

테러방지법제정반대공동행동
(2003년 9월 ~ 12월)

자료 모음 9.
반테러조치 관련 국제 인권 논의

1. Terrorism and human rights, Second progress report prepared by Ms. Kalliopi K. Koufa, Special Rapporteur, Commission on Human Rights (2002. 6. 17)
2. Terrorism is Global Threat, says Secretary-General, But Measures Against it must not be used to justify human rights violations (2002. 11. 21)
3. The right to freedom of opinion and expression, Report of the Special Rapporteur Mr. Ambeyi Ligabo, submitted in accordance with Commission resolution 2002/48 (2002. 12. 30)
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12. Speakers in Third Committee Debate Stress Need To-Integrate Respect For Human Rights into Counter-Terrorism Strategies : Importance of Development in Relation to Human Rights also Stressed(48차 유엔 총회 제3위원회, 2003. 11. 14)

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Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 6 of the provisional agenda

OTHER HUMAN RIGHTS ISSUES

Terrorism and human rights

**Second progress report prepared by Ms. Kalliopi K. Koufa,
Special Rapporteur***

* The report was submitted after the date set by the General Assembly to allow the Special Rapporteur to collect information on the most recent developments and to have them reflected in the report.

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Preface

Since the Sub-Commission discussed the first progress report (E/CN.4/Sub.2/2001/31) appalling events, such as the disastrous 11 September 2001 terrorist attacks in the United States of America, stunned and shocked the world. While, intellectually, one might foresee catastrophic events of this magnitude, no one was, in fact, able to predict the enormous emotional, psychological and other effects they would have, and still continue to have, on the global community and on international law.

Terrorism has always been a fact of life and yet, admittedly, the unconscionable suicide attacks of 11 September 2001, which are unprecedented in the annals of terrorism, have crossed a threshold and triggered changes that are already shaping the early twenty-first century. While the Special Rapporteur, in a rather prescient way, had cautioned in her first progress report about the direct and indirect impact that acts of terrorism - whether committed by States or non-State actors - have on human rights, she also was unprepared for the impact that the tragic events of 11 September 2001, as well as their sequel, would have on all areas of terrorism and human rights under consideration in her study. Indeed, she believes that there is no aspect of her work untouched by the initial tragedy and then the year's progression of horrific events in so many parts of the world.

This progress report is submitted to the Sub-Commission at a time when there is everywhere a heated debate and a feeling of increasing urgency with regard to most of the issues concerning terrorism and human rights. Various efforts are under way at the United Nations and in other intergovernmental organizations, as well as among non-governmental organizations, to find the adequate or appropriate responses to terrorism and evaluate the conformity of anti-terrorism legislation or acts at the national, regional or international levels with international human rights and humanitarian law norms. The effort undertaken by the Sub-Commission in this area is only one of them.

In the opinion of the Special Rapporteur, the recognition and realization of what was really new not only on 11 September, but also in the immediate aftermath of the attacks, should become an integral component of every endeavour which seeks to serve the cause of justice and the rule of law. Without this recognition and realization, it will not be possible to contribute usefully to the ongoing debate and concerns over the much-sought-after balance between the often conflicting imperatives of securing and defending democratic society, and of safeguarding civil liberties and human rights.

In this regard, it may be meaningful and illustrative to review the wide range of activities and initiatives undertaken within the framework of the United Nations, some regional intergovernmental organizations, international treaty bodies and other human rights bodies and mechanisms. An exhaustive account of all the relevant activities and initiatives at the global, regional and national levels is, of course, neither possible nor necessarily desirable. A host of turning-point initiatives or far-reaching undertakings, such as the building of an international coalition against terror and waging a war against terror or terrorism, have received extensive coverage elsewhere, and this has generally been in fields other than human rights. Therefore, a selective human rights specific approach will be applied in this review of activities and initiatives, with a view also to facilitating the Sub-Commission's deliberation and comments on them.

Introduction

1. In its resolution 1996/20 of 29 August 1996, adopted without a vote, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to entrust Ms. Kalliopi K. Koufa with the task of preparing, without financial implications, a working paper on the question of terrorism and human rights, to be considered at its forty-ninth session.
2. In its resolution 1997/42 of 11 April 1997, entitled "Human rights and terrorism", the Commission on Human Rights, noting the decision of the Sub-Commission to have a working paper prepared on the question of human rights and terrorism, reiterated its unequivocal condemnation of all acts, methods and practices of terrorism, regardless of their motivation, in all its forms and manifestations, wherever and by whomever committed, as acts of aggression aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences for the economic and social development of States, and decided to continue consideration of the question at its fifty-fourth session as a matter of priority.
3. A working paper on the question of terrorism and human rights was submitted by Ms. Koufa to the Sub-Commission at its forty-ninth session (E/CN.4/Sub.2/1997/28). In that working paper, she identified the many diverse, complex and contentious issues involved in any discussion of the problem of terrorism and human rights, and set out a number of proposals for a study on this topic. After examining the working paper and endorsing in general the basic approach contained in it, the Sub-Commission, in its resolution 1997/39 of 28 August 1997, expressed its deep appreciation to Ms. Koufa for her analytical, very comprehensive and well-documented working paper, and recommended that the Commission on Human Rights approve her appointment as Special Rapporteur to conduct a comprehensive study on terrorism and human rights on the basis of her working paper.
4. The Commission on Human Rights, in its decision 1998/107 of 17 April 1998, approved the appointment of Ms. Koufa as Special Rapporteur and requested the Secretary-General to provide the Special Rapporteur with all the assistance necessary to enable her to carry out her study. The Economic and Social Council, in its decision 1998/278 of 30 July, endorsed decision 1998/107 of the Commission on Human Rights.
5. There was insufficient time between the approval of her appointment by the Commission and the deadline for submitting documents to the Sub-Commission for the Special Rapporteur to complete a preliminary report for the fiftieth session of the Sub-Commission. Even so, in an oral presentation to the Sub-Commission, the Special Rapporteur highlighted the essential elements of her study, including a comprehensive discussion of the purpose, scope, sources and structure of a preliminary report. The Sub-Commission, in its resolution 1998/29 of 26 August 1998, noting both her working paper and the oral presentation concerning the basis and the orientation of her study, requested the Special Rapporteur to submit her preliminary report to it at its fifty-first session.

6. The Special Rapporteur submitted the preliminary report (E/CN.4/Sub.2/1999/27) to the Sub-Commission at its fifty-first session. In that preliminary report she presented an historical overview of the development of the question of terrorism within the United Nations system and analysed the major areas in which terrorism affects, directly or indirectly, the full enjoyment of human rights. The Special Rapporteur also identified and further discussed other basic priority areas and questions most deserving of examination in the next phases of her study, such as the question of defining terrorism, the interrelated questions of the scope of application of international human rights law and of the accountability of the non-State actor, as well as some recent trends in contemporary international terrorism.
7. In its resolution 1999/26 of 26 August 1999, the Sub-Commission expressed its deep appreciation and thanks to the Special Rapporteur for her excellent and comprehensive preliminary report and requested the Secretary-General to transmit it to Governments, specialized agencies and concerned intergovernmental and non-governmental organizations with the request that they submit to the Special Rapporteur comments, information and other data relating to the study. The Sub-Commission also requested the Secretary-General to give the Special Rapporteur all the assistance necessary for the preparation of her progress report, in particular by providing for visits of the Special Rapporteur to Geneva, New York and the United Nations Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention in Vienna, in order to hold consultations with the competent services and bodies of the United Nations, to complement her essential research and collect all the needed and up-to-date information and material. The Sub-Commission recommended that the Commission on Human Rights approve that request to the Secretary-General.
8. At its fifty-fourth session, the Commission on Human Rights, in its resolution 2000/30 of 20 April 2000, taking note of Sub-Commission resolution 1999/26, requested the Secretary-General to continue to collect information, including a compilation of studies and publications, on the implications of terrorism, as well as the effects of the fight against terrorism, on the full enjoyment of human rights and to make it available to all concerned special rapporteurs, including this Special Rapporteur. The Commission also endorsed the Sub-Commission's request to the Secretary-General to give the Special Rapporteur all the assistance necessary, in order to hold consultations with the competent services and bodies of the United Nations system to complement her essential research and to collect all the needed and up-to-date information and material for the preparation of her progress report. The Economic and Social Council, in its decision 2000/260 of 28 July 2000, approved that request to the Secretary-General.
9. In a note to the Sub-Commission at its fifty-second session (E/CN.4/Sub.2/2000/31), the Secretary-General set out the technical reasons that had made it impossible for the Special Rapporteur to finalize her progress report within the time available for the preparation of documents for that session. In her oral statement to the Sub-Commission, the Special Rapporteur spelled out the substantive and procedural difficulties and delays that had resulted in the inability to finalize the progress report, and requested that she should be allowed to submit it

to the Sub-Commission at its fifty-third session. In its decision 2000/115 of 18 August 2000, the Sub-Commission requested the Special Rapporteur to submit her progress report at its fifty-third session.

10. The Special Rapporteur submitted her progress report (E/CN.4/Sub.2/2001/31) to the Sub-Commission at its fifty-third session. In that progress report, she provided updated additional information on the development of recent international anti-terrorist action and addressed as many issues as possible, within the constraints for reports imposed on special rapporteurs. In particular, she addressed the definitional issue and the concept of terrorism reference to the potential actors involved in it, and proceeded by examining the basic distinction that is generally made between State and sub-State (or individual and non-State) terrorism. With a view to lessening the definitional controversy and removing some of the current armed conflicts from the terrorism debate, the Special Rapporteur also explored the need to separate war from terrorism, attention being given to the issue of self-determination and terrorism in armed conflict.
Handwritten notes: 최근 국제 반테러 조약들에 대한 정보, 중요, 테러의 종류, 개별 정의, 전쟁을 테러의 범위.

11. Moreover, the requests of the Commission to the Special Rapporteur to address as well, among other issues, the issue of new forms of terrorism and of the potential use of weapons of mass destruction by terrorist groups, were also given due attention in that progress report. On her visits to New York and Vienna in order to hold consultations with the competent United Nations organs and bodies and complement her essential research, the Special Rapporteur was, for all practical purposes, inundated with materials relevant to her study, but from widely divergent perspectives - such as human rights, humanitarian and criminal law, political science, sociology, anthropology and related fields. In addition, recognition by the Special Rapporteur of the importance of the ongoing debate among academics and policy makers over the possible exploitation of new technologies by terrorist groups also led her to give much attention during her research to scientific material which is outside her usual field of academic attention and regarding which there is much controversy, if not intransigent disagreement.

12. As a consequence, in that progress report, the Special Rapporteur did not shy away from the discussion of contemporary forms of terrorism, to which she devoted a whole chapter. In that chapter, she examined the plausibility of the threat of terrorist use of weapons of mass destruction and considered the potentially grave implications that both the terrorist use of weapons of mass destruction (i.e., chemical, biological and nuclear weapons) or of some forms of new information technologies (i.e., "cyber-terrorism"), as well as States' counter-terrorism policies, hold for the enjoyment of human rights. She then argued that a lot of what was being described as terrorism could in fact also be categorized as non-terrorist criminal activity, and warned against the danger of falling prey to those alarmist analyses of contemporary terrorism which are complacent towards a counter-terrorist machinery easily associated with potential infringement upon civil liberties and human rights.
Handwritten notes: 테러라는 정의 규정, 많은 것들 = 테러 기반 범죄.

13. Other questions raised by the Commission on Human Rights, in its resolutions 1999/27, 2000/30 and 2001/37, for the attention of the Special Rapporteur were also considered in the report, in an extensive chapter dealing with the impact of terrorism on human rights. Finally, given the scale, scope and complexity of the topic, the Special Rapporteur included among her concluding observations a recommendation to the effect that she be allowed to prepare a second progress report.

14. Having examined this analytical progress report, the Sub-Commission, by its resolution 2001/18 adopted unanimously on 16 August 2001, expressed its deep appreciation and thanks to the Special Rapporteur for her excellent progress report and requested her to continue her direct contacts with the competent services and bodies of the United Nations, in particular those in New York and Vienna, in order to expand her research, update information for the study and expedite her work. In the same resolution, the Sub-Commission requested the Secretary-General to transmit the progress report of the Special Rapporteur to Governments, specialized agencies and concerned intergovernmental and non-governmental organizations with the request that they submit to the Special Rapporteur, as soon as possible, comments and information relating to the study. Finally, the Sub-Commission requested the Special Rapporteur to prepare a second progress report.

15. At its fifty-eighth session, the Commission on Human Rights, in its resolution 2002/35 of 22 April 2002, endorsed the decision of the Sub-Commission requesting the Secretary-General to give the Special Rapporteur all the necessary assistance in order to hold consultations with the competent services and bodies of the United Nations system to complement her essential research and to collect all needed and up-to-date information and data for the preparation of her second progress report. It also requested the Special Rapporteur to give attention in her next report to the questions raised in that resolution.

16. The events of 11 September 2001, shortly after the submission by the Special Rapporteur of her first progress report (E/CN.4/Sub.2/2001/31) to the Sub-Commission at its fifty-third session, were a terrible shock to people around the world and, like the rest of the world, the Special Rapporteur was completely shaken by the catastrophe. While convinced that the phenomenon of terrorism is (and will continue to be) a part of life, the dramatic and devastating terror acts of 11 September 2001, and their enormous consequences, have caused the Special Rapporteur to rethink and re-evaluate the future course of her work on the topic of terrorism and human rights. She considers, in particular, that it would be detrimental to the study to continue working on it as if 11 September has not happened. In this context, the Special Rapporteur thinks that it is crucial for the purposes of the study to draw attention at this stage to the following new trends and developments.

17. (a) Since 11 September 2001 the fight against terrorism has become one of the priorities for all intergovernmental systems, both at the international and regional levels, as well as for a number of countries. In fact, the fight against terrorism has turned into a major subject of debate - if not the most prominent one - in the various intergovernmental forums. Moreover, in the aftermath of 11 September 2001, this fight against terrorism has experienced a staggering acceleration. Significant legislative and other measures and decisions have been taken at the international and national levels. A great many other like initiatives are also under way, at both the intergovernmental and the national levels, in particular with regard to the definition of the crime of terrorism, legal cooperation and extradition, restrictions on the right to seek asylum, and so on.

18. (b) A number of these initiatives and measures have already been the subject of concern for universal and regional human rights bodies and mechanisms.¹ It is in this context that the United Nations High Commissioner for Human Rights, in her report entitled "Human rights: a

uniting framework", submitted to the Commission on Human Rights at its fifty-eighth session, reminded the members of the Commission that: "An effective international strategy to counter terrorism should use human rights as its unifying framework. The suggestion that human rights violations are permissible in certain circumstances is wrong. The essence of human rights is that human life and dignity must not be compromised and that certain acts, whether carried out by State or non-State actors, are never justified no matter what the ends. International human rights and humanitarian law define the boundaries of permissible political and military conduct. A reckless approach towards human life and liberty undermines counter-terrorism measures."²

19. Hence, in the aftermath of 11 September 2001, it is necessary to take into account these new developments. Additional measures and other action taken at the international level to fight terrorism should be examined, and additional national measures and anti-terrorism legislation need to be reviewed also for their conformity to international law, particularly, international human rights law, international humanitarian law and international refugee law. An ongoing Sub-Commission study on terrorism and human rights cannot be indifferent to these current trends and developments.

20. In view of the above, it will be valuable at this time to seize the opportunity given to the Special Rapporteur for the submission of a second progress report, to present in this report a review of not only the main international anti-terrorist activities and initiatives undertaken since 11 September 2001 which are relevant to this study, but also the relevant reactions by various international human rights bodies and mechanisms. Accordingly, the present progress report comprises the following five sections: a preface, containing some of the ideas that are guiding the Special Rapporteur in her work; an introduction, concerning her mandate and her approach; chapter one, pertaining to the development of international anti-terrorist activity in the framework of the United Nations system and other intergovernmental organizations after the terrorist attacks in the United States of America; chapter two, containing a review of relevant comments, observations and decisions of human rights bodies and mechanisms, both at the universal and at the regional levels; and, finally, chapter three, consisting of concluding observations.

I. A REVIEW OF RECENT INTERNATIONAL ANTI-TERRORIST ACTIVITY RELEVANT TO THE STUDY

A. Update on the main activities and initiatives undertaken at the global level

21. In the wake of the emotional and political fallout of the 11 September 2001 attacks, significant anti-terrorist action has been taken within the United Nations. The General Assembly addressed the issue of the tragic events the day after the onslaught and adopted unanimously a resolution in which it urgently called for international cooperation to prevent and eradicate acts of terrorism and to bring to justice the perpetrators, organizers and sponsors of the outrages.³ The very same day, the Security Council, in its unanimous resolution 1368 (2001), unequivocally condemned in the strongest terms the horrifying terrorist attacks and regarded such acts, like any act of international terrorism, as a threat to international peace and security,

and called on the international community to redouble its efforts to prevent and suppress terrorist acts, including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions, in particular its resolution 1269 (1999).⁴

22. Further, the reactivation of the work of the Ad Hoc Committee established pursuant to General Assembly resolution 51/210 of 17 December 1996 to elaborate inter alia a comprehensive convention on international terrorism and, especially, the adoption by the Security Council of its resolution 1373 (2001) on 28 September 2001, constitute the major developments within the United Nations system. In particular, Security Council resolution 1373 (2001) marks a milestone on the road to combating international terrorism and will surely leave its imprint on the years to come. It poses challenges, and will probably have a significant effect with respect to human rights, for in the words of the United Nations High Commissioner for Human Rights "serious human rights concerns ... could arise from the misapplication of resolution 1373 (2001)".⁵

23. More specifically, at its fifty-fifth session, the General Assembly, in resolution 55/158 of 17 December 2000, decided that the work on drafting a comprehensive convention on international terrorism by the Ad Hoc Committee established by its resolution 51/210 of 17 December 1996, should continue during the fifty-sixth session of the General Assembly within the framework of a working group of the Sixth Committee.⁶ The Sixth Committee working group met from 15 to 26 October 2001. Although it came close to reaching agreement on the draft comprehensive convention, it could not finalize the few remaining articles involving politically sensitive matters. As a consequence, the Ad Hoc Committee established by General Assembly resolution 51/210 continued work on the drafting of the comprehensive convention from 28 January to 1 February 2002 but, despite some signs of further progress, the outstanding divergent views of delegations could not be finally reconciled. Both the report of the Sixth Committee working group,⁷ and the report of the Ad Hoc Committee⁸ evidence once again how difficult it is, politically, ideologically and legally, to define the crime of international terrorism and approach the issue of how to address the armed conflict governed by humanitarian law (articles 2 and 18 of the draft).

24. In this context, the Special Rapporteur notes that human rights analysis has been largely absent from the discussions on the controversial articles. In her view, including the human rights dimension more in the discussion could assist in resolving some of the differences. In any case, the Convention ultimately must conform to human rights and humanitarian law standards, which should be mentioned in the preambular paragraphs in addition to being included rather obliquely, in the Special Rapporteur's view, in various proposals for article 18 of the draft. As a matter of fact, the draft comprehensive convention on international terrorism, at the current state of deliberations, is a source of concern from several points of view, notably, the definition of the crime of international terrorism, the scope of application of the convention and international humanitarian law, the principle of non refolement and the safeguards against impunity. Amnesty International,⁹ Human Rights Watch,¹⁰ and the International Commission of Jurists¹¹ are among the non-governmental organizations that have already raised questions on these issues.

유엔 안보리 결의
1373 (2001)

인간권고문서

결의 1373 관련 내용

→ 심각한 인권 문제 발생
가능하다.

국제 테러 규범에 관한
광범위 조약 준비 중.

국제 테러 정의, 조약과

국제인권법 적용의 범위,

non refolement

원칙. 불처벌 방지 조약

관련 문제가 계속.

앰네스티, 휴먼라이츠워치,

국제법률가 위원회 → 문제 제기

25. On 28 September 2001, the Security Council, acting under Chapter VII of the Charter of the United Nations, adopted resolution 1373 (2001). In this resolution, which is binding on all Member States, the Security Council, reaffirming that any act of international terrorism constitutes a threat to international peace and security, reaffirming also 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 and reaffirming, further, the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations, as well as the principle 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, and calling on States to improve international cooperation to prevent and suppress the financing and preparation of any acts of terrorism, decided that all States should: prevent and suppress the financing of terrorist acts; criminalize the wilful provision or collection of funds for such acts; 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, and of persons and entities acting on behalf of terrorists; and 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, attempt to commit, facilitate or participate in the commission of terrorist acts.

26. Furthermore, in the same resolution the Security Council, decided that all States should refrain from providing any form of support to entities or persons involved in terrorist acts; take the necessary steps to prevent the commission of terrorist acts; deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens, and prevent them from using their respective territories for those purposes against other States or their citizens; 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 such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such acts; 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; and prevent the movement of terrorists or terrorist groups by effective border and other controls.

27. The Security Council also called upon all States: to find ways of intensifying and accelerating the exchange of operational information regarding terrorist 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; to exchange information and cooperate to prevent the commission of terrorist acts; to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism. It also called upon States to take appropriate measures in conformity with national and international law, including international human rights standards, before granting refugee status, for the purpose of ensuring that the asylum-seeker had not planned, facilitated or participated in the commission of terrorist acts; and to ensure that refugee status was not abused by the perpetrators, organizers or facilitators of terrorist acts and that claims of political motivation were not recognized as grounds for refusing requests for extradition of alleged terrorists.

행위 정의 1373
큰 규격
테러 행위에 대한 자금
관련 방지, freeze suppress
자금 자산(자금)과 모금
을 법적으로 규정
각종과 기타 금융 자산,
경제적 자원을 동결
경도나 기밀 사항도
관련 자금 조성 금지

정보 교환 강화
여행 문서 위조,
권리 탈취, 폭발물,
통신수단 사용)
예방 위한 정보 교환
테러 관련 국제 조약과
프로토콜의 당사국 제정
- 관련 국제 승인 절차
안전성 확인 테러 행위
계획, 지원, 실행하는 것 기밀이 분명히 해야.
- 관련 자료가 테러 단체, 테러 리스트에 의해 활용되지 않도록.

테러 행위 관련
연체나 개인
여론 여론 형성
주요 인물 제재
- 도둑질자 제재
- 테러 행위 연쇄
법적으로
국내법에서 중
형사법적으로
- 처벌
- 테러 행위 자판, 자금 제공 관련
수사나 형사 절차 관련 정보 제공을 위한 리베랄
조치 적용
(승인 함을
기준)
- 고려적인
공리-통
→ 테러 리스
기동 양

차별적 실행.
결정 기법 모의자도록 줄.
기밀성에 대해 보고도록.
행위 정의 1373호
(2001) 프레젠테이션
기에서 많은 국가들이
기에서 세 형법 제정.
큰 규격은 집행할
것임.

28. Last but not least, the Security Council decided to establish a Committee of the Security Council, consisting of all its members, to monitor implementation of resolution 1373 (2001), with the assistance of appropriate expertise, and called upon all States to report to the Committee, within 90 days, on the steps they had taken to implement that resolution.

29. The Counter-Terrorism Committee of the Security Council was established in October 2001. In that same month, it produced its work programme, as well as guidance for the submission of reports pursuant to paragraph 6 of Security Council resolution 1373 (2001).¹² By the end of May 2002, 160 States had submitted their reports to the Counter-Terrorism Committee,¹³ including the European Union.¹⁴ Within the framework of Security Council resolution 1373 (2001), a number of States have adopted new criminal legislation to fight terrorism. Other States have presented draft legislation in the same regard.

30. On 12 November 2001, at the end of a ministerial-level meeting to discuss threats to international peace and security caused by international terrorism, the Security Council, in its resolution 1377 (2001), adopted unanimously the Declaration on the Global Effort to Combat Terrorism annexed to that resolution. The Declaration calls on States to take urgent steps to implement fully Security Council resolution 1373 (2001) and invites the Counter-Terrorism Committee to explore ways in which States can be assisted in doing so. The Declaration also singles out attention to the issues of terrorist financing and provision of a safe haven to terrorist groups, from the other steps that States must undertake to implement fully resolution 1373 (2001).

31. For the rest, the General Assembly addressed, as usual, the item entitled "Measures to eliminate international terrorism". Because of the tragic events of 11 September 2001, it proceeded with the initial debate on the item in the plenary, on the understanding that the consideration of the technical aspects of the item would take place as usual in the Sixth Committee. General Assembly resolution 56/88 on measures to eliminate international terrorism, adopted without a vote on 12 December 2001 and, therefore, considered a great achievement, differs little in essence from the previous year's resolution on the same item, apart from the necessary updates and reference to Security Council resolution 1373 (2001). In resolution 56/88, the General Assembly welcomed the important progress attained in the elaboration of the draft comprehensive convention on international terrorism and decided that the Ad Hoc Committee established by General Assembly resolution 210 of 17 December 1996 should continue to elaborate that draft convention as a matter of urgency, should continue its efforts to resolve the outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism and should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

32. On 19 December 2001, the General Assembly, in its resolution 56/160 entitled "Human rights and terrorism", adopted by a recorded vote, bearing in mind that terrorism creates an environment that destroys the right of people to live in freedom from fear, reiterated its unequivocal condemnation of the acts, methods and practices of terrorism in all its forms and

manifestations as activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences for the economic and social development of States. The General Assembly also urged the international community to enhance cooperation at the regional and international levels in the fight against terrorism, in accordance with relevant international instruments, including those relating to human rights.

33. On 20 October 2001, the General Conference of UNESCO, convened in Paris for its thirty-first session, adopted a resolution in which it rejected the association of terrorism with any particular religion, religious belief or nationality and considered that the present challenges require a coherent and coordinated response by the organizations of the United Nations system as a whole. Moreover, noting that intolerance, discrimination, inequality, ignorance, poverty and exclusion, among others, provided fertile ground for terrorism, the General Conference affirmed that while acts of terrorism could never be justified whatever the motives, the world community required a global and inclusive vision of development based on the observance of human rights to meet the needs of the most vulnerable populations and segments of society. Finally, it expressed its firm conviction that based upon its mandate and within its areas of competence - education, science, culture and communication - UNESCO had a duty to contribute to the eradication of terrorism, drawing on its character as an intellectual and ethical organization.¹⁵

34. On 23 May 2001, the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly on 15 December 1997, entered into force. Already 63 States are parties to the Convention, while 58 have signed it. On 10 April 2002, the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly on 9 December 1999, entered into force. Until now, 36 States have become parties to this Convention and 132 States have signed it.

2001년
테러 특정 관련 조약
2002년
테러 자금 조달 억제
조약 (협약)

B. Update on the main activities and initiatives undertaken by regional and other intergovernmental organizations

1. European Union

35. On 19 September 2001, the Commission of the European Communities adopted two proposals for framework decisions of the Council of the European Union: one on the approximation of member States' criminal laws with a view to establishing a common definition of a terrorist act and laying down common criminal sanctions, the other on the creation of a European arrest warrant. The document issued on the first proposal, under the title "Proposal for a Council framework decision on combating terrorism",¹⁶ contains an explanatory memorandum as well as the text of the framework decision and seeks to address what are viewed by the Commission as legal loopholes in existing measures undertaken by the United Nations and the European Convention on the Suppression of Terrorism (1977) under the mandate of the Council of Europe by inter alia establishing "minimum rules relating to the constituent elements and penalties in the field of terrorism".¹⁷ The other proposal, entitled "Proposal for a Council

framework decision on the European arrest warrant and the surrender procedures between the member States",¹⁸ proceeds from the Tampere European Council meeting (1999), which set the objective of replacing extradition with a procedure for handing over perpetrators of terrorist attacks on the basis of a European arrest warrant.

36. On 6 December 2001, the Council of the European Union reached provisional agreement on the proposal for a Council framework decision on combating terrorism, and on 6/7 December 2001, 14 of the European Union members agreed on the draft framework decision on the European arrest warrant. On 8 January 2002, the European Parliament, on reconsultation by the Council, approved by legislative resolutions both draft framework decisions.¹⁹ On 27 December 2001, the Council of the European Union adopted four important Acts: two Common Positions, one on combating terrorism, based largely on United Nations Security Council resolution 1373 (2001), the other on the application of specific measures to combat terrorism, based largely on the proposed European Union Council framework decision on combating terrorism; a Regulation on specific restrictive measures against certain persons and entities, which set out the details of the freezing of funds and the ban on the issue of resources to terrorist persons, groups or entities; and an implementing Decision establishing the list of persons, groups or entities covered by the freezing of funds and the ban on the supply of resources.²⁰

37. On 6 February 2002, the European Parliament voted by an overwhelming majority to support the two proposed framework decisions on combating terrorism and on creating a European arrest warrant which, in the meantime, had been substantially amended by the Council of the European Union and, therefore, re-submitted to the European Parliament. These two proposed framework decisions constitute the legislative basis of the European Union's response to terrorism and a step towards the creation of a European judicial space. The proposed framework decision on combating terrorism, which contains a common definition of various types of terrorist offences and severe criminal sanctions, is due to come into effect in January 2003, whereas the European arrest warrant is expected to attain legal force in January 2004.²¹

2. Council of Europe

38. Immediately after the terrorist attacks of 11 September 2001 in the United States of America, the Council of Europe started a process of review of existing legal instruments regarding the fight against terrorism. Thus, on 12 September 2001, the Committee of Ministers of the Council of Europe, at the 763rd meeting of the Ministers' Deputies, adopted the "Declaration on the fight against international terrorism" and decided to hold a special meeting in order to examine, among other things, the scope for updating the European Convention on the Suppression of Terrorism.²² The Committee of Ministers, at its one hundred and ninth session, on 8 November 2001, agreed to take steps rapidly in order to give increased effectiveness to the existing international instruments of the Council of Europe on the fight against terrorism, by, among other things, setting up a Multidisciplinary Group on International Action against Terrorism. Accordingly, the Multidisciplinary Group on International Action against Terrorism was instructed to examine the existing international

instruments of the Council of Europe in the area of fighting terrorism, in particular the European Convention on the Suppression of Terrorism, and report to the Committee of Ministers of the Council of Europe on additional action which the Council of Europe could usefully carry out in the field of the fight against terrorism.

39. The Council of Europe adopted the European Convention on Cyber-Crime in November 2001. This Convention is the result of four years of work by experts from not only the member States of the Council of Europe but also the United States, Canada, Japan and other States that are not members of the Council of Europe. The Convention on Cyber-Crime was signed by 30 States at the opening ceremony of the International Conference on Cyber-Crime in Budapest, on 23 November 2001. The Convention is the first ever international treaty on criminal offences committed via the Internet and other computer networks, and deals in particular with infringements of copyright, computer-related fraud, child pornography and violations of network security. It also contains a series of powers and procedures, such as the search of computer networks and interception. Its main objective, set out in the preamble, is to pursue a common criminal policy aimed at the protection of society against cyber-crime, especially by adopting appropriate legislation and fostering international cooperation.

40. The Parliamentary Assembly of the Council of Europe adopted two important texts on terrorism in September 2001. In its resolution 1258 (2001), the Parliamentary Assembly called on the Council of Europe member States to review the scope of the existing national legal provisions on the prevention and suppression of terrorism, and to give urgent consideration to the possibility of amending and widening the Rome Statute to allow the remit of the International Criminal Court to include acts relating to international terrorism. In its Recommendation 1534 (2001), the Parliamentary Assembly urged the Committee of Ministers, with regard to the European Convention on the Suppression of Terrorism, to remove as a matter of urgency article 13, which grants contracting States the right to make reservations that can defeat the purpose of the convention by enabling the States to refuse extradition for offences otherwise extraditable. The Parliamentary Assembly also recommended that the Committee of Ministers examine, in cooperation with the European Union bodies, the modalities for extending the European Union arrest warrant to all Council of Europe member States, in the field of the fight against terrorism.

41. The above-mentioned "Declaration on the fight against international terrorism", adopted by the Committee of Ministers of the Council of Europe, provided, among other things, for the instruction of the Steering Committee for Human Rights of the Council of Europe to draw up guidelines, based on democratic principles, for dealing with movements threatening the fundamental values and principles of the Council of Europe.²³ To this end, the Steering Committee for Human Rights set up a Group of Specialists on Human Rights and the Fight against Terrorism, with the mandate to elaborate, by 30 June 2002, guidelines for the member States, which would evince the principles based on the safeguarding of human rights that should guide their actions in fighting terrorism, in a manner which respects democracy and the rule of law. Accordingly, in February 2002, this group of specialists submitted provisional draft guidelines²⁴ relating to: the obligation of States to protect all persons from terrorism; the prohibition of arbitrary measures in the fight against terrorism and the legality of counter-terrorist measures; the absolute prohibition of torture; measures of preventive coercion;

arrest and surveillance; detention and the regular supervision of preventive detention; judicial procedures; the punishment for terrorist activities; the right to seek asylum; extradition, expulsion and refoulement; and the freedoms of thought, expression, assembly and association.

3. Organization for Security and Co-operation in Europe

42. In the aftermath of the terrorist attacks of 11 September 2001, significant initiatives have also been taken in the framework of the Organization for Security and Co-operation in Europe (OSCE). Thus, the Ministerial Council of the OSCE, at its ninth meeting, in Bucharest, on 3 and 4 December 2001, adopted "The Bucharest Plan of Action for Combating Terrorism".²⁵ In this Action Plan, the Ministerial Council, underlining that terrorism is a threat to international peace and security, in the OSCE area as elsewhere, affirmed that the aim of the Action Plan was to establish a framework for comprehensive OSCE action to be taken by participating States and the Organization as a whole to combat terrorism, fully respecting international law, including international human rights law. The Bucharest Plan of Action is aimed at increasing interaction between States, especially through the ratification of the United Nations conventions and protocols relating to terrorism, and the strengthening of national anti-terrorist legislation. In March 2002, the Forum for Security Co-operation (FSC) of the OSCE adopted a "Road Map of the FSC for the Implementation of the Bucharest Plan of Action for Combating Terrorism".²⁶ The Portuguese Presidency of the OSCE appointed, on 29 January 2002, the former Minister of Defence of Denmark, Jan Troejborg, as the Personal Representative of the OSCE Chairman-in-Office to coordinate the organization's counter-terrorism initiatives.

43. From 13 to 14 December 2001, at the invitation of Kyrgyzstan, the OSCE and the United Nations Office for Drug Control and Crime Prevention organized the Bishkek International Conference on Enhancing Security and Stability in Central Asia: Strengthening Comprehensive Efforts to Counter Terrorism. The Conference adopted a Declaration and a Programme of Action. On 21 December 2001, the OSCE submitted a report to the Counter-Terrorism Committee of the United Nations Security Council, setting out the Action Plans and Declarations adopted by the above-mentioned meetings, as well as other information required under Security Council resolution 1373 (2001).²⁷

4. Organization of American States

44. The events of 11 September 2001 brought about a renewal of interest in Inter-American efforts to confront terrorism. Thus, on 21 September 2001, during the twenty-third Meeting of Consultation of Ministers of Foreign Affairs of the Organization of American States (OAS), the Ministers of Foreign Affairs, by their resolution entitled "Strengthening hemispheric cooperation to prevent, combat, and eliminate terrorism", entrusted the Permanent Council with preparing a draft Inter-American Convention Against Terrorism, and urged the States to study the international legal repercussions of the conduct of government authorities who provide financial support to, protect, or harbour terrorist individuals or groups.²⁸

45. In the light of this and subsequent resolutions of the organs of the Inter-American system, the Inter-American Committee Against Terrorism (CICTE), held two special sessions, on 15 October and 29 November 2001. Between these sessions, various subcommittees and other bodies worked diligently to identify counter-terrorism actions for OAS member States to

implement at the multilateral, regional, subregional and national levels, and to draft an ambitious concrete agenda for CICTE to pursue in 2002-2003. At the second regular session of CICTE, held from 28 to 29 January 2001 in Washington, D.C., the various OAS delegations reported on the action taken by their respective States to implement the resolution of the OAS Ministers of Foreign Affairs of 21 September 2001 on strengthening hemispheric cooperation to prevent, combat and eliminate terrorism.

46. As already mentioned, under the terms of this resolution, the Permanent Council was entrusted with preparing a draft Inter-American convention against terrorism. As a consequence, the Committee on Juridical and Political Affairs was tasked by the Permanent Council with elaborating the draft and a working group was set up for that purpose. Previously, in 1995, a draft Inter-American convention for the prevention and elimination of terrorism had been drawn up by the Inter-American Juridical Committee.²⁹ The working group charged with preparing a draft Inter-American convention against terrorism by the Committee on Juridical and Political Affairs, took up again the work relating to the draft Inter-American convention for the prevention and elimination of terrorism of 1995.³⁰ However, the draft convention drawn up by the working group and adopted by the Committee on Juridical and Political Affairs was different in many respects from the draft of 1995, particularly, with regard to the technique of incrimination.³¹ On 3 June 2002, the General Assembly of the OAS adopted the Inter-American Convention Against Terrorism.³²

47. The Inter-American Convention Against Terrorism does not create a new definition of the crime of terrorism and uses the technique of incrimination by referral to other international instruments. Thus, with regard to the definition of the crime of terrorism, the Inter-American Convention refers to offences established in various relevant international conventions.³³

5. Other organizations

48. On 11 September 2001, the League of Arab States issued the Cairo Communiqué regarding the tragic terrorist attacks.

49. On 11 November 2001, on the margins of the fifty-sixth session of the United Nations General Assembly, the Central Organ of the Organization of African Unity (OAU) Mechanism for Conflict Prevention, Management and Resolution, held its 5th Extraordinary Session at Ministerial Level, in New York. The session was convened at the request of the Republic of Sudan, to deliberate on the problem of terrorism and consider ways through which Africa could further contribute to the efforts of the international community to combat terrorism after the 11 September 2001 events. At the end of the deliberations, the Central Organ decided, inter alia, to urge member States to sign and ratify the existing international conventions and protocols relating to terrorism, and to request member States to ensure their effective follow-up and implementation of United Nations Security Council resolution 1373 (2001). It also stressed the relevance of the OAU Convention on the Prevention and Combating of Terrorism, as part of the efforts of the international community against terrorism. In addition, it welcomed the Declaration Against Terrorism, adopted by the African Summit held in Dakar on 17 October 2001, including the proposal concerning the drafting of an additional protocol to the OAU Convention on terrorism.³⁴

50. From 1 to 3 April 2002 the Organization of the Islamic Conference (OIC) held an extraordinary session of the Islamic Conference of Foreign Ministers in Kuala Lumpur, which resulted in the Kuala Lumpur Declaration on International Terrorism and Plan of Action.³⁵ Under the Plan of Action, the OIC established a 13-member open-ended Ministerial-level OIC Committee on International Terrorism, with a mandate to formulate recommendations on, inter alia, ways of expediting the implementation of the OIC Code of Conduct and the Convention on Combating International Terrorism.

II. A REVIEW OF RELEVANT COMMENTS, OBSERVATIONS AND DECISIONS ADOPTED BY INTERNATIONAL HUMAN RIGHTS BODIES AND MECHANISMS

51. It is most relevant to start this review by referring to the new general comment on states of emergency (article 4 of the International Covenant on Civil and Political Rights), adopted by the Human Rights Committee just a little time before the terrorist attacks of 11 September 2001.³⁶ This general comment of the Human Rights Committee is of great significance with regard to the limits imposed by international human rights law on States in their fight against criminality and especially in the matter of counter-terrorism.

52. Thus, in the opinion of the Human Rights Committee, States parties to the Covenant may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles that guarantee a fair trial, including the presumption of innocence.³⁷ The Human Rights Committee has also pointed out that only the courts of law may judge and convict a person for a criminal offence.³⁸ In this context, the Human Rights Committee has also specified that safeguards related to derogation as provided for in article 4 of the Covenant are based on the principles of legality and the rule of law, which are inherent to the Covenant as a whole. Moreover, as certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. It also emphasized that the presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court in order to enable the court to decide without delay on the lawfulness of detention must not be diminished by the decision of a State party to derogate from the Covenant.³⁹

53. In the aftermath of 11 September 2001, the Human Rights Committee has already had the opportunity to examine certain measures taken by States within the framework of Security Council resolution 1373 (2001) and their compatibility with the International Covenant on Civil and Political Rights. Thus, for instance, in one case, the Human Rights Committee expressed concern that a State party to the Covenant, in seeking to give effect to its obligation to combat terrorist activities pursuant to Security Council resolution 1373 (2001), was considering inter alia the adoption of legislative measures which would have potentially far-reaching effects on rights guaranteed in the Covenant, and which in that State party's view might require

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권사법정
우리국영의 권력

derogations from these human rights obligations. According to the Human Rights Committee, the State party should ensure that any measures undertaken in this regard are in full compliance with the provisions of the Covenant, including, when applicable, the provisions on derogation contained in article 4 of the Covenant.⁴⁰

각유권위원회.
난민 신청인

54. In another case, the Human Rights Committee has expressed its concern regarding the negative effects of measures taken after 11 September 2001, in particular in cases relating to asylum-seekers, and recommended that the authorities of the State party concerned should guarantee observance of the principle of non refoulement in the asylum and expulsion proceedings.⁴¹

군사법정
: 민간인 재판

55. In yet another case, regarding the practice of judging civilians in military courts, the Human Rights Committee expressed its concern that military tribunals have broad jurisdiction which is not confined to criminal cases involving members of the armed forces but covers also civil and criminal cases, when in the opinion of the executive the exceptional circumstances of a particular case do not allow the operation of the courts of general jurisdiction. The Human Rights Committee recommended in this case that the State party concerned should adopt legislative measures to limit the jurisdiction of the military tribunals to the trial of members of the military accused of military offences.⁴²

인종차별철폐위원회

56. The Committee on the Elimination of Racial Discrimination, on 8 March 2002, issued a statement on terrorism, in which it emphasized that measures to combat terrorism must be in accordance with the Charter of the United Nations and that they are to be considered legitimate if they respect the fundamental principles and the universally recognized standards of international law, in particular, international human rights law and international humanitarian law. In this statement, the Committee on the Elimination of Racial Discrimination also recalled that the prohibition of racial discrimination is a peremptory norm of international law of a non-derogable nature. It, further, insisted that the principle of non-discrimination must be observed in all areas, particularly in matters concerning liberty, security and dignity of the person, equality before tribunals and due process of law, as well as international cooperation in judicial and police matters in these fields, and expressed its intention to monitor, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, the potentially discriminatory effects of legislation and practices adopted in the framework of the fight against terrorism.⁴³

인종차별 금지.

2001년 12월 10일
UN 세계인권선언일
인권영웅가들

57. On 10 December 2001, on the occasion of United Nations Human Rights Day, 17 independent experts of the Commission on Human Rights issued a joint statement in which they reminded States of their obligations under international law to uphold human rights and fundamental freedoms in the context of the aftermath of the tragic events of 11 September 2001. In their joint statement, the independent experts expressed deep concern over the adoption or contemplation of anti-terrorist and national security legislation and other measures that might infringe upon the enjoyment by all of human rights and fundamental freedoms. They deplored human rights violations and measures that had particularly targeted groups, such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media. They also reminded States that under international human rights law certain rights cannot be derogated from under any circumstances,

반테러법, 국가보안법
제정 → 인권과
기본적 자유 침해

인권활동가, 이주민, 난민신청인, 난민, 종교적·민족적 소수자. 정치 활동가. → 인권침해.

이런 상황에서도, 공공의 위기 상황에서도 국제인권법과 규약들은 지켜야 할 것이다.

자유권, 안전.
각의적 체포로부터
자유, 무리추적.
공정한 재판에 대한
권리, 경제, 표현,
집회와 자유. 난민 신청자 자유. 여러가지 권리가 강하게 침해될 수 있는 인권자.

인권고등판무관
보고서.

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including in times of public emergency; and called upon them to take appropriate measures to uphold respect for such fundamental rights as the right to liberty and security of person, the right to be free from arbitrary arrest, the presumption of innocence, the right to a fair trial, the freedoms of opinion, expression and assembly, and the right to seek asylum. Last but not least, they called upon States to limit the measures taken to the extent strictly required by the exigencies of the situation, as public policies must strike a fair balance between, on the one hand, the enjoyment of human rights and freedoms by all and, on the other hand, legitimate concerns over national and international security, and emphasized that the fight against terrorism must not result in violations of human rights, as guaranteed under international law.⁴⁴

58. Finally, special attention should be drawn to the thought-provoking report of the United Nations High Commissioner for Human Rights, submitted, pursuant to General Assembly resolution 48/141, to the Commission on Human Rights at its fifty-eighth session, under the title "Human rights: a uniting framework". In her report, the High Commissioner expresses her particular preoccupation with the human insecurity prevailing worldwide in the aftermath of the appalling terrorist acts of 11 September. She addresses the big issue of the balance between human rights and security from a human rights perspective that places the law and respect for human rights commitments at the centre of an overall effective strategy to counter terrorism, while recognizing at the same time the legitimate concerns for national and international security. Her characteristic human rights approach to terrorism and to the rising levels of global anxiety following the events of 11 September 2001 is appropriately reflected in the following passage from her final remarks: "Despite global uncertainty, it is essential for everybody to uphold the universal human rights standards that were created collectively. Acts, methods and practices of terrorism aim at the destruction of these standards. This is why it is essential that all States implement the operational measures sought by the Security Council in resolution 1373 (2001) in a manner consistent with human rights. At the same time, building a durable global human rights culture, by asserting the value and worth of every human being, is essential if terrorism is to be eliminated. In other words, the promotion and protection of human rights should be at the centre of the strategy to counter terrorism."⁴⁵

III. CONCLUDING OBSERVATIONS

59. Since the beginning of her work, the Special Rapporteur has commented on the scale and scope of the mandate mostly in terms of legal issues and analysis and world events that have generated and continue to drive interest in this topic. The appalling events of 11 September 2001 have introduced new and unprecedented dimensions to the legal issues and analysis, also to world events that feed interest in the topic more than ever before. In the aftermath of the catastrophe, the scale and scope of the mandate have become almost unmanageable. In addition to the events of 11 September 2001, acts of terrorism throughout the world have escalated, especially related to a number of other crisis situations and "hot spots" throughout the world. Responses to terrorism have themselves been dramatic, sometimes undertaken with a sense of panic or emergency. In fact, there still exists a tone of "close-to-panic" reaction in much of the political and legal activity relating to terrorism and, of course equally importantly, on the part of many of the world's people. And "close-to-panic" reactions may have serious implications for international and human rights law, as well as humanitarian law.

60. There has been a plethora of proposals for national and international anti-terrorism legislation and measures, some of which have been adopted or are in the process of being adopted. It is far too premature to evaluate even those that have been adopted, as legal challenges are in the works and no one knows what parts, if any, will survive judicial review. There have been special procedures adopted in the United Nations, including but not limited to the Security Council Counter-Terrorism Committee, which has not yet undertaken to include the issue of human rights in its work in any major way. Regional intergovernmental organizations and many States have either new or proposed special anti-terrorism procedures. As already mentioned above, emergency sessions have been held in a number of areas, called by heads of State and other State authorities or by international and regional leaders. In addition, special sessions, conferences and colloquies have been convened at numerous universities around the world, and by non-governmental organizations and "think tanks" as well. There has been so much formal and informal material written that it is, for all practical purposes, impossible to cover all that is now considered most important, much less to read it all. Because so much is happening even as this is written, and with so many far-reaching implications, there has been too little time to reflect on it, much less to try to assess it properly. The very fact that international legal and political debate, on many issues under consideration by the Special Rapporteur, has deteriorated dramatically, supplanting meaningful and peaceful dialogue, has added difficulty to her already difficult task ahead.

61. The legal issues and analysis of this mandate cover the full array of human rights and humanitarian law in many areas, including the definition of terrorism itself, but also the responses to terrorism or its root causes. Some of the issues of human rights and humanitarian law related to the definition of terrorism had already been highly contentious for some time. Thus, in particular, the issue of armed conflict and the distinctions between, for example, civil wars and terrorism or between the use of force in defence of the right to self-determination and terrorism. On the other hand, a number of other issues, such as accountability for breaches of humanitarian law, including both national and international actions, which have usually been addressed in a more settled fashion, have now also become contentious. States and scholars, or commentators, often seem to have abandoned certain long-held views in favour of different ones. On some occasions, scholars who have taken one position appear to abandon it completely, and then recant or recast it. There are new and dramatic conflicts of views in some of the core areas of international law, difficult to sort out in the best of circumstances. What is clear though is that some scholars are now defending positions that would have been considered unreasonable, even by them, only a year ago - that is, positions strongly rejecting many of the basic principles of international law, human rights law and humanitarian law under consideration by the Special Rapporteur.

62. The issue of sub-State terrorism has also disintegrated into heated debate, now in relation also to the legal status of Al Qaeda members and its leadership. While they originally focused on the differences between transnational criminal organizations and terrorist groups, there now seems to be a growing apprehension among States Members of the United Nations concerning the links and symbiotic relationships between such organizations and groups. Increased access to technology, information and communication has benefited criminal enterprises and terrorist groups such as Al Qaeda, and globalization has allowed them to network, exploit and transfer

funds transnationally, to have access to weapons and military equipment and to maximize synergetic connections with organized crime. Some of the actions and operations of these terrorist organizations now raise novel questions and contention in international law.

63. Human rights and humanitarian law issues related to responses to terrorism were not significantly contentious in international law prior to 11 September 2001. According to common article 3 of the Geneva Conventions and Additional Protocol II thereto, a State can be at war with a revolutionary group or insurgents, regardless of the group's legitimacy. The novel question of whether a State can be at war with a terrorist group or a multinational criminal organization was never raised prior to 11 September 2001. In the post-11 September 2001 period, this novel question was raised, and is even contentious. Irrespective of the answer given, it remains clear that international humanitarian law refers to certain "protected targets", such as non-combatant civilians, prisoners of war, the sick, the wounded, and so on, which cannot be attacked under any circumstances. The only possible exonerating circumstance is a reasonable factual mistake. However, no rule of military necessity exonerates those who commit such violations with criminal responsibility. Prior to 11 September 2001, the need to respect fully all human rights norms in all responses to terrorism was also clear. In the post-11 September 2001 period, there appears to be a waiver of this view, not a few States and scholars suggesting that abrogation of human rights may be necessary to combat terrorism. In this context, many areas of responses have become exceptionally contentious, with the result that every issue of response generates heated debate.

64. Addressing the root causes of terrorism has now also become a rather highly contentious area, with a number of States and scholars insisting that, as there is no justification whatever for terrorism, there should be no effort made to try to understand its root causes. Instead, they argue there should be ever more militant action against terrorists and terrorist groups, with the goal of wiping them out. This position is met with dismay by the majority, who insist that it is foolhardy to ignore review of root causes, which are, in some situations, directly or indirectly related to the non-realization of human rights. The Special Rapporteur sides with those who support study of root causes in order to fashion more rationally means of eliminating terrorism. However, this topic alone is too vast.

65. Some of the actions undertaken in the cause of the global war against terrorism have been the cause of consternation also for the highest officials in the United Nations system. For instance, the United Nations Secretary-General has pleaded on a number of occasions for States to uphold all human rights, stressing that greater respect for human rights, not their curtailment, is the best means of preventing terrorism. Addressing recently the Commission on Human Rights he stated: "let us ensure that our security measures are firmly founded in law. In defending the rule of law, we must ourselves be bound by law".⁴⁶ He has also pointed out that the Council and the Counter-Terrorism Committee "must ... be sensitive to human rights as they pursue their work".⁴⁷ Attention has already been drawn to the concerns of the United Nations High Commissioner for Human Rights, also expressed in a number of statements and comments throughout the period. The United Nations High Commissioner for Refugees also has repeatedly voiced his own consternation about some measures which even though adopted in good faith have victimized people in need of international protection.⁴⁸

66. All these developments occurred after the submission by the Special Rapporteur of her first progress report to the Sub-Commission at its fifty-third session. Nonetheless, the Special Rapporteur considers that the observations contained in her first progress report still continue to be pertinent. In a rather prescient way, she had cautioned in that report against, for example, an over-hasty definition of terrorism by the Sub-Commission. She had also cautioned against the curtailment of protected procedural rights to presumption of innocence, to counsel, to examine and re-examine the evidence, to know the charges and to prepare a defence. She also warned against use of incommunicado detention and other violations of criminal justice procedures. Many of the current acts of States and proposed legislation either violate or carry substantial risks of violating these rights. In a stunning irony, the new debate on human rights includes some States and some human rights scholars who now advocate curtailing the very human rights the risk of curtailment of which was one of their major concerns that led to this mandate.

67. The Special Rapporteur had already completed a great deal of her study even prior to the fifty-third session of the Sub-Commission. Some of this work, and indeed much of the work accomplished throughout these years and not included in her previous reports to the Sub-Commission, owing either to page limitations or to deadlines for the submission of documents, may now have to be reviewed in the light of 11 September 2001. As already stated in the introductory part of this report, the Special Rapporteur considers that it is detrimental to this study to continue work on it as if 11 September 2001 had not happened. The 11 September 2001 catalyst of events, developments, disparate views, reversals, counter-reversals of opinion, and serial debate over human rights, terrorism and "new" international law have made this mandate gain in importance, as well as hardship or difficulty, in today's unstable and shifting environment. The significant unintended consequences of the global fight against terrorism might even justify some shift in the original focus of the study. Prudence suggests taking seriously whatever consequences and changes are reshaping today's environment, in order to be able to respond effectively to the challenges posed by this mandate.

68. In light of the above, and her concerns about time and the array of topics that still need the attention of the Sub-Commission, the Special Rapporteur recommends to the Sub-Commission to entrust her with the preparation of an additional progress report. With more time to study and reflect upon the recent catastrophic events, from some distance and "when the dust settles", hopefully, in the course of the coming year, she believes that she can more usefully contribute to the topic under consideration.

Notes

¹ See, for instance, the statement to the General Assembly of 22 October 2001 by Amnesty International, entitled "Draft comprehensive convention on international terrorism: a threat to human rights standards" (AI Index: IOR 51/009/2001); the press release issued by the United Nations Office at Geneva on 29 November 2001 entitled "Action against terrorism must not undermine human rights say High Commissioner for Human Rights, Council of Europe and OSCE", containing the joint statement by the United Nations High Commissioner for Human Rights, the Secretary-General of the Council of Europe and the Director of the OSCE Office for Democratic Institutions and Human Rights, cautioning Governments that measures to eradicate terrorism must not lead to excessive curbs on human rights and fundamental freedoms; the joint statement issued on 10 December 2001 by 17 experts of the Commission on Human Rights on the occasion of Human Rights Day, reminding States of their obligations to uphold human rights and freedoms in the context of the aftermath of 11 September 2001 (E/CN.4/2002/75, annex IV); the public statement of 22 March 2002, entitled "A human rights framework for responding to terrorism - Open statement to the 2002 Commission on Human Rights from Amnesty International, Cairo Institute for Human Rights Studies, Federation internationale des ligues des droits de l'homme, Human Rights Watch and International Commission of Jurists". And see also the resolution "Terrorism and Human Rights" of 12 December 2001 of the Inter-American Commission on Human Rights.

² See the Report of the United Nations High Commissioner for Human Rights submitted pursuant to General Assembly resolution 48/141, under the title "Human rights: a uniting framework" (E/CN.4/2002/18 of 27 February 2002), para. 5.

³ See General Assembly resolution 56/1 of 12 September 2001, paras. 4 and 3.

⁴ Security Council resolution 1269 (1999) of 19 October 1999 was the first to address the matter of terrorism in general. See the first progress report of the Special Rapporteur (E/CN.4/Sub.2/2001/31), para. 14.

⁵ See E/CN.4/2002/18, para. 31.

⁶ The General Assembly authorized the setting up of the working group in its resolution 54/110 of 9 December 1999, and the Sixth Committee established the Working Group on 25 September 2000 (see the report of the Working Group, A/C.6/55/L.2). In this way, work on drafting a comprehensive convention would take place twice each year.

⁷ A/C.6/56/L.9 of 29 October 2001.

⁸ Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37 (A/57/37).

⁹ See "Comprehensive Convention Against International Terrorism, joint letter Amnesty International/Human Rights Watch", New York, 28 January 2002, at: <http://hrw.org/press/2002/01/terror012802-ltr.htm>.

¹⁰ See "Human Rights Watch Commentary on the Draft Comprehensive Convention on Terrorism", Human Rights News, 17 October 2001, at: <http://www.hrw.org/press/2001/10/terrorcom1017.htm>.

¹¹ See International Commission of Jurists position on draft comprehensive convention on international terrorism of 24 January 2002 and F. Andreu-Guzmán, (ed.), Terrorism and Human Rights, occasional paper No. 2, International Commission of Jurists, Geneva, 2002.

¹² See S/2001/935 of October 2001, for the composition of the Counter-Terrorism Committee; the annex to S/2001/986 of 19 October 2001 for its work programme, and <http://www.un.org/Docs/sc/committees/1373/guide.htm> for the "guidance" for submission of reports by States.

¹³ Information on States' reports is available at: <http://www.un.org/Docs/sc/committees/1373/1373reportsEng.htm>

¹⁴ See S/2001/1297 of 28 December 2001.

¹⁵ The full text of this resolution (31C/Resolution 39) is available at: http://www.unesco.org/confgen/press_rel/201001_terrorism.shtml

¹⁶ See COM (2001) 521 final, 2001/0217 (CNS).

¹⁷ Ibid., preambular para.7, p. 15.

¹⁸ See COM (2001) 522 final, 2001/0215 (CNS).

¹⁹ See European Parliament, Report on the two proposals, Final A5-0003/2002 of 9 January 2002.

²⁰ See Official Journal of the European Communities L 344 of 28 December 2001.

²¹ See also S/2001/1297, op. cit., as well as "Agreement on a European arrest warrant - Extradition will no longer be necessary between EU member States" at: http://europa.eu.int/comm/justice_home/news/laecken_council/en/mandat_en.htm.

²² See Council of Europe, Committee of Ministers, "Declaration of the Committee of Ministers on the fight against international terrorism", adopted on 12 September 2001 at the 763rd meeting of the Ministers' Deputies, at: <http://cm.coe.int/taldecl/2001/2001dec3.htm>

²³ See *ibid.* and report of the 1st meeting of the Group of Specialists on Human Rights and the Fight against Terrorism, Steering Committee for Human Rights of the Council of Europe, document DH-S-TER (2001) 3 def. of December 2001.

²⁴ Document DH-S-TER MISC 3, Strasbourg, 18 February 2002.

²⁵ See OSCE documents: decision No. 1, "Combating terrorism", MC(9).DEC/1, annex and MC.DOC/2/01 of 4 December 2001.

²⁶ OSCE document FSC.DEC/5/02 of 20 March 2002.

²⁷ See S/2002/34 of 8 January 2002.

²⁸ Resolution RC.23/RES/1/01 rev.1 corr.1, of 21 September 2001, para. 9.

²⁹ Document of the Organization of American States, OEA/Ser.G CP/CAJP-1829/01 of 27 September 2001.

³⁰ See document of the Organization of American States OEA/Ser.G CP/CAJP-1848/01 of 14 December 2001.

³¹ See document of the Organization of American States OEA/Ser.G CP/CAJP-1891/02 rev.1 corr.1 of 8 May 2002.

³² See resolution AG/RES. 1840 (XXXII-O/02) of 3 June 2002.

³³ See article 2 of the Inter-American Convention Against Terrorism and Convention on the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the United Nations General Assembly on 14 December 1973; International Convention against the Taking of Hostages, adopted by the United Nations General Assembly on 17 December 1979; Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980; 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, signed at Montreal on 24 February 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991; International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly on 15 December 1997; International Convention for the Suppression of the Financing of Terrorism, adopted by the United Nations General Assembly on 9 December 1999.

³⁴ See OAU Central Organ Ministerial Communiqué on Terrorism, available at: <http://www.dfa.gov.za/docs/terroau.htm>.

³⁵ See the full texts at: www.oic-oci.org.

This question goes to the very heart of the credibility and authority of the international community. It centres on our collective ability to prevent large-scale losses of innocent civilian life. After Srebrenica, after Rwanda, after genocide, all of us need to affirm that sovereignty means responsibilities as well as powers; and that among those responsibilities, none is more important than protecting citizens from violence in war.

I have proposed that we think about two notions of sovereignty: one for States, another for individuals, and that whenever the two come into conflict, we as an international community think hard about whether — and how far — it is right to give primacy to the former over the latter. Human rights, and the evolving nature of humanitarian law, will be unacceptably limited if the principle of State sovereignty is always allowed to trump the protection of citizens within those States.

But let us be clear that sovereignty, improperly exercised, is not the only barrier to the protection of human life. Lack of political will, national interest narrowly defined, and simple indifference, too often combine to ensure that nothing is done, or that what is done is too little and too late. We still have a long way to go.

This challenge confronts us all anew in the post-September 11th environment, where an understandable focus on preventing still more terrible terrorist acts has increased concerns about the price we must pay in terms of cherished rights and liberties. We face a nearly unsolvable conflict between two imperatives of modern life — protecting the traditional civil liberties of our citizens and, at the same time, ensuring their safety from terrorist attacks with catastrophic consequences.

The attacks that struck the United States on 11 September 2001 shifted the global debate — and action — away from military intervention on behalf of others, to intervention in self-defence; from a Kosovo-like debate about how far — and under what conditions — the international community would act against a State perceived to be abusing its own citizens in gross and systematic ways, to considering how far — and under what conditions — individual States, alone and in concert, would act to halt terrorism and root out its cells in dozens of countries.

Terrorism is one of the threats against which States must protect their citizens. States have not only the right but also the duty to do so. But States must also take the greatest care to ensure that counter-terrorism measures do not mutate into measures used to cloak, or justify, violations of human rights. Terrorism has a nasty habit of causing the whole spectrum of opinion in a society to lurch in a repressive direction.

Even as many are rightly praising the unity and resolve of the international community in this crucial struggle, important and urgent questions are being asked about what might be called the "collateral damage" of the war of terrorism —

damage to the presumption of innocence, to precious human rights, to the rule of law, and to the very fabric of democratic governance.

Domestically, the danger is that in pursuit of security, we end up sacrificing crucial liberties, thereby weakening our common security, not strengthening it — and thereby corroding the vessel of democratic government from within. Whether the question involves the treatment of minorities here in the West, or the rights of migrants and asylum seekers, or the presumption of innocence or the right to due process under the law — vigilance must be exercised by all thoughtful citizens to ensure that entire groups in our societies are not tarred with one broad brush and punished for the reprehensible behaviour of a few.

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/87C9F57E07256...>

우리 사회의 어떤 집단도 하나를 낚아채지 않고 일부의 배신만을 막을 수 없다.

테러리즘: 국가가 시민을 보호해야 하는 위협 중 하나. 그러나 국가는

테러리즘이 인권침해를 은폐하고 정당화하는 것으로 등장하게 않도록 근초의 취임을 가늠해야 한다.

테러리즘은 사회 안에서 정치적 이념을 엄격한 방향으로 쓸 수 있는 강력한 속성을 갖고 있다.

국제적으로 나타나는 위협은, 일부 추구 속에 기본적 자유를 수호 우리 공동의 안보를 약화 및 정부의 등을 약화시킨다. 이것은 서구에서 소수자에 대한 위엄과 4대수다. 또는 자유의 권리, 무리추진에 이끌림. 위협을 받을 수 있다. 2003-09-15

The Universal Declaration of Human Rights provides an eloquent framework for the consideration of these vital measures.

Internationally, we are beginning to see the increasing use of what I call the "T-word" — terrorism — to demonize political opponents, to throttle freedom of speech and the press, and to delegitimize legitimate political grievances. We are seeing too many cases where States living in tension with their neighbours make opportunistic use of the fight against terrorism to threaten or justify new military action on long-running disputes.

Similarly, States fighting various forms of unrest or insurgency are finding it tempting to abandon the slow, difficult, but sometimes necessary processes of political negotiation, for the deceptively easy option of military action.

Just as terrorism must never be excused, so must genuine grievances never be ignored. True, it tarnishes a cause when a few wicked men commit murder in its name. But it does not make it any less urgent that the cause be addressed, the grievance heard, the wrong put right. Otherwise, we risk losing the contest for the hearts and minds of much of mankind.

We must act with determination to address, indeed solve, the political disputes and long-standing conflicts which underlie, fuel, and generate support for terrorism. To do so is not to reward terrorism or its perpetrators; it is to diminish their ability to find refuge or recruits, in any cause, any country. Only then can we truly know that the war on terrorism has been won — and the world made a safer, better, more just place.

I am not arguing — and let me underline this — that we do not face a grave threat from international terrorism. We certainly do. Terrorism is a global threat with global effects; its methods are murder and mayhem, but its consequences affect every aspect of the United Nations agenda — from development to peace to human rights and the rule of law. No part of the United Nations mission is safe from the effects of terrorism; and no part of the world is immune from this scourge.

The United Nations has a clear obligation to deal with this global threat. The United Nations has an indispensable role to play in providing the legal and organizational framework within which the international campaign against terrorism

can unfold. But our unrelenting position must be that any sacrifice of freedom or the rule of law within States, or any generation of new disputes between States in the name of anti-terrorism, is to hand the terrorists a victory that no act of theirs alone could possibly bring.

I thank you again for this honour, and commend you for the vital work you do to make the world and more just, a more orderly, and more safe place.

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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE
QUESTION OF FREEDOM OF EXPRESSION**

The right to freedom of opinion and expression

**Report of the Special Rapporteur Mr. Ambeyi Ligabo, submitted
in accordance with Commission resolution 2002/48**

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programmes altogether) should be reviewed. Similarly, the removal of administrative impediments to association of communities working in the HIV/AIDS area should be seen as a priority.

C. The right to freedom of opinion and expression and counter-terrorism measures

54. The Special Rapporteur unequivocally condemns terrorism and terrorist attacks; in this respect, the Special Rapporteur reiterates the statement by the Commission on Human Rights in its resolution 2002/35 that "terrorism, in all its forms and manifestations, wherever and by whomever committed, can never be justified in any instance" He strongly supports the view expressed in Part I, paragraph 17 of the Vienna Declaration and Programme of Action that "the acts, methods and practices of terrorism in all its forms and manifestations ... are activities aimed at the destruction of human rights, fundamental freedoms and democracy ...".

55. The link between human rights and terrorism is clear, and it is manifest at two levels: directly, as terrorist acts have a negative impact on the enjoyment of the human rights of the victims, in particular of their rights to life and personal integrity, and indirectly, "when a State's response to terrorism leads to the adoption of policies and practices that exceed the bounds of what is permissible under international law and result in human rights violations".⁹

56. More specifically, "the threat of terrorism to the freedom and independence of the media can be both direct and indirect. Terrorism all too often includes violent attacks on reporters and publishers. ... The indirect threat of terrorism has two main aspects. First, it seeks to intimidate, to instil fear and suspicion and to silence any voices with which it disagrees - a climate inimical to the exercise of rights and freedoms. Second, terrorism may provoke governmental responses that lead to laws, regulations and forms of surveillance that undermine the very rights and freedoms that an anti-terrorism campaign is supposed to defend".¹⁰

57. With this in mind, the Special Rapporteur wishes to bring to the attention of the Commission on Human Rights his concerns arising from the recent trend among Governments to adopt, or to contemplate the adoption of, counter-terrorism and national security legislative or other measures that may infringe upon the effective exercise of the right to freedom of opinion and expression. As highlighted above, the arguments of national security and anti-terrorism are being increasingly resorted to in many countries all over the world, with the intended or indirect effect of restricting the right to freedom of opinion and expression, in particular for media professionals, political opponents and human rights defenders. A number of Governments have prioritized national security over the protection of human rights and fundamental freedoms.

58. Such measures include the adoption of restrictive laws and rules for war reporting and increased resort to propaganda and manipulation of the media by defence ministries during conflicts; severe restrictions on the use of encryption software to protect the privacy of e-mail communications, thus facilitating wiretapping by the authorities; increased legal or regulatory pressures on journalists to reveal their sources of information or to hand over to authorities information the latter deem to be related to terrorism or terrorist activities; restriction on access to information in a growing number of areas, in particular by enlarging the categories of information to be protected by secrecy; the adoption of rules restricting the coverage of

Governments' activities and requiring it to be submitted for prior authorization; the increased exposure to criminal charges of journalists in case of publication of - even non-confidential - information regarded by Governments as damaging, including in certain cases making it a criminal offence to distribute information about any individual or group implicated in terrorist or subversive activities; the possibility for a Government to take over media outlets in areas where anti-terrorism operations are being conducted; etc.

59. In addition to the formal adoption of laws and regulations specifically targeting the free flow and exchange of information and communications and free expression, more generally, the right to freedom of opinion and expression might be effectively - though indirectly - restricted through various means, such as the bombing of broadcasting facilities and the targeting of journalists by the military in conflict areas; restrictions on the freedom of journalists to access certain conflict areas; or the resort to the argument of patriotism and to the threat of displeasing majority public opinion to demand complicit silence from journalists and stifle dissent and criticism. The use of such means of pressure lead, more often than not, to self-censorship of media professionals, human rights defenders, or political opponents.

60. With these examples in mind, the Special Rapporteur wishes to recall the joint statement issued on 10 December 2001 by 17 independent experts of the Commission on Human Rights (E/CN.4/2002/75, annex IV) and would like to associate himself with their conclusion that "public policies must strike a fair balance between, on the one hand, the enjoyment of human rights and fundamental freedoms for all and, on the other hand, legitimate concerns over national and international security" and that "the fight against terrorism must not result in violations of human rights as guaranteed under international law".

61. As underlined by the Secretary-General in his address to the Security Council meeting on counter-terrorism on 18 January 2002, "human rights ... are one of the best prophylactics against terrorism", the fight against which will be "self-defeating if we sacrifice other key priorities - such as human rights - in the process". Similarly, the Policy Working Group on the United Nations and Terrorism, established by the Secretary-General in October 2001, emphasized that "the protection and promotion of human rights under the rule of law is essential in the prevention of terrorism" (A/57/273-S/2002/875, annex, para. 26), recalling that international human rights instruments include "limitations on the actions that States may take within the context of the fight against terrorism" (ibid., para. 28).

62. Of course, the Special Rapporteur does not contest that there are situations - and the fight against terrorism is one of them - where States have the responsibility, and must take specific measures for the protection of their populations against terrorist threats and to maintain national security. In doing so, however, States must ensure that they comply fully with international human rights instruments and in particular with article 4 of the International Covenant on Civil and Political Rights (ICCPR) which strictly defines the conditions under which States parties can restrict, inter alia, the right to freedom of opinion and expression.

63. The rule of law must be respected by Governments when the adoption of anti-terrorism measures are being contemplated. As the Secretary-General strongly stated in his address on the occasion of Human Rights Day on 10 December 2002, "one of the most outstanding legacies of

the last century was the development of a body of international law - humanitarian, refugee, criminal and human rights law - which ... serve to protect the individual from injustice, from arbitrary treatment and from assaults on fundamental security. ... It is the most effective tool to fight criminality and terrorism, and the best guarantee of safety, security and freedom for us all".

64. The Human Rights Committee, in its General Comment No. 29 (CCPR/C/21/Rev.1/Add.11), has identified the conditions to be met for a State to invoke article 4 (1) of the Covenant to limit certain rights enshrined in its provisions, including the right to freedom of opinion and expression. Inter alia, the measures must be strictly limited in time, provided for in a law, necessary for public safety or public order, serve a legitimate purpose, not impair the essence of the right and conform with the principle of proportionality.

65. It is the view of the Special Rapporteur that in many of the cases brought to his attention, all or some of these conditions are not being met, and that the argument of the fight against terrorism is used by Governments as an illegitimate justification for the restriction of human rights and fundamental freedoms in general, and the right to freedom of opinion and expression in particular. There are cases where the feeling of insecurity caused by recent terrorist attacks has provided States with an opportunity to adopt such measures which had long been on the authorities' agenda, cases where the argument of national security is used to cover direct attacks against free media, investigative journalism, political dissent, and human rights monitoring and reporting.

66. However, the Special Rapporteur notes that in practice it is quite difficult to monitor the legitimacy, necessity and proportionality of anti-terrorism measures in the absence of a universally accepted, comprehensive and authoritative definition of terrorism. This, on the one hand, leaves ample space for abusive restrictions based more on varying definitions of terrorism that respond to individual States' interests than on a universal concept of what a terrorist act is, and, on the other hand, makes it all the more difficult to monitor and evaluate the necessity and proportionality of such restrictions.

67. Nevertheless, it has to be underlined once again that an effective enjoyment of the freedoms of opinion, expression and information marks the difference between democracy and terror. The Special Rapporteur strongly believes that guarantees of freedom of opinion and expression, freedom of the press and free speech are among the most effective means by which the fight against terrorism may be waged. As stressed in the first words of the "Charter for a Free Press",¹¹ "a free press means a free people" and, although restricting some human rights and fundamental freedoms in times of emergency might seem an effective solution to maintain peace and security, this can only be done through short-term measures, accompanied by strict and independently monitored safeguards.

68. The Special Rapporteur believes that terror and terrorism feed on undemocratic societies and systems, where human rights and fundamental freedoms are not guaranteed and protected, where systematic discrimination against and arbitrary treatment of specific groups within the population occur. He is of the strong view that the most effective way to combat terrorism is to secure the rule of law and ensure that human rights and fundamental freedoms are fully enjoyed and realized by all.

IV. CONCLUSIONS AND RECOMMENDATIONS

69. The Special Rapporteur considers that the exercise of the right to freedom of opinion and expression is a clear indicator of the level of protection and respect of all other human rights in a given society. While the Special Rapporteur notes that positive measures are being taken in a number of countries in favour of a greater protection of the right to freedom of opinion and expression (such as the repeal of criminal libel provisions from criminal codes in certain countries), he is still concerned that the trends as identified by his predecessor in his successive reports continue to be a strong preoccupation.

70. In particular, the Special Rapporteur is extremely concerned at the fact that the attacks against journalists, including killings, because of their professional activity continue to occur in many countries, most often with impunity. He urges Governments to take all necessary measures to protect journalists from attacks, be they from officials, law enforcement officers, armed groups or terrorists, and to provide an enabling environment for their activities. An end to impunity for the perpetrators of such acts and the conduct of serious investigation into these attacks is, in the view of the Special Rapporteur, the first step towards greater security for journalists.

71. In this respect, the Special Rapporteur is of the view that an in-depth study on the issue of the security of journalists, in particular in situations of armed conflicts, based on information from and the experiences of Governments and intergovernmental and non-governmental organizations, is necessary, and he would welcome a request from the Commission on Human Rights to undertake such a study.

72. Violations of the right to freedom of opinion and expression may occur in all regions and countries, whatever their system. However, democratic institutions, while not ensuring absolute respect for the right to freedom of opinion and expression, do offer more guarantees for its protection as well as a more enabling environment for its exercise. Freedom of opinion and expression not only benefits from a democratic environment; it also contributes, and is indeed pivotal to the emergence and existence of sound and functioning democratic systems. The Special Rapporteur encourages Governments of emerging democracies to promote and protect freedom of opinion and expression and freedom of the press.

73. As regards criminal libel and defamation, the Special Rapporteur is of the view that sanctioning libel and defamation by prison sentences is not proportionate. Furthermore, he is of the view that criminal law is not appropriate for regulating such offences. As stressed in his joint Declaration with the OSCE Representative on freedom of the media and the OAS Special Rapporteur on freedom of expression, "criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, as necessary, with appropriate civil defamation laws".

74. With respect to access to information for the purposes of education and prevention of HIV/AIDS, the Special Rapporteur wishes first to underline that the level of protection of human rights in a given country has a direct impact on the spread of the epidemic, and that the realization of human rights, in particular of specific groups such as women, young

people, men and women working in prostitution, men who have sex with men, migrants, refugees, intravenous drug users and other vulnerable groups, is essential to reduce vulnerability to HIV/AIDS.

75. Girls and women, who are increasingly disproportionately affected by HIV/AIDS, should be a priority target of education and information campaigns. These should be coupled with national programmes for the advancement of women towards the full enjoyment of all their rights, including their reproductive rights, promoting gender equality and empowerment.

76. The extensive use of the mass media (newspapers, magazines, radio and television stations, including community radios and televisions, etc.) is necessary to ensure the widest coverage of information campaigns. More generally, information and education should be provided through all available and accessible means, such as pamphlets, posters, books, instructions on condom packaging, advertisements on the radio and television, video clips, plays, songs, the Internet, group meetings, assemblies, etc. The Special Rapporteur encourages States to cooperate with the media, NGOs and community-based organizations in this endeavour.

77. If preventive education is to be effective, it must occur both through the formal and informal sectors, in schools, targeting young people, who represent half of the newly infected people every year, in the private sector and through communities. Preventive education has to be tailored to the targeted audience, take into account cultural habits and be accessible (e.g. made available in the language of the targeted community; using a medium accessible to all, including illiterate people; etc.).

78. While prevention - mainly through information and education - is the most feasible approach to reverse the trend of the HIV/AIDS epidemic in the world, it should be underlined that prevention should not be the only tool used. The effectiveness of prevention is increased when it is used in conjunction with care and treatment - and vice versa - in an enabling environment where the human rights of those living with HIV/AIDS are respected and protected.

79. In addition, strong social and political mobilization is necessary at the family, community and national levels in order to provide an effective response to the spread of HIV/AIDS. This requires political will at all levels of Government, a clear vision and leadership, as well as close coordination with and involvement of communities.

80. The Special Rapporteur, as indicated above, strongly believes that general respect for and protection of freedom of opinion and expression have a direct impact on the effectiveness of education and information policies, programmes and campaigns for the purpose of HIV/AIDS prevention. He therefore urges Governments to set a framework for the better protection of freedom of opinion and expression and for free flow of information and communications vis-à-vis the general public, as well as specific groups and communities.

81. The Special Rapporteur, while recognizing the legitimacy of national security and anti-terrorism legislation in many cases, stresses that these must only be implemented when the "life of the nation" is threatened, in the words of the ICCPR, and that the proportionality between the intended goal and the restriction on human rights and fundamental freedoms must be respected. The Special Rapporteur recommends that in considering the adoption or implementation of measures restricting human rights and fundamental freedoms, in particular the right to freedom of opinion and expression, attention be paid to the principles and conditions set in article 4 (1) of the ICCPR and to the 1995 Johannesburg Principles on National Security, Freedom of Expression and Access to Information (E/CN.4/1996/39, annex), which provide useful guidance in this respect.

82. The Special Rapporteur endorses General Assembly resolution 57/219 and highlights in particular its paragraphs 1 and 2 in which the Assembly affirmed that "States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law" and encouraged "States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights and to consider the recommendations from special procedures and mechanisms of the Commission on Human Rights and relevant comments and views of United Nations human rights treaty bodies".

83. The Special Rapporteur would like to draw the attention of the Commission on Human Rights to the resolution adopted at the UNESCO-sponsored Conference on Terrorism and the Media (Manila, 1-2 May 2002). In particular, the resolution underlines that "the threat of terrorism should not be used as an excuse to impose restrictions on the right to freedom of expression and of the media, or on freedom of information, and specifically on the following rights: to editorial independence; to protect confidential sources of information; to access information held by public bodies; to freedom of movement; and to privacy of communications".

84. Finally, the Special Rapporteur wishes to encourage efforts under way, in particular in the forum of the United Nations, to develop a universally valid and comprehensive definition of terrorism and terrorist acts. Such a definition will greatly help the human rights monitoring of measures adopted to combat terrorism, as well as the provision of technical assistance to States when undertaking to adopt such measures.

Notes

¹ In particular his first and second reports to the Commission on Human Rights, E/CN.4/1994/33 and E/CN.4/1995/32.

² These press releases may be consulted on the OHCHR web site: www.ohchr.org.

³ This declaration may be consulted on the OHCHR web site: www.ohchr.org.

⁴ See E/CN.4/1999/64, paras. 24-28 and E/CN.4/2000/63, paras. 45-52.

⁵ UNAIDS, Report on the global HIV/AIDS epidemic, July 2002.

⁶ United Nations Population Fund, Programme Briefs No. 1, "HIV Prevention Now", August 2001.

⁷ UNAIDS, op. cit.

⁸ See HIV/AIDS and Human Rights: Guideline 6. Available at the OHCHR web site: www.ohchr.org.

⁹ See Preliminary report of Ms. Kalliopi Koufa, Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights on terrorism and human rights, (E/CN.4/Sub.2/1999/27, para. 25).

¹⁰ Joint message by Kofi Annan, Secretary-General of the United Nations, Mary Robinson, United Nations High Commissioner for Human Rights, and Koïchiro Matuura, Director-General of UNESCO, on the occasion of the World Press Freedom Day on 3 May 2002.

¹¹ Adopted at the "Voices of Freedom Conference", held from 16 to 18 January 1987 in London, organized by the World Press Freedom Committee.

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Amnesty International

'The war against terrorism': a human rights perspective

Speech by Kate Gilmore, Amnesty International Executive Director
Secretary General, at the European Social Forum, Florence, 2002

It was on the 9th of November, a year ago today, that masked Russian soldiers seized the two women: Aset and Milana (Aset Yakhiaeva and Milana Betirgirieva). The women were visiting Serzhen Yurt - a Chechen village - visiting there because a wedding was to take place. Their neighbour was to marry and with excitement and anticipation, Aset and Milana joined in the pre wedding frenzy of food and fashion. The raid on the house came without warning and without explanation: the masked soldiers forcibly seized and took away Aset and Milana. Neither woman has been seen or heard of since and despite appeals to the Russian authorities, and even though Amnesty International in March 2002 was assured that the military authorities would look into the case, no information has emerged about the fate of our two wedding planners, treated as terrorists: Aset and Milana.

Let me take you back to a morning in February (11 February) this year back to the city of Cali, Colombia. Let me show you Viviana Maria (Villamil) and Julio (Galeano), her husband. They are beginning their ordinary workday, travelling on their way to work by motorcycle. Maria and Julio are trade union members, actively campaigning against the privatisation of Cali's electricity and other utilities. If you watch carefully, you will see what was reported to AI: that on this particular ordinary working day, Viviana and Julio are stopped by men on another motorcycle, that Julio Galeano is then shot dead and that Viviana Maria Villamil flees in terror of her life. How can this be? Well, AI can tell you that members of the Colombian armed forces prior to this murder and assault had accused union members of being linked to armed opposition groups as partners in a terrorist plot to destabilize the city. (Autodefensas Unidas de Colombia), and that an army-backed paramilitary group, declared members of the union to be legitimate "paramilitary targets". And so one is left dead and one is left in terror: these two unionists or are they terrorists: Viviana Maria Villamil and the late Julio Galeano.

Two months further into this year, on 5 April, far away from Colombia, Benjaline Hernandez, a worker from the human rights organization Karapatan, and her three companions would be shot dead on the island of Mindanao, in the Philippines. According to information received by Amnesty International, Benjaline Hernandez was visiting the area to investigate reports of killings of civilians. She and three local residents - Cristanto Amora, Vivian Andrade and Labaon Sinunday - were reportedly about to eat lunch in a hut when soldiers and members of a militia group opened fire on the building, forcing them to run outside. According to eyewitness reports the militia and military personnel forced Benjaline Hernandez, Cristanto Amora and Vivian Andrade to lie on the ground and as they pleaded for their lives shot them at close range. Their other companion reportedly tried to escape but was fatally wounded a few metres away from the hut. Local residents who later inspected the bodies reported that Benjaline Hernandez's skull had been crushed, and that her mouth, jaw and teeth had been disfigured by the exiting bullet. Apparently she had further bullet wounds in her neck, chest and hand, bruises on her body and burn marks on her chest. Military officials have claimed that Benjaline Hernandez was a member of the New People's Army, the armed wing of the Communist Party of the Philippines, and that she was killed in the course of a gun battle between members of the New People's Army and the militia. Amnesty International is deeply concerned that she was targeted as a result of her legitimate work in defence of human rights. Benjaline Hernandez, Cristanto Amora, Vivian Andrade, Labaon Sinunday human rights activists or terrorists?

Chechnya, Colombia, the Philippines: seemingly unrelated conflicts, thousands of kilometres apart; separated by hemispheres, economies, culture, nationality and yet somehow the product of the same relentless, unaccountable and now global phenomenon: for in each instance the state sees itself involved in fighting what is sometimes called "revolution", "separatism" or "extremism" but what is now more commonly described as "terrorism". This is the commonality connecting Aset and Milana with Viviana and Julio who are by this measure connected with Benjaline and Cristanto: a sinuous, elastic layered connectiveness that is the personal, intimate, visceral and irreversible consequences of the unbounded, unaccountable potentially never ending war against terrorism.

How are we to engage this permissiveness which, since the travesty of September 11th 2001, governments have attached to conduct that more often amounts to grave violations of human rights? How should we best respond to their instrumentalization of human rights abuses as an allegedly justifiable weapon of the war against terror?

We can find the way forward through a dynamic trio of interventions:

First and foremost, our best and most pressing response is to search out and expose the individual cost wrought by this cruel expediency. As I have just shared with you, Amnesty International strives to expose this personal, intimate, indelible human cost of the blunt, imprecise, arbitrary and unaccountable instruments that are forged in the steel of governments' resolve to combat violence through their attempted justification of the use of violence. In our experience, the excavation of the individual's experience from amidst the rubble of states' failure to honor their own promises, that most compellingly and irrefutably exposes allegedly legitimated actions for what they are: an abuse of human rights. This means we must always have people, ordinary people, as our first and foremost concern. It is an approach essential to the maintenance of our own humanity - and it is through the authentic narrative of the lives of individuals that we can more truly see the most serious and corrosive consequences of the state unaccountable, of the armed opposition group unchecked. It is here that we find the most incontrovertible evidence that it is oppression which cowers in the skirts of unchecked political power. Not in ideology nor in rhetoric but scrawled across the bodies of individuals and amplified in the despair of their unique particular voices.

Perhaps the next most critical opportunity to answer the troubling questions issued by the so called war against terrorism is to be found in the advocacy for and of international legal standards. It is in this realm that we and other human rights activists strive to ensure there is constructed an authoritative and efficacious temper to the power and authority of the nation state and to that power exercised by other actors. The role that agreed international standards, due processes, transparency and the rule of law can play in holding states and others to account should not be underestimated, if only because of what occurs when these standards are ignored or with deliberation and intent, overridden.

The so called war against terrorism is a case in point. Amnesty International does not use the word "terrorism". In our view it is simply not an acceptable term of use given that there is no internationally agreed definition of what the term means. Some years ago, academics identified over a hundred different definitions of terrorism and yet, despite the frequency with which it is now employed to justify everything from arbitrary detention to regime change, the term has not been subjected to the rigours of jurisprudence nor is there a broadly accepted definition under which we may systematically evaluate governments' application of the term and the actions they seek to justify under protection of its rubric.

Be assured - the consequences of the imprecise command of this term are not merely semantic. Rather, it is the case that the term's fluidity is serving to obfuscate the accountability of the state and of others' whose actions amount to human rights abuses. Consider, for example, the particular lesson revealed by the origins of the term "terrorism". The term terrorism was first used in a political context to describe the conduct of the 18th century Jacobins who were in power for a short time after the French Revolution. The Jacobins sought to impose their will by the mass execution of their opponents and their period of rule came to be called the Reign of Terror. And yet, these days governments, journalists and others generally use terrorism only to describe the violence used by non-government groups not by state officials. Was it ever agreed that the state cannot be said to have committed acts of terrorism? Equally problematic to the cause of justice is the inconsistent application of the term to non-state actors. For example, with respect to armed groups it is not agreed whether or not terrorism should refer to violence perpetrated by armed groups or whether it should exclude violence by groups who are trying to overthrow oppressive governments. Arab and African states, for example, have adopted treaties to combat terrorism that exclude armed struggles for "liberation and self-determination".

Of course, we are all familiar with the acts that people generally refer to as terrorism: deliberate, violent attacks on civilians - hijackers flying civil passenger planes into buildings in New York; suicide bombers in Tel Aviv; bombs outside a discotheque in Bali; the seizure of hostages in a Moscow theatre. But it is quite simply true that existing domestic laws and international treaties provide an ample basis in law on which to apprehend and prosecute those who employ such violent means to secure their political objectives. We have no need of the language of terrorism to condemn these acts. For example, in recent years, we have reported, without recourse to the language of terrorism, attacks on civilians by armed groups in many countries, including Algeria, Burundi, Sierra Leone, India, Nepal, Colombia, Israel and Spain, as well as the attacks in the USA of 11 September 2001 and last month, the taking of hostages in Moscow. We can, using international standards, readily identify so called these so called "terrorist" attacks as an abuse of the human rights of the victims and calls for the perpetrators to be brought to justice under domestic or international law, knowing that with respect to international law, depending on the circumstances, such attacks on civilians may well be found to amount to war crimes or crimes against humanity. Equally, we condemn unlawful attacks on civilians by government forces and by paramilitary forces allied to states.

Knowing the tendency of governments to ignore the rule of law and thereby violate human rights in the name of fighting so called "terrorism", and despite our intense lobbying, the UN Security Council has failed to ask states to uphold human rights when implementing counter-terrorism measures. The attitude of the UN Security Council and the behaviour of powerful states have sent a chilling message across the world that international law can be ignored with impunity. Countries like China and Egypt have cracked down on political dissidents. The Israel/OT conflict has escalated with Israel refusing to allow the United Nations access to investigate the attacks on Jenin last April. Russia threatened to attack Georgia in its pursuit of Chechen rebel hideouts. Human rights abuses in Chechnya have slipped off the agenda of European governments.

Of course, Amnesty International and other human rights advocates do not dispute the right of governments to take action to defend people in their jurisdictions from violent attacks on their lives, whether the

perpetrators are groups trying to achieve political objectives, or common criminals motivated by greed and anger. On the contrary: governments have a duty to ensure the protection of fundamental human rights including the right to life. Our concern is with the manner in which states respond. We argue that they can and should respond within the framework of international human rights and humanitarian law that has been established, tried and tested during the last 50 years. And yet, by failing to condition it on respect for these fundamental human rights, the so-called war against terrorism has become a license to governments to ignore human rights and to commit a wide range of abuses, secure in the knowledge that other governments are going to turn a blind eye in the interests of a "global coalition against terrorism."

In reality, there was and is no need to invoke the rhetoric of terrorism unless, of course, governments' seek its immoral garb to deftly cloak actions that otherwise would be exposed as illegitimate. Is this then the underlying motivation for the war against terror: that in a climate of fear, people are prepared to accept a wide range of measures from which they would otherwise, in the name of freedom, resist? It appears a convenience to governments that what was unacceptable on the 10th of September 2001 became acceptable on the 12th. Subsequently, governments with long-standing records of disregarding human rights in their actions against domestic opponents claimed vindication of their toughness. Egypt's Prime Minister Atef Abeid suggested that perhaps the US and the UK would stop calling on Egypt to give terrorists - his term "human rights." "You can give terrorists all the human rights they deserve until they kill you", he said. "After these horrible crimes committed in New York and Virginia", he went on, "maybe Western countries should begin to think of Egypt's own fight against terror as their model."

Governments which laid claim to longstanding records of advocacy for respect of the rule of law began to backtrack: The US has asserted a controversial interpretation of international law as the basis for imprisoning without charge or trial more than 600 people who are not US citizens at Guantanamo Bay and two US nationals on American territory. It is possible that they may be imprisoned for the rest of their lives without ever being brought before a court.

The UN Secretary General has observed that the context of the war against terrorism requires that our analysis of globalization worry not only "about the gap between haves and have nots, we need to worry about the gulf between insiders and outsiders in a globalised world." Post-11 September, political rhetoric about "good and evil", "you are with us or against us", "the forces of evil", "them and us" have accentuated this gulf, dehumanising and demonising people. Anti-terrorist laws in some countries, including the US and the UK, have targeted only foreigners or foreign-born citizens, stigmatising them as a source of danger and encouraging a climate in which xenophobia and racism flourishes. In a number of countries Moslems and Arabs have been attacked. In others anti-Semitism has re-emerged, particularly with the worsening of the conflict in the Middle East. Racism is a latent feature of all society, but shamefully, it appears to have become a blatant feature of European politics and election campaigns. Its victims are refugees, asylum seekers, foreigners, and even foreign-born citizens. Those who need their rights protected the most have become the ones most targeted for attacks.

This erosion of fundamental freedoms leads us then to the third essential plank with which we must build our platform of insistent advocacy for the promotion and protection of human rights and that is a concern with the root causes of so called "terrorism" and with those actions which are its breeding ground.

Shortly after the attacks the Parliamentary Assembly of the Council of Europe adopted a resolution that condemned terrorism but stated that

"the long-term prevention of terrorism must include a proper understanding of its social, economic, political and religious roots and of the individual's capacity for hatred. If these issues are properly addressed, it will be possible to seriously undermine the grass roots support for terrorists and their recruitment networks."

Clearly, many conflicts are fuelled by grievances that involve violations of human rights, such as racial and religious discrimination. More than fifty years ago, the Universal Declaration of Human Rights proclaimed that governments should respect and protect human rights not only because it was the right thing to do, but because if they did not people would be compelled to rebel against tyranny and oppression. But there is no clear and direct link between injustice and violence. Many victims of human rights violations do not threaten violence against their own and other governments but what is clear and must be understood to hold consistently and globally is that respect for human rights is not an obstacle to ensuring security but an essential ingredient for its achievement.

Contrary to rhetoric of the war against terrorism, the world's most significant human rights challenges did not emerge on 11 September. The majority of those whose lives and well-being are at risk, the sources of their insecurity are unconnected with the events of 11 September, pre-dating the so-called war against terrorism and enduring despite its interventions. They struggle to obtain enough food and clean water to live and to receive medical attention for their illnesses; they are the victims of attacks by police, prison guards or - for very many women - in their own homes by their husbands. They are persecuted by the state and private people because of their race or sexual identity; they flee persecution but cannot find safety. The Universal Declaration of Human Rights proclaims that the highest aspiration of the common people is a world in which human beings enjoy freedom of speech and belief and freedom from fear and want and that everyone is entitled to the rights and freedoms it sets forth, without distinction. The vision of the Declaration is as relevant today as it was when drafted in 1948 under the shadow of the smoky clouds of Treblinka's, Dachau's and Auschwitz's ovens. Straightforward, transparent, consistent and unconditional observance of its standards is the best weapon against so called terrorism and the best antidote to its consequences.

We meet today under the shadow of war. Military attacks threaten 24 million Iraqi women, men and children. Many of these people have already suffered terrible human rights abuse at the hands of their own government, and are even now crippled by the impact of sanctions imposed by UN. If war comes, the only certainty is that many of these people will die. They will be killed by the bombs and bullets of the US and its allies. They will be killed by the Iraqi security forces if they dare to rise against the Iraqi regime as they did in 1991. Many might die if they flee in search of refuge as they did in 1991 when neighbouring countries refused to grant them asylum. And no one knows what fate will befall them in a post-conflict Iraq, what kind of abuse or upheaval they will have to endure.

President Bush and Prime Minister Blair have invoked the human rights record of the Iraqi regime as yet another reason for military action. But this selective reference to human rights is sheer manipulation of the work of human rights activists. Let us not forget that western governments turned a blind eye to reports of widespread human rights violations in Iraq before the Gulf War. They remained silent when thousands of unarmed Kurdish civilians were killed in Halabja in 1988. And they continue to remain oblivious to the impact of sanctions that have jeopardized the right to food, health, and education and, in many cases, life of hundreds of thousands of individuals, many of them children.

A year ago, we were under the shadow of another war. Then it was the war against the Taliban regime executed in the name of justice but which caused great injustice to hundreds of innocent Afghan civilians who perished under the onslaught of American bombing or Taliban oppression.

And yet there are more wars still, hidden from public scrutiny and rendered insignificant by the preoccupations and self interests of the world's powers. Burundi is a tiny country in the heart of Africa, which has been torn by a brutal and vicious conflict since 1993. Tens of thousands of civilians, both Tutsis and Hutus, have been killed by Burundian military forces and by armed opposition groups: if there be such as terrorism, it can surely be found in Burundi. For children, even babies, have been shot, stabbed or beaten to death. There is almost total impunity - killings are not investigated, perpetrators are not prosecuted.

In September this year, AI sent a delegation to meet with the Burundi government, with human rights victims and with the defenders of human rights. Just days before our delegation arrived, there was yet another massacre. Under pressure from us the government admitted that more than 174 civilians had been killed in cold blood by the army, so brutally, with bodies piled on each other, that the authorities could not even tell us exactly how many had been women, how many children, and how many babies. Are babies too terrorists? Yet very few people outside Burundi know or care about that war.

There were only four survivors, of whom two were children, and each survivor had been wounded. Claudine is one of the four survivors of that massacre. Our delegation came across her while they were waiting in a big empty hospital hall sitting at a table in one corner. The door at the other end of the hall opened. Claudine walked in slowly. She is just a little girl of around six or seven years old and she was naked, except for the blanket she held about her body, with one of her arms, bearing a bullet wound, supported by a sling. She told in a soft, shy voice her name, but couldn't remember her family name. She did tell AI how she saw her grandfather, father, stepmother, her baby brother and two sisters killed. She herself was wounded but because she was so small somehow managed to crawl between the legs of the soldiers and in the commotion escape without being noticed. A neighbour later explained that she had found the little girl wounded, naked and unconscious in the forest, and had brought her to hospital, but the neighbour herself was too poor to afford to buy Claudine any clothes. That is why Claudine, the youngest of the four survivors of a bloody massacre, was still wrapped in a blanket two weeks later when we saw her. Claudine a child or a terrorist?

For the sake of Claudine and all the other Claudines around the world, I know we will never give up the struggle we share with you the struggle against the erosion of freedom no matter in what name that erosion is justified. Our struggle for human rights will prevail. Despair is not an option. We must not give up. Do not give up. Never give up.

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COMMISSION ON HUMAN RIGHTS

명간연례 FIDH의 특별 위원회

Fifty-ninth session

Item 4 of the provisional agenda

REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS

Written statement* submitted by International Federation for Human Rights (FIDH), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 February 2003]

Human Rights and counter terrorism measures

The International Federation for Human Rights and its 116 member organisations condemn all acts of international terrorism: they have since their establishment, fought for the defence of Human Rights and denounced Human Rights violations. They also have been unanimous in condemning the September 11 attacks against the United States. Their perpetrators must be brought to justice, strictly in conformity with the universal norms of human rights.

However, since the September 11 terrorist attacks, the fight against terrorism has very often been used by the States as a means to reinforce the security measures, most of the times without taking into consideration the international Human Rights standards: Moreover, as security has become the absolute priority and the – legitimate and necessary – fight against terrorism is increasingly diverted from its primary objective and used by governments to establish or strengthen their hold on power at the expense of their commitments on human rights.

As the report of the Working Group on Arbitrary Detention sets out, the initiatives of the USA in the struggle against terrorism blatantly contravene Human Rights International norms. Indeed, the

UN Working Group concluded that, both the case of persons detained in prisons on United States territory and those detained at the Naval Base of Guantanamo Bay, amount to arbitrary detention **

The FIDH, which has ceased on January 22 2002 the UN working group on the situation of the detainees at Guantanamo Bay, welcomes such decision. The American initiatives to prevent their Soldiers and Nationals from being sued by the International Criminal Court is another expression of their will to free their fight against terrorism from international justice and international law.

In other Western European countries, anti-terrorist legislation passed in 2001 and 2002, such as those passed in Great Britain, Germany, France and Italy*** include, *inter alia*, severe restrictions to freedoms (detention for an indefinite period, or refusal to grant the right of asylum and immigration, and an increased role for secret services, etc.) on the basis of a mere suspicion of belonging to a terrorist group.

Repressive measures multiply in several countries, under the pretext of the fight against terrorism, aimed, whether at repressing citizens, minorities or political opponents by equating them with Ben Laden's dangerous accomplices, or at muzzling human rights organizations.

For President Mubarak of Egypt, the establishment of military tribunals in the United States "prove(s) that we were right from the beginning in using all means, including military trials, [in response to] these great crimes that threaten the security of society". In several countries, and notably in Israel, Tunisia or Egypt, the anti-terrorism discourses is instrumentalised in order to tone down political opposition and Human Rights Activists. In Latin America, human rights defenders in Colombia are often accused of spreading propaganda that can harm the State, jeopardising national security, trying to topple the government, and aiding and abetting terrorism.

This criminalisation is often backed with legislation, as several state – such as China, Egypt, Algeria, Tunisia - adopted or re-implemented anti-terrorists legislation. In most cases, these new laws give a very broad definition of terrorism, which enable States to use the fight against terrorism against political opponents and Human Rights activists. The law on political extremism that Russia passed in a few days in June 2002 is a case in point. This law gives no clear definition of "political extremism", which leaves the door open to numerous arbitrary interpretations. And yet people can be sent to prison for up to 5 years on those grounds alone, or even for simply launching "an appeal for political extremism". Moreover, the fight against terrorism is largely used by the Russian authorities to legitimise its war in Chechnya.

In Africa, a number of States such as South Africa, Tanzania and Zimbabwe have already passed or envisage passing legislation against terrorism which could be used against civil society protest movements. For example, in Zimbabwe, any individual "undermining the authority of the President" may be found guilty of an act of terrorism.

As US President, George Bush declared Asia as "the second front in the war against terrorism", Asian countries have joined the coalition against terrorism launched by the US and through these events have found renewed justification for reinforcing their security law. In Malaysia for instance, the fight against terrorism gave new justification to the Internal Security Act (ISA), the use of which led to a new wave of arrests of individuals supposedly linked to groups of fundamentalists.

No wonder then that the regional and international mechanisms, which have logically followed their government, adopt the same attitude toward the struggle against Terrorism.

On a regional level, the texts adopted or set back to the agenda following September 11, 2001 have in common an extremely broad definition of "terrorist", which suggests that a large number of acts, including legitimate opposition and mobilization of civil society, could fall under the

"terrorist" heading. This is the case of the Arab Convention for the Suppression of Terrorism adopted in Cairo on 22nd April, 1998, back on the agenda, whose aim is to suppress terrorism, and also appears to muzzle political opposition and all those who dare to criticise the current regimes pacifically. Indeed, the vagueness of the definition of "terrorism" corresponding to "any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardise national resources". The African Union's Convention Against Terrorism and laws to combat terrorism adopted by the European Union and the Organisation for Security and cooperation in Europe (OSCE) adopt as well broad definitions of terrorism.

To the same extent, FIDH remain deeply concerned by the fact that the UN Secretary-General and UN Human Rights High Commissioner calls on the State Parties to both fight terrorism and respect the international human rights standards and the international humanitarian law have not been listened to. Hence, the fight against terrorism has dominated debates, to the detriment of an evaluation of human rights situations. One year after its inception in autumn 2001, the United Nations Committee on Terrorism had received 207 reports from 163 governments. This enthusiasm contrasts with the cumulative delay of 1,371 reports regretted by the six UN committees in charge of monitoring the application of human rights treaties.

However, the FIDH welcomes the resolution unanimously adopted during the 57th session of the UN General Assembly in 2002 A/RES/57/219, which emphasises the importance of both combating terrorism and respecting the Rule of Law and individual freedom. The position adopted by Kofi Annan, UN Secretary-General, to the 20 January Security Council ministerial meeting on terrorism, denouncing the fact that: "Internationally, we are seeing an increasing use of what I call the "T-word" — terrorism — to demonize political opponents, to throttle freedom of speech and the press, and to delegitimize legitimate political grievances. We are seeing too many cases where States living in tension with their neighbours make opportunistic use of the fight against terrorism to threaten or justify new military action on long-running disputes." Press Release SG/SM/8583 SC/7639

Indeed, the FIDH believes that the United Nations do have a very important role to play in the fight against terrorism: it is the most legitimate body to recall the states that, "while there is an urgent and compelling need to prevent acts of terror, there is a no less compelling need to pursue the goals enshrined in the United Nations Charter."

Hence, the FIDH recommends that:

- States now consider that the coalition against terrorism must act within the framework of international human rights standard and international humanitarian law.
- Efforts should be made by the States so that the Arab Convention for the suppression of terrorism and the African Union's Convention against Terrorism should be revised in order to refer to international human rights and humanitarian law;
- the UN Commission for Human Rights adopt a resolution which firmly stresses that fighting against terrorism does not prevent State Parties to comply with their International Human Rights commitments;
- that the Commission set up a special mechanism to monitor the impact of counter-terrorism measures undertaken by State Parties on Human rights at the national, regional and international levels.

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

** Civil and Political Rights, including the Question of Torture and Detention, Report of the Working Group on Arbitrary Detention, E/CN.4/2003/8..

*** See the FIDH request, on March 4 2002, to the Committee on the Elimination of All forms of Racial Discrimination (CERD) for an urgent procedure on the cases of the Anti Terrorism Act in the UK, the USA PATRIOT Act and the Anti-terrorist legislation in Germany

**** Terrorism is not as such a separate offence in the international field

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Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland



Fifty-seventh session
Agenda item 109 (b)

Resolution adopted by the General Assembly

[on the report of the Third Committee (A/57/556/Add.2 and Corr.1-3)]

57/219. Protection of human rights and fundamental freedoms while countering terrorism

The General Assembly,

Reaffirming the purposes and principles of the Charter of the United Nations,

Reaffirming also the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law,

Recalling that States are under the obligation to protect all human rights and fundamental freedoms of all persons,

Recalling also the relevant resolutions of the General Assembly and the Security Council on measures to eliminate international terrorism,

Recalling further its resolution 48/141 of 20 December 1993 and, inter alia, the responsibility of the United Nations High Commissioner for Human Rights to promote and protect the effective enjoyment of all human rights,

Reiterating paragraph 17 of section I of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993,¹ which states that acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism,

Noting its resolution 56/160 of 19 December 2001 and noting also Commission on Human Rights resolution 2002/35 of 22 April 2002,² on human rights and terrorism,

Reaffirming its unequivocal condemnation of all acts, methods and practices of terrorism, in all their forms and manifestations, wherever and by whomsoever

¹ A/CONF.157/24 (Part I), chap. III.

² See *Official Records of the Economic and Social Council, 2002, Supplement No. 3 (E/2002/23)*, chap. II, sect. A.

committed, regardless of their motivation, as criminal and unjustifiable, and renewing its commitment to strengthen international cooperation to prevent and combat terrorism,

Stressing that everyone is entitled to all the rights and freedoms recognized in the Universal Declaration of Human Rights³ without distinction of any kind, including on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in accordance with article 4 of the International Covenant on Civil and Political Rights,⁴ certain rights are recognized as non-derogable in any circumstances and that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlining the exceptional and temporary nature of any such derogations,

1. *Affirms* that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;

2. *Encourages* States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourages them to consider the recommendations of the special procedures and mechanisms of the Commission on Human Rights and the relevant comments and views of United Nations human rights treaty bodies;

3. *Requests* the United Nations High Commissioner for Human Rights, making use of existing mechanisms:

(a) To examine the question of the protection of human rights and fundamental freedoms while countering terrorism, taking into account reliable information from all sources;

(b) To make general recommendations concerning the obligation of States to promote and protect human rights and fundamental freedoms while taking actions to counter terrorism;

(c) To provide assistance and advice to States, upon their request, on the protection of human rights and fundamental freedoms while countering terrorism, as well as to relevant United Nations bodies;

4. *Requests* the Secretary-General to submit a report on the implementation of the present resolution to the Commission on Human Rights at its fifty-ninth session and to the General Assembly at its fifty-eighth session.

77th plenary meeting
18 December 2002

³ Resolution 217 A (III).

⁴ See resolution 2200 A (XXI), annex.



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.

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Agenda item 11

CIVIL AND POLITICAL RIGHTS

**Protecting human rights and fundamental freedoms
while countering terrorism**

**Report of the Secretary-General on implementation of
General Assembly resolution 57/219**

Introduction

1. The present report is submitted pursuant to General Assembly resolution 57/219 of 18 December 2002, "Protecting human rights and fundamental freedoms while countering terrorism", in which the Assembly requested the Secretary-General to submit a report on its implementation to the Commission on Human Rights at its fifty-ninth session and to the General Assembly at its fifty-eighth session.

2. In resolution 57/219 the Assembly affirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law; encouraged States to take into account relevant United Nations resolutions and decisions on protecting human rights while countering terrorism, and encouraged them to consider the recommendations of the special procedures and mechanisms of the Commission on Human Rights and the relevant comments and views of United Nations treaty bodies; and requested the United Nations High Commissioner for Human Rights, making use of existing mechanisms:

(a) To examine the question of protecting human rights and fundamental freedoms while countering terrorism, taking into account reliable information from all relevant sources, including Governments and international and non-governmental organizations;

(b) To make general recommendations concerning the obligation of States to promote and protect

human rights and fundamental freedoms while taking actions to counter terrorism;

(c) To provide assistance and advice to States upon their request, as well as to United Nations bodies, on the protection of human rights and fundamental freedoms while countering terrorism.

3. As a preliminary step, the High Commissioner for Human Rights has sent letters to a wide range of sources, requesting information relevant to their efforts to ensure protection of human rights and fundamental freedoms while countering terrorism. The sources addressed include Member States, regional organizations, non-governmental organizations, and United Nations departments and agencies. The information received will be reviewed and will form part of the basis of my report to the General Assembly at its fifty-eighth session on implementation of resolution 57/219.

I. United Nations Action To Date

4. The issue of the protection of human rights and fundamental freedoms while countering terrorism remains a matter of great concern to the United Nations. In remarks to a high-level debate of the Security Council on counter-terrorism, on 20 January 2003, I stated:

"[W]e must never lose sight of the fact that any sacrifice of freedom or the rule of law within States - or any generation of new tensions between States in the name of anti-terrorism - is to hand the terrorists a victory that no act of theirs alone could possibly bring. Even as many are rightly praising the unity and the resolve of the international community in this crucial struggle, important and urgent questions are being asked about what might be called the 'collateral damage' of the war on terrorism - damage to the presumption of innocence, to precious human rights, to the rule of law, and to the very fabric of democratic governance."

5. The High Commissioner for Human Rights has placed great emphasis on the need to respect human rights while countering terrorism in his bilateral discussions with Member States. In particular, he has underlined the principle that any exceptional measures taken to counter terrorism must be subject to strict limitations, including that they be transparent, necessary, time-limited and otherwise strictly proportional to the exigencies of the situation. The High Commissioner has also continued to call attention to certain human rights protections which are non-derogable under any circumstances, including states of emergency. These include (but are not limited to) the right to life; the prohibition against torture or cruel, inhuman or degrading punishment; the principle of legality in the field of criminal law (requiring that criminal liability be strictly subject to precise provisions in the law applicable at the time the act or omission took place, except where a later law imposes a lighter penalty); the recognition of everyone as a person before the law; and freedom of thought, conscience and religion.

6. The High Commissioner has established a useful dialogue with the Counter-Terrorism Committee of the Security Council and will maintain it, pursuant to the provisions of resolution 57/219. The High Commissioner briefed CTC on 21 October 2002 and proposed that his Office continue to provide CTC with information pertinent to the implementation of Security Council resolution 1373 (2001), highlighting its implications for human rights, for example by providing advice on appropriate standards and principles and notifying CTC of the relevant findings of the United Nations human rights mechanisms. The High Commissioner recommended in particular that CTC strengthen its links with the Human Rights Committee, responsible for monitoring State compliance with the International Covenant on Civil and Political Rights. In this connection, OHCHR and CTC are arranging reciprocal briefings between the Human Rights Committee and CTC in March and April 2003.

7. An additional important initiative on this issue was the establishment in October 2001 of the

Secretary-General's Policy Working Group on the United Nations and Terrorism, and in particular, the subgroup on human rights. The subgroup, chaired by the Deputy High Commissioner for Human Rights, was tasked with developing background information and making recommendations on the question of terrorism and human rights. In its report to the Policy Working Group submitted in April 2002, the subgroup reviewed key pronouncements of the Security Council and regional bodies on the issue of human rights and terrorism. While reiterating the obligation of States to take vigorous measures to ensure the security of their populations, the report also reviewed the limitations on State action set by international human rights standards and their interpretation by United Nations treaty bodies, the European Court of Human Rights, the Inter-American Court of Human Rights and other bodies.

8. In its report (A/57/273, annex - S/2002/875, annex), the Policy Working Group recommended that the United Nations High Commissioner for Human Rights should convene a consultation of international, regional and subregional organizations and non-governmental organizations on the protection of human rights in the struggle against terrorism. It proposed that the United Nations Department of Public Information be requested, in consultation with OHCHR, to publish a digest of the core jurisprudence of international and regional human rights bodies on the protection of human rights in the struggle against terrorism. It recommended that OHCHR make maximum use of its field presences and its regional experts, as well as the findings of the human rights treaty bodies and special rapporteurs, in its examination of this issue. Finally, the Policy Working Group proposed that the High Commissioner for Human Rights maintain his dialogue with the Security Council's Counter-Terrorism Committee on the importance of ensuring respect for human rights in the implementation of legislation, policies and practices to combat terrorism. All of these proposals, currently in the process of implementation, are consistent with the provisions of General Assembly resolution 57/219.

9. The existing human rights mechanisms of the United Nations continue to consider human rights aspects of counter-terrorism measures, a process which has been reinforced since 11 September 2001. The Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Racial Discrimination have all recently produced findings on aspects of counter-terrorism measures taken by a number of Member States. These findings supplement the extensive body of jurisprudence on the issue previously developed by the human rights treaty bodies.

10. A number of special procedures, including the Special Rapporteurs on torture, the independence of judges and lawyers, and contemporary forms of racism, racial discrimination, xenophobia and related intolerance have examined the question of human rights and counter-terrorism measures and addressed aspects of it in reports to the Commission on Human Rights and the General Assembly. In addition, the Sub-Commission on the Promotion and Protection of Human Rights continued to study the subject of terrorism and human rights and to consult on the issue with relevant United Nations bodies.

II. Future Activities

11. OHCHR will maintain an active profile on the issue of human rights and counter-terrorism measures, in furtherance of resolution 57/219. OHCHR is strengthening its capacity in this area, particularly with regard to its ability to assess counter-terrorism policies and practices from a human rights perspective, taking into account reliable information from all relevant sources, and to propose strategies in its technical cooperation programme to assist States, upon their request, in protecting human rights in their efforts against terrorism.

12. On the basis of all the foregoing, I will submit a more comprehensive report on implementation of resolution 57/219 to the General Assembly at its fifty-eighth session.

III. Conclusion

13. The necessity of ensuring respect for human rights in the international campaign to eliminate the practice and threat of terrorism will continue to be emphasized, consistent with the provisions of General Assembly resolution 57/219. As reflected in the Charter of the United Nations, the Organization has an important dual role to serve in this respect - that of promoting the maintenance of international peace and security while also seeking to achieve international cooperation in encouraging respect for the human rights and fundamental freedoms of all.

14. Initiatives already taken to promote exchanges of views and information on this issue will be maintained. The dialogue which has been established between the Counter-Terrorism Committee of the Security Council and OHCHR will be further built upon in the time ahead. The United Nations will develop further the dialogue which has been initiated within the United Nations system and with regional and non-governmental partners, as well as Member States, in order to better implement resolution 57/219.

** In accordance with General Assembly resolution 53/208 B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

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COMMISSION ON HUMAN RIGHTS
Fifty-ninth session
Item 11 of the provisional agenda

CIVIL AND POLITICAL RIGHTS

Written statement* submitted by the International Centre for Human Rights and Democratic
Development (Rights & Democracy),
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2003]

Promoting human rights in the fight against terrorism

1. Since the attacks in the United States on September 11, 2001, the global problems of violence and the absence of security — that so often appear to be a distant phenomenon — have suddenly become pressing concerns in international relations between States. In virtually every nation, part of the response to September 11th has been the hasty enactment of new national security and emergency legislation and the implementation of new surveillance and investigative measures to combat terrorism. Although States have a duty to protect the right to life of all people within their jurisdiction, measures taken by some States pose a serious danger to human rights. When dealing with human insecurity, the challenge is not to promote security at the expense of human rights, but rather to ensure full respect of human rights for all, even in situations where national security is at stake. There must be no trade-off between effective action to counter terrorism and the protection of the full range of human rights.

2. As the international community struggles to conceptualize and articulate a clear definition of "terrorism", many different actors use fear and violence to further their political ends. It is therefore imperative to distinguish between State terrorism, State-sponsored (or State-linked)

terrorism and terrorism perpetrated by non-state actors. Moreover, with different targets of fear and violence, we must also distinguish between intra-State terrorism, inter-State terrorism and international terrorism. With so many variations and nuances on the concept of "terrorism", we must be prudent in the use of a single, politically-loaded term. We must resist the temptation to use terrorism as a catch-all phrase for all serious domestic or international crimes. Rights & Democracy strongly condemns all acts of terrorism committed by State and non-State actors.

3. Rights & Democracy is deeply concerned with the repressive attitudes of some governments that have used the so-called international "war on terrorism" as a pretext to crackdown on political dissidents, separatists and religious groups, to create informal criminal justice systems and to adopt restrictive or punitive policies against refugees, asylum-seekers, and foreigners. History shows that periods of security troubles are precisely moments where it is necessary to fight for the protection of human rights. The fight against terrorism must not lead to the adoption of counter-terrorism measures that are incompatible with international human rights and humanitarian law standards. In the long term, greater respect for human rights and humanitarian law, democracy and social justice, will prove to be more effective measures against terrorism.

4. International human rights law, through mechanisms such as derogations and restrictions clauses, recognizes and provides means by which the restriction or suspension of certain rights may be necessary and permitted in exceptional circumstances to protect human rights. The terrorist attacks of September 11th have not changed the fundamental precepts. States must be made aware of the responsibilities placed upon them by the various international human rights instruments and reminded that the key provisions of the International Covenant on Civil and Political Rights cannot be derogated from at all costs.

5. There is no dichotomy between human rights and security. The conceptual linkage between human rights and terrorism, which places the law and respect for human rights obligations at the centre of the fight against terrorism, has been highlighted on a number of occasions by the UN Secretary-General, the UN High Commissioner for Human Rights and other international leaders. For instance, in her report on "Human Rights: A Unity Framework" presented to the 58th session of the Commission on Human Rights, former High Commissioner for Human Rights, Mary Robinson, reminded States that "an effective international strategy to counter terrorism should use human rights as its unifying framework" and that "the promotion and protection of human rights should be at the centre of the strategy to counter terrorism" (E/CN.4/2002/18). More recently, addressing the Security Council on October 4, 2002, to commemorate the one-year anniversary of the Committee on Counter-Terrorism, Secretary-General Kofi Annan, in his endorsement of a three-pronged counter-terrorism strategy based on dissuasion, denial and cooperation, emphasized that "to achieve effective dissuasion, it is essential to remember that the fight against terrorism is above all a fight to preserve fundamental rights and sustain the rule of law. By their very nature, terrorist acts are grave violations of human rights. Therefore, to pursue security at the expense of human rights is short-sighted, self-contradictory, and, in the long run, self-defeating" (SG/SM/8417).

6. Rights & Democracy believes that the quest for a balanced approach between anti-terrorism legislation and the protection of fundamental rights and the rule of law should take into account:

- the need to promote substantive laws at the national level that respect human rights, e.g. protection against torture and inhuman treatment;
- the need to promote procedural safeguards for those who are arrested under national security related laws, including access to lawyers, expeditious access to the courts and independence of the judiciary;
- the need to address the concerns of special groups such as women, children, refugees/asylum-seekers, minorities and indigenous peoples;

- the need to ensure that there are checks and balances against abuses of power and that State power is not untrammelled;
- the need to abide by international human rights standards, particularly to ensure that those national provisions attempting to derogate from human rights (clawbacks) do not derogate from non-derogable rights such as the right to life and freedom from torture and that derogations are reasonable, proportional to the threats and in conformity with the fundamental interests of society and democracy;
- the need to promote the view that human rights/human security and national security are compatible and that they are both accommodated in international law and the international human rights framework.

7. Rights & Democracy welcomes the adoption of Resolution 57/219 on "Protecting human rights and fundamental freedoms while countering terrorism" by the UN Assembly General during its 57th session in December 2002. By adopting this far-reaching resolution, the General Assembly reaffirmed the importance of respecting human rights, fundamental freedoms and the rule of law while countering terrorism. The resolution stresses States' obligations to ensure that certain non-derogable rights are fully observed at all times, and that if States derogate from their obligations, they must unequivocally meet all the requirements of article 4 of the International Covenant on Civil and Political Rights. Finally, the General Assembly also calls on the High Commissioner for Human Rights to monitor the protection of human rights while countering terrorism and to make recommendations to States

8. Rights & Democracy and others NGOs look at the Commission on Human Rights to address this important issue. We believe the Commission, as UN's supreme human rights body, has an important role to play in assessing if the measures taken by States to combat terrorism are in conformity with international human rights and humanitarian law standards and make recommendations to governments and other UN bodies. It must send a clear message that there is no contradiction between human rights and security. It must ensure that every effort possible is taken to protect those threatened by human rights violations, whether violations result directly from terrorism or are committed in the name of counter-terrorism.

Recommendations

Rights & Democracy calls on the Commission on Human Rights to pay specific attention to the measures taken by States to combat terrorism and adopt a resolution to:

1. Recall that any action undertaken in the name of combating terrorism, including military action, must unequivocally be conducted within international human rights and humanitarian law standards;
2. Make a statement of principle regarding legitimate non-violent struggles for human rights and democracy and the protection of human rights defenders in the context of the war on terrorism;
3. Urge all States to ensure that in taking counter-terrorism measures they protect both the security and the human rights of people, that non-derogable rights are strictly observed, and that relevant recommendations and observations adopted by the human rights treaty monitoring bodies are seriously taken into account, notably General Comment No. 29 on States of emergency (article 4 ICCPR) of the Human Rights Committee;
4. Call for the establishment of a new mechanisms to monitor and analyse the impact on human rights of measures taken by States to combat terrorism, with a mandate to make recommendations to States and to advise the Counter-Terrorism Committee of the UN Security Council;
5. Request relevant special procedures of the Commission — namely, the Special Rapporteur on

extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Working Group on Arbitrary Detention — to monitor and report on the impact of counter-terrorism measures on human rights and make recommendations for their observance.

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Office of the United Nations High Commissioner for Human Rights
Geneva, Switzerland



UNITED NATIONS

Press Release

XXXXXXXXXX

UN RIGHTS EXPERTS CALL FOR RESPECT OF LIBERTIES IN ANTI-TERROR MEASURES

XXXXXXXXXX

30 June 2003

The following is a joint statement by the Special rapporteurs/representatives, experts and chairpersons of the working groups of the special procedures of the United Nations Commission on Human Rights:

The special rapporteurs/representatives, experts and chairpersons of the working groups of the special procedures of the Commission on Human Rights, who met in Geneva from 23 to 27 June 2003, expressed alarm at the growing threats against human rights, threats that necessitate a renewed resolve to defend and promote these rights. They also noted the impact of this environment on the effectiveness and independence of special procedures.

Although they share in the unequivocal condemnation of terrorism, they voiced profound concern at the multiplication of policies, legislations and practices increasingly being adopted by many countries in the name of the fight against terrorism, which affect negatively the enjoyment of virtually all human rights -- civil, cultural, economic, political and social.

They draw attention to the dangers inherent in the indiscriminate use of the term "terrorism", and the resulting new categories of discrimination. They recall that, in accordance with the International Covenant on Civil and Political Rights, and pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, certain rights are non-derogable and that any measures of derogation from the other rights guaranteed by the Covenant must be made in strict conformity with the provisions of its Article 4.

The special rapporteurs/representatives, experts and chairpersons of the working groups of the special procedures of the Commission and the chairpersons of human rights treaty bodies deplore the fact that, under the pretext of combating terrorism, human rights defenders are threatened and vulnerable groups are targeted and discriminated against on the basis of origin and socio-economic status, in particular migrants, refugees and asylum-seekers, indigenous peoples and people fighting for their land rights or against the negative effects of economic globalization policies.

They strongly affirm that any measures taken by States to combat terrorism must be in accordance with their obligations under the international human rights instruments.

They are determined, in the framework of their respective mandates, to monitor and investigate developments in this area and call upon all those committed to respect for

human rights, including the United Nations, to be vigilant to prevent any abuse of counter-terrorism measures.

A full list of the experts and procedures can be found at the following address:
<http://www.unhchr.ch/html/menu2/2/mechanisms.htm>

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UNITED NATIONS

Press Release

2003년 6월 30일 유엔 인권 전문가들, 케네디코리에서 인권과 자유
존중이라고 촉구.

XXXXXXXXXX

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정책, 제도, 관행
: '테러리즘'에 관해
이런 이름 하여
→ 양면의 실정기 부정적인 영향
아닐다.
"테러리즘" 용어의 무분별한
사용.
차별 : 새로운 범주 등장.

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테러리즘'이라는 명분으로
인권 활동가들이 위협당하고
약자 집단이 목표/표적이 되고
차별 받는다. 정황/사회적 자
유치 기준 등등과, 난민, 난민신청
승인 등을, 정적 세력에게 방해
는 사람들.

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개척이 인권 침해하여
출구 보여. 러사.
2003-09-15

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/F1A1ADCDFDCA...>

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Amnesty International

국제 캠페인 2002년 보고서

2002 in Focus

'Counter-terrorism' and human rights

Further information

Exploiting the atmosphere of fear that followed 11 September, many governments ignored, undermined or openly violated fundamental principles of international human rights and humanitarian law.

Report 2003: USA

All AI documents on the United Nations

카에다 혹은 테러의 자로 규정된 사람들의 권리 침해. 이명 범인 사람. 또한 전쟁을 체포. 배의 관대나 오거지 수감. 기소 없이. 적자권 받지 못하게.

There was widespread abuse of the rights of people detained as suspected al-Qa'ida members or alleged "terrorists". More than 600 people, captured during the war in Afghanistan, continued to be held at the US base in Guantánamo Bay, Cuba, without charge or legal assistance. If they were prisoners of war, they should have been released at the end of the war in Afghanistan. If they were not prisoners of war, they should have been charged with a recognizable criminal offence or released. The US government, however, treated alleged al-Qa'ida members and associates as "enemy combatants" - a concept applied to detainees regardless of the circumstances in which they were captured or taken into custody (including those who were not taken prisoner during armed conflict). Arguing that it was "at war" with al-Qa'ida, the USA asserted that it was entitled to detain "enemy combatants" until the "war" ended - which means they could be detained indefinitely and without the rights afforded to prisoners of war or criminal suspects.

전쟁으로 보면 권리가 틀렸어야. 전쟁으로 간주하면 인적 자유권 행사할 수 있는 사유로 기소되었어야 함. 그러나 미 정부는 알카에다 무장사. 영구자를 적이란 개념 자체 무효로 주장. 적은 무기한 구금될 수 있음. 전쟁으로 남러시아(파라)의 권리 보장받지 못하게.

US forces also held hundreds of detainees in Afghanistan. Some were reportedly transferred to United Front forces in Afghanistan despite their record of abusing detainees; others were sent to countries where torture and ill-treatment are rife. In Pakistan, the authorities handed over more than 400 people to US custody without adequate human rights safeguards, in breach of domestic legislation regarding extradition and the international principle of non-refoulement.

In Yemen, US officials collaborated with the local authorities to locate, attack with missiles and kill six men, one of whom was suspected of being a leading al-Qa'ida member. Available information indicated that on that occasion no attempt was made to arrest, charge or prosecute the al-Qa'ida suspect.

인간보위: '대 테러' 이름으로 희생되는 인권이 적에게 거의 매몰되어 못하고 있다. 2001년 11월 1973년 체결된 정부에 '테러'를 배양하는 조치를 취하고 강제.

The UN Security Council did little to counter the atmosphere in which human rights were sacrificed in the name of "counter-terrorism". The Security Council, which had adopted Resolution 1373 in 2001 compelling all governments to take measures against "terrorism", and its Counter-Terrorism Committee consistently refused to allow UN human rights mechanisms to advise or inform these initiatives. In November the UN General Assembly adopted a resolution calling on the High Commissioner for Human Rights to analyse the effects of "counter-terrorism" measures: a similar initiative by Mexico had earlier failed at the UN Human Rights Commission for lack of support.

유엔 안보리 1373년 결의. 인권이 적에게 거의 매몰되어 못하고 있다. 2001년 11월 유엔총회는 유엔인권 고등위원에게 '테러'의 효과를 분석하라고 촉구하는 결의 채택.

테러의 처벌 법적 자유 침해. 테러 2001년 3월 테러방지법 제정. 테러의 처벌이 법정 바로 증거로 인정될 수 있도록 함.

Governments around the world appeared to take on board the message that human rights standards could be jettisoned in times of emergency. Some sought to use the "war against terrorism" to legitimize their repression of political dissent and their failure to address internal conflicts and grievances. In the Philippines, the government branded lawful groups critical of the government, including some human rights organizations, as "fronts" for an armed opposition group, increasing human rights defenders' vulnerability to abuse. In Liberia, journalist and human rights activist Hassan Bility was accused of belonging to an armed opposition group, severely tortured and held incommunicado and without charge or trial for six months. His was not an isolated case.

정부는 인권 기준 배상 시엔 배려할 수 없다고 하는 듯함. 일부는 '테러'의 정의를 광범위하게 정하여 배상할 수 없도록 하는 등. 문제를 은연중에 정당한 도구로 사용.

The introduction of "anti-terrorism" measures that erode fundamental freedoms, seen in many countries in the months following the 11 September attacks, continued in 2002. In India, for example, parliament enacted the Prevention of Terrorism Act in March, which provides for confessions obtained in police custody to be admissible in courts for "terrorist" offences. Confessions in police custody in India are often extracted through torture, and Indian law prohibits such confessions from being submitted as evidence for other offences.

Many governments justified "counter-terrorism" measures on the grounds of protecting civilians from violent attack. AI strongly condemned such attacks, including the hostage-taking by Chechen rebels in a Moscow theatre; suicide bombings by Palestinians in Israel; killings by Maoist groups in Nepal; and kidnappings by armed political groups in Colombia - and called for the perpetrators to be brought to justice in fair procedures. However, in the post-11 September world, many governments spoke not of law enforcement and justice, but of self-defence and war - a war that appeared to be increasingly waged outside the norms of human rights and international humanitarian law.

9.11 이후 많은 정부들은 법집행과 정의가 위해 말하지 않고 자위안 전쟁에 대해 이야기. 인권과 국제법 개념의 밖에서 수행되는 전쟁.

Distr.
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E/CN.4/Sub.2/2003/WP.1
8 August 2003

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fifth session
Agenda item 6 (c)

**SPECIFIC HUMAN RIGHTS ISSUES:
NEW PRIORITIES, IN PARTICULAR TERRORISM**

**Additional progress report prepared by Ms. Kalliopi K. Koufa,
Special Rapporteur on terrorism and human rights***

* In view of its late submission and length which exceeds the established page limits, the document is issued as received in the language of submission only.

GE.03-15788

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Introduction

1. In its resolution 1996/20 of 29 August 1996, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to entrust Ms. Kalliopi K. Koufa with the task of preparing a working paper on the question of terrorism and human rights, to be considered at its forty-ninth session. In response to this request, Ms. Koufa submitted her working paper (E/CN.4/Sub.2/1997/28), identifying the many diverse, complex and contentious issues involved in the discussion of this question, and proposed a number of ways to study further this topic.
2. The Sub-Commission, in its resolution 1997/39 of 28 August 1997, commenting on the very comprehensive and well documented working paper, and endorsing the basic approach set out by Ms. Koufa, recommended that the Commission on Human Rights approve her appointment as Special Rapporteur to carry out a comprehensive study on terrorism and human rights. The Commission on Human Rights, in its decision 1998/107 of 17 April 1998, approved the appointment of Ms. Koufa as Special Rapporteur. The Economic and Social Council, in its decision 1998/278 of 30 July 1998, endorsed the above decision of the Commission.
3. At the fifty-first session of the Sub-Commission, the Special Rapporteur submitted her preliminary report (E/CN.4/Sub.2/1999/27), containing an historical overview of the evolution of the question of terrorism within the United Nations system and analysis of the major areas in which terrorism affects, directly and indirectly, the full enjoyment of human rights. She further identified and discussed other basic priority areas that would next deserve to be examined also, such as the question of definition, the interrelated questions of the scope of application of human rights law and of the accountability of the non-State actors, as well as recent trends in contemporary terrorism.
4. In its resolution 1999/26 of 26 August 1999, the Sub-Commission expressed its deep appreciation to the Special Rapporteur for her excellent and comprehensive preliminary report and requested the Secretary-General to transmit it to Governments, specialized agencies and concerned inter-governmental and non-governmental organizations with the request that they submit to her pertinent comments, information and other data. It also requested the Secretary-General to provide for visits of the Special Rapporteur to Geneva, New York and the United Nations Office for Drug Control and Crime Prevention in Vienna, in order to hold consultations and complement her research.
5. In its resolution 2000/30 of 20 April 2000, the Commission on Human Rights, taking note of Sub-Commission resolution 1999/26, requested the Secretary-General to continue to collect information on the topic, and to make it available to the concerned special rapporteurs, including this Special Rapporteur. The Commission also endorsed the Sub-Commission's request for consultations. The Economic and Social Council, in its decision 2000/260 of 28 July 2000, approved that request.
6. At the fifty-third session of the Sub-Commission, the Special Rapporteur presented her progress report (E/CN.4/Sub.2/2001/31), in which she provided up-dated information on the development of international anti-terrorist action and addressed several controversial issues, such

as the problem of definition, the concept of terrorism by reference to the potential State and non-State actors involved in it, but exploring more fully the manifestations of State terrorism, the issue of new forms of terrorism and of the potential use of weapons of mass destruction by terrorist groups. In this context, she discussed the potentially grave implications that both the terrorist use of weapons of mass destruction and States' counter-terrorism policies hold for human rights, and warned against the disturbing tendency to categorize ordinary criminal activity as terrorism, as well as against those alarmist analyses that can lead to counter-terrorism measures easily falling into the infringement of human rights. The Special Rapporteur also discussed the distinction between armed conflict and terrorism, stressing their points of divergence as well as their convergence when terrorist acts are committed in an ongoing armed conflict, the issue of self-determination forming part of this discussion. She further followed her analysis with an extensive consideration of the impact of terrorism on human rights, with emphasis on the issues raised by the Commission in its resolutions 1999/27 of 26 April 1999, 2000/30 of 20 April 2000 and 2001/37 of 23 April 2001.

7. The Sub-Commission, in its resolution 2001/18 of 16 August 2001, expressed its deep appreciation for the excellent progress report and requested that the Special Rapporteur continue her direct contacts with the competent services and bodies of the United Nations in New York and Vienna. It also requested the Secretary-General to transmit the progress report to Governments, specialized agencies and concerned intergovernmental and non-governmental organizations to enable them to submit comments to the Special Rapporteur. Finally, the Sub-Commission requested the Special Rapporteur to prepare a second progress report. The Commission, in its resolution 2002/35 of 22 April 2002, endorsed the requests of the Sub-Commission for a second progress report and for continuing consultations.

8. The Special Rapporteur submitted to the Sub-Commission, at its fifty-fourth session, her second progress report (E/CN.4/Sub.2/2002/35), written in the wake of 11 September 2001, under the enormous emotional and psychological stress and shock prevailing all around the world, due to the well known terrorist events in the United States of America and their catastrophic consequences. Sensing the shifting international environment, the surfacing new trends and developments as a result of the accelerated fight against terrorism, and the worldwide "close-to-panic" reaction in much of the political and legal activity relating to terrorism, with their obviously serious implications for international and human rights law as well as humanitarian law, the Special Rapporteur pondered over the need to rethink and re-evaluate the future course of her work. In particular, she thought that it would be detrimental to her study to continue working on it as if 11 September 2001 had not happened. The 11 September 2001 catalyst of events and developments, disparate views of opinion and serial debate over human rights, terrorism, and the "new" international law was adding to the original momentum of her mandate, making it gain in both importance and hardship. The significant unintended consequences of the global fight against terrorism and the risk of damage to the cause of justice and the rule of law justified, in her opinion, some diversion from her basically conceptual approach of the study on terrorism and human rights towards one that is more human rights specific.

9. Therefore, seizing the opportunity given to her for the presentation to the Sub-Commission of a second progress report, the Special Rapporteur devoted most of that report to a review of the relevant international anti-terrorist activities and initiatives undertaken since 11 September 2001, and the relevant reactions by various international human rights bodies and mechanisms, both at

the global and the regional levels. In this light, she addressed *inter alia* the main action undertaken by the Security Council; commented on the Counter-terrorism Committee that was created under its authority; discussed initiatives at the General Assembly and the effort to finalize the draft international convention on international terrorism; drew attention to the UNESCO resolution of 20 October 2001 which rejected the notion of associating terrorism with any particular religion or nationality and pointed out that social injustice is a fertile ground for terrorism; and reviewed initiatives undertaken at the regional level (i.e., within the European Union, the Council of Europe, the Organization for Security and Co-operation in Europe, the Organization of American States, the League of Arab States, the Organization of African Unity and the Organization of the Islamic Conference).

10. Turning specifically to the reactions of the human rights bodies and mechanisms, the Special Rapporteur dealt with the work of the Human Rights Committee regarding, in particular, that Committee's newest general comment on Article 4 of the International Convention on Civil and Political Rights (CCPR/C/21/Rev.1/Add.11) and its subsequent review of certain cases relating to post-11 September 2001 anti-terrorism legislation or actions undertaken by State parties. The Special Rapporteur also drew attention to important statements on terrorism and human rights by the Committee on the Elimination of Racial Discrimination, by independent experts of the Commission on Human Rights, and by the United Nations High Commissioner for Human Rights. In her concluding observations, the Special Rapporteur recalled, furthermore, the often expressed consternation by the highest officials of the United Nations, including the Secretary-General, the High Commissioner for Human Rights and the High Commissioner for Refugees, with regard to some actions undertaken in response to terrorism, and noted the array of topics that still needed the attention of the Sub-Commission, as well as some other main post-11 September 2001 issues that generated new interest in the topic and fed this interest more than ever before.

11. By its resolution 2002/24 of 14 August 2002, the Sub-Commission, expressed its deep appreciation and thanks to the Special Rapporteur for her excellent report and requested her to continue her work taking into consideration, *inter alia*, the replies submitted by governments, competent organs and bodies of the United Nations system and intergovernmental and non-governmental organizations, and to continue direct contacts and consultations with the competent services and bodies of the United Nations, in particular those in New York and Vienna, in order to expand her research, update the study and expedite her work. It also requested the Special Rapporteur, in view of the complexity of the phenomenon of terrorism and the extraordinary range and quantity of developments at the international, regional and national levels since the events of 11 September 2001, to submit an additional progress report to the Sub-Commission at its fifty-fifth session which would include a discussion of national, regional and international measures adopted and/or applied after 11 September 2001, and of the conceptual debate arising therefrom.

12. At its fifty-ninth session, the Commission on Human Rights, in its resolution 2003/37 of 23 April 2003, endorsed the Sub-Commission's request that the Secretary-General give the Special Rapporteur all the assistance necessary to carry on her consultations with the competent services and bodies of the United Nations system to complement and expand her research and data for the preparation of an additional progress report, and requested the Special Rapporteur to give attention in her next report to the questions raised in that resolution.

13. This additional progress report, submitted to the Sub-Commission at its fifty-fifth session in accordance with resolution 2002/24, consists of three sections. The first section contains preliminary comments relating to the scope of the study. The second section returns to the conceptual level of analysis, by resuming the discussion of non-State terrorism from the very point where it was left off in the first progress report (E/CN.4/Sub.2/2001/31), and by giving further thought to this, as well as other component parts of the study. The third section consists of concluding observations. Further, the report is also supplemented by two Addenda. Addendum I reviews and up-dates on international anti-terrorist activities and initiatives undertaken at the global and regional levels, since the submission of last year's report. Addendum II contains a summary of the replies and comments received by the Special Rapporteur from governments, intergovernmental and non-governmental organizations, as well as United Nations special procedures, in the period from May 2002 to May 2003.

I. PRELIMINARY COMMENTS RELATING TO THE SCOPE OF THE STUDY

14. Since the submission to the Sub-Commission of the last report (E/CN.4/Sub.2/2002/35), there have been many new developments that both directly and indirectly heavily affect the study of the Special Rapporteur on terrorism and human rights. Events before the war in Iraq, the war itself, and now its tragic aftermath have further seriously undermined many of the fundamental principles of international law, human rights and humanitarian law in their entirety, and not only relating to terrorism. At the time of writing of this additional progress report, the Special Rapporteur finds herself functioning under a situation of unique international tension, which not only burdens the issue of terrorism and human rights, but in which the acceleration of world events and turning-point initiatives is overtaking much of her work. Just one year ago, commenting on the escalation of crisis situations and "hot spots" throughout the world, the dramatic - and, sometimes, "close-to-panic" - reactions in the international community and their far-reaching implications for human rights, which justified, in the opinion of the Special Rapporteur, some shift in the original focus of her study, she could nonetheless express a hope that in the course of the coming year "the dust would settle", allowing her to study and reflect upon the catastrophic events from some distance.¹ Sadly, this has not been the case, of course.

15. Time and distance from the catastrophe of 11 September 2001, instead of bringing a rehabilitation of the much needed normalcy in the international relations of the dawning 21st millennium, have truly opened a new era of global insecurity, uncertainty and erosion of established international law. While "the dust has not settled" yet, the very viability, relevance, even legitimacy, of the international system built up within the past fifty plus years has been put to question and to further severe testing, over the past few months.² At this time, the Special Rapporteur sees no clear roadmap to reinstatement of the rule of law necessary to protect human rights and humanitarian law in the global struggle against terrorism, and shares the skepticism of most people around the world about the over-zealous use of counter-terrorist measures to facilitate enforcement activities in criminal and other matters unrelated to terrorist activities.

16. On a more positive note, the Special Rapporteur notes, however, that in spite of many serious setbacks, there has also been a kind of regrouping in the international community, especially in regard to challenging and reacting to anti-terrorist legislation passed since 11 September 2001. Much of the credit for this goes to the international and national human rights groups and mechanisms that roused public opinion, by repeatedly making the case that

repressive new laws, detention practices, harsh treatment of immigrants, refugees and minorities, as well as other policies and practices introduced in a significant number of countries, and broadly justified by the new international war on terrorism, lower the accepted standards of human rights. Thus, after initially leaning heavily towards national security measures at the expense of international human rights and humanitarian law norms, the international community may have begun to generate a more reasoned balancing of security and rights in relation to anti-terrorist legislation.

17. In fact, there are two notable indications that much of the attention that was focused on acts of terrorism in the previous year was refocused this past year on counter-terrorism measures. For the first time, during its last 57th session, the General Assembly adopted, without a vote, a resolution on "Protecting human rights and fundamental freedoms while countering terrorism" (A/RES/57/219 of 18 December 2002), which emphasizes the need of both combating terrorism and respecting the rule of law, and encourages an active profile of the United Nations High Commissioner for Human Rights on the issue of human rights and counter-terrorism measures. Furthermore, the Commission on Human Rights, which in the course of its 58th session had chosen not to take specific action or undertake any new initiatives to monitor the impact of anti-terrorism measures on human rights, chose this year to follow suite to this important initiative by the General Assembly by adopting, also without a vote, resolution 2003/68 of 25 April 2003, entitled "Protection of human rights and fundamental freedoms while countering terrorism". The Special Rapporteur thinks that these particular actions will eventually provide a useful point of departure to assess where counter-terrorism measures most negatively impact on human rights. As is well known, there is currently no international institution with a clear mandate to assess whether measures taken and justified by a State as necessary to combat terrorism are in violation of human rights standards which it has accepted, or which would require that a derogation be made. And it is, indeed, unfortunate that the Counter-terrorism Committee established by the Security Council does not believe this to be part of its mandate.

18. This additional progress report is submitted at a time when the heated debate over terrorism and human rights is still in the ascendant. Also, at a time when the feeling of increasing urgency regarding the adequacy or appropriateness of the responses to terrorism and the conformity of national and international measures adopted and/or applied after 11 September 2001 with international human rights and humanitarian law norms is far from being abated. The deliberations at the 54th Sub-Commission session, as well as those at the Commission's 58th and 59th sessions, and at the General Assembly's 57th session, demonstrate clearly that there is a general concern with these issues, and a need to approach constructively both the trade-offs between security and civil liberties and the dilemmas posed thereof, in today's growing climate of uncertainty triggered by the events of 11 September 2001. It is in this particular context that the Special Rapporteur envisages paragraph 6 of Sub-Commission resolution 2002/24 of 14 August 2002, requesting her to submit an additional progress report which will include a discussion of national, regional and international measures adopted and /or applied after 11 September 2001, and of the conceptual debate arising therefrom.

19. The Special Rapporteur has followed as closely as was possible the adoption and implementation of various national and international anti-terrorist laws and policies, not only for their negative impact on human rights, but also for their lack of impact in actually minimizing the threat of terrorism. While she views that fully addressing and discussing national and international anti-terrorism measures could be extremely valuable also for her conceptual study,