrorism and Security Monitor*, March 1, 2003.

five terrorists had been captured or killed and the task force was examining another 550 individuals as potential terrorists or facilitators. Most of the suspects were apprehended by the host nations rather than by the U.S. CJTF-HOA began working with host countries' militaries in the region to improve their capacity for combating terrorism in less developed areas and up and down the coast. Kenyan naval forces were trained to do more monitoring on the coast, and taught by the United States marine appropriate boarding procedures. Yemen received both training and ships to monitor its coastline, and training projects are underway in Ethiopia and Eritrea. An important component of the training accustoms local militaries to the idea that a functioning infrastructure is more important than possessing advanced military technology (particularly without the training to use it effectively). Coalition forces decrease in number as local capacity increases. In an area about two-thirds the size of the U.S., one of the biggest challenges is the extent of uncontrolled territory.²⁰²

Kenya has offered total support to the US government in the war on transnational terrorism. Consequently, Kenya is represented in the US counterterrorism Combined Joint Task Force-Horn of Africa (CJTF-HOA) in Djibouti and has officers in Tampa, Florida, for counterterrorism coordination for the Horn of Africa.

The CJTF-HOA's publicly-stated mission to engage in "joint and combined training and operations in the CJOA-HOA and AOI to enable Regional Nations to defeat Al-Qaida and Associated Movements (AQAM) and to obtain coalition support in order to diminish

²⁰²Deborah L. West, *Combating Terrorism In The Horn Of Africa And Yemen*, Belfer Center For Science And International Affairs, 2005 Cambridge Massachusetts, Harvard University, p 6.

underlying conditions that terrorists seek to exploit and to prevent the re-emergence of AQAM.”²⁰³

To effect this mission, the CJTF-HOA efforts include conducting a series of short-term operations that are designed facilitate information operations, increase border security, provide counterterrorism training, increase coastal security, and foster intelligence sharing. In addition, the CJTF-HOA engages in civil-military operations and civil-affairs operations to support the primary activities. In these latter activities, the CJTF-HOA conducts goodwill exercises that include bringing U.S. military medical and veterinary professionals to various locations in the region to help local communities, and using the engineering capabilities of the Army engineers and Navy Seabees to dig wells and provide infrastructure to communities. Officially, the CJTF-HOA is not a direct action force and does not directly engage terrorists.

The CJTF-HOA program includes US training of militaries of the regional countries in counterterrorism procedures, with its stated mission to detect, disrupt, and defeat transnational terrorism.²⁰⁴ The training has enhanced Kenya’s military preparedness. However, the military lacks efficient, effective transportation and communication equipment to effectively carry out these new tasks. Resources are needed to equip the force to enable it to effectively assert its presence along the porous land borders to deter entry of terrorists into the country.

²⁰³ Author’s discussion with RADM Hunt; presentation at the Naval Postgraduate School by former CJTF Commander Major General Samuel Helland, USMC in October 2005. This particular version of the mission statement comes from Colonel Dwight Trafton, USMC, Chief of Staff, CJTF-HOA, remarks delivered to the “21st Century Marines in Africa Conference: West and Central Regions,” United States Marine Corps University, Quantico, VA, January 18-19, 2006

²⁰⁴Thompson Jim Fisher, 2004. Former U.S. envoy to Ethiopia Speaks to Air Force Special Operations Class. Washington File Staff Writer, 7 September. Article on-line. Available from <http://usinfo.state.gov/is/Archive/2004/Dec/03-890080.html>.

Terrorist Finance - Training Programs

Programs aimed directly at countering terrorist finance have almost no military components. These programs are primarily bilateral and include initiatives managed by the FBI and Treasury Department. The FBI's Terrorist Finance Operations Section (FTOS) runs training sessions on combating terrorist finance in regions around the world, yet African participation is minimal and in 2003, Kenya was the only country to receive this training.²⁰⁵ International Law Enforcement Agency (ILEA) located in Gaborone, Botswana, run by the Federal Bureau of Investigations (FBI) discussed previously figures in the FBI's arsenal to combat terrorist finance, though its full impact across Africa may be limited. Housed in Gaborone, Botswana, the African ILEA primarily serves countries in the Southern African region, which limits its impact in strengthening the capacity of East African law enforcement agencies. Kenya, Ethiopia, Djibouti and Uganda have been invited to send officials to Gaborone for training at the ILEA, and the first East Africans graduated a three-month course in June 2003.²⁰⁶ This could indicate that in the future the ILEA will help to strengthen the capacity of the East African governments as well. Financial crimes are among the many courses taught at the ILEA (the others courses involve, among other subjects, counterterrorism in general, anti-corruption, border security, drug enforcement, firearms).

Many of the difficulties that African governments experience with fighting terrorism concern capacity limitations (law enforcement agencies that are weak and/or unable to actually track and obtain evidence on terrorist financiers and money launderers) and an

²⁰⁵ "U.S. Bilateral Assistance Efforts." *INCSR 2003 Report*, March 1, 2004.

²⁰⁶ Information on the International Law Enforcement Academy (ILEA) in Gaborone, Botswana was obtained from the State Department website at: <http://www.state.gov/p/inl/ilea/ci1283.htm>.

inability (or unwillingness) to tighten security and enforce border controls. The countries that do have anti-money laundering legislation are slow to implement the regulations, however, and the entire effort against money laundering and other forms of TF involves more than just the creation of AML regimes. Enforcement is also important.

Strengthening law enforcement capacities could help area governments uncover and then successfully prosecute money-launderers and other terrorist financiers. For example, seminars organized by the Department of Justice's Office of Overseas Prosecutorial Development Assistance and Training (OPDAT) provide training to help participating countries to develop action plans to strengthen counterterrorism efforts and draft counterterrorism legislation. Djibouti, Kenya and Tanzania have sent representatives to receive training in combating terrorist financing from OPDAT. Since capacity and enforcement abilities to combat TF in these countries is particularly low (see below), there should be indirect benefit to the efforts of these countries to combat TF.

Provision of secure IT network and case management project for [the Anti-Terrorism Police Unit] ATPU, \$2.08 million (over two years) Support of cyber forensics lab and cyber crime training, \$1.24 million (over two years) Border Control Management course to enhance operational planning skills, \$200,000.²¹¹⁷

Despite the US' central role in the development and implementation of counterterrorism measures in Kenya, it is not clear how proactively the US requires such measures to be taken in full compliance with Kenya's international human rights obligations. To the

²¹¹⁷ "Joint U.S.-Kenya Statement regarding the official visit of the Minister of State for Provincial Administration and Internal Security to the United States" Press Release of the US Embassy in Nairobi (4 May 2007).

contrary, the US' approach to counter-terrorism under the Bush administration has been regularly condemned for its failure to accord with basic human rights standards.

Kenya has suffered more from transnational terrorism than any other country in the region or in Africa. Kenya is particularly susceptible to terrorism. The country has been and continues to be hospitable to refugees and foreigners. It is relatively easy to enter because of the tourist trade, and that tourist trade creates the additional hazard of soft targets like hotels. Kenya's close relationship to the United States and Europe also raises its security profile. In this regard it needs assistance and cooperation in combating terrorism.

Kenya through its diplomatic activities has cooperated with other state and non state actors in anti terrorism activities. Diplomacy is the instrument of power that builds political will and strengthens international cooperation. Diplomatic exchanges promote counter terrorism cooperation with friendly nations that serve each other's mutual interests. Transnational terrorism has no boundaries and requires governments to reach out to their neighbors and allies to forge a multilateral approach in the fight against the threat. Diplomacy supports the other instruments of national power in numerous ways. For example, extradition treaties help in the application of criminal law by facilitating the transfer of fugitive terrorist suspects. Intelligence sharing among nations potentially discourages terrorists from operating in those countries and facilitates the monitoring of groups operating in the region. Transnational terrorism affects global peace and stability.

As such, no country can single-handedly combat the threat. The enormous resources and global intelligence needed are beyond the reach of many developing countries.

The Government of Kenya continues to cooperate with the United States and the International community in identifying terrorist groups operating within Kenya. However, more work remains to be done in domestic areas such as law enforcement, enacting counterterrorism legislation, and prosecution of alleged terror suspects. Kenya registered little to no progress toward the overall strengthening of its capabilities to combat terrorism, prosecute terror suspects, or respond to emergencies. The Government of Kenya disbanded the U.S.-supported Joint Terrorism Task Force (JTTF), set up in 2004 to improve police and prosecutors' ability to cooperate on counterterrorism issues. The Government of Kenya did not engage in a national discussion to sensitize the public to terrorism issues, nor did it finalize a national counterterrorism strategy.

Sharing of Facilities and Information

Kenya also joined the US in the global war on terror (GWOT). Kenya has provided the United States with facilities for counterterrorism efforts in Eastern Africa region. Kenya has signed up as a member of the willing nations. Kenya and the U.S. have an agreement to share anti-terrorism Intelligence especially after the August 7, 1998 bombing of the US embassy in Nairobi and the Kikambala Hotel in November 2002. The two countries have focused on Al Qaeda cells in Somalia. The operations include the initiatives to arrest terrorist suspects and disrupt terrorist operations. Kenya joined the Terrorist Interdiction Program.

As one of the nations affected by the East Africa bombings in 1998, Kenya remains fully cooperative in assisting the US investigations of those attacks.²⁰⁸ The Kenyan Government has been more outspoken on the domestic nature of Kenya's terrorist threat and the involvement of Kenyan nationals in terrorist activity, particularly after a policeman was killed while attempting to apprehend suspected terrorists in August 2003. The September 11 terrorist attacks promoted counter-terrorism as the strategic priority for the U.S. government globally, and therefore Africa falls under that framework.

The U.S. counterterrorism operations since 9/11 have explicitly demonstrated the U.S. requirement to take an indirect approach to the problem. In addition to host-nation capacity building, the cooperation of all agencies within the U.S. Government (USG) is required for a coordinated and effective approach to the Global War on Terrorism (GWOT).

Kenya became a central front in the GWOT due to its strategic location and willingness to be an ally. Kenya is one of the three "anchor states" in sub-Saharan Africa, along with Nigeria and South Africa, that are essential to stabilizing the area. The program with Kenya focuses on three general lines of effort: foreign assistance, defense security cooperation and assistance programs, and counter-terrorism training programs. In general, all three efforts have been effective, but the lack of a coordinated regional U.S.

²⁰⁸Office of the Coordinator for Counterterrorism, *Patterns of Global Terrorism -2003* April 29, 2004 available at http://www.globalsecurity.org/security/library/report/2004/pgt_2003/pgt_2003_31578pf.htm

Government effort has reduced the effectiveness of on-going programs to counter the transnational threat in the region.²⁰⁹

Kenya – US Defense Ties

The United States and Kenya have long standing defense ties, which have deepened as a result of counter terrorism cooperation.²¹⁰ The United States began formal relations with Kenya in 1981 with air and port basing agreements. Kenya's strategic location also has facilitated access for stability and humanitarian operations in the western Indian Ocean and East Africa. Before resigning as U.S. Secretary of Defense in late 2006, Donald Rumsfeld laid out his vision for an Africa Command that would be added to the existing U.S. military commands in order to maintain order and stability in the often overlooked continent. After Sept. 11, 2001, the Horn of Africa (Ethiopia, Eritrea, Djibouti, Kenya, Somalia and Yemen) was specifically identified as the area of Africa most at risk for becoming a safe haven for terrorists. Moreover, the region is already largely inundated with small arms and light weapons – the weapons of choice for terrorists.

Kenya is considered a vital U.S. ally in the war on terror and has supported U.S. counterterrorism efforts by sharing intelligence, providing over flight rights and granting access to airfields and bases. The State Department considers Kenya to be a “front-line state” in the war on terror and this counterterrorism cooperation has yielded an increase in U.S. military assistance for Kenya since Sept. 11, 2001. In the five years after Sept. 11,

²⁰⁹ Jason C Henneke, In What Ways Has US Security Cooperation Programs Been Effective in Helping Kenya to Build Partnership Capacity to Counter Transnational Terrorism? Army Command And General Staff Coll Fort Leavenworth Ks School Of Advanced Military Studies

²¹⁰ Center for Defense Information, available at <http://www.cdi.org/pdfs/kenya.pdf>, p 2.

Kenya received nearly eight times the amount of military assistance it received in the five years prior to Sept. 11. This increase has been marked by exceptionally large FMF appropriations in FY 02 and FY 04. Since FY 05, however, IMET and FMF appropriations have dwindled.²¹¹ The 2006 State Department Terrorism report points out that Kenya's counterterrorism cooperation with the United States "was uneven and constrained by domestic political pressures and considerations."

United States Counter-Terrorism Funding To Kenya

The United States provides Kenya with specific counterterrorism funding and training although neighboring Djibouti houses the U.S. army's Combined Joint Task Force-Horn of Africa (CJTF-HOA), which works to train the region's militaries in order to expand their counterterrorism capabilities. Kenya is a beneficiary of the Regional Defense Counter terrorism Fellowship Program (CTFP) and received \$300,000 in FY 05, with \$250,000 budgeted in FY 06, and \$275,000 currently requested for FY 07.

Kenya receives funding to expand its counter terrorism capabilities through the Foreign Operations budget's Anti-Terrorism Assistance program (NADR-ATA), which is part of the Nonproliferation, Anti terrorism, Demining, and Related Activities account. Kenya received \$3.2 million from this account in FY 06 and is slated to receive approximately \$3 million in FY 07 and \$5.5 million in FY 08. The Anti-Terrorism Assistance (ATA) it helped created the Kenyan Antiterrorism Police Unit (KAPU) in 2004 to conduct anti-terrorism operations, the Joint Terrorism Task Force in 2004 to coordinate anti-terrorism

²¹¹US department of State, "Africa Overview," 2006 Country Reports on Terrorism, April 30, 2007. Available at: <http://www.state.gov/s/ct/rls/crt/2006/82730.htm>.

activities (although the unit was disbanded by the Kenyan government in 2005, and is now training and equipping members of a multi-agency, coast guard-type unit to patrol Kenya's coastal waters. Between 2003 and 2005, ATA provided training both in Kenya and in the United States to 454 Kenyan police, internal security, and military officers. The creation of the KAPU was financed with \$10 million IN 2003, along with \$622,000 from ATA; the ATA spent \$21 million on training for Kenya in 2004, \$3.5 in 2005, and another \$3.2 in 2006. The Bush administration requested \$2.9 for 2007 and an additional \$5.5 in 2008.²¹²

Kenya is a participant in the East Africa Counter terrorism Initiative (EACTI), launched in 2004. Like the Trans-Sahara Counter terrorism Initiative, EACTI is designed to improve regional capacity and cooperation in carrying out counter terrorism operations. Additionally, since FY 04, Kenya has received funding through the African Contingency Operations Training and Assistance (ACOTA) program, which is part of the Peacekeeping Operations account in the Foreign Operations budget. In 2008 the Bush Administration expects to provide Kenya with \$800,000 in Foreign Military Financing Program funds to pay for further arms purchases. Kenya has also been permitted to make large arms deals directly with private American arms producers through the State Departments Direct Commercial Sales Program. Kenya took delivery of \$1.9 million worth of arms this way in 2005, got an estimated \$867,000 worth in 2007, and is expected to receive another \$3.1 million worth this year. In addition, the Bush Administration intends to spend \$550,000 in 2008 to train Kenyan military officers in the United States through the International Military Education and Training Program at

²¹²Daniel Volman, *US Military Activities In Kenya*, January 5, 2008

military academies and other military educational institutions in the United States. The United States is also providing training and equipment to Kenya's military, internal security, and police forces through several global and regional programs.²¹³

In June 2003, President Bush announced the commitment of \$100 million for East Africa Counter terrorism Initiative (EACTI). The amount was intended to provide counter terrorism equipment, training, and assistance to six countries in the region: Djibouti, Eritrea, Ethiopia, Tanzania, Uganda, and Kenya. As part of this effort, EACTI provided \$10 million for an intensive in-country anti terrorism training program for Kenya. This program is overseen by my office and implemented by Diplomatic Security's Office of Anti terrorism Assistance. The Kenya program was developed from the ground up. DS/ATA experts traveled to Kenya, consulted extensively with members of the Embassy Country Team, and employed experts from other USG agencies, to ensure that Kenya's most pressing needs were addressed. Rather than simply use a training and equipment package for the Kenyans that have been used successfully in other countries, ATA customized its plan to focus from the outset on what it perceived as the weakest link in Kenya's capacity to combat terrorist organizations: inter agency collaboration, command and control. In close coordination with Kenya's Commissioner of National Police, Director of Public Prosecutions, and others senior Kenyan officials, ATA devised a nine-week training course that has been delivered to a hand-picked group of investigators, prosecutors, immigration officials, and counter terrorism analysts. The participant graduate and proceed to comprise the core staff of a Joint Terrorism Task Force (JTTF). Through nine weeks of training, institutional rivalries and suspicions have been broken

²¹³ Ibid

down among the participants, and they are ready to bring their skills to bear in a concerted fashion. ATA has assisted in identifying and making ready a base from which the JTTF will operate. Each member brings to the task force the experience and resources of his or her agency, but they will now be working together across agency lines toward common counter terrorism objectives.

Further specialized training and equipment has been promised, but it will be crafted in consultation with the Kenyan task force for their use in making arrests and prosecutions. We are moving away from a "Here you go -- good luck" approach to counter terrorism assistance to more of a "We're all in this together -- what shall we do next" approach. The difference appear subtle from here in Washington, but it has enormous implications for partner nation ownership, sustainability, and success on the ground.

Another element of the Kenya program is worth noting. The Commissioner of National Police is eager to improve the KNP's maritime interdiction capability, particularly in the waters along the northern coast, where traditional cargo dhows transit the Somali border on a daily basis. We know that some of these vessels carry contraband and persons of interest from a counterterrorism perspective, but there is currently a very limited capability to interdict and inspect them. A U.S. Navy group has been working with the Kenyan Navy. In planning the maritime element of its program, ATA has drawn extensively on the Navy group's expertise. They have provided ATA with valuable information about navigational issues, fueling stations, launch ramps, and so forth. Some of their experts assisted ATA in the evaluation of a locally available and serviceable boat/engine package that is well suited to those waters and the interdiction mission.

The Kenyan Navy conducts maritime interdiction training with the assistance of U.S. Navy personnel for its own sailors. The navy has agreed to enroll maritime police officers into the next two eight-week courses it delivers. Police and Navy personnel will deploy together in joint coastal operations. The police have much wider arrest authority than navy personnel under Kenyan law. This is mutually beneficial for the Kenyan services. In addition, the Kenya Police will provide information to the Nairobi-based Joint Terrorism Task Force for analysis. The JTTF will in turn provide leads, derived from investigative intelligence, to the maritime unit.

The Kenya program represents several elements of the criteria that: a customized approach based on the strengths and weaknesses of the partner nation; resident instructors, advisors, and mentors who gain the trust and respect of their Kenyan colleagues; and various USG elements -- State, DOD, Justice -- working together to combine resources and expertise that ensures the most effective assistance possible.

Cooperation with European States

Cooperation with European states will encompass the technical aspect, the European Union, in particular cooperation with Britain and France.

Technical Expertise

Kenya's Counter-Terrorism efforts have been considerably enhanced by the deployment of a counter-terrorist adviser in Kenya whose role is to develop and implement the United Kingdom, UK's, counter-terrorism strategy for Kenya as well as a wider regional strategy. These appointments, which are funded through the GOF CT programme, have

helped to shape the Kenya programme. During 2004–5 a number of new projects were initiated, which include: aviation security and border security management; assistance on anti-money laundering and counter-terrorist financing legislation; police reform and leadership support through Centrex; training in CT investigative skills for the Kenyan police; improving tourism security and the development of a Kenyan Joint Terrorist Task Force.²¹⁴

Kenya is receiving technical assistance to prepare the Jomo Kenyatta International Airport (JKIA) in Nairobi to meet International Civil Aviation Organization (ICAO) standards and the Federal Aviation Authority (FAA) International Aviation Safety Assessment (IASA) Category 1 status permitting direct flights to the USA²¹⁵.

JKIA is an aviation hub for flights to Asia, Europe and other destinations in Africa, and achievement of Category 1 Status will have a huge impact on the economy. This is because hubs allow collection of traffic so that markets can be consolidated into strong, efficient operations for both passengers and cargo. Safety and security is a prerequisite to such consolidation.²¹⁶ A major premise of the initiative is that African governments are ultimately responsible for the implementation of new security initiatives.²¹⁷

²¹⁴ Global Opportunities Fund Annual Report 2004-5

²¹⁵ "Safe Skies Initiative is Improving US-Africa Air Service, Slater Tells Committee," Press Release by the US Department of Transportation (No. 144 – 98), 30th July 1998. Mr. Rodney E. Slater was US Secretary of Transportation, and the Press Release covered his statement to the House Transportation and Infrastructure Sub-Committee on Aviation. See www.ostpxweb.dot.gov/aviation for the strategy for IASA Category 1 Status.

²¹⁶ Speech by Ms. Susan McDermott, US Deputy Assistant Secretary for Aviation and International Affairs, at the 2nd AGOA Forum (Mauritius, January 2003).

²¹⁷ Speech by Ava Wilkerson, Federal Aviation Authority Office of International Aviation, Lome, Togo, February 2003. She said, "We are only there to help, and only when we see the level of political will necessary to develop, implement and sustain improvements to aviation safety and security."

The increased terrorist threat after the 2002 terrorist attacks compelled the Kenya government to increase security along the Kenya -Somalia border, which precipitated the sealing of all the borders. The Kenyan and French navies have performed joint patrols in the Indian Ocean by patrolling to keep terrorists away.²¹⁸ This measure is intended to prevent the entry of terrorists through the Kenyan coastline. However, the political turmoil in Somalia has made it complicated to coordinate and monitor border security.

The Justice and Home Affairs Council adopted the European Union Counter-Terrorism Strategy in December 2005. The Heads of States and Governments welcomed the Strategy on 15 and 16 December 2005. The aim of the document is to take the agenda of work set out at the March 2004 European Council in the wake of the Madrid bombings constituting the EU Action Plan on Terrorism into the next phase. The Strategy commits the European Union to combat terrorism globally while respecting human rights, and also to make Europe safer, and for its citizens to live in freedom, security and justice. According to the document, terrorism is a threat to all States and to all peoples, and a criminal and unjustifiable act under any circumstances. The strategy requires work at national, European and international levels. The Strategy rests on the four pillars – prevention, protection, pursuit and response. Actions covered by each pillar cut across policy areas.²¹⁹

²¹⁸Mathias. Ringa, 2004. France and Kenya to Collaborate in Terror War. *The East Africa Standard*, Nairobi, 5 October. Article on-line Available from www.eastandard.net/hm_news/news.php?articleid=789290802/content/articles/article1c01.html. Internet, p 6

²¹⁹The European Union Counter-Terrorism Strategy

The EU endeavors to sustain international consensus on fighting terrorism, cooperation with the United Nations or other international and regional organizations, establishment of relations with important partners, with particular regards for neighboring countries, and the allowance of a targeted technical assistance. The EU is deeply engaged and shares responsibility for global security based on shared values and principles of liberty, democracy, rule of law, respect for human rights and fundamental freedoms. Moreover, the EU promotes a comprehensive approach addressing social as well as political factors and aiming at increasing tolerance and knowledge of different cultures and religions.²²⁰

The EU is now mainstreaming the issue of terrorism in its relations with third countries. The EU has introduced counter-terrorism clauses are being introduced in all external agreements. The EU has provided aid and technical assistance to countries lacking the capability to implement the common legal framework in UN Resolutions and Conventions. Counter-terrorism assistance is already part of the aid strategy of the EU and its Member States and The Council has resolved to enhance EU contribution. The European Council has invited the European Commission to increase funding for capacity-building projects in third countries and to ensure that there is sufficient flexibility in the budgetary procedures to allow funds to be used imaginatively. It is therefore natural that the EU should work closely with CTED.²²¹ Therefore, The EU attaches particular importance to developing international and regional co-operation in the fight against terrorism, particularly supporting the key role of the UN and the universal adherence to UN Conventions and Resolutions. In this regard therefore, the EU supports the key role

²²⁰ see European commission justice and home affairs

²²¹ Address by Mr Gijs de Vries, European Union Counter-Terrorism Coordinator, to the Counter-Terrorism Committee established by the United Nations pursuant to Resolution 1373 (2001)(New York)

of the United Nations and works to ensure universal adherence to all UN Security Council Resolutions, UN Conventions and Protocols relating to terrorism.

Kenya's Counter-Terrorism efforts have been considerably enhanced by the deployment of a counter-terrorist adviser in Kenya whose role is to develop and implement the United Kingdom, UK's, counter-terrorism strategy for Kenya as well as a wider regional strategy. These appointments, which are funded through the GOF CT programme, have helped to shape the Kenya programme. During 2004–5 a number of new projects were initiated, which include: aviation security and border security management; assistance on anti-money laundering and counter-terrorist financing legislation; police reform and leadership support through Centrex; training in Counter-Terrorism investigative skills for the Kenyan police; improving tourism security and the development of a Kenyan Joint Terrorist Task Force.²²²

Cooperation with Other Countries in Africa and in the Horn of Africa

Similarly, the EAC which consists of 5 member states: Kenya, Uganda, Tanzania, Burundi, and Rwanda has been involved in counter terrorism, although the founding treaty makes no specific mention of counterterrorism as an area of cooperation among its members, the three founding heads' of state (Kenya, Tanzania, and Uganda) did agree in a memorandum of understanding in 1999 to set up a mechanism to deal with terrorism in the region. The EAC subsequently created a terrorism and counterterrorism task force to study the national, regional, and international legal framework for counterterrorism and the protection of human rights. The divergence of laws and policies among EAC partner

²²² Global Opportunities Fund Annual Report 2004-5

states, the task force has proposed the development of a framework that would seek their harmonization. While a specific counterterrorism mechanism has not yet been established, the EAC has developed some counterterrorism programs under the aegis of cooperation on “political matters, and legal and judicial affairs” and devised an “East African Community Strategy on Combating Terrorism in East Africa.” The strategy calls on member states to exchange information on terrorism, enhance border security, and establish a regional forensic center.

In addition, the EAC has developed a number of programs that are relevant to the implementation of the UN Strategy, including the Operational Programme for Combating Terrorism under the auspices of the EAC Chiefs of Police Meetings. The EAC member states signed a memorandum of understanding on defense cooperation in September 2007. The agreement aims to control the trafficking and proliferation of small arms and light weapons and to improve regional police cooperation in combating cross-border crime.²²³

The first regional meeting of the Heads of National Human Rights Commissions of the EAC Partner States was held in Arusha in February 2008. The meeting aimed to promote and protect human rights within the region and put forth a strategic 3-year plan of action that included an EAC Bill of Rights with mechanisms for enforcement and a call for greater capacity-building efforts for national institutions. While the priority issue of the

²²³ Press release, Thursday June 19th 2008 EAC Small Arms and Light Weapons Control Project at http://www.eac.int/news_2007_sep_small_and_light_weapons.htm on June 2008

organization remains economic integration, efforts to address human rights or other security related issues work to combat some of the conditions conducive to terrorism. ²²⁴

In an effort to bring peace to the region and to reduce conditions for terrorist breeding grounds in the surrounding failed and failing states, Kenya is involved in both Somalia and Sudan Peace Processes, which are within the Intergovernmental Authority and Development framework, to achieve stability and functioning institutions in these countries. Stability in these countries will reduce their use as potential safe havens and recruiting grounds for terrorists. Somalia's instability has also created problems for enforcing border controls. Somalia's lack of a central government for the last 14 years and its proximity to the Arabian Peninsula make it a potential location for international terrorists seeking transit or a launching point from which to conduct operations elsewhere. Somalia also widely uses the hawalla system of money transfer. The lawlessness in Somalia is conducive to the unhindered or unchecked movement of terrorists, materiel, and cash between the two countries through the long, un-patrolled coastline and porous borders. To address the problem, Kenya has been on the forefront in the region in bringing about national reconciliation to establish peace and stability in Somalia. The peace process in Kenya realized the signing of a peace accord between the warlords and the formation of a transitional federal government in Somalia. However, because of insecurity, the new government has not relocated to Somalia.

²²⁴ Center on counter terrorism cooperation, East African Community (EAC) available at http://www.globalct.org/resources_factSheets_eac.php on June 2008

Conclusion:

This chapter has examined external cooperation by Kenya as spelt out in the UNSC RES 1373. In particular, this chapter has researched on: Kenya-United Nations Cooperation, including UNDP/UNODC National Project; Kenya-Africa Union Cooperation.

The East African Counterterrorism Initiative (EACTI) and CJTF-HOA is the foundation for U.S. counterterrorism programs in so far as US – Kenya partnership in counterterrorism is concerned Military. The chapter has examined Kenya-US Defense ties and how it has affected border control as outlined in the UNSC RES 1373; The Combined Joint Task Force-Horn of Africa; US Terrorist-Finance to Kenya; Training Programs; Sharing of Facilities and Information.

Kenya has ratified Africa Union's Convention on the Prevention and Combating of Terrorism 1999 and its 2002 Protocol. In addition, a task force has been created and a memorandum of understanding signed in 1999 to set up a mechanism to deal with terrorism by Kenya, Uganda and Tanzania.

Finally, the chapter has highlighted Kenya's Cooperation with European States, with other countries in Africa, and in the Horn of Africa. Britain has developed counterterrorism strategy for Kenya as well as a wider regional strategy targeting aviation security and border security management; assistance on anti-money laundering and counter-terrorist financing legislation; police reform and leadership support through

Centrex; training in CT investigative skills for the Kenyan police; improving tourism security and the development of a Kenyan Joint Terrorist Task Force.

CHAPTER FIVE: CONCLUSION TO MULTILATERAL COOPERATION IN COUNTER-TERRORISM: KENYA AND THE UN

Introduction

This study set out to investigate multilateral cooperation in counter-terrorism, with specific reference to Kenya and the UN. The study aimed to achieve two objectives: First, to examine the forms and patterns of Kenya's cooperation in counter-terrorism as outlined in UNSC RES 1373. Second, the study investigated the nature of assistance that Kenya has received from external partners in order to effectively implement the cooperation aspect in counter-terrorism as enshrined in UNSC RES 1373.

This concluding chapter is organized around the three main findings of the study. The first finding is that international terrorism is a recognized threat to international peace and security, and one that can be addressed effectively through international cooperation within the framework of UNSC RES 1373. The UNSC RES 1373 is therefore an important first step towards this end.

International cooperation in counter-terrorism under UNSC RES 1373 commits member states to take certain measures at the domestic levels and others at the international level and the analysis can be conducted at those two levels.

Second, implementation of UNSC RES 1373 at the domestic level elicited contention between the government on one hand and the social groups on the other, resulting in partial success.

Third, the implementation of international cooperation aspect of the UNSC RES 1373 involves

cooperation with external actors within the region and beyond. Success depended upon the appreciation of the degree of the threat posed by international terrorism.

Chapter one was the introduction to the study and included statement of the problem, hypothesis, objectives of the study, justification of the study, theoretical framework, literature review, methodology and Chapter Outline.

Chapter two examined the role of United Nations in counter-terrorism. Both UNSC RES 1373 and the CTC have had an impact in combating global terrorism, but not in a readily noticeable way. Nonetheless, the UN approach to global terrorism since 2001, and the CTC-system in particular have had an impact on enhancing multilateral efforts towards formulating a viable global agenda of counter-terrorism that can coordinate international efforts. Broadly speaking, there are perhaps five UN/CTC 'achievements' that can act as a measurement of these successes.

Kenya has submitted three reports to the Counter-Terrorism Committee as required by paragraph 6 of UNSC RES 1373. The Counter-Terrorism Committee visited Kenya in 2005 and praised it for its honest reporting and its plans to establish a unit to combat the financing of terrorism. During this visit, the Executive Director of the Counter-Terrorism Committee's Executive Directorate and stressed the importance of having in place in Kenya legislation for the criminalization of terrorism as well as instruments to control the financing of terrorism. The fifth special meeting with international, regional and sub-regional organizations of the Counter-Terrorism Committee on Prevention of Terrorist Movement and Effective Border Security" was also held in Nairobi in October 2007.

Since UNSC RES 1368 and 1373, the Security Council has issued over thirty resolutions dealing with global terrorism. In essence, the Security Council, in the legal parlance, remains actively seized on the matter of countering global terrorism and as such offers its weighty support to the UN process. Political will and leadership, above all else, are essential prerequisites if the UN is to continue to have a substantial role in the global fight against terrorism. To this point, the Security Council has and continues to offer its expertise and legitimization to the UN process.

The CTC has had an impact on broadening global counter-terrorism by catalyzing the development of counter-terror mandates in over sixty regional and sub-regional intergovernmental organizations. The CTC's Special Meeting of 6 March 2003, convened representatives of various international organizations in an attempt to spur these organizations to actively engage themselves in the global fight against terrorism. Indeed, following the UN's lead, many international organizations have in fact adopted counter-terrorism strategies that are in concordance with the recommendations outlined in UNSC RES 1373 and promoted by the CTC.

Lastly, while the UN has produced 13 international conventions related to combating terrorism, if it is to build on these areas of UN comparative advantage, one major opportunity for UN action is having defined and then entrenched counter-terrorism into its political embodiment, more importantly by conclusion of a Comprehensive Convention on International Terrorism, the UN must then act against its development around the world. It must do so by first strengthening the CTC and CTED, and by creating new counter-terrorist institutions if they are deemed necessary.

A UN moral authority on terrorism would be greatly enhanced if agreement could be reached on a comprehensive convention on International Terrorism, which would establish a definition for terrorism and outlaw terrorism in all its forms. Member states took a strong step forwards at the 2005 World Summit, whose Outcome Document, unanimously endorsed by world leaders, contains for the first time in UN history an unqualified condemnation of terrorism in all its forms and manifestation, committed by whomever, whatever and for whatever purpose. This provides a sound basis to conclude the long overdue comprehensive convention day of its passing.

Chapter three, cooperation through domestic level adjustments in this study has revealed that the Kenya Government has drafted two domestic laws: First the Suppression of Terrorism Bill, 2003 that was published in a Special issue of the Kenya Gazette as Supplement No. 38 on the 30th April 2003. This Bill went through the first reading in the parliament but was referred to the Departmental Committee stage of the administration of Justice and Constitutional Affairs of parliament. The departmental committee has since proposed that the Bill be revised by the Attorney General for introduction in parliament again. At the same time, the Law Society of Kenya offered to assist in this initiative by drafting another Bill entitled the Anti-Terrorism Bill as a response to criticisms against the Suppression of Terrorism Bill 2003. The Bill was proposed but was not formally introduced before Parliament. Both bills have been criticized as a matter of policy and on specific human rights and constitutional grounds. While neither bill has been formally reintroduced, some members of civil society sharply criticized the draft laws.

Similarly, the Kenya Government has drafted the Proceeds of Crime and Anti-Money Laundering Bill, 2008 was published by the Attorney General on 11th April 2008 (under Gazette

Notice No. 25) to create a comprehensive legislative framework to combat money-laundering in Kenya. The Bill matured on the 25th April 2008 and subsequently went through the First Reading on 29th April 2008 and the Second Reading on the 8th May 2008. The Bill has not reached the Third Reading. The publication of the Bill was received with mixed reaction but almost a year down the line; the Bill is yet to be enacted into law. Finance Assistant Minister Oburu Odinga introduced the Bill on Thursday 17 February 2009. The Bill was referred to Parliaments Departmental Committee on Finance which scrutinized it and submitted a report to the House in 14 days to pave way for debate. However, the House went on recess before the Bill could be debated. The earliest the Bill can be debated is October 2009.

Kenya's domestic actors, in particular the members of parliament, and the of civil society have voiced strong opposition to both the draft Suppression of Terrorism Bill, 2003 and the draft Proceeds of Crime and Anti-Money Laundering Bill, 2008 and this has largely stalled their progress into becoming law in Kenya.

In addition to legislations, the study has found out that the Kenya Government established the Anti-Terrorism Police Unit (ATPU) as a special division of the Kenya Police in February 2003 to carry out specific investigations and arrests related to terrorism, conduct specialist operations (sometimes joining up with other units of the force to do so) and plays a major role in the interrogation of terrorist suspects.

The NSIS has been transformed to focus more on criminal intelligence, counter-terrorism, money laundering, narcotics trafficking and proliferation of illicit arms. The centre coordinates the

training of officers from different relevant government agencies and collection of timely, tailored and digestible intelligence a National Counter Terrorism Strategy; a National Counter terrorism Center (NCTC); and establishing an Anti Terrorism Police Unit; aviation security through the Kenya Airport Authority (KAA) and the Kenya Civil Aviation Authority (KCAA) the Safe Skies program; the Kenya Revenue Authority, KRA, initiatives such as: National and Regional customs initiatives including Cooperation with Tanzania in establishing the legislative framework for exchange of staff between the two revenue authorities for the purpose of inspecting goods to facilitate trade and secure the trade supply chain: through other anti-terrorism other anti-terrorism policing.

Other measures include overland transport whereby the Gok has embarked on a programmed to streamline the public sector, in addition to a comprehensive programme incorporating registration of drivers and conductors after conducting background checks, fitting of speed governors and seat belts to all public service vehicles, and reducing overcrowding in vehicles by limiting the number of passengers; collaboration with the United States Agency for International Development (USAID) to support Kenya and Uganda's initiative to implement joint border controls at the Malaba border in line with the Revised WCO Convention on Simplification and Harmonization of Customs Procedures (Kyoto Convention).

KRA is currently implementing a function-based organizational structure under a three-year Corporate Plan, and is currently implementing a function-based organizational structure under a three-year Corporate Plan. Further, the KRA is offering training, technical assistance and capacity building support for border customs staff by synchronizing training and sharing

resources in combating terrorism, money laundering, drug trafficking and other transnational customs offences.

Chapter four has dealt with external engagements that Kenya has established or engagements with important external actors in the fight against terrorism, including countries such as the US, the EU, the AU, the EAC, HOA region, and the supranatural actors such as the UN as outlined in the UNSC RES 1373. Kenya has acceded to all thirteen conventions that set the foundation for the full implementation of the UNSC RES 1373.

The Kenya Government is a beneficiary of an on-going national project funded and closely coordinated by both the UN agencies. The UNDP and UNODC are jointly running a \$431,000 one-year project on ‘Strengthening counter-terrorism capacity for a safer Kenya’ which is funded by the Government of Denmark.

Kenya has ratified Africa Union’s Convention on the Prevention and Combating of Terrorism 1999 and its 2002 Protocol which has developed a “Plan of Action on the Prevention and Combating of Terrorism in Africa which specifically references the obligations set out under UNSC RES1373.

The study has revealed that Kenya’s external cooperation with state and non-state actors is varied, depending on the degree of appreciation of the threat due to international terrorism. Kenya – US cooperation is the broadest. The East African Counterterrorism Initiative (EACTI) and CJTF-HOA is the foundation for U.S. counterterrorism programs in so far as US – Kenya partnership in counter-terrorism is concerned. The USG has funded counter-terrorism initiatives

through training and equipment of various Kenyan law enforcement and security; Programs; Training and equipping of four coastal security patrol units including training on security management and planning at Mombasa (Port Security Initiative), and Construction of Coastal Maritime Training Facility on Camp Manda.

The USG through the Combined Joint Task Force – Horn of Africa (CJTF-HOA) set up in 2002 with its headquarters in Djibouti, has established a focal point for defense mission in the region. This initiative falls under the jurisdiction of the United States Central Command (USCENTCOM). Kenya also joined the US in the global war on terror (GWOT). Kenya has provided the United States with facilities for counterterrorism efforts in Eastern Africa region.

Kenya's cooperation with European countries includes cooperation with the EU more so Britain and France and covers technical. Britain has developed counter-terrorism strategy for Kenya as well as a wider regional strategy. Projects targeted under this scheme include: aviation security and border security management; assistance on anti-money laundering and counter-terrorist financing legislation; police reform and leadership support through Centrex; training in CT investigative skills for the Kenyan police; improving tourism security and the development of a Kenyan Joint Terrorist Task Force. The deployment of a counter-terrorist adviser in Kenya whose role is to develop and implement the United Kingdom, UK's, counter-terrorism strategy for Kenya as well as a wider regional strategy has considerably enhanced Kenya's efforts in fighting terrorism.

The EAC has created terrorism and counterterrorism task force to study the national, regional, and international legal framework for counterterrorism and the protection of human rights as agreed in a memorandum of understanding in 1999 to set up a mechanism to deal with terrorism by Kenya, Uganda and Tanzania.

Chapter five concludes the study by showing the ways and means by which Kenya has cooperated in so far as cooperating internally, with bilateral, multilateral and with the UN and other international actors is concerned. The chapter also offers valuable lessons learnt and recommendations for further research.

Some impediments, domestic and external, still exists in the so far as Kenya's cooperation towards the implementation of UNSC RES 1373 is concerned. This is likely to stifle reforms aimed at fighting terrorism for many years to come. It will be a long war for Kenya and the region, and the end is not yet in sight. Kenya will continue to be vulnerable because of the very strong stand it has taken against terrorism, the assistance it has extended to regional efforts against terrorist groups, and the support it has given to the American War on Terror. As a nation, we must thus expect that if the opportunity presents itself, terrorists will launch an attack on the Kenyan assets.

Epilogue

Multilateralism and concerted action with a central role of the United Nations is believed to be of much importance in the fight against terrorism in a unified and coordinated way. Facing an evolving, global terrorist threat, the international community's ability to deal effectively with it will only be as strong as the international community's weakest link and states derive more benefit when working with partners around the globe rather than alone in the international fight against terrorism²²⁵ it is clear that transnational issues demand multinational responses.

No matter how powerful a country such as the United States is, without partners it cannot easily or efficiently tackle problems that transcend borders. There is simply no way the United States alone can be present everywhere to deny it funding, or, better yet, to find it and destroy it.

The first element of combating terrorism should aim at defeating existing terrorist organizations at the global, regional, and state level. Terrorism will only be defeated by solidarity and collective action. Through direct and indirect use of diplomatic, informational, military, and economic instruments of power, the international community should seek to defeat terrorist organizations by attacking their centers of gravity while directly compelling or indirectly influencing states that sponsor terrorists. The centers of gravity of terrorist groups include leadership, supporting ideology, finances, command and control network, and sanctuaries. To defeat existing terrorist groups, the UN partners need to: Identify and isolate terrorist organizations at each level, disrupt support infrastructure and sanctuaries, discredit ideology or reasons for committing acts of terrorism, destroy networks and leadership.

²²⁵ Alistair Millar and Eric Rosand, *Building Global Alliances In The Fight Against Terror*, (Washington: Center on Global Counterterrorism Cooperation, 2008), p 2.

Too many nations define terrorism differently and have different ways of fighting terrorism, different cultural values, different legal standards, and different approaches to human rights. Some nations are part of the problem and not part of the solution; their regimes simply find it too tempting to try to exploit terrorists for their own interests. Institutions like the UN, however, are the only way to cut across the fault lines that divide the world.

There are many functions that regional centers for counterterrorism can do better than international institutions. Defining regions in terms of common interests, the same definition of terrorism, groups that are more likely to keep mutual secrets and nations that do not support terrorism in any form, allows cooperation at a level of depth that can only be achieved by limiting the nations involved. At the same time, such cooperation can be equally vital to building trust on a regional level. For all of the talk about clashes between civilizations, terrorists often do a superb job of exploiting national differences and tensions at the local level. They exploit them to find tolerance and sanctuary, or simply the kind of indifference that allows them to move and operate across borders. Institution building is, in itself, dangerous unless it is tied to clear and transparent measures of effectiveness. The fact that many aspects of counterterrorism are secret is not a reason to keep budgets and programs secret, to fail to develop adequate measures of effectiveness, and make them open enough so that political authorities, journalists, and the public cannot judge what is and is not being accomplished.

Formal structures of cooperation are not a substitute for bilateral and multilateral efforts that put real counterterrorist in cooperation with their foreign counterparts. These may or may not be institutionalized. In general, the best efforts tend to be a mix of formal meetings and cooperation

efforts with informal expert cooperation and dialogue. The key is that nations can cooperate in sensitive areas, in intelligence, and in operations, in ways that are not public but are carefully focused and have direct and immediate value. This kind of cooperation has value at all levels, but particularly when it cuts across regions, religions, cultures, and political systems.

International cooperation must focus on real terrorists and extremists, and avoid taking actions that punish the innocent, and risk alienating those who are not extremists and terrorists. There has been a tendency in the West, and particularly in the US, to go too far in counterterrorism and arrest, detain, and question too many ordinary Muslims and Arabs. The seventh lesson goes back to the issue of the divisions between the West and the Middle East, and the issue of Islamic extremism. No matter how well we cooperate in counterterrorism, this will not be enough. The fact is, however, that we also need cooperation in dealing with the causes of the kind of global terrorism that has emerged out of Islamist extremism. Moderate regimes in the Middle East have fought this battle far longer than the West. In many cases, however, they have not yet moved to deal with the necessary political and economic reforms. The last lesson is that African countries should continue to be assisted in counter terrorism because of the fragility of the states among other factors that make them vulnerable to terrorism.

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Security Council

Distr.: General

28 September 2001

Resolution 1373 (2001)

Adopted by the Security Council at its 4385th 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 recognized 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 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,

Recognizing 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 organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized 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 person 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 controls 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; forged 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 the 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 recognized 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, subregional, 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 and 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 resolution;

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 determination 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.

Distr.: General
31 July 2002

Original: English

Letter dated 29 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Kenya, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(Signed) Jeremy Greenstock
Chairman
Counter-Terrorism Committee

Annex

Note verbale dated 24 July 2002 from the Permanent Mission of Kenya to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of the Republic of Kenya to the United Nations presents its compliments to the Counter-Terrorism Committee of the Security Council and, with reference to paragraph 6 of resolution 1373 (2001), has the honour to submit the report on measures taken by the Republic of Kenya towards the implementation of the resolution (see enclosure).

Enclosure

Report of the Republic of Kenya submitted to the Security Council Committee established pursuant to resolution 1373 (2001)

The position of Kenya on the fight against terrorism has been well elaborated in its Statements during the General Debate of the 56th Session of the UN General Assembly. As a country, Kenya has herself suffered the direct impact of terrorism having been a victim as recently as August 1998. Kenya has on many occasions condemned in the strongest terms the acts of terrorism in all their manifestations and called for intensified and comprehensive international cooperation in the fight against the scourge.

In the aftermath of the 11 th September 2001 attacks, Kenya expressed its unequivocal solidarity with the United States of America and generously offered to join in any efforts aimed at bringing to justice the perpetrators of these attacks. Kenya has in subsequent months committed herself to facilitating international efforts in this respect and is currently assisting in ensuring the success of the on-going operation, "Enduring Freedom".

The adoption of the Security Council Resolution 1373 (2001) which constitutes a comprehensive attempt to fight terrorism globally is a welcome move for Kenya.

Legislative Measures

After September 2001, the Government of Kenya realised that the existing domestic legislative framework was inadequate to effectively deal with the multifaceted aspects of terrorism. The current provisions of anti-money laundering legislation, for example, were limited. The government has therefore initiated intensive measures to enhance the existing penal legislation in order to deal with all the aspects of terrorism.

In addition, administrative measures have been put in place by the Central Bank of Kenya to deal with the identification, tracing and freezing of financial assets belonging to persons identified with terrorist activities. In this respect the Central Bank of Kenya has issued instructions to Banks in Kenya to trace and freeze financial assets of organisations and persons so identified.

International Efforts

Kenya fully supports all efforts by the international community aimed at combating terrorism.

In this respect, Kenya has finalised the ratification process regarding the following international conventions covering directly or indirectly the subject of terrorism:

- (i) Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo 1963

- [ii] Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague 1 970
- [iii] Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation, Montreal 1 971
- [iv] International Convention against the Taking of Hostages, 1979
- [v] 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), Montreal 1 988
- [vi] Convention for the Suppression of Unlawful Acts against the safety of Maritime Navigation, Rome 1988
- [vii] Convention on the Physical Protection Of Nuclear Material, Vienna 1980
- [viii] Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, Rome 1988
- (ix) Convention on the Marking of Plastic Explosives for the purpose of Detection, Montreal 1991
- [x] International Convention for the Suppression of Terrorist Bombings, New York 1997

- [ix] International Convention for the Suppression of the Financing of Terrorism, New York 1999.

Kenya has also ratified the OAU Convention on the Prevention and Combating of Terrorism, 2001.

Conclusion

The Government of Kenya is committed to joining forces with all governments at the bilateral level and recognises the significance of the United Nations Security Council Resolution 1373 [2001] in enhancing the existing efforts in the fight against terrorism.

The Resolution provides an important forum for cooperation and coordination of the efforts of the members of the international community. The Government of Kenya believes that early and full implementation of the Resolution is important. In line with this objective, Kenya intends to maintain close links with the Counter-Terrorism Committee and stands ready to provide any further constructive contribution and support.

**Appendix 3.0: The third report from Kenya to
the Counter-Terrorism Committee**

S/2004/181

United Nations

Security Council

Distr.: General
10 March 2004

Original: English

Letter dated 4 March 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 18 September 2003 (S/2003/908). The Counter-Terrorism Committee has received the attached third report from Kenya submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(Signed) Inocencio F. Arias
Chairman

Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

Annex

Note verbale dated 2 March 2004 from the Permanent Mission of the Republic of Kenya to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of Kenya to the United Nations presents its compliments to the Chairman of the Committee and, in reference to the latter's letter dated 31 October 2003, has the honour to forward herewith Kenya's third report on measures taken to implement resolution 1373 (2001) (see enclosure).

**THIRD REPORT OF THE REPUBLIC OF KENYA
SUBMITTED TO THE UNITED NATIONS
COUNTER-TERRORISM COMMITTEE
(CTC)**

THIRD REPORT OF THE REPUBLIC OF KENYA SUBMITTED TO
THE UNITED NATIONS COUNTER TERRORISM COMMITTEE
(CTC)

ESTABLISHED PURSUANT TO PARAGRAPH 6 OF SECURITY
COUNCIL RESOLUTION 1373 (2001)

Introduction

Kenya submitted its first report and second supplementary report to Counter Terrorism Committee (CTC) in July 2002 and March 2003 respectively. Arising out of the second report, CTC posed further question and elicited further comments from the Government of Kenya with regard to the implementation of Resolution 1373 (2001). Set out below are the responses from the Government of Kenya to the issues requested by CTC:

Are the measures taken by Kenya to combat terrorism compliant with all its obligations under international law (Has it adopted measures to combat terrorism in accordance with international human rights, refugee, and humanitarian law?)

All legislative and administrative measures taken must not be contrary or *ultra vires* to the provisions of the Constitution of Kenya, which at Chapter V provides for the protection of fundamental rights and freedoms of the individual. These rights and freedoms include right to life, personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection -from deprivation of property, protection from arbitrary search or entry, freedom of conscience, expression, assembly and association, freedom of movement, protection from discrimination on the grounds of race, political opinion, religion, colour, creed or sex.

The Constitution of Kenya embodies the principles contained in various international human rights covenants, which Kenya is also a party to. So far there has been no Constitutional challenges against any measures taken.

- 1.2 Is there any law, which criminalizes the willful provision or collection, by any means, directly or indirectly, of funds by Kenyans or in the territory 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? Give an outline of provisions.

There is no law, which directly criminalizes the willful provision, or collection of funds to carry out terrorist acts. However such an offence is punishable under the offences related to conspiracy to commit a felony under the various provisions of the Penal Code Chapter 63 of the Laws of Kenya.

Section 220 of the Penal Code provides that any person who attempts or with intent to unlawfully cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life, is guilty of a felony and is liable to imprisonment for life.

Section 224 of the Penal Code also provides that any person who conspires with any other person to kill any person, whether that person is in Kenya or elsewhere, is guilty of a felony and is liable to imprisonment for fourteen years. Under section 234 in addition to corporal punishment the same punishment is provided for any person who unlawfully causes grievous harm.

Section 235 of the Penal Code further provides that any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, is guilty of a felony and is liable to imprisonment for fourteen years.

The substantive provision criminalizing the willful provision or collection of funds by Kenyans or in the territory with the intention to be used carry out terrorist acts is provided in Section 14 of the Suppression of Terrorism Bill, 2003 as follows:-

Any person who-

- (a) invites another to provide or make available money or other property; and

- (b) intends that it should 'be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism,
 - (c) receives money or other property and intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism,
 - (d) provides or makes available money or other property and knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism,
- shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding ten years or to a fine, or both.

What executive machinery is in place for preventing and suppressing the financing of terrorist acts?

Currently there is an Anti Terrorist Police Unit located in the Office of the President overseeing the prevention and suppressing the financing of , terrorist acts. The Unit composed of intelligence personnel dealing with various aspects of financial forensics required to trace proceeds channeled for terrorist activities. This Unit is a stopgap measure awaiting the enactment of the Anti-Money Laundering Bill, which shall transform the Unit into the equivalent of Financial Intelligence Unit.

The Kenya Bankers Association has come up with policy guidelines of "know your customer (KYC)" and "know your transactions (KYT)" requiring all member banks to report any suspicious financial transactions awaiting the enactment of the anti money laundering bill.

The Central Bank of Kenya has also re-organized its capacity to closely monitor and supervise the operations of commercial banks and forex bureaus.

What progresses have been made towards enactment of the Suppression of Terrorism Bill and Anti Money Laundering Bill?

The Suppression of Terrorism Bill has been published and matured for debate in the National Assembly. The publication of the Bill elicited various comments from different stakeholders. But due to the tight calendar of the National Assembly and the need to build

consensus among various stakeholders the Bill may lapse and will need to be published again before submission for debate in the National Assembly.

The Anti Money Laundering Bill is at the drafting stage.

1.3 Does the obligation to report suspicious financial transactions extend to other intermediaries e.g. lawyers, accountants and notaries when engaged in brokering activities?

The duty to report not only suspicious financial transaction but preparation to commit crime generally lies with every person in Kenya.

Under Section 393 of the Penal Code every person who, knowing that a person designs to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completion thereof is guilty of a misdemeanor. Section 393 of the Penal Code provides that a person who receives or assist another who is, to his knowledge, guilty of an offence and liable to imprisonment of 3 years being accessory after the fact.

Professional Ethics governing the practice of various professions in Kenya require that members of that profession to report to the competent authorities where they suspect that any illegal act are about to be committed.

The substantive duty to report suspicious financial transactions by other intermediaries engaged in brokering activities will be covered under the Anti Money Laundering Bill.

1.4 Is there any law in Kenya which provides for the freezing of funds regardless of their origin which are:

- Held in the names of persons and entities identified in lists, such as those approved for the purposes of

Security Council Resolution 1267 (1999), as being linked to terrorist activities;

- Suspected of being linked to terrorism, but which have not yet been used for the commission of a terrorist act.

Under Section 36 of the Narcotic Drugs and Psychotropic Substances_ (Control) Act, No. 4 of 1994 any person who commits a specified offence under the Act, all the property owned by such a person on the date of the commission of that offence or acquired by him after that date shall be forfeited to the Government.

Under the Act the regulations have been made to freeze the accounts suspected to contain proceeds of drug trafficking or related offences awaiting the determination by the courts.

Outline Section 180 of the Evidence Act and the relevant provisions of the Criminal Procedure Code as well as information on whether Kenya can freeze assets suspected of being linked to terrorism at the request of another State.

Section 180 of the Evidence Act Chapter 80 of the Laws of Kenya provides that where it is proved on oath to a judge or magistrate that in fact, or according to reasonable suspicion, the inspection of any banker's book is necessary or desirable for the purpose of any investigation into commission of an offence, the judge or magistrate may by warrant authorize a police officer or other person named therein to investigate the account of any specified person in any banker's book, and such warrant shall be sufficient authority for the production of any such banker's book as may be required for scrutiny by the officer or person named in the warrant, and such officer or person may take copies of any relevant entry or matter in such banker's book.

Any person who fails to produce any such banker's book to the police officer or any other person executing the warrant shall be guilty of an offence and liable to imprisonment for a term not exceeding one year or to a fine or both.

Under Section 47 of the Narcotic Drugs and Psychotropic Substances (Control) Act the Government of Kenya may enter into an

arrangement on a reciprocal basis with the Government of another country in respect of the recovery, and handing over of possession to the Government of that country of any property in Kenya which is confiscated by or forfeited to the Government of that country in consequence of the commission by any person of an offence against a corresponding law of that country or for tracing and preserving any property in Kenya owned by or under the control of any person who has or is suspected to have committed an offence against such corresponding law.

Does the Suppression of Terrorism Bill (STB) have provisions for the blocking of assets of terrorists and terrorist organizations and the seizing of such funds? If so give an outline of the provision.

Under Section 19 of the STB where the Attorney General has reasonable grounds to suspect that a person has committed, is committing or is about to commit an act of terrorism or is in possession of terrorist property, he may, for the purposes of the investigation of an offence apply to the High Court for an order:

- compelling the person to deliver up any document or record relevant to identifying, locating or quantifying any property and
- requiring a bank or any other financial institution, trustee, cash dealer or custodian to produce all information and deliver up all documents and records regarding any business transaction conducted by or on behalf of the person concerned.

Section 21 of the STB proposes that an authorized officer who has reasonable grounds to suspect that any cash which is being imported into or exported from Kenya, or is being brought to any place in Kenya for the purpose of being exported to any place in Kenya, is terrorist property, may seize the cash.

The authorized officer may seize all the cash under this section even if he reasonably suspects that a part only of the cash to be terrorist property especially where it is not reasonably practicable to seize that part of the cash that is suspected to be terrorist property. These powers can be exercised whether or not any court proceedings have been brought for an offence in connection with the cash concerned.

The Proceeds of Crime and Anti-Money Laundering Bill, 2008

**THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING
BILL, 2008**

ARRANGEMENT OF CLAUSES

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