Cooperation in Counterterrorism: Rhetoric vs. Reality

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The rhetoric of cooperation in counterterrorism comes easily. The reality comes hard. Nations have very different views of who is a terrorist and who is a legitimate opponent to a given government. While all nations at least claim to oppose terrorism as they individually define it, they do not agree on who should be called a terrorist, on the relative priority for counterterrorism over human rights and civil liberties, or the priorities that should be given to a specific threat.

This is why sweeping agreements and broad statements of good intentions are sometimes possible, but only because no one takes them seriously. Like many exercises in diplomatic rhetoric, they survive the meeting that produces them and the public relations office that publicizes them, but die upon engagement with reality.

**Cooperation in Rhetoric versus Cooperation in Action**

It may not always be true that one country’s terrorist is another country’s freedom fighter, but it is true often enough to place serious limits on real world cooperation. Experience has also shown that debating serious differences over how to define a terrorist under these conditions does little more than highlight these differences and repeat past arguments.

Other motives are involved. There some states use non-state actors to serve their own political and security interest, while other states use the equivalent of state terrorism to suppress legitimate opposition or simply opponents. If anything, this tendency has probably increased in recent years as states make more use of non-state actors in asymmetric warfare or back given sides in internal power struggles.

Open or covert proxy warfare is a growing reality, particularly in unstable areas like the Middle East and North Africa. It also, however, has become part of the struggle in the Ukraine and has long been part of the security problems in South Asia. The use of terrorism and non-state actors has been a key aspect of the struggle between India and Pakistan and Pakistan and Afghanistan in spite of repeated public effort to eliminate it.

**Areas Where Cooperation Can be Effective**

It is far easier to call for cooperation in counterterrorism than to achieve it, particularly on a global or regional basis. There are, however, some areas where cooperation can work – at least upon occasion.

*Focused Efforts of Clear Common Interest*

One area is when cooperation in counterterrorism deals with well-focused efforts between groups of nations that really do share a common view of the threat and give it enough priority to really cooperate. A careful focus on agreed threats is critical, and so is tailoring that focuses to avoid differences in national interest and sensitivities over intelligence and politics.

In many cases, this means the details of such cooperation are at least partially secret. There is little point in giving such details to the terrorist target, or inviting outside challenges and criticism – particularly when there a serious national differences over other issues or how counterterrorism should be conducted.
Truly Violent Outliers

Another area of practical cooperation is dealing with truly violent actors where nations have not begun to use such actors as proxies to serve their own interests. Nations can disagree about given political movements and groups, but once an organization or individual poses a broad threat of violence and acts upon it, they become easier targets to agree upon. This is particularly true of extremist movements where no state shares the same ideology or goals. Aum Shinrikyo was a good case in point. So are truly violent Islamist extremist movements.

Even here, however, the image of cooperation is sometimes used as a cover, and some governments that provide covert support to extremist movements support violent actors. Security and intelligence services sometimes operate independently within the limits of plausible deniability and can occasionally mount “rogue” operations not authorized by their governments. These are key reasons that they are really cooperating, have valid targets, and do not combine real terrorist threats with political targets. “Trust but verify” does not simply apply to arms control agreements.

Prevention

A third area deals with prevention, although cooperation here again requires some degree of common interest. Flagging known individual terrorists, flight and airport security, halting the movement of foreign “volunteers,” blocking transfers of money and the sale of explosives and other tools of terrorism across borders can sometimes work. Once again, however, much depends on state-to-state relations and common views of the value of counterterrorism versus civil liberties.

Turkey, for example, found it convenient to let foreign volunteers have relatively easy access to Syria when this seemed to strengthen ISIL’s ability to threaten Assad, although it came to find that ISIL was an equal threat to Turkey.

UN and International Organizations

A fourth area of cooperation lies in supporting agreed areas of cooperation in UN, Interpol, and other international efforts. These efforts generally involve very specific areas of action that do not present the same challenges as bi/multilateral, regional, or global agreements that have to deal with controversial targets and threats.

This limits their scope and the their real world ability to deal with some of the most serious problems involving state and non-state terrorism. At the same time, the art of the possible has allowed the UN to develop 14 universal legal instruments and four amendments to prevent terrorist acts. These acts are summarized in the annex that follows, and UN action continues:

- In 2005, the international community also introduced substantive changes to three of these; and the UN adopted the Amendments to the Convention on the Physical Protection of Nuclear Material, the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.
- Two more legal instruments were added in 2010: the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and the 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft. These treaties further criminalize the act of using civil aircraft as a weapon, and of using dangerous materials to attack
aircraft or other targets on the ground. The unlawful transport of biological, chemical and nuclear weapons and their related material becomes punishable under the treaties. Moreover, directors and organizers of attacks against aircraft and airports will have no safe haven. Making a threat against civil aviation may also trigger criminal liability.

- Currently, states are negotiating an additional international treaty, a draft comprehensive convention on international terrorism. This convention would be the kind of broad call for action that is often more honored in words than action, but would build on principles already present in anti-terrorism conventions: the importance of criminalization of terrorist offences, making them punishable by law and calling for prosecution or extradition of the perpetrators; the need to eliminate legislation which establishes exceptions to such criminalization on political, philosophical, ideological, racial, ethnic, religious or similar grounds; call for Member States to take action to prevent terrorist acts; and emphasize on the need for Member States to cooperate, exchange information and provide each other with the greatest measure of assistance in connection with the prevention, investigation and prosecution of terrorist acts.

The UN also established a Counter-Terrorism Implementation Task Force (CTITF) was in 2005 and the General Assembly endorsed United Nations Global Counter-Terrorism Strategy in 2006. The CTITF has a United Nations Counter-Terrorism Centre (UNCCT), and ties together a wide range of entities, provides observers from key UN agencies, and has working groups on key issues. It also works with the World Bank, International Monetary Fund, United Nations Office on Drugs and Crime, and other organizations in addressing the financing of terrorism.

As for Interpol, its web page states that its General Secretariat collects, stores and analyses information about suspected individuals and groups and their activities, and exchanges data with member countries and other international organizations. Its Counter-Terrorism Fusion Centre, works to disrupt the recruitment and activities of foreign terrorist fighters.

It works to limit terrorist incidents carried out with chemical, biological, radiological, nuclear and explosives material, circulates alerts and warnings on terrorists, dangerous criminals and weapons threats to police in member countries through alerts known as Notices and Diffusions. INTERPOL-United Nations Security Council Special Notices are used to alert member countries to individuals and entities associated with Al-Qaeda and the Taliban, as listed by the 1267 Committee of the UN Security Council, and to help countries implement the freezing of assets, travel bans and arms embargoes.

In the event of a terrorist attack, member countries may request the assistance of an INTERPOL Incident Response Team (IRT). Experts can be quickly deployed to the site of the incident to provide a range of investigative and analytical support services, in coordination with the General Secretariat.

**Looking Towards the Future**

The problem for cooperation is not a lack of declarations, declared principles, existing institutions, and good ideas. It is a reality in which states continue to use non-state actors as proxies and tools, pick very different sides in local conflicts, conduct covert operations, and increasingly focus on such actions as a form of asymmetric conflict with limits or avoids the risk of different military intervention and warfare. It is also the states that rely on repression and the equivalent of state terrorism in trying to suppress or eliminate their opposition.
At the same time, most institutions dealing with cooperation in dealing with terrorism focus largely on counterterrorism and not only dealing with the causes of terrorism. They are not shaped to deal with ideological battles like the fight against violent religious extremism, or the problems in governance, politics, discrimination, sectarian and ethnic tensions, economic development, and population pressures and “youth bulge” that generate political upheavals and violence. They also give relatively limited priority to rehabilitation.

It is far from clear that progress in cooperation will outpace the growth of various forms of terrorist violence and the escalating threat from non-state actors.

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Annex One: UN Conventions on Counter Terrorism


1. **1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft**
   (Aircraft Convention)
   - Applies to acts affecting in-flight safety;
   - Authorizes the aircraft commander to impose reasonable measures, including restraint, on any person he or she has reason to believe has committed or is about to commit such an act, where necessary to protect the safety of the aircraft; and
   - Requires contracting States to take custody of offenders and to return control of the aircraft to the lawful commander.

2. **1970 Convention for the Suppression of Unlawful Seizure of Aircraft**
   (Unlawful Seizure Convention)
   - Makes it an offence for any person on board an aircraft in flight to "unlawfully, by force or threat thereof, or any other form of intimidation, [to] seize or exercise control of that aircraft" or to attempt to do so;
   - Requires parties to the convention to make hijackings punishable by "severe penalties"
   - Requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution; and
   - Requires parties to assist each other in connection with criminal proceedings brought under the Convention.

**2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft**

- Supplements the **Convention for the Suppression of Unlawful Seizure of Aircraft** by expanding its scope to cover different forms of aircraft hijackings, including through modern technological means;
- Incorporates the provisions of Beijing Convention relating to a threat or conspiracy to commit an offence.

3. **1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation**
   (Civil Aviation Convention)
   - Makes it an offence for any person unlawfully and intentionally to perform an act of violence against a person on board an aircraft in flight, if that act is likely to endanger the safety of the aircraft; to place an explosive device on an aircraft; to attempt such acts; or to be an accomplice of a person who performs or attempts to perform such acts;
   - Requires parties to the Convention to make offences punishable by "severe penalties"; and
   - Requires parties that have custody of offenders to either extradite the offender or submit the case for prosecution.

   (Diplomatic Agents Convention)
   - Defines an "internationally protected person" as a Head of State, Minister for Foreign Affairs, representative or official of a State or international organization who is entitled to special protection in a foreign State, and his/her family; and
   - Requires parties to criminalize and make punishable "by appropriate penalties which take into account their grave nature" the intentional murder, kidnapping or other attack upon the person or liberty of an internationally protected person, a violent attack upon the official premises, the private
accommodations, or the means of transport of such person; a threat or attempt to commit such an attack; and an act “constituting participation as an accomplice”.

5. 1979 International Convention against the Taking of Hostages (Hostages Convention)
   • Provides that “any person who seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostage within the meaning of this Convention”.

   • Criminalizes the unlawful possession, use, transfer or theft of nuclear material and threats to use nuclear material to cause death, serious injury or substantial property damage.

Amendments to the Convention on the Physical Protection of Nuclear Material
   • Makes it legally binding for States Parties to protect nuclear facilities and material in peaceful domestic use, storage as well as transport; and
   • Provides for expanded cooperation between and among States regarding rapid measures to locate and recover stolen or smuggled nuclear material, mitigate any radiological consequences or sabotage, and prevent and combat related offences.

   • Extends the provisions of the Montreal Convention (see No. 3 above) to encompass terrorist acts at airports serving international civil aviation.

   • Establishes a legal regime applicable to acts against international maritime navigation that is similar to the regimes established for international aviation; and
   • Makes it an offence for a person unlawfully and intentionally to seize or exercise control over a ship by force, threat, or intimidation; to perform an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of the ship; to place a destructive device or substance aboard a ship; and other acts against the safety of ships.

   • Criminalizes the use of a ship as a device to further an act of terrorism;
   • Criminalizes the transport on board a ship various materials knowing that they are intended to be used to cause, or in a threat to cause, death or serious injury or damage to further an act of terrorism;
   • Criminalizes the transporting on board a ship of persons who have committed an act of terrorism; and
   • Introduces procedures for governing the boarding of a ship believed to have committed an offence under the Convention.

Establishes a legal regime applicable to acts against fixed platforms on the continental shelf that is similar to the regimes established against international aviation.

**2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf**

- Adapts the changes to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation to the context of fixed platforms located on the continental shelf.


- Designed to control and limit the used of unmarked and undetectable plastic explosives (negotiated in the aftermath of the 1988 Pan Am flight 103 bombing);
- parties are obligated in their respective territories to ensure effective control over "unmarked" plastic explosive, i.e., those that do not contain one of the detection agents described in the Technical Annex to the treaty;
- Generally speaking, each party must, inter alia, take necessary and effective measures to prohibit and prevent the manufacture of unmarked plastic explosives; prevent the movement of unmarked plastic explosives into or out of its territory; exercise strict and effective control over possession and transfer of unmarked explosives made or imported prior to the entry into force of the Convention; ensure that all stocks of unmarked explosives not held by the military or police are destroyed, consumed, marked, or rendered permanently ineffective within three years; take necessary measures to ensure that unmarked plastic explosives held by the military or police are destroyed, consumed, marked or rendered permanently ineffective within fifteen years; and, ensure the destruction, as soon as possible, of any unmarked explosives manufactured after the date of entry into force of the Convention for that State.


- Creates a regime of universal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in, into, or against various defined public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place.


- Requires parties to take steps to prevent and counteract the financing of terrorists, whether direct or indirect, through groups claiming to have charitable, social or cultural goals or which also engage in illicit activities such as drug trafficking or gun running;
- Commits States to hold those who finance terrorism criminally, civilly or administratively liable for such acts; and
- Provides for the identification, freezing and seizure of funds allocated for terrorist activities, as well as for the sharing of the forfeited funds with other States on a case-by-case basis. Bank secrecy is no longer adequate justification for refusing to cooperate.


- Covers a broad range of acts and possible targets, including nuclear power plants and nuclear reactors;
- Covers threats and attempts to commit such crimes or to participate in them, as an accomplice;
- Stipulates that offenders shall be either extradited or prosecuted;
- Encourages States to cooperate in preventing terrorist attacks by sharing information and assisting each other in connection with criminal investigations and extradition proceedings; and
• Deals with both crisis situations (assisting States to solve the situation) and post-crisis situations (rendering nuclear material safe through the International Atomic Energy Agency (IAEA).


• Criminalizes the act of using civil aircraft as a weapon to cause death, injury or damage;
• Criminalizes the act of using civil aircraft to discharge biological, chemical and nuclear (BCN) weapons or similar substances to cause death, injury or damage, or the act of using such substances to attack civil aircraft;
• Criminalizes the act of unlawful transport of BCN weapons or certain related material;
• A cyber attack on air navigation facilities constitutes an offence;
• A threat to commit an offence may be an offence by itself, if the threat is credible.
• Conspiracy to commit an offence, or its equivalence, is punishable.