

at least in as much as it would enable her to draw together and point out certain trends indicating areas of concern related to national anti-terrorism legislation, the Special Rapporteur cannot help thinking that responding adequately to the above mentioned request of the Sub-Commission would require a full study in itself.

20. In particular, she now believes that she is already facing a dual task. On the one hand, the task of completing and finishing the study on terrorism and human rights, which was basically conceptual in its inception and approach - the exception being, of course, her second progress report, responding of necessity to the events and situations generated by 11 September 2001. On the other hand, the task of reviewing and discussing national, regional and international counter-terrorism measures and legislation adopted and/or applied after the milestone of 11 September 2001. While the Special Rapporteur thinks that it is not possible to address both of these tasks in one and the same study, for primarily systematic and methodological reasons, part of her hesitance is, admittedly, relating also to the sheer quantity of legislation and other material that would inevitably make her report far longer than the limits imposed for such reports.

21. As a consequence, the Special Rapporteur considers that the most appropriate way of responding to the above mentioned tasks is, in the first place, to continue with her conceptual approach of terrorism and human rights with a view to completing the Sub-Commission study the soonest possible and, then, should the Sub-Commission so decide, turn to the review and discussion of national, regional and international counter-terrorism measures with a view to indicating areas of concern related to anti-terrorist legislation and threats to rights hammered out years ago relative to criminal and other procedures.

## II. A FOLLOW-UP ON THE ISSUE OF DEFINITION

### A. Introductory remarks

22. The Special Rapporteur has already addressed some of the issues regarding the difficulty of defining terrorism, underscoring in particular as one of the major difficulties standing in the way of consensus in the United Nations the controversy about wars of national liberation and the motives advanced to justify violence.<sup>3</sup> She has also presented the views and varying positions of the Sub-Commission members as to whether the study should undertake a definition of terrorism,<sup>4</sup> and indicated her own leaning towards the view that the study need not shy away from scrutinizing the essential elements and manifestations of terrorism, with a view to obtaining or drawing together basic definitional components and criteria that might eventually guide the Sub-Commission towards the advancement or articulation of a definition for the purposes of the study.<sup>5</sup>

23. Although, admittedly, finding an all-encompassing and generally acceptable definition of terrorism is too ambitious an aim, the Special Rapporteur has throughout her work considered valuable the idea of elaborating with some precision on the definitional elements of "terrorism" and of what can be considered as "acts of terrorism", for the purposes of this study, and in particular with a view to identifying the major aspects of the phenomenon of terrorism and its possible relationship to the question of accountability. In this context, she was bound to give attention also to the controversial issue of the actors or potential perpetrators of terrorism.<sup>6</sup>

24. In her view, the almost entire concentration on behavioral description (i.e., on certain conduct or behavior and its effects) and failure to spell out clearly who can use terrorism, has been one of the major reasons for not achieving a definition likely to command general approval. Despite the horrors associated with it, terrorism in its most widely accepted usage has, to be sure, an inherently moral and political context as well. This is well evidenced by the very practice within the United Nations, where among the main stumbling blocks in the effort to define terrorism has been the question of who can be identified and labeled as "terrorist".<sup>7</sup>

25. As a consequence, in discussing the problem of definition in her first progress report, the Special Rapporteur introduced the question of the actors or potential instigators of terrorism, in an attempt to prune away and reduce at least part of the definitional wrangle, by spelling it out clearly and trying to explain it.<sup>8</sup> In this connection, she approached analytically the dual conceptual distinction that is generally made between State and sub-State (or non-State or individual) terrorism - a distinction which usually corresponds to the two different basic dimensions of the terrorist phenomenon (i.e. State and anti-State), and which is now a generally acceptable component of the debate on terrorism, in both the world of the academia and ordinary parlance, including in the United Nations - and delineated the different manifestations and effects of State terrorism from the point of view of international law, international human rights and humanitarian law.<sup>9</sup> Next, she introduced the much more disparate and diversified manifestations of non-State (or sub-State) terrorism, but deferred discussion of the complex problems raised by this unwieldy to uniform typology and categorization dimension of the terrorist phenomenon, in particular as regards international and human rights law, in order to present it later in a more integrated form, and after having also reviewed the relevant submissions to her from governments and non-governmental organizations.<sup>10</sup> Finally, she attempted to initiate debate on the ever-present international controversy - and, thereby, the recurring request of a number of Member States - regarding the need to clearly differentiate between terrorism and the struggle for self-determination, by analyzing legally, in light of the 1949 Geneva Conventions and the 1977 Protocols Additional thereto, various cases or situations of armed conflict or war, with a view to distinguishing and separating them from terrorism.<sup>11</sup>

26. In the present section of this additional progress report, the Special Rapporteur continues and concludes the discussion of sub-State (or non-State or individual terrorism) initiated in her first progress report, and follows on her conceptual analysis with some basic legal delimitations of terrorism and terrorist acts relevant from the human rights perspective. This section is not to be considered as a thorough overview by the Special Rapporteur of the subject matter. More work has to be done, in particular with regard to the legal delimitations of terrorism, and especially the human rights delimitation of terrorism. It should further be understood that this additional progress does not supersede the previous reports of the Special Rapporteur but that it should be read in conjunction with them.

### B. Sub-State<sup>12</sup> (or non-State or individual) terrorism

27. The diverse manifestations of sub-State terrorism (i.e. terrorism committed by non-State groups or individuals, usually as a form of subversion) having been already portrayed in the first progress report (E/CN.4/Sub.2/2001/31), it is presently the purpose of the Special Rapporteur to comment on and try to give some order to the jumble of private agents and organizations lumped together as "sub-State" or "non-State" or, even, "individual" terrorism. As is well known, the focus of world literature on terrorism remains riveted on this type of terrorism, while the



increasing danger emanating from the sophisticated tactics and operations mounted or likely to be mounted by terrorist actors of the kind has become - particularly after the terrorist attacks of 11 September 2001 - the cause of much more international consternation and international solidarity than ever before.

28. In considering sub-State (or non-State) terrorism, two points should be made from the very outset. First, because of its diversity and manifold manifestations, it is difficult to generalize on this brand of terrorism - confined to individuals and groups of private actors - without sacrificing accuracy.<sup>13</sup> In its long history, this aspect of terrorism has undergone all kinds of mutations, societal and technological changes having wrought their own direct effects on terrorists, as individuals and as groups. Moreover, the possibility of State involvement in (or sponsorship of) this type of terrorism - a possibility that is now generally recognized, despite existing disagreement as to its extent or the ways and forms it may take - blurs sometimes the line of its distinction from State terrorism. In any event, the variety and complexity of this aspect of the terrorist phenomenon is further witnessed by the fact that terrorists vary from country to country, as a result of cultural traditions, social structures, political relationships and affiliations, as well as other factors that make generalizations and taxonomies very difficult.

29. Second, even the briefest review of the juridical and political literature and doctrine of terrorism reveals not only that most of the writers focus their analyses on this type of terrorism, but also that there is a different understanding of and disagreement about any similarities existing between this brand of terrorism and the brand of State terrorism, beyond the fact, of course, that both attempt to induce a state of fear.<sup>14</sup> Building on the different manifestations and functions of these two basic categories of terrorism, many writers argue against mixing or viewing them together,<sup>15</sup> particularly since there is adequate (even if insufficiently enforced) international law to regulate and restrain State violence.<sup>16</sup> On the contrary, it is quite obvious that much remains to be done in the direction of regulating and suppressing terrorism pertaining to individuals and groups of private actors.

### 1. Typologies and categories of sub-State terrorism

30. It has already been noted that terrorism pertaining to individuals and groups of private actors (i.e., "non-State" or "sub-State" terrorism) may take several forms.<sup>17</sup> Thus, within this category have been placed, with varying degrees of accuracy and legitimacy, by various commentators, such persons, groups and organizations as the "sicarii" and the "assassins",<sup>18</sup> nineteenth- and early twentieth-century anarchists, Marxist and Maoist revolutionaries, nationalists and separatists, ultra leftist and ultra rightist groups, rural and urban guerrillas, liberation fighters, mercenaries, paramilitaries, religious and other fanatics, ecological activists, anti-globalization protestors and trade unionists, "new generation" terrorist groups and terrorist "entities",<sup>19</sup> as well as "lone terrorists".<sup>20</sup> This terse catalogue, breathtaking as it may be in its variety and scope - since it is covering the long history of the non-State terrorist enterprise throughout recorded history, and for at least two thousand years - cannot certainly depict the enormously varied range of qualities, differences and similarities across the decades, the shifts in character, the changes due to distance and the surrounding political circumstances, or the mixtures of types and borderline conditions included in the constellation of non-State terrorist agents and organizations.

31. To systematize thinking, in light of the varied and complicated nature of all these terrorist phenomena, researchers and scholars in the area of political and social sciences have devised and charted various typologies, and ventured into not only the explanation of the historical and political background but also the examination and analysis of the sociology and the personality of the non-State or sub-State terrorist actors.<sup>21</sup>

32. To begin with, analysts have attempted to divide and classify terrorism and terrorists by their historical origins (for example: revolutionary, anarchist, guerrilla, anti-colonialist, etc.); by ideological type, (for example: nationalist, left-winger and right-winger, religious fundamentalist, etc.); by the nature of their goals (for example: separatist, national liberationist, "self-determinist", racist, etc.); and in terms of the setting in which they operate, especially the type of terrorist targeting (for example: kidnapping, xenofighting,<sup>22</sup> indiscriminate victims, etc.), or the terrain in which they operate (for example: rural, urban, transnational, etc.).<sup>23</sup> The tangles caused by such attempts to categorize non-State terrorist individuals, groups, and organizations are pretty obvious in view of the overlap and coexistence of properties or qualities within or among the different types, and the inconsistencies resulting from the combinations of different criteria and numerous variables.

33. Clearly, for instance, ideology can be political but it can also be religious. Revolutionaries can be left-wingers (i.e., Marxist-Leninist, Maoist, etc.),<sup>24</sup> or right-wingers (i.e., various racist and other militant movements in several parts of the world, including Europe, the USA and the Middle East);<sup>25</sup> they can be nationalists and/ or separatists (i.e., the indigenous nationalist/anti-colonialist groups that emerged in Asia, Africa and the Middle East during the late 1940s and 1950s to oppose continued European rule<sup>26</sup> or, during the late 1960s and 1970s, the diverse nationalist and ethnic separatist groups outside the colonial framework, as well as radical, entirely ideologically motivated organizations, and disenfranchised or exiled nationalist minorities adopting terrorist tactics as a means to draw attention to their causes, and thereby attract international sympathy and support);<sup>27</sup> and they can also be guerrillas - rural or urban - and at the same time kidnappers, and so on (i.e., partisans, insurgents using irregular military operations against the government or its army forces and assigning a role - more or less important - to terrorist tactics, and other groups of resistance);<sup>28</sup> but they can be religious fanatics or religious radicals and extremist groups as well (i.e., starting from such early classic cases of sacred terror groups and sects as the "assassins", the "sicarii" and the "thugs",<sup>29</sup> and moving through contemporary examples of militant religious fundamentalism - Christian, Jewish, Islamic and other groups<sup>30</sup> - to the recent cases of "millenarian" groups or "cults" disposed to go as far as using chemical, biological and nuclear weapons).<sup>31</sup>

34. Equally, the criterion of the historical origins does not prove ideal and can also be misleading and complicated as an analytical tool. It can also be misleading in distinguishing between contemporary terrorist groups, or coexisting terrorist groups with different political or ideological orientations. For example, both the Red Army Faction and the Weathermen emerged during the 1960s' student unrest;<sup>32</sup> and there were different religious and secular terror groups coexisting, often uneasily, in the Middle Eastern and North African contexts.<sup>33</sup> Further, there are also drawbacks in categorizing by the nature of the goals pursued by the terrorists (i.e., overthrow of the established order, or separatism and irredentism),<sup>34</sup> and by the targets or the types of victims chosen by the terrorists (i.e., carefully selected persons or indiscriminate and random victims);<sup>35</sup> whereas even categorizing in terms of the setting or the terrain in which



terrorists operate (i.e., urban or rural, domestic or transnational and international) is not unambiguous outright.<sup>36</sup>

35. There exist, of course, several other ways and instances of categorizing and classifying terrorism and terrorists in the literature of the social sciences, because there are several different approaches to conceptualizing the phenomena of terrorism and terrorists. Depending on one's own particular concerns and the framework chosen, different categories and typologies will obviously turn up.<sup>37</sup> In the pertinent words of one commentator "there are almost as many typologies of terrorism as there are analysts."<sup>38</sup> Reference to them here, however, must be kept to a minimum, since they are not as central as other points to the purposes of this study, and are far from contributing to the solution of the problem of definition. On the contrary, in the opinion of the Special Rapporteur, the existing plethora of classifications and typologies in the field, rather than contributing to the exegesis and rationalization of the terrorist phenomena add to the polysemy and divergence prevailing in this area.

36. That said, classifications and typologies may be useful as basic tools for mapping the different types of terrorism and terrorist groups and, by so doing, for breaking up the tremendously broad concepts into more analytical frameworks for discussion, and into categories more manageable for research and study. However, dividing into categories and classifying in the field is also a very complicated task and can be highly misleading, as already evinced by the examples given above. Other examples could easily be drawn from even the briefest review of the abundant contemporary professional literature of terrorism, evincing further a number of serious - and potentially dangerous - consequences and misperceptions, as a result of the development of even more sophisticated and analytical typologies and divisions, which aim at defining more precisely subgroups of terrorism but rest on ill-fitting or flawed assumptions, on dubious or overlapping distinctions, and on omissions or exclusions of other important instances of terrorism.

37. For instance, the inordinate amount of attention currently garnered upon terrorist groups with an ethno-nationalist or religious orientation has led contemporary typologies of terrorist organizations to focus closely on socio-cultural criteria, primarily the putative ethnic, national, or religious identities or ideological beliefs of group members.<sup>39</sup> These typologies usually differentiate terrorist actors according to their identity or ideology. While this can be helpful from a sociological or even psychological perspective, the Special Rapporteur is wary of the culturalist bias of some of these typologies, since this bias - often combined with the meager evidence provided by national statistics and data banks that are sometimes based on unspecified criteria or questionable and inaccurate figures<sup>40</sup> - may lead to lumping together disparate types and aspects of the political phenomena, eventually occluding those socio-political differences which could assist in illuminating the existence of a group's legal legitimacy or lack thereof.

38. One such especially problematic paradigm is the so-called "religious terrorism". Often part of the "superterrorism" discourse,<sup>41</sup> a number of authoritative analyses cite the religious, often Islamic, identities of some contemporary terrorist organizations as proof of transcendent, otherworldly justifications for their actions, and so of their potential willingness to use extreme, catastrophic means, such as WMD, to reach their goals.<sup>42</sup> While recognizing that "fundamentalist" terrorists, originating from mainstream religious traditions, differ from the so-called "millenarian" terrorist sects and cults, some of these specific analyses put nonetheless the emphasis on the dichotomy between religious terrorists - who are driven by hate and fanaticism

and, supposedly, are unchecked by political, moral or practical restraints - and political terrorists - who, supposedly, are more flexible, subject in principle to negotiation and to circumstances pushing them towards some rational assessments of their activity.<sup>43</sup> Thus, however, a group's identity can be used to discount its political claims or to label it as extremist and incapable of compromise or being reasoned with. A group's actual tactics and goals can be replaced by hypotheses about how it could or might act based upon its attributed religion.<sup>44</sup> As a matter of fact, this type of conceptual problem runs through many analyses of terrorism that employ identity-based typologies, so it maybe that less cultural, more organizational typologies could be less prejudicial in either their presumptions or their results, at least from the legal and human rights point of view.

39. In any event, while broad or general categorizations can hardly reach precision and do full justice to the variety and complexity of the terrorist phenomena, attempts to devise analytical and more sophisticated subdivisions and distinctions providing more precise delimitations of, or information on, subgroups of terrorism - such as their organizational structure, size, potential relationships with States and degrees of such relationships, their identity, characteristics, social, political, cultural and psychological motivations, and so forth - are too complicated and diverse and, above all, they only serve the needs of the particular user. As useful as they are for illuminating particular aspects of the phenomena of terrorism and of terrorists, and for contributing to our understanding of the wide-ranging nature of the *problematique* surrounding them, they are of little utility in identifying exactly what constitutes terrorism and who the terrorists are.

40. The Special Rapporteur's training and mentality as a jurist naturally influence her understanding of and approach to the terrorist phenomena. Nevertheless, deeply conscious of the political-science background of most of the professional literature dealing with the subject matter, she obviously could not, and in fact did not, neglect to take into consideration whatever political, social, and other important specialist input is contributing to the better understanding of the manifold aspects of these phenomena. That is how she was led into examining also the question of typologies and categorizations in the framework of sub-State or non-State terrorism in her effort to conceptualize this extremely vast and disparate area at best.

41. The result of her examination is that there is no common or uniform methodology for an all-inclusive identification, classification and appraisal of sub-State terrorism. Furthermore, actor-based distinctions, which can be found in many current classifications of terrorism, have their own shortcomings. The more general they are, the more they cut across the many existing categories of sub-State terrorism. The more narrow and specified they are, the less they contribute to the issue of definition and the much-needed delimitation of the complex phenomenon of terrorism. In view of the fact that there is no common methodology for the categorization of sub-State terrorism, and the fact that categories and distinctions, to be useful or functional, must serve the approach of their users, the Special Rapporteur considers that it would best serve her approach to retain, from among the many categories and distinctions in circulation, only those which differentiate between domestic (or internal) and international terrorism and between individual terrorists and terrorist groups.

42. These very general distinctions that can be found in most current classifications of terrorism are also not devoid of the difficulties and ambiguities resulting from any attempt to further define or specify them more precisely. Thus, for instance, allusion has already been made to the



ambiguity regarding the term "international terrorism".<sup>45</sup> As is well known, there are several definitions of the term "international terrorism", some of which are quite confusing.<sup>46</sup> It will be further noted that, frequently, even the term "transnational terrorism" is distinguished from the term "international terrorism", and also defined in different ways.<sup>47</sup> In addition, in considering the very distinction between individual terrorists and terrorist groups that act nationally or internationally, several questions arise regarding the context and the situations in which they function or occur, including whether the individual or group non-State terrorist actors are effectively acting on their own, or as part of another group or another organization or entity which may direct and control them from another country.<sup>48</sup>

43. However, in the opinion of the Special Rapporteur, there is a principal virtue in these distinctions, namely their relevance for useful and meaningful legal discussion. It is necessary to distinguish national from international terrorism, and individual terrorists from terrorist groups and/or terrorist organizations, because of the different legal content, regulation and implications or effects attending these distinctions or categories. These distinctions are, moreover, relevant to any legal approach of the issue of definition and to any attempt to legally delimit the phenomenon of terrorism. In her prior work, the Special Rapporteur, has already sought to conceptualize on different aspects of this complex phenomenon and demarcate areas whose exploration necessitated her venturing into ways departing from her usual legal analysis.<sup>49</sup> It is of central importance to her now to return to the legal approach. So, after briefly explaining next the terms "internal" (or "domestic") and "international" terrorism, and presenting the different formulations and connotations that are most frequently contained in the use of the term "international terrorism", in both international law and international relations, she will proceed by developing a legal framework of analysis allowing for the containment and confinement of the definitional issue within limits that are most relevant to the ongoing human rights discussion of terrorism, particularly since the 11 September 2001 terrorist events.

## 2. Internal (or domestic) and international terrorism

44. As the name implies, internal (or domestic) terrorism is confined within the borders of one specific State, whereas international terrorism involves an "internationalizing" element or feature engaging the interests of more than one State. Internal (or domestic) terrorism is generally viewed by States as a violation of domestic criminal laws. Even the most casual survey of legal literature and doctrine indicates that perpetrators of internal terrorism involving the territory and the citizens of only one State fall within the categories of criminals and are punished as a rule everywhere by penal codes.

45. On the other hand, there are various definitions and criteria offered concerning the "international" component or the "international" nature of terrorism. To put it also in other words, there are different views with regard to the element or feature and the circumstances, which "internationalize" terrorism, and as to how States obtain jurisdiction over international and/or transnational terrorists.<sup>50</sup>

46. It has been maintained, for instance, that terrorism is international when the perpetrator of the crime or its victim is an alien in the State where the terrorist crime was committed or its effects materialized;<sup>51</sup> or when one of the following elements are present: the terrorist activity takes place in more than one State, or where no State has exclusive national jurisdiction, or when it affects the citizens of more than one State, internationally protected persons or internationally

protected objects.<sup>52</sup> In another much more detailed formulation, terrorism is deemed to be international in terms of acts that contain international elements (e.g. conduct performed in whole or in part in more than one State), in terms of internationally protected targets (e.g. civilians protected by international instruments or not, diplomats and personnel of international organizations), in terms of power-oriented outcome (e.g. aiming at changes of the political, social or economic structures, or the policies, conduct or practices of a given State), and in terms of internationally proscribed conduct (e.g. violation of international norms).<sup>53</sup> In yet another formulation, for terrorism to be "transnational", there needs to be some extra-territorial element, either with regard to the perpetrators, the victim-State, the nationality of the victims or even the very nature of the offence; and while there is an extra-territorial element in cases where the perpetrator flees abroad and seeks refuge in a foreign country against extradition proceedings, it is unclear whether there are "transnational" elements in the cases of terrorist groups perceiving themselves not to be part of the victim-State and trying to secede.<sup>54</sup> It has also been suggested, somewhat vaguely, that terrorism is international when the interests of more than one State are involved;<sup>55</sup> and that international terrorism is any terrorist activity containing an international jurisdictional element.<sup>56</sup>

47. These different formulations, emanating from various attempts to define international terrorism from the legal perspective, do not necessarily contradict each other, yet their overall effect is the creation of a certain ambiguity and confusion in the area.<sup>57</sup> The same is true with other notable attempts to conceptualize and define the international nature of terrorism from the political and sociological perspective. Thus, for instance, it has been maintained that international terrorism comprises terrorist incidents that have clear international consequences, such as incidents in which terrorists go abroad to strike their targets, stay at home but select victims because of their connection to a foreign State (e.g. foreign executives) or attack international lines of commerce (e.g. airliners).<sup>58</sup> The same expert opinion on terrorism has, further, maintained that international terrorism may also be defined as acts or campaigns of violence waged outside the accepted rules and procedures of international diplomacy and war,<sup>59</sup> thereby excluding from the concept of international terrorism the local activities against a local government of citizens or dissident groups in their own country if no foreign connection is involved, and eventually including in the concept of international terrorism the breaking of the rules and exporting violence by various means to States that normally would not, under the traditional rules, be considered participants in the local conflict.<sup>60</sup> In the opinion of another expert commentator, however, terrorism is international when it is directed at foreigners or foreign targets, when it is concerted by factions of more than one State, or when it is aimed at influencing the policies of a foreign government.<sup>61</sup> Moreover, it should be mentioned that the ambiguity and confusion resulting from the introduction and different uses of the term "transnational terrorism" in international relations also is equally noticeable.<sup>62</sup>

48. While the suppression of domestic or internal terrorism is basically pertaining to the competence of the single State, the suppression of international terrorism, cutting across the interests of other States as well, pertains to the competence of more than one State. Because the ramifications of international terrorism are liable to be global, they are generally regarded as the most troubling and imperiling the entire social fabric of the international community.

## C. Delimitations of terrorism: a legal approach

### 1. The quest for a definition of terrorism



49. It is all too apparent that a major stake in the fight against terrorism is the lack of a precise legal definition of the crime of terrorism. Since there is no international definition of terrorism, the initial characterization of an activity as "terrorist" is made by the domestic legal system.<sup>63</sup> In this context, it will be recalled that Security Council resolution 1373 (2001), adopted on 28 September 2001, under Chapter VII of the United Nations Charter, establishes a long list of legal obligations with a view to fighting terrorism but does not contribute to the legal definition of the crime of terrorism. As appropriately stated by Jean-François Gayraud, and David Sénat, this resolution "decrees the universal hunt of terrorism without defining it".<sup>64</sup> Thus, to fulfill their obligations under resolution 1373 (2001) States have resorted to definitions of terrorism established under their own national legislations. This obviously creates problems since national legislations may criminalize as "terrorist acts" certain activities that could not be accepted as "terroristic", while others may criminalize activities that are lawful under international law. Moreover, there are several national laws, which define the terrorist offences and crimes in vague, nebulous and imprecise terms. As a result of this situation, certain forms of political and/or social opposition, the exercise of certain freedoms and legitimate activity under international humanitarian law, are regrettably - all too often - criminalized. This deeply disturbing state of affairs, curtails the principle of legality in the context of criminal law, imperils the lawful and/or legitimate exercise of human rights and fundamental freedoms, and erodes confidence in international institutions.

유엔 안전  
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50. The international community, in its struggle over the years to condemn and combat international terrorism, has approached the definitional issue from two different perspectives. The first is holistic in its approach of terrorism, as it seeks to establish a general and comprehensive definition of the crime of terrorism. The second is segmented and object-oriented in its approach, as it is oriented toward the more modest goal of elaborating, in a piecemeal fashion, international instruments criminalizing specific behavior or acts favored by the terrorists. Although some regional intergovernmental systems have managed to establish comprehensive and general definitions of the crime of terrorism, this has not been the case at the global level of the United Nations. Obviously, the fundamental divisions in the world community on the issue of definition have halted, at the international level, the holistic and comprehensive approach. In contrast to the inability to reach consensus on a general definition of international terrorism, particularly within the United Nations, the segmented and object-oriented approach, commonly qualified as "sectoral" or "sectorial" approach by specialists in the area,<sup>65</sup> has yielded a significant number of international instruments to prevent and suppress common terrorist crimes. To date, this sectoral method of dealing with the problem, by reference to the notion of "terrorist acts" and the so-called "multiform offence character" of terrorism,<sup>66</sup> enjoys the wider consensus within the international community, as proven already by the number of existing international "sectoral" conventions at both the global and the regional level.

**2. The comprehensive approach**

51. With regard to the holistic approach, which seeks to establish a general and comprehensive definition of terrorism, allusion has already been made to the necessity to distinguish between the initiatives and efforts undertaken in the framework of the United Nations and those undertaken in the frameworks of the various regional intergovernmental systems. The efforts and initiatives taken in the framework of the United Nations indicate very clearly the almost unsurmountable difficulties that, to this very day, stand in the way of formulating a single,

universally acceptable general definition of the crime of "terrorism". For long decades, States, experts and the legal community have been striving without success to work out a comprehensive generally acceptable definition, which would be feasible and satisfactory from the legal point of view, in line with the techniques of incrimination in criminal law. At the regional level, even though in recent years some intergovernmental systems have been successful in formulating general definitions of the crime of terrorism, these definitions do not coincide, in at least so far as all the elements of the crime are concerned. Furthermore, some of these definitions create problems with regard to basic principles of criminal law and of human rights.

52. The first attempt to establish and codify at the international intergovernmental level a general definition of terrorism, undertaken under the auspices of the League of Nations, resulted in the abortive Convention for the Prevention and Punishment of Terrorism, adopted in Geneva in 1937.<sup>67</sup> This Convention formulated a general definition of the crime of terrorism and established also a list of acts specified as acts of terrorism. Both its general definition and the specific incrimination of the acts of terrorism enumerated therein were the object of severe criticisms.<sup>68</sup> Thus, for instance, while some authors considered that the definitions of the specific terrorist acts were insufficient and too vague, others maintained that the specific criminal intent to create terror - required by Article 1, paragraph 2 of the Convention containing the general definition of the crime of terrorism - was not an end in itself but only the means of perpetrating acts with political, ideological or criminal goals.<sup>69</sup>

53. In the aftermath of World War II, the United Nations made no attempt to revive the abortive 1937 Terrorism Convention. Nonetheless, the United Nations International Law Commission addressed the definitional issue in 1954, during its work on the Draft Code of Offences against the Peace and Security of Mankind. The International Law Commission studied the question of both a general definition of terrorism and of the criminalization of specific acts of terrorism.<sup>70</sup> In 1990, it examined the issue of a crime of "international terrorism", covering both State and non-State terrorism,<sup>71</sup> and included a definition of the crime of "international terrorism" in article 24 of that version of its draft Code of Crimes against the Peace and Security of Mankind.<sup>72</sup> However, in 1995, no consensus could be reached among the members of the International Law Commission.<sup>73</sup> Several Commission members emphasized in particular the difficulties of elaborating a definition of the crime of terrorism that would satisfy the exigency of precision required by criminal law.<sup>74</sup> At the end, the International Law Commission decided not to include "international terrorism" as a specific or autonomous crime in the draft Code of Crimes against the Peace and Security of Mankind of 1996. However, it decided to include the "terrorist acts" in the acts constitutive of war crimes committed in violation of international humanitarian law and in armed conflicts.<sup>75</sup>

54. The Statute of the Ad Hoc International Criminal Tribunal for the Former-Yugoslavia has not included terrorism nor terrorist acts within the list of crimes falling under its jurisdiction. But the Statute of the Ad Hoc International Criminal Tribunal for Rwanda, in its article 4 on "Violations of common article 3 of the Conventions of Geneva and Additional Protocol II", has included the "acts of terrorism" in the list of crimes submitted to its jurisdiction, without providing, however, any definition. The Rome Statute of the International Criminal Court does not contain a specific criminalization of terrorism, although the issue of terrorism was taken up in the course of its preparatory works. Some proposals were made to include in the jurisdiction of the International Criminal Court acts of terrorism already criminalized in international treaties



through reference to an annex,<sup>76</sup> and also to establish a universal definition of the "crime of terrorism".<sup>77</sup> However, none of these proposals was retained in the Rome Statute.

55. The drafting of a general convention on international terrorism started at the United Nations in 2000, within the Ad Hoc Committee created by General Assembly resolution 51/210 in 1996, and is continuing its work within a Working Group of the Sixth Committee of the General Assembly. The yearly reports of the Ad Hoc Committee and of the Working Group on Terrorism, clearly bring out the difficulties encountered by the States in their attempt to reach consensus on a general definition of the crime of terrorism that will be acceptable at the global level. For instance, in its last meetings on 15 and 16 October 2002, several delegations made it clear that in order to agree on the issue of definition it was necessary first to reach consensus on the issue of the scope of application of the draft general convention.<sup>78</sup>

56. Apparently, the situation is different at the regional intergovernmental level, since some regional systems have already succeeded in reaching agreement on a comprehensive and general definition of the crime of terrorism. In this regard, mention should be made to the "Council Framework Decision on Combating Terrorism", adopted by the European Union on 13 June 2002,<sup>79</sup> and containing a mutually acceptable definition of the terrorist act. Actually, the Council Framework Decision establishes two types of terrorist offences, i.e. the terrorist offence and the offence relating to a terrorist group, on the one hand, and "offences related to terrorist activities", on the other hand. The definition of the terrorist offence is markedly inspired from the draft general convention on international terrorism that is actually being elaborated in the United Nations. Further, mention should be made to the Convention of the Organization of African Unity on the Prevention and the Combating of Terrorism (or Algiers Convention), that was adopted in July 1999,<sup>80</sup> the Arab Convention for the Suppression of Terrorism, adopted in Cairo in 1998, and the Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted in 1999. It is worth noting that besides the formulation of a definition of terrorism<sup>81</sup> as well as of the terrorist offence,<sup>82</sup> the Arab Convention for the Suppression of Terrorism, makes also reference to offences established by other treaties.<sup>83</sup> In any event, despite their having certain elements in common, the different definitions adopted by these three conventions and by the Council Framework Decision on Combating Terrorism of the European Union diverge in significant aspects.

## 2. The segmented or "sectoral" approach

57. In the absence of a common, universally acceptable, general definition of international terrorism, the segmented or "sectoral" approach has been widely used in the practice of States. In fact, of the 24 existing international instruments, 21 criminalize specific terrorist activities.<sup>84</sup> For lack of space and in order to be respectful of the regulations concerning the length of Sub-Commission reports, the Special Rapporteur does not plan to review and comment on them except for their relationship to and /or impact on basic human rights and fundamental freedoms.

58. In any event, in the opinion of the Special Rapporteur, it is in this context of object-oriented and segmented or sectoral approach, that should be included all three regional instruments adopted after 11 September 2001, namely the Inter-American Convention Against Terrorism, adopted on 3 June 2002, the Convention of the Council of Europe on Cyber-Crime and its additional Protocol, and the Protocol amending the European Convention for the Suppression of Terrorism.<sup>85</sup> Indeed, the Inter-American Convention against Terrorism does not advance any

new definition of the terrorist offence. Using the technique of indirect incrimination, this convention defines terrorist offences by simply referring to the incriminations embodied in ten international anti-terrorism conventions.<sup>86</sup>

59. International humanitarian law adopts the same approach. For instance, article 33 of the Fourth Geneva Convention of 1949, article 51, paragraph 2, of the First Additional Protocol to the Geneva Conventions, as well as articles 4, paragraph 2, d), and 13 of the Second Additional Protocol to the Geneva Conventions criminalize specific acts of terrorism. However, strictly speaking, these norms of international humanitarian law establish prohibitions of certain practices, rather than provide for the legal definitions of "terrorist acts" as criminal offences. Thus, in its commentary on article 13 of the Second Additional Protocol to the Geneva Conventions, the International Committee of the Red Cross underscores that these prohibitions stem from the general principle of protection of civilian population against the dangers of hostilities, which is a principle already recognized by customary international law and the laws of war as a whole. This principle is specified by "the absolute prohibition of direct attacks, acts or threats aiming at violence committed with a view to spreading terror."<sup>87</sup>

60. In a certain sense, the prohibition of the use of terror and terrorist acts is neither general nor abstract. It is closely related to the persons or objects targeted by these acts. The concepts of civilian population and protected persons are essential and so is also the nature of the objects. Moreover, the prohibition is also closely related to the means that are used, particularly their unlawful character or their indiscriminate effects.<sup>88</sup> In the words of Michel Veuthey "it is in a general principle, applicable to all and in all circumstances, that it is necessary to seek a limitation if not a prohibition of such acts: the respect of civilian persons and their essential possessions as well as the necessity, in an armed struggle, to avoid superfluous sufferings".<sup>89</sup> Furthermore, as specified by the Committee in its commentary on article 51 of the First Protocol Additional to the Geneva Conventions, there is no doubt that acts of violence related to a state of war almost always give rise to some degree of terror among the population and sometimes also among the armed forces. It also happens that the attacks on armed forces are purposely conducted brutally in order to intimidate the enemy soldiers and to persuade them to surrender. Nevertheless, this provision has nothing to do with this kind of terror, for it is intended to prohibit "acts of violence the primary purpose of which is to spread terror among the civilian population without offering substantial military advantage."<sup>90</sup>

## 4. A human rights delimitation of terrorism

61. There can be no doubt, from an international law point of view, that every State has not only the right but also the duty to prevent and suppress crime, especially crime which by its nature, objectives, or the means employed for its commission, is considered or qualified as terrorist. Additionally, the international community should also equip itself with all the appropriate legal instruments and means that are necessary to fight this scourge. Having said this, the Special Rapporteur is nonetheless convinced that States and the international community have an obligation to perform their rights and duties within the limits of the rule of law, respecting in particular the principles of international and criminal law, including international human rights and humanitarian law. In this context, it should be recalled that the United Nations Commission on Human Rights has repeatedly affirmed "that all measures to counter terrorism must be in strict conformity with international law, including international human rights standards."<sup>91</sup>



## (a) Relevant principles of criminal law

62. Any legal definition of a crime, not only at the national (or domestic) but also at the international level, must be in conformity with established principles of criminal law and of international human rights law. With regard to criminal law, there are two basic principles that should always be kept in mind: the principle of legality of the offence - *nullum crimen sine lege* - and the principle of subjective responsibility. As regards international human rights law, it is necessary to reinforce that the qualification of a behavior as an offence should not criminalize any legitimate form of exercise of fundamental freedoms. As stated by Professor George Levasseur, the law must only prohibit those behaviors that are harmful to society.<sup>92</sup> Any legal definition of the crime of terrorism, be it a general definition or a definition relating to a specific act, cannot deviate from these principles. In this light, the report on "Terrorism and Human Rights", which the Inter-American Commission on Human Rights has recently published, draws our attention to the importance of ensuring that crimes relating to terrorism are "classified and described in precise and unambiguous language that narrowly defines the punishable offence, by providing a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offences or are punishable by other penalties."<sup>93</sup>

63. The principle of legality of the offence - *nullum crimen sine lege* - is, undoubtedly, one of the cornerstones of the whole edifice of modern criminal law. The United Nations International Law Commission has repeatedly underscored that this principle "is a fundamental principle of criminal law".<sup>94</sup> Professor Paul Guggenheim asserted as early as 1954 that this principle "is recognized by all civilized States".<sup>95</sup> "*Nullum crimen sine lege*", which applies in domestic law as well as in the framework of international criminal treaties, is also reaffirmed as a general principle of criminal law in the Rome Statute of the International Criminal Court. It is, moreover, incorporated in international human rights law. Thus, for example, article 15 of the International Covenant on Civil and Political Rights, article 7 of the European Convention of Human Rights, article 7 of the African Charter on Human and Peoples' Rights, article 6 of the Arab Charter of Human Rights and article 9 of the American Convention on Human Rights, are all dealing with this principle of legality. It should, further, be recalled that this principle is referred to as a non-derogable right in several human rights treaties.<sup>96</sup> Also the Human Rights Committee, in its General Comment N° 29, has pointed out that the principle of legality in criminal matters cannot be subjected to derogation.<sup>97</sup> For its part, the above-mentioned report on "Terrorism and Human Rights" of the Inter-American Commission on Human Rights, is also underlining that the principle *nullum crimen sine lege* is one of the "fundamental principles of criminal law".<sup>98</sup>

64. In any event, the principle *nullum crimen sine lege* is closely linked to the right of any individual to life, liberty and security of the person, protected by article 3 of the Universal Declaration of Human Rights. As pointed out by the International Law Commission, "criminal law sets out standards of behavior that individuals must respect".<sup>99</sup> On many occasions, the Human Rights Committee has considered that, as far as the International Covenant on Civil and Political Rights is concerned, the right of any individual to the security of the person, spelled out by the Universal Declaration of Human Rights, is by no means limited to cases of formal deprivation of liberty. For instance, the Committee has pointed out that States parties have the duty to undertake all reasonable and appropriate measures of protection, and that the guarantees provided by the Covenant would be entirely ineffective if one could interpret article 9 as

authorizing a State party to dismiss threats to the safety of an individual under the pretext that he is not held in detention.<sup>100</sup> The Inter-American Commission on Human Rights has also considered that the purpose of the principle of legality, inherent in criminal law, is to guarantee the safety of the individual, by allowing him or her to know the acts for which he or she might be held criminally responsible.<sup>101</sup>

65. The meaning of the principle *nullum crimen sine lege* is that in order to be qualified as an offence, an act or omission should be criminalized under applicable law at the time of its commitment and, further, that the definitions of criminal offences must be precise, unequivocal, and unambiguous. Thus, in its General Comment N° 29, the Human Rights Committee has specified that the principle of legality in the field of criminal law signifies that criminal responsibility, as well as punishment, must be defined within "clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty."<sup>102</sup> The European Court of Human Rights agrees, further pointing out that the principle *nullum crimen sine lege* implies that definitions of criminal offences, or criminal incriminations, must be precise and unambiguous.<sup>103</sup> And the Inter-American Court of Human Rights concurs that crimes must be "classified and described in precise and unambiguous language that narrowly defines the punishable offense, thus giving full meaning to the principle of *nullum crimen nulla poena sine lege praevia* in criminal law", specifying further, that ambiguity in describing crimes creates doubts and the opportunity for abuse of power "particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty."<sup>104</sup>

66. That said, many national antiterrorist laws continue to resort to vague, ambiguous or imprecise definitions allowing for the criminalization of legitimate exercise of fundamental freedoms, peaceful political and/or social opposition and other lawful acts, as already noted by the Special Rapporteur. Thus, the Human Rights Committee was compelled to examine and formulate observations and comments to which the Special Rapporteur has already referred in this and in her previous report.<sup>105</sup> In the same vein, the Inter-American Commission on Human Rights has been equally concerned about certain domestic anti-terrorism laws that violate the principle of legality because these laws "have attempted to prescribe a comprehensive definition of terrorism that is inexorably overbroad and imprecise", or have legislated "variations on the crime of 'treason' that denaturalize the meaning of that offence and create imprecision and ambiguities in distinguishing between these various offences."<sup>106</sup> It has, moreover, underscored that the observance of the principle of legality, as well as of the principles *non bis in idem* and of the presumption of innocence are particularly significant in the context of domestic laws that prescribe crimes relating to terrorism.<sup>107</sup>

67. The principle *nullum crimen sine lege* has two corollaries: the restrictive interpretation of criminal law and the prohibition of analogy, on the one hand, and the prohibition of a retroactive application of criminal law, on the other hand. Thus, for example, paragraph 2 of article 22 of the Rome Statute stipulates that "the definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favor of the person being investigated, prosecuted or convicted". It hardly need be said that it is this principle of legality that was at the basis of the development of the elements of crimes envisaged by the Rome Statute. In this context, vague and ambiguous or imprecise incriminations could not be admitted. It may as well be of interest to recall that the Special Rapporteur on the Independence



of Judges and Lawyers also emphasized that legal definitions that are vague, nebulous or imprecise are contrary to international human rights law and to "general conditions prescribed by international law".<sup>108</sup> When these definitions allow for the criminalization of legitimate behavior under international human rights law, or acts that are lawful acts under international humanitarian law, they overstep the principle of legality.

68. The principle of individual criminal responsibility is also a fundamental element of contemporary criminal law. Professor Pierre-Marie Dupuy maintains that subjective responsibility in criminal matters as well as individuality of the penalty are principles of international criminal law and peremptory norms.<sup>109</sup> The above-mentioned report on "Terrorism and Human Rights", of the Inter-American Commission on Human Rights, contains some pertinent observations on this matter also. It states, for instance, that among the most fundamental principles governing criminal prosecutions that are afforded international protection under human rights law is the precept that no one should be convicted of an offence except on the basis of individual penal responsibility. It notes that criminal prosecutions must comply with the fundamental requirement that no one should be convicted of an offence except on the basis of individual penal responsibility, the corollary to this principle being that there can be no collective criminal responsibility. This requirement has received particular emphasis in the context of post-World War II criminal prosecutions, owing in large part to international public opposition to convicting persons based solely upon their membership in a group or organization. However, this restriction does not preclude the prosecution of persons on such established grounds of individual criminal responsibility as complicity, incitement, or participation in a common criminal enterprise, nor does it prevent individual accountability on the basis of the well-established superior responsibility doctrines.<sup>110</sup>

69. In this respect, it is important to recall that articles 9 and 10 of the Nuremberg Statute raised the question of objective criminal responsibility for membership in a criminal group. These provisions were targeting, of course, members and Heads of the leading Nazi Party (National Sozialistische Partei), the Gestapo (Geheime Staatspolizei), the S.D. (Sicherheitsdienst des Reichsfuehrers) and the S.S. (Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei). The Nuremberg Tribunal declared these three organizations criminal. Nevertheless, as pointed out by Professor Eric David, all the members of these groups were not recognized as criminals on the simple fact of their membership in the above-mentioned groups.<sup>111</sup> As a matter of fact, the Nuremberg Tribunal dismissed any application of objective individual criminal responsibility. For a member of these groups to have been declared criminal, it was necessary to have been involved voluntarily and in full knowledge of the criminal purposes of the group, or to have actually participated in the commission of war crimes, crimes against peace or crimes against humanity.

70. The principle of individual criminal responsibility is expressly recognized by several international instruments, in particular the Fourth Geneva Convention in its article 33, the First Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts in its article 75, paragraph 4 b), the Second Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts in its article 6, paragraph 2 b), the Second Protocol for the Protection of Cultural Property in the Event of Armed Conflict in its articles 15 and 16, the Statute of the International Criminal Tribunal for the Former Yugoslavia in its article 7, the Statute of the International Criminal Tribunal for Rwanda in its Article 6, the Rome Statute for

the International Criminal Court in its article 25 and the Statute of the Special Court for Sierra Leone in its article 6. The International Committee of the Red Cross, in its commentary on article 33 of the Fourth Geneva Convention, has affirmed that this provision embodies in international law "one of the general principles of domestic law, i.e. that penal liability is personal in character".<sup>112</sup> In addition, in its commentary on article 75, paragraph 4 b), of the First Additional Protocol to the Geneva Conventions, the Committee has specified that after World War II, and ever since, "international public opinion has condemned convictions of persons on account of their membership in a group or organization" and that objections were also raised against collective punishment inflicted indiscriminately on families or on the population of a district or building. It, further, underscored the decision taken to outlaw any conviction or punishment that would not be based on individual responsibility "in accordance with the now universally accepted principle that no one may be punished for an act he has not personally committed."<sup>113</sup> It is also important to note, in this context, that in his Report on the Establishment of the International Criminal Tribunal for the former Yugoslavia, the Secretary General declined to retain, for the purposes of the jurisdiction of the Tribunal, the criminal liability of individuals by reason of their membership in an association or organization considered to be criminal.<sup>114</sup>

71. International human rights instruments acknowledge implicitly the principle of individual criminal responsibility. It is noteworthy, however, that the American Convention on Human Rights reinforces this principle with the prohibition of sanctions that would target other persons than the offender, such as family or close relatives.<sup>115</sup> Recently, the Inter-American Commission on Human Rights pointed out that a person could be condemned only for an offence and on the basis of individual criminal responsibility.<sup>116</sup>

72. Admittedly, in recent years, a new "technique of incrimination" in antiterrorist matters has surfaced. In line with this "technique" international bodies and States draw up official lists of groups qualified as terrorist groups. Membership or collaboration with these groups is in itself an offence. This "technique of incrimination", however, is not devoid of problems with regard to the principle of individual criminal responsibility. The Special Rapporteur, in her first progress report, submitted to the Sub-Commission before even the horrendous terrorist attacks of 11 September 2001, drew attention to these problems in the following terms: "[s]ome of this [anti-terrorism] legislation contains no definition of terrorism, while some contains lists of certain acts. Some of it includes provisions in which groups are put on an official terrorist list, frequently with no analysis of the particulars of the situation or the nature of the group. Those groups and others espousing similar views but uninvolved with the groups concerned may face severe consequences...[J]udicial proceedings to challenge this false labelling or to defend a person charged with an offence under such anti-terrorism legislation may leave room for serious negotiation of a wide range of procedural rights."<sup>117</sup> On the same topic, it is important to mention also that the European Court of Human Rights has specified that Article 5 of the European Convention of Human Rights does not legitimize the arrest of a person who is suspected of planning to commit an offence on the sole ground that the person belongs to a group of individuals recognized as dangerous and known for its continuing propensity to crime.<sup>118</sup>

#### (b) Definitions of terrorism and human rights

73. It has already been noted that one of the most disturbing aspects is, indeed, the establishment of legal definitions of the crime of terrorism or of terrorist acts which can lead to the criminalization of legitimate and/or lawful behaviour under international law, especially as



regards the exercise of fundamental rights and freedoms. More specifically, there are certain domestic laws which actually or potentially conflict with the exercise of the right to take part in the conduct of public affairs, the right to strike, as well as freedom of expression, association and information. There are definitions of terrorism which directly criminalize legitimate forms of political, ideological and social opposition, and other definitions which disregard the principle *nullum crimen sine lege*, as explained already at some length - i.e. they are so wide and/or of such an ambiguous and imprecise nature that they leave space for the eventual criminalization of activities falling within the legitimate exercise of trade-unionism and other fundamental rights and freedoms.

74. It is true, of course, that according to international law the exercise of certain rights and fundamental freedoms can be limited. However, there can be no doubt that these limitations or restrictions cannot be imposed in an arbitrary way, for it is international law itself that sets out the precise framework. In this context, the Human Rights Committee, in its General Comment N° 10 on the Liberty of Expression, has specified that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted. These restrictions may relate either to the interests of other persons or to those of the community as a whole. Nevertheless, when a State party to the International Covenant on Civil and Political Rights imposes certain restrictions on the exercise of freedom of expression, these may not in any case put in jeopardy the right itself. Article 19, paragraph 3, sets out conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of that paragraph; and they must be justified as being "necessary" for that State party for one of those purposes.<sup>119</sup> Beyond this, the Committee has pointed out on several occasions that according to the Covenant freedom of expression can only be limited if its exercise undermines the rights or the reputation of others or compromises national security or public order.<sup>120</sup>

75. The European Court of Human Rights has, on several occasions, dealt with the issue of the relationship between freedom of expression and terrorism. The clear incitation to the use of violence, hostility or hatred between citizens is one of the criteria retained by the Court to distinguish between the exercise of freedom of expression and terrorism.<sup>121</sup> The Inter-American Commission on Human Rights concurs that in the fight against terrorism some limitations on freedom of expression might be justified as measures that are necessary to protect the public order or national security. In its "Report on Human Rights and Terrorism",<sup>122</sup> it considered, in particular, that "the requirement that any subsequent penalties must be established by law means that it must be foreseeable to the communicator that a particular expression may give rise to legal liability", and added that an overly broad or vague provision may not fulfill the requirement of foreseeability and therefore may violate the terms of Article 13, paragraph 2 of the American Convention on Human Rights.<sup>123</sup> The Inter-American Commission has also recommended to the States to impose subsequent penalties for the dissemination of opinion or information only through laws that have "legitimate aims", are "clear and foreseeable", not "overly broad or vague", and "ensure that any penalties are proportionate to the type of harm they are designed to prevent". It also recommended to the States to refrain from promulgating laws that broadly criminalize, without an "additional requirement of a showing of an intent to incite lawless violence or any other similar action and a likelihood of success, the public defense (apologia) of terrorism or of persons who might have committed terrorist acts".<sup>124</sup>

76. Concerning the rights to freedom of assembly and association, the Inter-American Commission on Human Rights also affirms that limitations on such rights must be established "by or in conformity with laws that are enacted by democratically elected and constitutionally legitimate bodies and are tied to the general welfare", and underscores that such rights cannot be restricted "at the sole discretion of governmental authorities". It specifies, moreover, that any such restriction must be in the interest of national security, public order, or to protect public health or morals or the rights or freedoms of others, and "must be enacted only for reasons of general interest and in accordance with the purpose for which such restrictions have been established". Additionally, the restrictions must be considered necessary in a "democratic society", of which "the rights and freedoms inherent in the human person, the guarantees applicable to them and the rule of law are fundamental components". Similarly, in the words of the Inter-American Commission, "while the rights to freedom of assembly and of association are not designated to be non-derogable", any measures taken by States to suspend these rights "must comply strictly with the rules and principles governing derogation including the principles of necessity and proportionality".<sup>125</sup>

77. It is equally significant to note that the right to strike is also susceptible to limitations and restrictions.<sup>126</sup> The International Labour Organization's Union Freedom Committee has considered that a general restriction of the right to strike is permissible only in the case of those services that are classified as essential, which the International Labour Organization defines as those whose suspension could jeopardize the safety or life of all or part of the public.

78. After 11 September 2001, in the name of the fight against terrorism, the exercise of the above rights and freedoms has been criminalized in several countries. This tendency is even more worrying when intergovernmental systems adopt counter-terrorism legal instruments, which allow for the criminalization of some of the modalities of the exercise of the above-mentioned rights. The OAU Convention on the Prevention and Combating of Terrorism, for instance, leaves open space for an eventual criminalization of certain of the modalities of the exercise of the right to strike, by having adopted a fairly wide definition of "terrorist act".<sup>127</sup>

79. However, it is important to remember that this phenomenon is not all that new. Thus, for example, as early as 1995, the Working Group on arbitrary detention reiterated its concern about the lack of precision in the legislation of several countries with regard to certain criminalized conduct described by the governments as "acts of treason", "acts hostile to a foreign State", "enemy propaganda", "terrorism", etc. In 1994, the Working Group, observing that there were criminal classifications under which it was not even clear whether the perpetrator of an "attack on State security" used violence or merely manifested an opinion, considered the possibility of suggesting that the competent body (which was the forthcoming Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders) should make recommendations to ensure that criminal classifications established by national law are in conformity with the general principles guaranteeing that the right to the principle of restrictiveness or lawfulness is not arbitrarily disregarded.<sup>128</sup> And, of course, the Human Rights Committee has also formulated observations with regard to existing very broad or vague definitions of terrorism in the legislation of several States, and under which legitimate forms of exercise of fundamental rights could be criminalized.<sup>129</sup>

### (c) Terrorism and political offence

오전  
법정  
구형  
책임  
'국가안보공격'  
법정



80. A major aspect of the problem of legally defining terrorism is the potential relationship of terrorism with the concept of political offence. Admittedly, the delimitation of the concept of political offence and of its potential relationship with terrorism is of particular relevance to the human rights discussion of the definitional problem of terrorism. In this context, it is important to note that there is no international definition of the political offence. The concept is commonly referred to in domestic legislations and in the doctrine of criminal law. There are some domestic legislations that are unfamiliar with the criminalization of political offences. However, the acts that are criminalized by the penal law are equivalent to the definitions of the political offence established by the legislations of other States. For the rest, criminal doctrines envisage several cases of political offences, i.e., the political offence *stricto sensu*, the "complex" political offence, and the common law offence committed for political reasons or purposes. Nonetheless, the various schools of thought in criminal law have diverging views on these different aspects. Some emphasize the objective character of the criminal behavior while others focus on the intent or the political motivation of the perpetrator.<sup>130</sup> Some differentiate between the non-antisocial behavior of the perpetrator and require an antigovernment intent,<sup>131</sup> while others find the specifics of the political offence in the goods legally injured by the behavior.

81. It is clear, however, that the concept of political offence is well recognized under international law, in particular as regards extradition, asylum, amnesties and infliction of criminal penalties. In a sense, the concept of political offence derives from the right to resistance or the right to rebellion set out in the Preamble of the Universal Declaration of Human Rights.<sup>132</sup> Although no definition of the political offence is embodied in international instruments, the case law of the human rights intergovernmental bodies frequently refers to this concept.<sup>133</sup> Thus, for instance, the Inter-American Commission on Human Rights considers as political offences acts presenting certain elements that are characteristic of a political offence, in spite of how national criminal legislations considers the facts.<sup>134</sup> It is worth noting also that in his study on "Amnesty Laws and Their Role in the Safeguard and Promotion of Human Rights", the expert of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. Louis Joinet, spelled out the generally accepted criteria to distinguish between political offences and common law offences.<sup>135</sup>

82. With regard to extradition, the generally accepted rule is that there is no extradition for political offences. Many international conventions embody this rule. Nevertheless, international instruments do not include a definition of the political offence. Consequently, it pertains to the State from which extradition is required to determine whether the offence for which extradition is needed is a political offence or is connected to a political offence. The concept of political offence is further linked to the principle of *non-refoulement*, spelled out in several treaties of extradition. Most of these treaties reproduce the Irish clause of the European Convention on Extradition, according to which a State is not compelled to extradite if the required State has "substantial grounds" for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.<sup>136</sup>

83. However, as underlined by Mikaël Poutiers, the rule of non extradition for political offences "is not absolute [as] it is indeed admitted that the political purpose put forward could not justify the commission of particularly serious criminal acts".<sup>137</sup> Thus, some crimes, even if motivated by political reasons, are not regarded for the purpose of extradition as political offences or committed for political aims. Consequently, the rule *aut dedere aut judicare* is applicable.

Terrorist acts<sup>138</sup> such as attacks against Heads of States,<sup>139</sup> crimes against humanity,<sup>140</sup> war crimes,<sup>141</sup> genocide,<sup>142</sup> apartheid, mercenarism, torture and forced disappearance,<sup>143</sup> *inter alia*, belong to this category of offences. One of the consequences of such a differentiated legal treatment between political offences and terrorist offences lies in the possible extradition of the perpetrator of the offence.

84. The concept of political offence is also closely related with the concept of refuge and the right to asylum. Historically, the concepts of political offence and persecution for political reasons were at the heart of the recognition of the right to asylum. Asylum has long been recognized in Latin American countries. Asylum was initially limited to cases of political offences as shown by many regional instruments.<sup>144</sup> Although they do not explicitly refer to the words "political offence", the Universal Declaration of Human Rights<sup>145</sup> and the United Nations Declaration on Territorial Asylum implicitly recognize the right to asylum for the perpetrators of acts considered as political crimes. Article 22, paragraph 7, of the American Convention on Human Rights provides that "[e]very person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offences or related common crimes." As is well known, the Convention relating to the Status of Refugees extended the reasons for which asylum can be granted.

85. However, various international instruments and in particular refugee law<sup>146</sup> exclude from the right to asylum and the protection stemming from it, perpetrators of certain acts such as, *inter alia*, crimes against peace, war crimes, crimes against humanity, serious non-political crimes and acts contrary to the purposes and principles of the United Nations. Although such crimes can be justified by political reasons, given the seriousness of these offences and the values and legal interests at stake, such crimes are not considered as "political offences" and do not entitle their perpetrators to invoke the right to asylum.<sup>147</sup> The perpetrators are also excluded from the international protection stemming from the status of refugee. As regards terrorist acts, these also fall in this category of acts depriving their perpetrators of the right to asylum. In this context, particular attention should be drawn to Security Council Resolution 1373 (2001) imposing to all States, *inter alia*, to "[d]eny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens", and calling upon them to take appropriate measures, "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", and ensure "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".<sup>148</sup>

86. In this context, there are two situations challenging the right to asylum. The first, highlighted by the United Nations High Commissioner for Human Rights, in his annual Note on international protection addressed to the executive Committee of the Office of the High Commissioner for Refugees (UNHCR), on 11 September 2002,<sup>149</sup> involves the vague and imprecise definitions of terrorism offences in the regional legal instruments. In this respect the High Commissioner recommended "the inclusion of precise definitions in such instruments and avoidance of any unwarranted linkages between asylum-seekers/refugees and terrorists".<sup>150</sup> He also pointed out that "if definitions are too broad and vague, as has sometimes been the case, there is a risk that the "terrorist" label might be abused for political ends, for example to criminalize legitimate activities of political opponents, in a manner amounting to persecution".<sup>151</sup> The second involves the legal classification of political offences *per se* as



The second involves the legal classification of political offences *per se* as terrorist crimes. As is well known, several countries removed from their national criminal legislation the category of political offence and criminalized these same behaviors as terrorist offences.

87. The concept of political offence is also included in some international instruments as to the imposition of penalties. For example, the American Convention on Human Rights prohibits the death penalty for political offences or related common crimes. The Inter-American Court and the Inter-American Commission on Human Rights have touched upon this issue on several occasions. It is also interesting to recall, in this context, the provision of Article 1 of International Labour Organization Convention No. 105, Concerning the Abolition of Forced Labour, which stipulates that ratifying members undertake to suppress and not to make use of any form of forced or compulsory labor "[a]s a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system".

88. The concept of political offence is also linked to the issue of amnesties. As is well known, "terrorist" campaigns fought for political ends or purposes can sometimes end in compromise. In this kind of campaign or conflict, human rights are violated in practice, either as a result of a vigorous counter terrorism policy ignoring the constraints of international and human rights law, or by those "terrorists" who have been defeated and captured, or even those that have lost power. In the event of political settlement and compromise, while amnesty laws for human rights violators can play an important role in the process of reconciliation within the State, they also raise the serious issue of impunity.

89. In his study on "Amnesty Laws and Their Role in the Safeguard and Promotion of Human Rights", Sub-Commission expert Mr. Louis Joinet, had stated that the granting of amnesty for political offences was a frequent practice that favored the resolution of armed conflicts and the return to democracy.<sup>152</sup> Some schools of thought in criminal law justify eligibility for amnesty for political offences on the argument that those engaging in this kind of behavior are not antisocial. A number of constitutions and national laws recognize therefore, the possibility of granting amnesty to the perpetrators of political offences. It is notable, that many resolutions of the General Assembly<sup>153</sup> and of the Commission on Human Rights<sup>154</sup> have recommended the release of the perpetrators of political offences, in particular by the granting of amnesty or measures of clemency, and that the Human Rights Committee has also considered as a positive measure for the implementation of the International Covenant on Civil and Political Rights the granting of amnesty to perpetrators of political offences or their release.<sup>155</sup> In the same line, the Inter-American Commission on Human Rights has also recommended the granting of amnesty to perpetrators of political offences.<sup>156</sup> It is equally important to note that international humanitarian law also envisions amnesty for those who fight against the government in an internal armed conflict, as set out in Article 6, paragraph 5 of the Second Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts, allowing for a broad amnesty to be granted to "persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained."

90. In any event, international human rights law and international humanitarian law impose certain limits to the possibility of granting amnesties. Accordingly, perpetrators of war crimes, genocide, crimes against humanity and other gross violations of human rights cannot benefit

from amnesties and other similar measures. Even though the perpetrators of the above mentioned criminal activities may have acted for political ends or purposes, the extreme seriousness of their acts and the values at stake exclude any consideration of their conduct as political offences, or common crimes committed for political reasons, and they are, therefore, excluded from the benefit of amnesties or similar measures. The Human Rights Committee,<sup>157</sup> the Inter-American Court of Human Rights<sup>158</sup> and the Inter-American Commission on Human Rights<sup>159</sup> concur that amnesty and other similar measures which prevent the perpetrators of gross human rights violations from being brought before the courts, tried and sentenced are incompatible with State obligations under international human rights law. It is further notable, that the incompatibility of amnesty laws with the obligation to investigate, bring to trial and punish those responsible for gross human rights violations has implicitly been recognized in the Vienna Declaration and Programme of Action, adopted by the 1993 World Conference on Human Rights.<sup>160</sup> Finally, attention should be drawn to an official interpretation given by the International Committee of the Red Cross, as to the scope of Article 6, paragraph 5, of the Second Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts, which states that "[t]he *travaux préparatoires* of 6(5) indicate that this provision aims at encouraging amnesty, i.e., a sort of release at the end of hostilities. It does not aim at an amnesty for those having violated international humanitarian law."<sup>161</sup>

91. It follows, that perpetrators of international terrorism, as delineated and/or defined under binding international conventions and other binding international law norms, should not benefit from amnesties and other similar measures, at least to the extent that their international criminal activity grossly violates human rights and is contrary to the purposes and principles of the United Nations Charter. And yet, the habitually vague and imprecise delineations and/or definitions of the "terrorist" offences - in national as well as international law norms - often blurs the landscape, as repeatedly noted by the Special Rapporteur, and allows for the criminalization of the lawful and/or legitimate exercise of human rights and freedoms, or even for the legal assimilation of the terrorist with the political offences, compromising eventually the possibility of amnesties.

92. Terrorist acts and political crimes have, of course, certain common features, in particular as regards the political motive of the perpetrators. In the words of Colin Warbrick, "[i]f there be an identifiable concept of terrorism, a necessary, if not always sufficient, condition appears to be that there is conduct done with some political motive."<sup>162</sup> Nevertheless, terrorist acts and political crimes are two different criminal categories, subject to distinct rules, especially as regards extradition, asylum and amnesty. It is likely that, during an insurrection, terrorist acts are committed and their authors must be tried for those acts. This is a problem of cumulative incriminations. International law does not prohibit insurrection. What is forbidden, and illicit, is the perpetration of certain acts.<sup>163</sup> Under international humanitarian law, the prohibition of the recourse to acts not considered legal military operations is neither general nor abstract, and is in strict relationship with the notions of civilian population and protected persons.

93. In conclusion, it cannot be overemphasized that any State has the right to defend itself and to take the necessary measures to guarantee its own security and integrity. In order to do so, States have the right to criminalize behaviors that endanger their security and integrity. But, in so doing, States are also bound by, in particular, international and criminal law principles. The legal determination of behaviors which constitute other offences, such as the political offence, as



terrorist, but which are quite distinct from terrorism, denaturalizes and undermines the meaning of "terrorist offence," creating ambiguities in distinguishing between these various offences. That is particularly true when any form of political offence - with or without use of violence, be it a terrorist act or not - is put into the legal category of terrorist offences. The blurring of legal categories has serious consequence as to the legal status of the political offence, in particular as regards extradition, asylum, penalty and amnesties. The recommendation of the Inter-American Commission on Human Rights, according to which States must "ensure that crimes relating to terrorism are classified and described in precise and unambiguous language that narrowly defines the punishable offence, by providing a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offences or are punishable by other penalties" is particularly compelling.<sup>164</sup>

### III. CONCLUDING REMARKS

94. The Special Rapporteur began her work by first exploring possible avenues for conceptual development of the topic and then elaborating on several aspects or themes. She intended her second progress report to develop several other aspects or themes as part of her conceptual evolution of the topic. She envisioned, at the time, that she would then work on the final report in which she would draw together the many conceptual strands to arrive at a working and workable definition of terrorism, a practical set of guidelines incorporating human rights and humanitarian law issues, and a variety of conclusions and recommendations. The events of 11 September 2001, however, somewhat derailed that aim, with the result that the Special Rapporteur deviated somewhat from her original intentions regarding the second progress report to accommodate and document the international upheaval, as well as international and regional action in the post 11 September 2001 context.

95. As in previous reports, the Special Rapporteur continues to document international and regional action in an addendum to this report, in order to be respectful of the new limitations imposed on Sub-Commission reports. However, it is clear that to discuss international, regional and national measures is a Herculean task, considering the huge amount and diversity of the measures adopted and/or implemented at national, regional and international levels after 11 September 2001 to combat terrorism. As already noted by the Special Rapporteur in her preliminary observations, discussion of these is a new job of an entirely new scale and scope from her original mandate, which already included a vast array of conceptual issues. Furthermore, the follow-up of measures adopted to combat terrorism is a long-term task that requires the examination of the conformity of such measures to a significant number of international human rights instruments and largely exceeds the inherent object and the "raison d'être" of studies of the Sub-Commission, as well as the material capacities of the Special Rapporteur.

96. And yet, the Special Rapporteur thinks that it is essential to follow-up and permanently examine the conformity of these measures with international human rights law. To a certain extent, the treaty bodies and the special procedures of the Commission on Human Rights carry out, at least partially and in a fragmented way, this follow-up. Indeed, the Special Rapporteur is encouraged by the fact that the treaty bodies are developing methods to address compliance of national legislation on terrorism, including the inclusion of specific questions on these issues in their directives to States for the preparation of their reports.

97. At this stage of her work, the Special Rapporteur considers it appropriate to press for the Sub-Commission and all other human rights bodies to continue to urge the Security Council Counter Terrorism Committee of its obligation to review national anti-terrorism legislation also from the point of view of human rights and humanitarian law.<sup>165</sup> It is apparent that to date the "liaison" relationship with the Office of the High Commissioner for Human Rights and the Human Rights Committee has yet to yield a specific undertaking from the CTC regarding human rights. It is certainly not premature to recommend that the CTC should incorporate human rights and humanitarian norms into its advisory programmes assisting States to draft or amend counter-terrorist legislation. The regional inter-governmental organizations are already playing an important role in this regard and the Special Rapporteur welcomes these efforts.

98. The Special Rapporteur also considers that it would be appropriate and effective for the Commission on Human Rights to establish within the Commission a procedure of follow-up and supervision of the measures adopted and/or implemented after 11 September 2001 at national, regional and international levels. Some encouraging steps have been accomplished by the General Assembly resolution 57/219 of 18 December 2002 and the Human Rights Commission resolution 2003/68 of 25 April 2003.

99. Another alternative for the Commission could be to consider for the Sub-Commission a more active role in monitoring counter-terrorism legislation when the Special Rapporteur completes her study. Even though the Commission itself usually assumes efforts to monitor States' and even non-States actors' compliance with human rights norms, there is precedence for such action by the Sub-Commission. In this regard the Special Rapporteur points out the "Khalifa" reports (beginning in 1981) monitoring trade with the apartheid regime in South Africa and the "Despouy" reports (beginning in 1985) monitoring States' use of "state of emergency" derogations of human rights. Further, several of the Sub-Commission's working groups also monitor States' compliance with aspects of human rights law under their mandates.

100. Finally, the Special Rapporteur continues to welcome and reflect on the valuable comments and suggestions made to her by her colleagues in the Sub-Commission, States, intergovernmental and non-governmental organizations, as well as United Nations special procedures. She looks forward to completing her study on the conceptual aspects of terrorism and human rights and to submitting her final report to the Sub-Commission at its fifty-sixth session in 2004.



<sup>1</sup> See E/CN.4/Sub.2/2002/35, para. 68.

<sup>2</sup> In this vein see, generally, M. Robinson, "Shaping Globalization: The Role of Human Rights", Fifth Annual Grotius Lecture, American Society of International Law 97<sup>th</sup> Annual Meeting, Washington, DC, 2 April 2003.

<sup>3</sup> See E/CN.4/Sub.2/1997/28, para. 11.

<sup>4</sup> See E/CN.4/Sub.2/2001/31, paras. 27-31.

<sup>5</sup> *Ibid.*, paras. 26 and 30.

<sup>6</sup> See E/CN.4/Sub.2/1999/27, paras. 42-43.

<sup>7</sup> See E/CN.4/Sub.2/2001/31, paras. 32-33.

<sup>8</sup> *Ibid.*, paras. 31 and 34.

<sup>9</sup> *Ibid.*, paras. 35-67.

<sup>10</sup> *Ibid.*, paras. 68-70. See summaries of the relevant submissions in Addendum 2 to this report.

<sup>11</sup> *Ibid.*, paras. 71-81.

<sup>12</sup> Despite the reservations expressed during the discussion of her first progress report in the Sub-Commission by her expert colleague Fissea Yimer and the observer government of Turkey, about her using the term "sub-State" terrorism (in contrast to "State" terrorism), the Special Rapporteur is of the opinion that she should abide by the terminology that she has already used, since it is both scientifically correct and familiar in the framework of the UN also - see, for example, the Manual on Human Rights Training for the Police of the UNHCHR, Professional Training Series No. 5, under the title "Human Rights and Law Enforcement" (1997), at p. 101. Nonetheless, although she believes that she has already defined "sub-State" terrorism so as to avoid possible confusion, in the present report she is going to use the term "sub-State" terrorism interchangeably with the terms "non-State" or "individual" terrorism, in order to give all due attention to the two reservations mentioned above. Still, there is one more point that the Special Rapporteur wishes to make in the context of terminology. Given the present construct of international law and the central position that the State still retains in it, she considers the terms "sub-State terrorism" or "individual terrorism" (as opposed to the term "State terrorism") to convey even more accurately the concept of "terrorism from below", than the term "non-State terrorism" does, especially in today's international practice of terrorism. In the same vein, see, for instance, G. Wardlaw, *Political Terrorism: Theory, tactics, and counter-measures*, Cambridge, Cambridge University Press, 1982, p. 69, referring also to F.J. Hacker, *Crusaders, Criminals, Crazies: Terror and Terrorism in Our Time*, New York, W.W. Norton and Co., 1976, and the Special Rapporteur's analysis in E/CN.4/Sub.2/2001/31, para.36 ff.

<sup>13</sup> See also J.J. Lambert, *Terrorism and Hostages in International Law*, Cambridge, Grotius Publications Ltd., 1990, pp. 14-15.

<sup>14</sup> *Ibid.*, p.16.

<sup>15</sup> See, for instance, E. Konstantinov, "International Terrorism and International Law", *German Yearbook of International Law*, vol. 31, 1988, pp. 289-306, at p. 292; W. Reich, "Understanding terrorist behavior: The limits and opportunities of psychological inquiry", in W. Reich, ed., *Origins of terrorism*, Cambridge, Woodrow Wilson International Center for Scholars and Cambridge University Press, 1990, pp. 261-279, at p. 276; and Lambert, note 13, *supra*, at pp. 16-17. See also K. Skubiszewski, "Definition of Terrorism", *Israel Yearbook of Human Rights*, vol. 19, 1989, pp.39-53.

<sup>16</sup> R. Mushkat, "'Technical' Impediments on the Way to a Universal Definition of International Terrorism", *Indian Journal of International Law*, vol. 20, 1980, pp. 448-471, notes at pp. 449-450 that in discussing the definitional problem in the UN *Ad Hoc* Committee of Thirty-Five on international terrorism, Western States opposed the inclusion of governmental acts within the category of State terrorism by maintaining that the law relating to State action was being dealt with in other contexts such as the United Nations Charter, the 1949 Geneva Conventions, the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the UN Charter, and so on; see also T.M. Franck and B.B. Lockwood, Jr., "Preliminary Thoughts Towards an International Convention on Terrorism", *American Journal of International Law*, vol. 68, 1974, pp. 68-90, at p. 74, as well as J.J. Paust, "Some Thoughts on 'Preliminary Thoughts' on Terrorism", in the same volume of the same *Journal*, at p. 502.

<sup>17</sup> See E/CN.4/Sub.2/2001/31, paras., 68-70.

<sup>18</sup> W. Laqueur, *Terrorism*, Boston-Toronto, Little, Brown and Co., 1977, pp. 7-9. See also R.A. Friedlander, *Terrorism: Documents of International and Local Control*, vol.1, New York, Oceana Publications, Inc., 1979, pp. 7-8.

<sup>19</sup> B. Hoffman, "Terrorism and WMD: Some Preliminary Hypotheses", *The Nonproliferation Review*, Spring-Summer 1997, pp. 45-53, at p. 47.

<sup>20</sup> W. Laqueur, "Postmodern Terrorism", *Foreign Affairs*, vol.75, No. 5, pp. 24-36, at p. 34.

<sup>21</sup> For a good selection and review of the many different kinds of typologies in circulation, see A.P. Schmid and A.J. Jongman, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories and Literature*, Amsterdam, Oxford, New York, North-Holland Publishing Co., 1988, pp. 39-59; see also D. Duez, "De la définition à la labellisation: le terrorisme comme construction sociale", in *Le droit international face au terrorisme - Après le 11 septembre 2001*, CEDIN-Paris I (Cahiers internationaux No. 17), Paris, Pédone, 2002, pp. 105-118, at pp. 106-109, *Wardlaw*, note 12 *supra*, at pp. 10-15, P. Wilkinson, *Terrorism and the Liberal State*, London, Macmillan, 1986, p. 50 ff., as well as, I. Sharif, *The success of political terrorist events: an analysis of terrorist tactics and victim characteristics, 1968 to 1977*, Lanham, Maryland, University Press of America, Inc., 1995, pp. 22-24.

<sup>22</sup> I.e., when foreigners are the targets.

<sup>23</sup> See generally, M. Crenshaw and J. Pimlott, eds., *Encyclopedia of World Terrorism*, vol. 1, Armonk, New York, M.E. Sharpe, Inc., 1997 p. 185 ff.

<sup>24</sup> For example, the Red Army Faction (or Baader-Meinhof Gang) in Germany, the United Red Army in Japan, the Red Brigades in Italy and, even, the Weather organization (or Weathermen) in the United States. See, for instance, R. Kupperman and D. Trent, eds., *Terrorism: Threat, Reality, Response*, Stanford, California, Hoover Institution Press, 1979, p. 22 ff. and E. Sprinzak, "The psychopolitical formation of extreme left terrorism in a democracy: The case of the Weathermen", in Reich, note 15 *supra*, pp. 65-85, and, generally, Laqueur, note 18, *supra*, pp. 206 ff.

<sup>25</sup> *Ibid.*, p.71 ff.; R.E. Rubenstein, *Alchemists of Revolution: Terrorism in the Modern World*, New York, Basic Books, Inc., 1987, p. 126 ff.; T. Bjørge, "Right-wing and racist terrorism", unedited paper contributed to the International Conference on "Countering Terrorism Through Enhanced International Cooperation" (Courmayeur, Mont Blanc, 22-24 September 2000), organized by the International Scientific and Professional Advisory Council of the United Nations, in cooperation with the United Nations Terrorism Prevention Branch of the UN Office for Drug Control and Crime Prevention; and see, generally, *International Encyclopedia of*



Terrorism, Chicago & London, Fitzroy Dearborn Publishers, 1997, pp. 206-208, 543-545, 561-566.

<sup>26</sup> B. Hoffman, Inside Terrorism, London, Indigo, 1999, pp. 25-26, who also recalls that it was during this period that the 'politically correct' appellation 'freedom fighters' came into fashion as a result of the political legitimacy that the international community accorded to struggles for national liberation and self-determination.

<sup>27</sup> *Ibid.*, at p. 26.

<sup>28</sup> See, generally, the section on "Guerrillas and Terror" of the International Encyclopedia of Terrorism, note 25 *supra*, pp. 149-158, as well as W. Laqueur, Guerrilla: A Historical and Critical Study, Boston-Toronto, Little, Brown and Co., 1976, and R.D. Ramirez, "On the Kidnapping Industry in Colombia", unedited paper contributed to the International Conference on "Countering Terrorism Through Enhanced International Cooperation", note 25 *supra*; and see also Wardlaw, note 12 *supra*, pp. 43-49, as well as Rubenstein, note 25 *supra*, pp. 206-227, for a penetrating discussion of the more recent theoretical framework.

<sup>29</sup> A historical overview of these early classical cases of religious extremism may be most conveniently found in Laqueur, note 18 *supra*, pp. 7-10, and the International Encyclopedia of Terrorism, note 25 *supra*, pp. 40-41 and 219-220.

<sup>30</sup> See, for instance, Laqueur, note 18 *supra*, pp. 127-155, as well as Hoffman, note 19 *supra*, at p. 48.

<sup>31</sup> *Ibid.* p. 49 ff. But see also D.C. Rapoport, "Perceptions and Misperceptions of Religious Terror", unedited paper contributed to the International Conference on "Countering Terrorism Through Enhanced International Cooperation", note 25 *supra*.

<sup>32</sup> See the International Encyclopedia of Terrorism, note 25 *supra*, at p. 199.

<sup>33</sup> *Ibid.*, at p. 197 as well as Rapoport, note 31 *supra*.

<sup>34</sup> See, for instance, C. Hewitt, "Separatism, Irredentism, and Terrorism", unedited paper contributed to the International Conference on "Countering Terrorism Through Enhanced International Cooperation", note 25 *supra*, and International Encyclopedia of Terrorism, note 25 *supra*, at p. 198.

<sup>35</sup> *Ibid.*, pp. 198-199, and see also A. Schmid, "Magnitudes of Terrorist Victimization", paper prepared for the Ancillary Meeting on "Terrorist Victimization: Prevention, Control, and Recovery", on the occasion of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 'Crime and Justice: Meeting the Challenges of the 21<sup>st</sup> Century', held in Vienna, 12 April 2000, pp. 5-6. The author of the paper, an expert authority on terrorism and Officer-in-Charge of the UN Terrorism Prevention Branch, makes further distinctions between "instrumental targets", "target audiences", "targets of attention", "targets of demands" or "targets of terror", at pp. 3-4.

<sup>36</sup> See, for instance, Sharif, note 21 *supra*, pp. 25-27, Schmid and Jongman, note 21 *supra*, pp. 41-43, Lambert, note 13 *supra*, pp. 22-23, and G. Levasseur, "Les aspects répressifs du terrorisme international", in G. Guillaume et G. Levasseur, eds., Terrorisme international, Paris, Pédone, 1976/1977, pp. 59-131, at p. 66 ff., and M.C. Bassiouni, "International Terrorism", in M.C. Bassiouni, ed., International Criminal Law, 2d ed., vol. I, Ardsley, N.Y., Transnational Publishers Inc., 1999, p. 771, who notes that to define "international terrorism" unambiguously and all-inclusively is very difficult, if not impossible.

<sup>37</sup> See Schmid and Jongman, note 21 *supra*. See also C.J.M. Drake, Terrorists' Target Selection, New York, St. Martin's Press, 1998, an impressive attempt to construct a holistic categorization, and E.A. Fattah, "Terrorist Activities and Terrorist Targets: A Tentative Typology", in Y.

Alexander and J.M. Gleason, eds., Behavioral and Quantitative Perspectives on Terrorism, New York, Pergamon Press, 1981, pp. 11-30.

<sup>38</sup> C. Johnson, "Perspectives on Terrorism", reprinted in W. Laqueur, ed., The Terrorism Reader, New York, American Library, 1978, p. 276, cited in Schmid and Jongman, note 21 *supra*, at p. 40.

<sup>39</sup> Many such socio-cultural typologies exist; see, for instance, W. Laqueur, The New Terrorism: Fanaticism and the Arms of Mass Destruction, Oxford, Oxford University Press, 1999, p. 79 ff. and that provided by P. Wilkinson, in Terrorism Versus Democracy: The Liberal State Response, London, Frank Cass, 2001, pp. 19-21 and pp. 45-62.

<sup>40</sup> See David Rapoport's (note 31 *supra*) poignant criticism of the statistics (from the RAND - St. Andrews University data base on international terrorism, 1995) cited by the well-known authority on terrorism and Director of the Rand Corporation, Washington Branch, Bruce Hoffman in Inside Terrorism, note 26 *supra*, p. 93, and in earlier work of the same author. See also Wardlaw, note 12 *supra*, at p. 52.

<sup>41</sup> See E/CN.4/Sub.2/2001/31, paras. 82 and 96.

<sup>42</sup> For instance, see generally Hoffman, note 19 *supra*, pp. 45-53, and see also W. Laqueur, "The New Face of Terrorism", The Washington Quarterly, Autumn 1998, pp. 169-178, at pp. 173-174, and the same author in The New Terrorism: Fanaticism and the Arms of Mass Destruction, note 39 *supra*, at pp. 81-82.

<sup>43</sup> See Rapoport, note 31 *supra*.

<sup>44</sup> M. Mamdani, "Good Muslim, Bad Muslim: A Political Perspective on Culture and Terrorism", in E. Hershberg and K. W. Moore, eds., Critical Views of September 11: Analyses from Around the World, New York, The New Press, 2002.

<sup>45</sup> See note 36 *supra* and accompanying text.

<sup>46</sup> Schmid and Jongman, note 21 *supra*, p. 41 ff., as well as Bassiouni, note 36 *supra*, who defines "international terrorism" in two different ways in the same chapter, namely as conduct which is prohibited by an international convention (at p. 771), and as acts which must contain an international element, be directed against an internationally protected target, or violate an international norm (at p. 778). For further elaboration on this, see *infra*, paras. 45-47.

<sup>47</sup> See, for instance, D.L. Milbank, Research Study: International and Transnational Terrorism: Diagnosis and Prognosis, Washington D.C., CIA Political Research Department, April 1976, p. 1, as cited by Schmid and Jongman, note 21 *supra*, pp. 41-42, and Sharif, note 21 *supra*, pp. 26-27.

<sup>48</sup> Cf. also Bassiouni, note 36 *supra*, pp. 778-779.

<sup>49</sup> Thus, for instance, in examining contemporary forms of terrorism in E/CN.4/Sub.2/2001/31, para. 82 ff., or typologies of sub-State terrorism in para. 30 ff. of the present report.

<sup>50</sup> While some use interchangeably the terms "transnational" and "international", others prefer to define them differently, the distinguishing characteristics between these terms generally including, but not limited to, acts of violence across State boundaries, type of target or victim, violence carried out by autonomous non-State actors, or State supported non-State actors, see Sharif, note 21 *supra*, pp. 26-27. See also note 54 *infra*.

<sup>51</sup> K. Skubiszewski, "Definition of Terrorism", Israel Yearbook on Human Rights, vol. 19 (1989), pp. 39-53, at p. 49, as well as Levasseur, note 36 *supra*, at pp. 67.

<sup>52</sup> Mushkat, note 16 *supra*, at p. 468.

<sup>53</sup> Bassiouni, note 36 *supra*, at p. 778. See also his working definition of international terrorism in C. Bassiouni, "An International Control Scheme for the Prosecution of International Terrorism: An Introduction", in A.E. Evans and J.F. Murphy, eds., Legal Aspects of



International Terrorism, Lexington, Massachusetts, Lexington Books, 1978, pp. 485-491, at p. 485.

<sup>54</sup> G. Gilbert, "The 'Law' and 'Transnational Terrorism'", Netherlands Yearbook of International Law, vol. XXVI (1995), pp. 3-32, at p. 10, citing also C. Bassiouni, "The Penal Characteristics of Conventional International Criminal Law", 15 Case W Res. JIL. 27 (1983), p. 29, n.16: "Similarly, the undefined 'transnational' element could encompass a multitude of activities which may affect the interests of more than one State, involve transborder activities or involve nationals of more than one State. This is potentially a very elastic concept".

<sup>55</sup> C.J. Mann, "Personnel and Property of Transnational Business Operations", in Legal Aspects of International Terrorism, note 53 *supra*, pp. 399-481, at p. 399.

<sup>56</sup> J.N. Saxena, "Relationship between International Terrorism, State Terror and Human Rights in the World Order", Indian Journal of International Law, vol. 27 (Special Issue on Terrorism), April-Sept. 1987, pp. 194-202, at p. 196.

<sup>57</sup> But see Lambert, note 13 *supra*, pp. 22, noting also the International Law Association's formulation in its Report of the Sixty-First Conference 6-7 (1984), as follows: "terrorism is international, despite its having been committed 'within the jurisdiction of one country', when it is committed 'against any foreign government or international organization or any representation thereof', or 'against any national of a foreign country because he is a national of a foreign country', or 'by a person who crosses an international frontier into another country from which his extradition is requested'".

<sup>58</sup> B.M. Jenkins, "International Terrorism: A New Challenge for the United Nations", in United Nations Institute for Training and Research, ed., The United Nations and the Maintenance of International Peace and Security, Dordrecht, M.Nijhoff Publishers, 1987, pp. 407-421, at p. 409.

<sup>59</sup> B.M. Jenkins, "International Terrorism: A New Mode of Conflict", in D. Carlton and C. Schaarf, eds., International Terrorism and World Security, London, Croom Helm, 1975, pp. 20-21.

<sup>60</sup> See, in this sense, Mushkat, note 16 *supra*, at pp. 468-469.

<sup>61</sup> Wilkinson, note 21 *supra*, at p. 182.

<sup>62</sup> *Ibid.*

<sup>63</sup> Cf. C. Warbrick, "Terrorism and Human Rights", in J. Symonides, ed., Human Rights: New Dimensions and Challenges, (UNESCO manual on human rights), Ashgate/Dartmouth Publishing, Aldershot (England), 1998, p. 225.

<sup>64</sup> J.-F. Gayraud, and D. Sénat, Le terrorisme, Collection "Que sais-je?", N° 1768, Presses universitaires de France, 3<sup>rd</sup> edition, Paris, 2002, p. 29. Translation by the Special Rapporteur.

<sup>65</sup> See, for instance, Lambert, note 13 *supra*, p. 49.

<sup>66</sup> See C. Bourges-Habif, "Le terrorisme international", in H. Ascencio, E. Decaux and A. Pellet, Droit international pénal, Paris, Pedone, 2000. Translation by the Special Rapporteur.

<sup>67</sup> LN Doc. C.546 (I).M.383(I).1937.V

<sup>68</sup> See, Yearbook of the International Law Commission, 1985, Volume II, First part, UN doc. A/CN.4/SER.A/1985/Add.1 (Part.1), paras. 138-148.

<sup>69</sup> According to Article 1, paragraph 2, of the 1937 Terrorism Convention, "acts of terrorism" means criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, a group of persons or the general public."

<sup>70</sup> See, Yearbook of the International Law Commission, 1985, Volume II, First part, UN Doc. A/CN.4/SER.A/1985/Add.1 (Part.1), para. 124 ff.

<sup>71</sup> See, Yearbook of the International Law Commission, 1990, Volume II, Second part, pp. 28-29.

<sup>72</sup> See, Report of the International Law Commission on the work of its forty-third session, 29 April to 19 July 1991, UN Doc. A/46/10, Supplement N° 10, article 24.

<sup>73</sup> See Report of the International Law Commission on the work of its forty-seventh session, 2 May to 21 July 1995, UN Doc. A/50/10, Supplement N° 10, commentary to article 24, para. 105 and ff.

<sup>74</sup> See, for instance, the Third Report of the Special Rapporteur, Mr. Doudou Thiam, on the Draft Code of Crimes Against the Peace and Security of Mankind, Yearbook of the International Law Commission, 1985, Volume II, First Part, paras. 124-154.

<sup>75</sup> See, "Acts committed in violation of international humanitarian law applicable in armed conflict not of an international character", article 20, f, iv of the 1996 Draft.

<sup>76</sup> Article 20, para. c of the Draft. See Report of the Preparatory Committee for the Establishment of an International Criminal Court - Volume II - (Compilation of proposals), UN doc. A/51/22, Supplement No. 22A, pp. 56 and 301-302.

<sup>77</sup> See Report of the Preparatory Committee for the Establishment of an International Criminal Court, UN doc. A/CONF.183/2/Add.1 (1998), p. 28.

<sup>78</sup> See UN doc. A/C.6/57/L.9 of 16 October 2002, paras. 1 and 2; and see also article 18 of the draft Convention.

<sup>79</sup> See Official Journal n° L 164, 22/06/2002, p. 0003-0007.

<sup>80</sup> See OUA Doc. AHG/Decl. 132 (XXXV).

<sup>81</sup> See Article 1, paragraph 2: "Terrorism: Any Act or threat of violence, whatever its motives or purposes, that occurs for the advancement of an individual or collective criminal agenda, causing terror among people, causing fear by harming them, or placing their lives, liberty or security in danger, or aiming to cause damage to the environment or to public or private installations or property or to occupy or seize them, or aiming to jeopardize a national resource."

<sup>82</sup> See Article 1, paragraph 3: "Terrorist Offence: Any offence or attempted offence committed in furtherance of a terrorist objective in any of the Contracting States, or against their nationals, property or interests, that is punishable by their domestic law."

<sup>83</sup> *Ibid* : "[...] The offences stipulated in the following conventions, except where conventions have not been ratified by Contracting States or where offences have been excluded by their legislation, shall also be regarded as terrorist offences: a) The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1964; b) The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970; c) The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971, and the Protocol thereto of 10 May 1984; d) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973; e) The International Convention against the Taking of Hostages, of 17 December 1979; f) The Provisions of the United Nations Convention on the Law of the Sea, of 1982, relating to piracy on the high seas.

<sup>84</sup> These are the following: (A) At the global level: Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 and entered into force 4 December 1969; Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 and entered into force on 14 October 1971; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 and entered into force on 26 January 1973; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973, and entered into force on 20 February 1977; International Convention against the Taking of Hostages, adopted by



the General Assembly of the United Nations on 17 December 1979 and entered into force on 3 June 1983; Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980 and entered into force on 8 February 1987; Protocol on 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 and entered into force on 6 August 1989; 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 and entered into force 21 June 1998; International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997 and entered into force on 23 May 2001; International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999 and entered into force on 10 April 2002. (B) At the regional level: Convention of the Council of Europe on Cyber-crime; Additional Protocol to the Convention of the Council of Europe on Cyber-crime; European Convention on the Suppression of Terrorism, concluded in Strasbourg on 27 January 1977; Protocol amending the European Convention on the Suppression of terrorism, concluded in Strasbourg on 15 May 2003; OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, concluded in Washington, D.C. on 2 February 1971; Inter-American Convention against Terrorism, adopted by the General Assembly of the OAS on 3 June 2002; SAARC Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987; Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, done at Minsk on 4 June 1999.

<sup>85</sup> See note 84 *supra*.

<sup>86</sup> See Article 2 of the Inter-American Convention Against Terrorism listing the following international conventions: Convention for the Suppression of Unlawful seizure of Aircraft, signed in 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 General Assembly of the United Nations on 14 December 1973; International Convention against the Taking of Hostages, adopted by the UN General Assembly on 17 December 1979; Convention on the Physical Protection of Nuclear Material, signed in 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 March 10, 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, signed in Rome on 10 March 1988; International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; and International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

<sup>87</sup> Y. Sandoz, C. Swinarski and B. Zimmerman, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva, International Committee of the Red Cross, Martinus Nijhoff, 1987, paragraph 4761, p. 1470.

<sup>88</sup> M. Veuthey, *Guérilla et Droit Humanitaire*, Genève, Edition CICR, 1983 p.134 ff.

<sup>89</sup> *Ibid.* p. 160. Translated by the Special Rapporteur.

<sup>90</sup> Commentary of article 51 of the First Additional Protocol to the Geneva Conventions, in Y. Sandoz, C. Swinarski and B. Zimmerman, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, note 87 *supra*, paragraph 1940, p. 632.

<sup>91</sup> See, for instance, the preamble of its resolution 2001/37 of 23 April 2001, entitled "Human rights and terrorism", as well as its previous resolutions 2000/30, 1999/27 and 1998/47.

<sup>92</sup> See G. Levasseur, « Justice et sûreté de l'Etat », *Revue de la Commission internationale de juristes*, winter 1964, vol. 5, p. 264.

<sup>93</sup> See *Report on Terrorism and Human Rights*, OEA/ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, "Recommendations", No. 10 (a).

<sup>94</sup> See, for instance, the Reports of the International Law Commission to the UN General Assembly of 1993 (UN doc. A/48/10, Supplement N° 10, p. 81) and 1994 (UN doc. A/49/10, Supplement N° 10, p. 321).

<sup>95</sup> See P. Guggenheim, *Traité de droit international public*, vol. II, Genève, Georg & Cie S.A., 1954, p. 32.

<sup>96</sup> See Article 4, paragraph 2, of the International Covenant on Civil and Political Rights, article 15 of the European Convention of Human Rights, and article 27 of the American Convention on Human Rights.

<sup>97</sup> Human Rights Committee, General Comment N° 29, "States of emergency (article 4)", para. 7, UN Doc. CCPR/C/21/Rev.1/Add.11 of 31 August 2001.

<sup>98</sup> See *Report on Terrorism and Human Rights*, note 93 *supra*, para. 218.

<sup>99</sup> See Report of the International Law Commission to the General Assembly of 1996, UN Doc. A/51/10, Supplement N° 10, p. 90.

<sup>100</sup> Decision of 12 July 1990, Communication No. 195/1985 William Eduardo Delgado Páez c. Colombia, UN Doc. CCPR/C/39/D/195/1985 of 23 August 1990. See also Communication N° 314/1988, Bwalya c. Zambia, of 20 October 1993, Communication N° 468/1991 (Oló Bahamonde c. Equatorial Guinea).

<sup>101</sup> Inter-American Commission on Human Rights, Second Report on the human rights situation in Peru, paragraph 80.

<sup>102</sup> Human Rights Committee, note 97 *supra*, para. 7.

<sup>103</sup> European Court of Human Rights, Kokkinakis v. Greece, Decision of 25 May 1993, Series A, No. 260-A, p.22, para. 52.

<sup>104</sup> Judgement of 30 May 1999, *Castillo Petruzzi et al Case*, para. 121.

<sup>105</sup> See Addendum I to this report, updating on international anti-terrorist action, and see also UN. Doc. E/CN.4/Sub.2/ 2002/35 of 17 July 2002, paras. 51-55.

<sup>106</sup> See *Report on Terrorism and Human Rights*, note 93 *supra*, para. 226.

<sup>107</sup> *Ibid.*

<sup>108</sup> See UN Doc. E/CN.4/1998/39/Add.1, paragraph 129.

<sup>109</sup> Pierre-Marie Dupuy, "Normes internationales pénales et droit impératif (*jus cogens*)", in *Droit international pénal*, note 66 *supra*, p. 74. Translation by the Special Rapporteur.

<sup>110</sup> See *Report on Terrorism and Human Rights*, note 93 *supra*, para. 227.

<sup>111</sup> E. David, *Eléments de droit pénal international - Deuxième partie: La répression des infractions de droit international*, Bruxelles, Presses universitaires, 8<sup>th</sup> Edition, 1999, p. 362.

<sup>112</sup> J. Pictet, "Commentary of Article 33", in *Commentary of the IV Geneva Convention Relative to the protection of Civilian Persons in Time of War*, International Committee of the Red Cross, Geneva, 1958, p. 225.



<sup>113</sup> Y. Sandoz, C. Swinarski and B. Zimmerman, "Commentary of Article 75" in *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, note 87 *supra*, paragraph 3098, pp. 880-881.

<sup>114</sup> See Report of the Secretary-General pursuant to Paragraph 2 of Security Council resolution 808 (1993), presented 3 May 1993, UN Doc. S/25704, para. 51.

<sup>115</sup> See article 5, paragraph 3, of the Convention stipulating that "Punishment shall not be extended to any person other than the criminal".

<sup>116</sup> See Press Release No. 12/03 of 16 April 2003, "Cuba: Inter-American Commission on Human Rights Condemns the Execution of Three Persons", available at <http://www.cidh.oas.org/Comunicados/English/2003/12.03.Htm>.

<sup>117</sup> E/CN.4/Sub.2/2001/31 of 27 June 2001, para. 111.

<sup>118</sup> European Court of Human Rights, *Guzzardi v. Italy*, Judgment of 8 July 1980, Serie A N° 39, paragraph 102.

<sup>119</sup> Human Rights Committee, General comment N° 10, "Freedom of expression (Art. 19)", 29/06/83, paragraph 4.

<sup>120</sup> See, for instance, Decision of 12 July 1996, Communications 422/1990, 423/1990 and 424/1990, in the cases *Adimayo M. Aduayom, Sofianou T. Diasso, and Yawo S. Dobou v. Togo*, CCPR/C/57/D/424/1990 of 19 August 1996, paragraph 7.4.

<sup>121</sup> See, for instance, *Zana v. Turkey*, Judgment of 25 November 1997, and *Incal v. Turkey*, Judgment of 9 June 1998.

<sup>122</sup> See note 93 *supra*.

<sup>123</sup> *Ibid.* para. 316.

<sup>124</sup> *Ibid.*, "Recommendations" N° 11 (b) and (c).

<sup>125</sup> *Ibid.*, para. 360.

<sup>126</sup> See, in particular, International Covenant on Economic, Social and Cultural Rights (Article 8); ILO Convention N° 87 concerning Freedom of Association and Protection of the Right to Organize; ILO Convention N° 151 concerning Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service.

<sup>127</sup> Article 1, paragraph 3, defines a "terrorist act" as "any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

- (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
- (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
- (iii) create general insurrection in a State."

<sup>128</sup> Report of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/1995/31 of 21 December 1994, para. 51.

<sup>129</sup> See, for example, "Concluding Observations of the Human Rights Committee - Algeria", CCPR/C/79/Add.95 of 18 August 1998, paragraph 11; "Concluding Observations of the Human Rights Committee - Peru", CCPR/C/79/Add.72 of 18 November 1996, paragraph 12 and "Concluding Observations of the Human Rights Committee - Egypt", CCPR/C/79/Add.23 of 09 August 1993.

<sup>130</sup> See, for example, the study conducted by the International Commission of Jurists, *Aplicación de las declaraciones y convenciones internacionales referendums al asilo en América latina*, Geneva, September 1975, pp. 16 to 19.

<sup>131</sup> See, for instance, Levasseur, note 92 *supra*, p. 280 ff.

<sup>132</sup> The relevant paragraph reads as follows: "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human right should be protected by the rule of law".

<sup>133</sup> See, for example, "Concluding Observations of the Human Rights Committee - Syrian Arab Republic", CCPR/CO/71/SYR of 24 April 2001; Committee against Torture, "Concluding Observations of the Committee against Torture - China", A/48/44, paras.387-429, of 26 June 1993; Inter-American Commission on Human Rights, Informe sobre la situación de los derechos humanos en la República de Cuba, OEA/ser.L/V/II.4 doc. 2 of 20 March 1962 (in Spanish); Annual report of the Inter-American Commission on Human Rights 1997, OEA/SER.L/V/II.98, doc. 6 of 17 February 1998; Annual report of the Inter-American Commission on Human Rights 2000, OEA/Ser.L/V/II.111 doc. 20 rev. of 16 April 2001, Report N° 49/01 cases 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique), 11.847 (Dalton Daley) v. Jamaica of 4 April 2001, available at

<http://www.cidh.org/annualrep/2000eng/ChapterIII/Merits/Jamaica.11.826.htm>

<sup>134</sup> See Report on the Human Rights Situation in the Republic of Cuba, OAS document OEA/Ser.L/V/II.4, doc. 2, 20 March 1962; Annual Report of the Inter-American Commission on Human Rights - 1997, OAS document OEA/Ser.L/V/II.98, doc. 6, 17 February 1998; Decision N° 49/01 of 4 April 2001, cases Nos. 11826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) v. Jamaica, paragraphs 131 and 137.

<sup>135</sup> See UN Doc. E/CN.4/Sub.2/1985/16 of 21 June 1985, paras. 47-48.

<sup>136</sup> See Article 5 of the European Convention. See also P. Weis, "Asylum and terrorism", *The Review*, International Commission of Jurists, vol. 19, 1977, p. 37 and ff.

<sup>137</sup> See M. Poutiers, "L'extradition des auterus d'infractions internationales", in *Droit international pénal*, note 66 *supra*.

<sup>138</sup> See, for instance, the International Convention Against the Taking of Hostages of 1979; Article 1 of the European Convention for the Suppression of Terrorism; Article 11 of the Inter-American Convention against Terrorism.

<sup>139</sup> Article 3, paragraph 3, of the European Convention on Extradition; Article 3 of the Montevideo Convention on extradition of 1933.

<sup>140</sup> Article 1 of the Additional Protocol to the European Convention on Extradition.

<sup>141</sup> Article of the Additional Protocol to the European Convention on Extradition.

<sup>142</sup> Article VII of the Convention on the Prevention and Punishment of the Crime of Genocide. See also Article 1 of the Additional Protocol to the European Convention on Extradition.

<sup>143</sup> Article 5 of the Inter-American Convention on Forced Disappearance of Persons.

<sup>144</sup> See, for instance, Article 16 of the Treaty of International Penal Law of Montevideo of 1889; The Havana Convention on Asylum of 1928; the Montevideo Convention on Political Asylum of 1933; and the Caracas Convention on Territorial Asylum of 1954.

<sup>145</sup> See Article 14, paragraph 1 stipulating that "everyone has the right to seek and enjoy in other countries asylum from persecution", and in paragraph 2 that "this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

<sup>146</sup> See in particular Article 1 (F) of the Convention relating to the Status of Refugees and Article 1, paragraph 2 of the Declaration on Territorial Asylum.



<sup>147</sup> See also Recommendation of Asylum and International Crimes, approved by the Inter-American Commission on Human Rights at its 108th regular session on 20 October 2000, in which the Inter-American Commission on Human Rights, clearly makes the point that States have accepted that "there are limits to asylum, based on several of the sources international law, including that asylum cannot be granted to persons with respect to whom there are serious indicia that they may have committed international crimes, such as crimes against humanity (which include the forced disappearance of persons, torture, and summary executions), war crimes, and crimes against peace."

<sup>148</sup> See Security Council resolution 1373 (2001) of 28 September 2001, paras. 2(c) and 3(f),(g), respectively.

<sup>149</sup> See Executive Committee of the High Commissioner's Programme, fifty-third session, "Note on International Protection", UN doc. A/AC.96/965 of 11 September 2002.

<sup>150</sup> Ibid., para.39.

<sup>151</sup> Ibid.

<sup>152</sup> See UN doc. E/CN.4/Sub.2/1985/16 of 21 June 1985.

<sup>153</sup> See, for instance, resolutions 32/121 of 16 December 1977, entitled "Protection of the Human Rights of Certain Category of Prisoners", 32/116 of 16 December 1977, entitled "Question of Southern Rhodesia", and 32/65 of 8 December 1977 entitled "Torture of Political Prisoners and Detainees in Southern Africa".

<sup>154</sup> See, for example, resolution 1993/69 of 10 March 1993 on "Situation in Equatorial Guinea".

<sup>155</sup> See "Concluding Observations of the Human Rights committee - Morocco", CCPR/C/79/Add.44 23 November 1994, para. 6; "Concluding Observations of the human Rights committee - Syrian Arab Republic", CCPR/CO/71/SYR of 24 April 2001, para. 3; "Concluding Observations of the Human Rights Committee - Armenia", CCPR/C/79/Add.100 of 19 November 1998, para. 6; "Concluding Observations of the Human Rights Committee - Libyan Arab Jamahiriya", CCPR/C/79/Add.45 of 23 November 1994, para. 7.

<sup>156</sup> See Report on the Situation of Human Rights in the Republic of Nicaragua,

OEA/Ser.L/V/II.53, doc. 25, 30 June 1981, Recommendations 3 to 5.

<sup>157</sup> "General Comment No. 20 (44) on Article 7, 44th session of the Human Rights Committee (1992) in Official Documents of the General Assembly, Forty-Seventh Session, Supplement N° 40 (A/47/40), appendix VI.A; Report of the Human Rights Committee, Supplement N° 40 (A/34/40), 1979, para. 81; "Concluding Observations of the Human Rights Committee - Chile", CCPR/C/79/Add.104, para. 7; "Concluding Observations of the Human Rights Committee - France", CCPR/C/79/Add.80, para. 13; "Concluding Observations of the Human Rights Committee - Lebanon", CCPR/C/79/Add.78, para. 12; "Concluding Observations of the Human Rights Committee - Republic of Croatia", CCPR/CO/71/HRV of 4 April 2001, para. 11; "Concluding Observations of the Human Rights Committee - El Salvador", CCPR/C/79/Add.34, para. 7; "Concluding Observations of the Human Rights Committee - Haiti", A/50/40, paras. 224-241; "Concluding Observations of the Human Rights Committee - Peru", CCPR/C/79/Add.67, paras. 9 and 10; "Concluding Observations of the Human Rights Committee - Peru", CCPR/CO/70/PER of 15 November 2000, para. 9; "Concluding Observations of the Human Rights Committee - Uruguay", CCPR/C/79/Add.19, paras. 7 and 11; and "Concluding Observations of the Human Rights Committee - Yemen", A/50/40, paras. 242-265.

<sup>158</sup> Inter-American Court of Human Rights, Judgment of 14 March 2001, *Case of Barrios Altos (Chumbipuma Aguirre and others v. Peru)*.

<sup>159</sup> Inter-American Commission on Human Rights, Report N° 36/96, Case 10,843 (Chile), 15 October 1996; Report N° 34/96, Cases 11,228, 11,229, 11,231 and 11,282 (Chile), 15 October 1996,

paragraph 50; Report N° 25/98, Cases 11,505, 11,532, 11,541, 11,546, 11,549, 11,569, 11,572, 11,573, 11,583, 11,585, 11,595, 11,652, 11,657, 11,676 and 11,706 (Chile), 7 April 1998, paragraph 42; Report N° 136/99, Case 10,488 *Ignacio Ellacuría S.J. and others* (El Salvador), 22 December 1999, paragraph 200; Report N° 1/99, Case 10,480 *Lucio Parada Cea and others* (El Salvador), 27 January 1999, paragraph 107; Report N° 26/92, Case 10,287 *Las Hojas Massacre* (El Salvador), 24 September 1992, paragraph 6; Report N° 28/92, Cases 10,147, 10,181, 10,240, 10,262, 10,309 and 10,311 (Argentina), 2 October 1992; and Report N° 29 (Uruguay), 1992.

<sup>160</sup> See UN doc. A/CONF.157/23 of 25 June 1993, : "States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law."

<sup>161</sup> See letter dated 1995 from the International Committee of the Red Cross to the Prosecutor of the Criminal Court for the Former Yugoslavia. This interpretation was repeated in another communication from the International Committee of the Red Cross dated 15 April 1997.

<sup>162</sup> See note 63 *supra*, at p. 219, as well as his note 4 at p. 236 where he pertinently explains that it is for this reason that attempts to deal with terrorism by isolating only the objective factors of the conduct itself are too wide. Thus, for example, hijacking may be undertaken also for reasons of personal gain, or hostage taking also for reasons of private revenge: both would be caught by "terrorist" treaties but neither would be properly or usefully described as terrorism.

<sup>163</sup> See the various treaties on combating terrorism, as well as common Article 3 to the 1949 Geneva Conventions and the Additional Protocols to the Geneva Conventions of 12 August 1949 relating to the protection of victims of non international conflicts (Articles 4 and 13).

<sup>164</sup> Report on Terrorism and Human Rights, note 93 *supra*, "Recommendations" No. 10 (a).

<sup>165</sup> The Sub-Commission has, of course, already requested this of the Commission on Human Rights. See Sub-Commission resolution 2002/2, of para. 11. In para. of this resolution the Sub-Commission also called upon the High Commissioner for Human Rights to "attach high priority to examining international and national measures" for compatibility with international human rights law.



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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\***

**Addendum**

**An Update on International Anti-Terrorist Activities and Initiatives**

\* 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.

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6. Other Organizations		

**I. INTRODUCTION**

1. Since the submission of last year's report there has been additional international action on terrorism that should be taken into account. The fight against terrorism which, as noted by the Special Rapporteur in that report,<sup>1</sup> experienced a staggering acceleration after 11 September 2001, has continued to be a top priority for all governments and intergovernmental systems and a steadfast concern for all human rights bodies and mechanisms. As an exhaustive account of anti-terrorist activities and initiatives undertaken at either the global or the regional levels is neither possible nor necessarily desirable for this report to enlarge upon, the Special Rapporteur has sought to focus on those where human rights and humanitarian law issues have been raised.

**II. AN UPDATE ON THE MAIN INTERNATIONAL ANTI-TERRORIST ACTIVITIES AND INITIATIVES**

- A. An update on the main activities and initiatives undertaken at the global level
1. The United Nations

**(a) The Security Council**

2. On 4 October 2002 the Security Council held a meeting to commemorate the one-year anniversary of its Counter-Terrorism Committee (CTC), a committee of the whole established pursuant to Council resolution 1373 (2001) of 28 September 2001, to monitor States' implementation of the obligations imposed by that far-reaching resolution to combat terrorism.<sup>2</sup> In addressing the meeting, the Secretary-General stated, *inter alia*, that the consequences of terrorism "affect every aspect of the United Nations agenda - from development to peace to human rights to the rule of law" and welcomed the intention of the Chair of the CTC to consult with the United Nations High Commissioner for Human Rights.<sup>3</sup> He stressed that to "pursue security at the expense of human rights is short-sighted, self-contradictory, and, in the long run, self-defeating" and pointed out that "[i]n places where human rights and democratic values are lacking, disaffected groups are more likely to opt for a path of violence, or to sympathize with those who do."<sup>4</sup> Responding to the questions and comments of the speakers in that debate, the Chairman of the CTC noted the mention of human rights in some detail by several Council members, and said that this was "a sensitive subject both for the CTC and the Council", but that "the awareness of the CTC to human rights obligations must be very active, not just passive". He added further that what is being promoted within the CTC "must be actively compatible with human rights obligations, leading to greater opportunities for Member States to meet their human rights obligations against the tension of the requirements to meet obligations under resolution 1373 (2001)."<sup>5</sup>

3. During the resumed meeting of the Council, on 8 October 2002, the Chairman of the CTC, responding to further questions and comments relating to the Committee's report and the fight against terrorism did not fail to note the continuing focus on human rights by several speakers and in particular "on the denial of human rights that terrorism itself represents" and on the need "to remain aware of human rights obligations", and recognized that "poor development and



poverty are a growth medium for support for the kind of activities which terrorists undertake".<sup>6</sup> At the closure of the meeting, through a statement made by the President of the Security Council (S/PRST/2002/26), the Council invited the CTC to pursue the programme of its fifth 90-day period (S/2002/1075), focusing on ensuring that all States have legislation in place covering all aspects of resolution 1373 (2001), ratify as soon as possible the 12 international conventions and protocols relating to terrorism, create mechanisms to prevent and suppress terrorism financing, and build a dialogue with international, regional and subregional organizations. The same statement expressed also the Council's satisfaction that 174 Member States and 5 others had submitted reports to the CTC pursuant to paragraph 6 of resolution 1373 (2001).<sup>7</sup>

4. On 20 January 2003, at a high level Security Council meeting attended by the Ministers of Foreign Affairs, the Council, by its resolution 1456 (2003), decided to adopt a strong declaration on the issue of combating terrorism, in which it reaffirmed, *inter alia*, that terrorism can only be defeated in accordance with the United Nations Charter and international law, and called on States to ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular human rights, refugee and humanitarian law.<sup>8</sup> In the same declaration, the Council invited also the Secretary-General to present a report summarizing any proposals made during its ministerial meeting and any commentary or response to them by any member of the Council.<sup>9</sup> In the summary of proposals, contained in the relevant report subsequently submitted by the Secretary-General, there is mention of the emphasis given by some members to the fact that the fight against terrorism must respect international law, including human rights law, and of the emphasis given by one member to the need to establish the human right to protection of terrorism and its initiative to develop, under the auspices of the United Nations, a code to protect human rights against terrorism.<sup>10</sup>

5. On 6 March 2003, the CTC held a special meeting to bring together representatives of international, regional and sub-regional organizations involved in anti-terrorism activities.<sup>11</sup> Of the many organizations present at the special meeting, only the Council of Europe sent a delegate representing the issue of human rights. However, the Office of the High Commission for Human Rights sent three representatives, and UNICEF and WHO were both represented, presenting issues related to human rights.<sup>12</sup> It is noteworthy that although the conference document indicating suggested points to address in three different areas - international issues, regional issues and assistance efforts - the requirement that anti-terrorism measures be compatible with human rights was only present in the suggested points under international issues.<sup>13</sup> The session's Outcome document<sup>14</sup> indicates some attention to human rights brought forward by participants in that they included the agreement to "remain aware of the interaction between their activities and human rights concerns, and of the need for respect for the rule of law and human rights obligations."<sup>15</sup> The CTC did not include the issue of human rights in its offer of practical steps to assist the organizations in their activities undertaken to combat terrorism.

6. On 4 April 2003 Inocencio F. Arias (Spain) became the new chairperson of the CTC, replacing Jeremy Greenstock (United Kingdom). In his last address as chairperson of the CTC, Mr. Greenstock indicated that 343 reports regarding implementation of Security Council resolution 1373 (2001) had been received from a combination of States, international, regional and sub-regional organizations to which 243 replies had been sent by the CTC.<sup>16</sup> He pointed out the necessity of preventing terrorists from gaining access to materials used in chemical, biological, nuclear, and other deadly weapons and forwarded the view that counter-terrorism was now a global affair, with the United Nations at the centre. According to Mr. Greenstock, an

important achievement of the CTC to date is that States, international and regional organizations "recognized the link between implementation of resolution 1373 and other obligations, particularly those in the human rights field."<sup>17</sup> In a second statement, Mr. Greenstock indicated that the CTC was already in "close liaison" with the Office of the High Commissioner for Human Rights and that a meeting with the Commission on Human Rights was contemplated.<sup>18</sup> In his statement to the Security Council, Mr. Arias noted that the first eighteen months of the CTC had focused on identifying national legislation, but that now the focus would change to study of the implementation and effectiveness of anti-terrorism legislation.<sup>19</sup>

7. During the debate of the 4 April 2003 Security Council meeting, a number of speakers stressed the importance of full respect for international law, human rights and the Charter in all counter-terrorism legislation and activities. For example, in speaking of the need to protect human rights, the representative of Germany stated that the rule of law must always prevail, while the representative of Chile noted that State terrorism had occurred in his region, and that use of methods of State terrorism degraded the struggle.<sup>20</sup> The representative of Peru, speaking for the "Rio Group," added concerns about assuring the protection of humanitarian law, while the representatives of Pakistan, Mexico, Brazil, Greece (speaking on behalf of the European Union), Colombia and Syria also stressed the need to respect human rights, humanitarian law and the rule of law in all efforts to fight terrorism. Moreover, the issue of protecting the right of self-determination and the right of peoples to fight oppression was raised by a number of speakers, as the failure to resolve this issue continues to be a major stumbling block in the efforts to elaborate the comprehensive anti-terrorist convention.

#### (b) The General Assembly

8. At its fifty-seventh session, the General Assembly addressed the item entitled "Measures to eliminate international terrorism", the technical aspects of which were, as usual, considered in the Sixth Committee. On the recommendation of the Sixth Committee, the General Assembly adopted resolution 57/27 on Measures to eliminate international terrorism on 19 November 2002. Operative paragraph 3 of this resolution reiterates the General Assembly's call that all national measures undertaken to combat terrorism must comply with "international law, including international standards of human rights."

9. On 18 December 2002, the General Assembly, on recommendation of its Third Committee, adopted resolution 57/219 entitled "Protecting human rights and fundamental freedoms while countering terrorism". This was the first time that the General Assembly adopted a resolution calling for the protection of human rights in the context of counter-terrorism measures. This resolution recalls that in accordance with article 4 of the International Covenant on Civil and Political Rights certain rights are recognized as non-derogable in any circumstances,<sup>21</sup> and affirms that States must ensure that any measures taken to combat terrorism fully comply with international law, in particular international human rights, refugee and humanitarian law.<sup>22</sup> The resolution also requests the United Nations High Commissioner for Human Rights to examine the question of protecting human rights in the context of countering terrorism, make general recommendations on this topic, and provide assistance and advice to States and to relevant United Nations bodies that so request.<sup>23</sup> Finally, the Secretary-General is requested to submit a report to the Commission on Human Rights at its fifty-ninth session and to the General Assembly at its fifty-eighth session on the implementation of this resolution.<sup>24</sup>



10. Efforts by the General Assembly to draft a comprehensive convention on international terrorism continued in the General Assembly's Ad Hoc Committee on Terrorism,<sup>25</sup> which is also meeting during the General Assembly's session as a working group of the Sixth Committee to continue consideration of outstanding issues. During 2002, the Ad Hoc Committee was convened according to General Assembly resolution 56/88 of 12 December 2001,<sup>26</sup> and met from 28 January to 1 February 2002 to continue the elaboration of the draft comprehensive convention on international terrorism, resolve the outstanding issues relating to the elaboration of the draft international convention on the suppression of acts of nuclear terrorism, and 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.<sup>27</sup> On 1 February 2002, the Ad Hoc Committee adopted its report and recommended to the Sixth Committee the establishment of the working group to be convened from 14 to 18 October 2002, to continue, as a matter of urgency, consideration of the above issues.<sup>28</sup> The report of the Ad Hoc Committee makes it clear that the text of the comprehensive convention on international terrorism would require an agreement on the armed conflict issues raised by this Special Rapporteur at earlier stages of her work, including the issues of armed forces, foreign occupation and self-determination.

11. The Special Rapporteur notes, in particular, the lack of agreement with regard to draft articles 1.2 and 18 and the envisaged scope of the draft comprehensive convention, notwithstanding the validity of relevant provisions of the 1977 Additional Protocols to the Geneva Conventions, article 3 common to the Geneva Conventions, and the Statute of the International Criminal Court recently created in Rome. Draft article 15 of the draft comprehensive convention constitutes another source of concern for potentially infringing on the established principle of "*non-refoulement*".<sup>29</sup> The Special Rapporteur observes further that the definition of the crime of international terrorism is also contentious. Reference in draft article 2 to unspecified or ill-definable concepts such as "serious damage", "major economic loss", "purpose of the conduct, by its nature or context", and "credible and serious threat" is a source of ambiguity and may, even, undermine the principle of legality.

12. In any event, work has continued during the fifty-seventh session of the General Assembly, in the framework of the working group, which, during its two meetings on 15 and 16 October 2002, continued to seek wording on the outstanding issues without reaching consensus.<sup>30</sup> The Ad Hoc Committee on Terrorism, which held its 2003 session from 31 March to 4 April, while indicating that progress had been made regarding both the "armed forces/foreign occupation (self-determination)" and "root causes" issues to be resolved, it has once again failed to achieve consensus on the key areas of the work.<sup>31</sup>

### (c) International human rights bodies and mechanisms

13. The issue of human rights and terrorism was a prominent feature of the fifty-ninth session of the Commission on Human Rights and, arguably, it is in this session that the shift from concerns about national security to concerns about anti-terrorism measures in both national and international affairs was clearly noticeable. A considerable number of non-governmental organizations submitted written statements addressing human rights and terrorism - with the majority of them containing unfavorable critiques of national measures that these NGO's consider to violate fundamental principles of human rights or humanitarian law. In the general

debates, concerns about anti-terrorism measures were not only raised by several NGO's, but also by a number of States and State officials who addressed the Commission. Anti-terrorism actions and legislation was also a feature of certain of the statements or reports of working groups and rapporteurs of the Commission.<sup>32</sup>

14. The Secretary-General submitted the report requested by General Assembly resolution 57/219 of 18 December 2002, "Protecting human rights and fundamental freedoms while countering terrorism", to the Commission at its fifty-ninth session.<sup>33</sup> In this report, the Secretary-General indicated the many steps that the United Nations High Commissioner for Human Rights had taken to carry out the directives of resolution 57/219. Even before the directive of the General Assembly, the High Commissioner briefed the CTC, on 21 October 2002, and proposed that his Office continue to provide input regarding implementation of Security Council resolution 1373 (2001). The High Commissioner had stressed the importance of links with existing human rights mechanisms of the United Nations. In the Secretary-General's report, he indicated that the Office of the High Commissioner and the CTC were arranging reciprocal briefings between the Human Rights Committee and CTC in March and April 2003.<sup>34</sup>

15. In the same report, the Secretary-General also discussed the Policy Working Group on the United Nations and Terrorism which he had established in October 2001,<sup>35</sup> and in particular the sub-group on human rights. This subgroup, chaired by the Deputy High Commissioner for Human Rights, was tasked with developing background information and making recommendations regarding terrorism and human rights.<sup>36</sup> In the report of the full Policy Working Group to the General Assembly, the group proposed that the United Nations High Commissioner for Human Rights convene a consultation on the protection of human rights in the struggle against terrorism. It proposed that the United Nations Department of Public Information prepare and publish a digest of core jurisprudence of international and regional human rights bodies on this question. The Policy Working Group also recommended that the High Commissioner for Human Rights maintain his dialogue with the CTC, viewed as consistent with General Assembly resolution 57/219.<sup>37</sup>

16. On 23 April 2003, the Commission on Human Rights adopted resolution 2003/37 on "Human rights and terrorism". While the Commission has been adopting a resolution on terrorism and human rights for a number of years, growing awareness and concern for anti-terrorist measures was so widespread during the 2003 session of the Commission that the Commission managed without particular difficulty the adoption, without a vote, of a second "anti-terrorism" resolution focusing on the protection of human rights and fundamental freedoms while countering terrorism.<sup>38</sup> It is worth noting that during the 2002 Commission session, a similar draft resolution tabled by Mexico under the same title had to be withdrawn.

17. The resolution on "Protection of human rights and fundamental freedoms while countering terrorism" of the Commission, reaffirms "the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and the rule of law,"<sup>39</sup> affirms the duty of States to ensure that "any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law",<sup>40</sup> and seeks continued interaction between the High Commissioner for Human Rights and the Human Rights Committee with the CTC.<sup>41</sup> It also requests all relevant special procedures and mechanisms of the Commission as well as United Nations human rights treaty bodies to include in their work the protection of human rights in the context of measures to



combat terrorism,<sup>42</sup> and requests the High Commissioner for Human Rights to continue to examine the issue, taking into account reliable information from all sources, to continue to make general recommendations concerning the States' human rights obligations while countering terrorism, and to continue to provide assistance and advice to States and to relevant United Nations bodies on the issue.<sup>43</sup> It is worth recalling that the customary Commission resolution on Human rights and terrorism also expresses concern about counter-terrorist measures and invites the Office of the United Nations High Commissioner for Human Rights to respond to requests by governments for assistance regarding counter-terrorist measures and human rights.<sup>44</sup>

18. The Committee on the Elimination of Racial Discrimination continues to monitor the potentially discriminatory effects of counter-terrorism legislation and practices as indicated in its Statement on Racial Discrimination and Measures to Combat Terrorism, adopted on 8 March 2002, and presented by this Special Rapporteur in her second progress report.<sup>45</sup> Attention is further drawn to the Committee's Report on its sixtieth and sixty-first sessions, submitted to the fifty-seventh session of the General Assembly,<sup>46</sup> which contains its concluding observations regarding one case of asylum seekers after the 11 September 2001 events, and another case concerning the negative consequences of anti-terrorist legislation for ethnic and religious groups, migrants, asylum-seekers and refugees, in particular as a result of racial profiling.<sup>47</sup>

19. The Committee against Torture issued a statement on 22 November 2001 in which it reminded State parties of the non-derogable nature of most of the provisions of the Convention against Torture, such as Articles 2 (exceptional circumstances are no justification for torture), 15 (confessions under torture are not admissible evidence) and 16 (prohibiting cruel, inhuman and degrading treatment).<sup>48</sup> Its conclusions and recommendations, relating to the examination of a case in which anti-terrorist legislation allowing for the expulsion of foreigners suspected of terrorism under a procedure that was potentially infringing on the Convention,<sup>49</sup> and of a case in which, despite the manifest internal difficulties, compounded by "acts of terrorism" and security threats, the Committee reiterated that no exceptional circumstances whatsoever may be invoked as a justification of torture,<sup>50</sup> merit also to be underlined here.

20. The Human Rights Committee, in addition to interacting with the CTC, continues to review counter-terrorism measures as part of its evaluation of reports submitted to it by States under periodic review. The Special Rapporteur, in her second progress report, presented the Committee's new general comment on article 4 of the International Covenant on Civil and Political Rights and a broad overview of how the Committee has accommodated its work in light of Security Council resolution 1373 (2001).<sup>51</sup> Since then, the Committee has on many other occasions highlighted the effects of anti-terrorist measures on the enjoyment on human rights embodied in the Covenant. Thus, for example, on 26 July 2002 one country was questioned about various aspects of its anti-terrorism measures that the Committee felt they unduly encroach on obligations under the Covenant. That country was requested to ensure that the fear of terrorism does not become a source of abuse.<sup>52</sup> Also on 26 July 2002, another country was reminded that it was "under obligation to ensure that counter-terrorism measures taken under Security Council resolution 1373 (2001) are in full conformity with the Covenant."<sup>53</sup> On 7 August 2002, the Committee expressed its concern about the negative effects of one country's new anti-terrorism measures on asylum seekers suspected of terrorism, and stressed that country's obligation to strictly observe the principle of "*non-refoulement*".<sup>54</sup> On 28 November 2002, the Committee was concerned about another country's broad and general definition of terrorism in its national legislation and the possibility of infringement on several articles of the

Covenant. It also criticized the military courts and State security courts of that country for having jurisdiction over civilians.<sup>55</sup> On 3 April 2003, the Committee expressed concern over what it viewed as an overbroad definition of terrorism and of membership to a terrorist group under a State's criminal law.<sup>56</sup>

21. The Special Rapporteur considers that review of counter-terrorism measures by the Human Rights Committee is extremely valuable, as the process includes dialogue between States and the Committee and practical suggestions made by the Committee. The Committee also has much experience addressing many of the areas of greatest concern, especially relating to criminal justice. Even so, she is aware that the Committee can only review a small number of State reports each year. Further, the Committee's mandate is limited to the International Covenant on Civil and Political Rights, so issues relating to humanitarian and other human rights law could not be handled fully by the Committee.<sup>57</sup> Thus, the work of the Committee cannot possibly make up for a lack of thorough review of counter-terrorism measures from the point of view of compliance with human rights and humanitarian law. In any event, she considers continued interaction of the Committee with the CTC as particularly important.

22. A number of Special Rapporteurs and other independent experts of the Commission have also referred, within their specific mandates, to some important aspects of terrorism, and its devastating effects on human rights, as a result of the various policies, legislations and practices increasingly adopted by many States in the name of the fight against terrorism. For example, the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, in his interim report submitted to the fifty-seventh session of the General Assembly,<sup>58</sup> addressed his topic in the context of anti-terrorist measures, concluding *inter alia* that the right to *habeas corpus*, the right to have access to a lawyer within 24 hours from the time of arrest, and the right to inform a relative or friend about detention are the basic legal safeguards that should remain in any legislation relating to arrest and detention, including any type of anti-terrorist legislation, because they guarantee the access of persons in detention to the outside world and thus ensure their humane treatment.<sup>59</sup> The Special Representative of the Secretary-General on human rights defenders, in her second report to the Commission (E/CN.4/2002/106), also did not fail to express concern that the post-11 September 2001 climate and the global war on terrorism offer pretexts to infringe human rights and clamp down on human rights defenders.<sup>60</sup> In her latest report to the Commission (E/CN.4/2003/104) she notes the rapid expansion of measures described as "security" or "counter-terrorism", which can affect the work of human rights defenders or even target them, and observes that such measures are now also being adopted in States where fundamental human rights are largely guaranteed.<sup>61</sup> She recommends *inter alia* that counter-terrorism and security legislation must respect human rights standards, including the Declaration on human rights defenders, and draws attention to the usefulness of the OHCHR guidelines (E/CN.4/2002/18, annex) in this regard.<sup>62</sup>

23. Finally, attention should be drawn to a second joint statement by the Special rapporteurs/representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human rights,<sup>63</sup> issued after their meeting in Geneva from 23 to 27 June 2003. They express their alarm at the growing threats against human rights and voice 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. Drawing attention to the dangers inherent in the indiscriminate use of the term "terrorism" and the



resulting new categories of discrimination, they recall the non-derogability of certain rights. In addition, they 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, they strongly affirm that any measures taken by States to combat terrorism must be in accordance with their international human rights obligations, and express their determination to monitor and investigate developments in this area within their respective mandates.<sup>64</sup>

## 2. The Group of Eight (G8)

24. The Group of Eight (G8) held a summit in Evian, France from 2 - 3 June 2003 at which the issue of terrorism was discussed and a plan prepared called "Building International Political Will and Capacity to Combat Terrorism - a G8 Action Plan." (G8 Plan).<sup>65</sup> Pointing to a number of terrorist acts over the past year, the G8 Plan concedes that "remnants of Al Qaeda are scattered all over the world and still maintain a global network."<sup>66</sup> Because of the continuing threats of terrorism, the G8 stresses the need to build stronger international will and the need for enhanced counter-terrorism co-operation. Those countries with insufficient capacity to fight terrorism need to be provided with capacity-building assistance. The G8 Plan also stresses that capacity building should be developed in conjunction with efforts to "strengthen good governance, the rule of law, human rights and judicial reform, and to the analysis of factors which contribute to the emergence of terrorism."<sup>67</sup>

25. To carry out its plan, the G8 created a Counter-Terrorism Action Group (CTAG) to work in what appears to be a parallel fashion with the Security Council's Counter-Terrorism Committee. The first meeting of CTAG will be held before 15 July 2003, at which it will begin to analyze and prioritize capacity building needs. By its second meeting, to be held before 15 October 2003, CTAG expects to review requests for assistance. CTAG will prepare bi-annual reports on current and planned capacity building assistance, which it will share with the CTC. By the G8 Summit of 2004, CTAG will have expanded regional assistance through training centers, identifying the best training practices and counter-terrorism curricula. The G8 presidency will prepare an overall report on CTAG for the 2004 Summit.

## B. An update on the main activities and initiatives undertaken by regional and other organizations

### 1. The European Union

26. On 13 June 2002 the Council of the European Union formally adopted the European Union Framework Decision on combating terrorism that entered into force with its publication on 22 June in the Official Journal of the European Union.<sup>68</sup> According to the terms of the Framework Decision, Member States have until 31 December 2002 to comply with its terms.

27. On 31 July 2002, the Commission of the European Union submitted a document entitled "Proposal for a Council Decision on the financing of certain activities carried out by Europol in

connection with cooperation in the fight against terrorism."<sup>69</sup> In the Explanatory Memorandum the Commission indicates that the purpose of such a Council Decision is to create the legal basis by which these funds allocated in the European Union budget for Europol to take steps to set up an anti-terrorism control center and communications systems could be used. The Annex to the draft identifies the projects that will be financed: (1) European Bomb Date Network; (2) Communication Network for Special Intervention Units; (3) Operations Control Centre; and (4) Development of a common methodology for terrorism threat and risk assessment.

28. On 8 August 2002, the European Union submitted a supplemental report to the United Nations Security Council Counter-Terrorism Committee.<sup>70</sup> This report first indicates that the Seville European Council of 21-22 June 2002 "confirmed the inclusion of counter-terrorism clauses in agreements with third countries."<sup>71</sup> The report then describes proposals to consider co-operation and exchange of information with member States of the United Nations other than the United States and with specialized or regional organizations.

## 2. The Council of Europe

29. The Council of Europe carried out many activities relating to terrorism and human rights in the past year, and its leaders continue to speak out in defense of human rights. For example, Peter Schieder, the President of the Parliamentary Assembly, pointed out that "a war against terrorism which neglects human rights is perpetuating the threat."<sup>72</sup> Speaking at the 10<sup>th</sup> International Judicial Conference, Council of Europe Secretary-General Walter Schwimmer emphasized that "terrorism is an assault on human rights, democracy, and the rule of law. It must be defeated with utmost vigor, but not at any cost, certainly not at the cost of these values."<sup>73</sup>

30. Among a number of conferences and meeting organized around the theme of terrorism and human rights are a hearing on 14 May 2002 on "Questions concerning freedom of expression and information and the fight against terrorism" under the auspices of the Council's Steering Committee on Mass Media (CDMM), followed by a specialized conference on "Media, terrorism and anti-terrorist activities" on 25 November 2002 under the auspices of the Council's Media division. The Multi-disciplinary Group on International Action against Terrorism (GMT) submitted its 2002 report to the Committee of Ministers at its 6-7 November session in Strasbourg, in which it underscored the need to strengthen human rights.

31. On 15 July 2002, the Council of Europe published the first international guidelines on human rights and anti-terrorism measures (Guidelines)<sup>74</sup> as mandated by the Steering Committee for Human Rights with an aim to safeguard human rights and fundamental democratic principles at all times.<sup>75</sup> The "Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism" were adopted by the Deputies of the Ministers of Foreign Affairs of the Council at its 804<sup>th</sup> meeting, on 11 July 2002.<sup>76</sup> The Guidelines elaborate on the limitations to derogations from human rights allowed in international human rights instruments in times of national emergencies.<sup>77</sup> They open by reaffirming the obligation on States to protect everyone against terrorism, and reiterate the obligation to avoid arbitrariness, the requirement that all measures taken by States to combat terrorism must be lawful, and the absolute prohibition of torture. They also set out a framework which particularly concerns the collecting and processing of personal data and for measures which interfere with privacy, arrest, police custody and pretrial detention, legal proceedings, extradition, compensation of victims and some other issues also raised by the Special Rapporteur in her prior reports.<sup>78</sup>



32. The Council of Europe Office of the Commissioner for Human Rights has also taken up the topic of human rights and terrorism. On 30 May 2002 Commissioner Alvaro Gil-Robles issued a recommendation regarding house-to-house searches in pursuit of alleged terrorists, concerned that such practices can result in numerous violations of human rights.<sup>79</sup> On 28 August 2002, the Commissioner issued an opinion regarding the obligation that a permissible derogation must be reviewed periodically, and that in the situation investigated, waiting 5 years for a review was too long.<sup>80</sup> The same opinion also found that prolonged indefinite detention of non-nationals would violate human rights relating to detention. In a statement made on 24 May 2002 to the European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Commissioner expressed anxiety over curtailment of human rights due to anti-terrorist measures, emphasizing that "renunciation of human rights . . . would itself mean handing a victory to the terrorists."<sup>81</sup>

33. On 9 January 2003 the Parliamentary Assembly submitted to the Committee of Ministers the draft protocol amending the European Convention on the Suppression of Terrorism<sup>82</sup> and a report expressing some concerns with the text. The report discusses concerns over Article 13 relating to reservations, urges the need to wait for a report of the European Committee on Crime Problems prior to finalizing the text, and a desire to broaden the definition of terrorist acts to include preparatory acts as well as acts against property or material resources. An amended text was adopted by the Committee of Ministers on 13 February 2003. The first session of the Committee of Experts on Special Investigation Techniques in relation to Acts of Terrorism, authorized by the Protocol, was held from 14-16 April 2003.

### 3. The Organization for Security and Co-operation in Europe

34. The Organization for Security and Co-operation in Europe (OSCE) continues to engage in many activities relating to human rights and terrorism. In April, 2002, Gerald Stoudmann, then the director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) issued a statement on "Protecting Human Rights in the Fight Against Terrorism",<sup>83</sup> in which he argued that the protection of democracy and human rights must be an "integral part of the fights against terrorism, and not an obstacle to it." He stressed that in the ODIHR action plan, there is a focus on addressing root causes of terrorism by addressing religious intolerance, multi-culturalism, communication between governments and civil society, and training in judicial and law enforcement fields.

35. In May 2002, the OSCE held an experts session in Almaty, Kazakhstan on measures to combat drug trafficking and terrorism in Central Asia. Also in May 2002, the Forum for Security Co-operation (FSC) held an experts meeting in Vienna.<sup>84</sup> From 3 - 5 June 2002, the ODIHR held a conference jointly with the International Office for Migration (OIM) on migration and terrorism, with a particular focus on the member States of the Commonwealth of Independent States. On 12 June 2002, in Lisbon, the OSCE co-hosted, with the Council of Europe, a High Level Experts Meeting on the Prevention and Combat of Terrorism. The Conclusions of that meeting provide a brief summary of initiatives undertaken by a number of European regional organizations present at the meeting and emphasize the need fully to comply with all international and regional norms of human rights and humanitarian law.

36. From 6 to 10 July 2002, the 11<sup>th</sup> OSCE Parliamentary Assembly Annual Session met, with its theme being "Confronting Terrorism: a global challenge in the 21<sup>st</sup> century." The document issued from that assembly, called the Berlin Declaration,<sup>85</sup> contains a very lengthy and detailed section on terrorism, in the framework of which it sets the issue of combating terrorism within the ambit of the rule of law, human rights and political participation. Of key interest is Chapter III: Democracy, Human Rights and Humanitarian Questions. Paragraph 79 condemns State terrorism; paragraph 80 requires full compliance with humanitarian law in any armed conflict or action to suppress terrorism; paragraph 83 rejects any suppression of human rights and civil liberties in the fight against terrorism. The Declaration also has many paragraphs discussing root causes of terrorism, and the need for the full realization of human rights to effectively suppress terrorism. Particular emphasis is placed on the role of poverty as a root cause. Finally, the Berlin Declaration endorses the proposal to elaborate a Charter on Terrorism within the OSCE.

37. From 10 to 11 October 2002, the ODIHR held a conference in Baku on religious freedom and combating terrorism. The Baku conference stressed the important role religions and beliefs can play in preventing terrorism and conflict. It called on States to ensure religious freedom, and to direct measures to combat terrorism to the individual perpetrators of terrorist acts only and not against the national, ethnic or religious community to which they belong. The conference rejected any attempt to justify terrorism and extremism on any political, religious, economic and social grounds and warned that "just as religion may wrongly be used to justify terrorism, so can 'anti-terrorism' actions of governments wrongly be used to justify actions that undermine human rights and freedom of religion or belief".<sup>86</sup> In January 2003, the ODIHR began planning for a conference, currently scheduled for September 2003, on preventing and combating terrorism, specifically to benefit civil society and States with limited experience in combating terrorism. In March 2003 Christian Strohal (Austria) was named the new director of the ODIHR. On 30 April, the ODIHR and the OSCE office in Baku held a conference on the need to respect human rights in the fight against terrorism. The ODIHR currently seeks funding to initiate OSCE-wide monitoring and analysis of anti-terrorism measures.

38. On 7 December 2002, the Ministerial Council, at its tenth meeting in Porto, adopted the OSCE Charter on Preventing and Combating Terrorism.<sup>87</sup> By the terms of the Charter, the OSCE undertook to "implement effective and resolute measures against terrorism and to conduct all counter-terrorism measures and co-operation in accordance with the rule of law, the United Nations Charter and the relevant provisions of international law, international standards of human rights and, where applicable, international humanitarian law." The Charter also strongly emphasizes preventative measures aimed at root causes of terrorism, presenting the essential role of civil society in governance, in relation to democratic principles and human rights.<sup>88</sup> It further condemns hate speech, and stresses the need for arms control, disarmament and non-proliferation as being "indispensable" in the context of combating terrorism.<sup>89</sup>

### 4. The Organization of American States

39. Immediately following the adoption of the Inter-American Convention Against Terrorism on 3 June 2002, discussed by the Special Rapporteur in her second progress report,<sup>90</sup> the General Assembly of the Organization of American States (OAS) adopted a resolution entitled "Human rights and terrorism."<sup>91</sup> In stressing that States may not renounce their duties to respect fully human rights, the OAS declared that the fight against terrorism "must be waged with full respect



for the law, human rights, and democratic institutions, so as to preserve the rule of law, freedoms, and democratic values in the Hemisphere.<sup>92</sup>

40. The OAS Inter-American Committee Against Terrorism (CICTE) held its third regular session from 22 to 24 January 2003, in San Salvador. On 24 January 2003, CICTE adopted the Declaration of San Salvador on Strengthening Cooperation in the Fight Against Terrorism,<sup>93</sup> in which the Committee expressed concern about the links between terrorist groups and groups involved in transnational organized crime, and that terrorist groups use the methods of organized crime to finance their operations. The Declaration includes CICTE's conviction that the fight against terrorism and cooperation in this respect must be carried out with full respect for the personality, sovereignty, and independence of member States, the rule of law, human rights, and fundamental freedoms, in compliance with their obligations under international law, in particular international human rights law, the international law of refugees, and international humanitarian law.<sup>94</sup> CICTE sent reports and representation to the Counter-Terrorism Committee of the United Nations Security Council as required under Security Council resolution 1373 (2001).

41. Following the submission by a number of States regarding acts of terrorism in Colombia to the Permanent Council,<sup>95</sup> the Permanent Council adopted a resolution condemning these acts.<sup>96</sup>

42. On 12 December 2001, the Inter-American Commission on Human Rights adopted a resolution on human rights and terrorism,<sup>97</sup> in which the Commission acknowledged that "terrorist attacks have prompted vigorous debate over the adoption of anti-terrorist initiatives that include, inter alia, military commissions and other measures." On this point, the Commission specifically states that

According to the doctrine of the IACHR, military courts may not try civilians, except when no civilian courts exist or where trial by such courts is materially impossible. Even under such circumstances, the IACHR has pointed out that the trial must respect the minimum guarantees established under international law, which include non-discrimination between citizens and others who find themselves under the jurisdiction of a State, an impartial judge, the right to be assisted by freely-chosen counsel, and access by defendants to evidence brought against them together with the opportunity to contest it.<sup>98</sup>

In this resolution the Commission also announced that it would prepare a report on terrorism and human rights, to be completed by the end of 2002.

43. On 22 October 2002, the Inter-American Commission on Human Rights issued its report on "Human Rights and Terrorism",<sup>99</sup> "in the hope that it will assist . . . in ensuring that anti-terrorism initiatives comply fully with fundamental human rights and freedoms and thereby achieve one of the crucial components for a successful campaign against terrorist violence."

### 5. The Organization of the Islamic Conference

44. The Organization of the Islamic Conference (OIC) held its twenty-ninth session of the Islamic Conference of Foreign Ministers in Khartoum from 25-27 June 2002. In its resolution on legal affairs,<sup>100</sup> the Foreign Ministers, as in the past, stressed the need for international consensus

on combating terrorism, including State terrorism and the need to address the real causes of terrorism. The OIC, further, reinforced its call for specific and agreed upon standards to distinguish terrorism from struggles for national liberation from alien, colonial or foreign occupation, pointing to attempts to obliterate the distinction as counter to the United Nations and OIC charters. The Foreign Ministers also denounced any use or threat of use of force against any Islamic State under the pretext of combating terrorism, and denounced the term "axis of evil" used by a government as a "form of political and psychological terrorism." The Foreign Ministers also welcomed the establishment of the OIC's open-ended Ministerial-level OIC Committee on International Terrorism, as authorized by the Kuala Lumpur Declaration on International Terrorism.<sup>101</sup> The Foreign Ministers requested the Secretary-General to establish an open-ended Committee of Governmental Experts on International Terrorism with a mandate to follow up on this and related initiatives of the OIC.

45. In his speech to the Foreign Ministers, the president of the host-country Sudan stressed the responsibility of the OIC in the post-11 September 2001 world, and underscored the existence of "shaky international relations" and international imbalance that goes beyond the need to control the world's dwindling resources.<sup>102</sup>

### 6. Other organizations<sup>103</sup>

46. The Commonwealth of Independent States (CIS) continues its anti-terrorism efforts through its "Program of the CIS member states for combating international terrorism and other manifestations of extremism until 2003" (Program), initially adopted in June 2000. Part of the purpose of the Program is to co-ordinate treaty obligations relating to terrorism within the framework of the United Nations and the Council of Europe. Under the terms of the Program, the CIS established the Anti-terrorist Center, functioning since December 2000. From 15 to 19 April 2002, the Anti-terrorist Center, in conjunction with law enforcement bodies of CIS member States, held a training exercise called "South-Anti-terror - 2002", which took place in Kyrgyzstan, Kazakhstan and Tajikistan. The CIS is also adopting measures to facilitate cross boundary operations.<sup>104</sup> Due to the special concerns about the possible involvement of terrorist groups and cross border smuggling of drugs, weapons in the southern regions, the 7 October 2002 CIS meeting of the Heads of State established an office of the Anti-terrorist Center in the Central-Asian region. From 27 to 28 March 2003, the Inter-Parliamentary Assembly of the CIS, in conjunction with the Parliamentary Assembly of the Council of Europe, sponsored an international conference in St. Petersburg on combating terrorism.

47. The African Union (AU)<sup>105</sup> issued a statement condemning the 28 November 2002 attack at the Paradise Hotel in Mombasa, Kenya, as well as the failed missile attack against civilian aircraft in Kenyan airspace. On 6 December 2002 the OAU Convention on the Prevention and Combating of Terrorism<sup>106</sup> entered into force with the deposit, by Ghana, of the 15<sup>th</sup> ratification. An Additional protocol to this Convention establishing a "Mechanism for combating terrorism" has been drafted by Senegal and examined at the High-Level Intergovernmental Meeting on the Prevention and Combating of Terrorism in Africa, held in September 2002 in Algiers. As of the 6 January 2003 ratification of Mozambique, 18 African States are parties to the Convention.

48. From 30 - 31 October 2002, in Vienna, there was an international colloquy called "Anti-terrorist Measures and Human Rights," organized by the Marangopoulos Foundation for Human Rights, the European Training and Research Center for Human Rights and Democracy, and the



Vienna Diplomatic Academy, with the participation of the President of the Council of Europe Parliamentary Assembly, the Secretary-General of the Council of Europe, and representatives of the Steering Committee for Human Rights of the Council of Europe.

49. The European Ministers of Justice plan a session for 8 - 9 October, in Sofia, with the theme of the fight against terrorism.

<sup>1</sup> See E/CN.4/Sub.2/2002/31, paras. 17-18.

<sup>2</sup> The CTC has a website at <http://www.un.org/Docs/sc/committees/1373>.

<sup>3</sup> See UN Press Release SG/SM/8417, SC/7523 of 4 October 2002.

<sup>4</sup> Ibid.

<sup>5</sup> See Security Council, 4618<sup>th</sup> meeting, 4 October 2002, S/PV.4618, Provisional, at p. 24.

<sup>6</sup> Security Council, 4618<sup>th</sup> meeting, 8 October 2002, S/PV.4618 (Resumption 2), Provisional, at p. 18.

<sup>7</sup> See Security Council, 4619<sup>th</sup> meeting, 8 October 2002, S/PV.4619, Provisional, p. 2.

<sup>8</sup> See Annex to Security Council resolution 1456 (2003) of 20 January 2003, preamble and operative para. 6, UN doc. S/RES/1456 (2003).

<sup>9</sup> Ibid., para. 12.

<sup>10</sup> See Report of the Secretary-General submitted pursuant to resolution 1456 (2003), UN doc. S/2003/191, at p.2.

<sup>11</sup> The special meeting was an initiative of the ministerial meeting of the Security Council of 20 January 2003 and was attended by over 50 international, regional and subregional organizations. For provisional summary records of the meeting, see UN docs. S/AC.40/SR.57 and S/AC.40/SR.57/Add. 1.

<sup>12</sup> The International Bar Association was also present, although there is no indication whether its representatives had any specific training or focus on human rights concerns.

<sup>13</sup> This may be explained because many of the regional organizations have placed an increasingly heavy emphasis on human rights obligations in the context of anti-terrorism measures. There is no similar explanation for the absence of concern over human rights in the

<sup>14</sup> S/AC.40/SR.57, para. 1.

<sup>15</sup> Ibid., p.2.

<sup>16</sup> See Press Release SC/7718 of 4 April 2003.

<sup>17</sup> Ibid., p. 4.

<sup>18</sup> Ibid., p. 15.

<sup>19</sup> Ibid., p. 7.

<sup>20</sup> Ibid., pp. 4-5.

<sup>21</sup> See A/RES/57/219, preambular para. 10.

<sup>22</sup> Ibid., para. 1.

<sup>23</sup> Ibid., para. 3.

<sup>24</sup> Ibid., para. 4.

<sup>25</sup> The Ad Hoc Committee was established by General Assembly resolution 51/210 of 17 December 1996.

<sup>26</sup> See A/RES/56/88 of 12 December 2001, paras. 16 and 17.

<sup>27</sup> See Report of the Ad Hoc Committee established by General Assembly Resolution 51/210 of 17 December 1996, Sixth session (28 January-February 2002), GAOR Fifty-seventh session, Supplement No. 37 (A/57/37).

<sup>28</sup> Ibid., p. 2.

<sup>29</sup> See, for instance, article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 33 of the 1951 Convention relating to the Status of Refugees.

<sup>30</sup> See the Report of the Working Group in UN doc. A/C.6/57/L.9, under Agenda item 160 on Measures to eliminate international terrorism.

<sup>31</sup> See UN Press releases L/3028 of 31 March 2003 and L3030 of 4 April 2003.

<sup>32</sup> For example, of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and of the Special Rapporteur on the Independence of Judges and Lawyers.

<sup>33</sup> UN doc. E/CN.4/2003/120 of 20 March 2003.

<sup>34</sup> Ibid., para. 6.

<sup>35</sup> The group, comprised of senior UN officials and outside experts, and chaired by the Under-Secretary-General for Political Affairs, was established with the purpose of identifying the policy dimensions of terrorism for the Organization and offer a series of recommendations on steps the Organization can take to further address the problem of terrorism. For the Report of the Policy Working Group on the United Nations and Terrorism, see UN doc. A/57/273 - S/2002/875, Annex.

<sup>36</sup> See Report of the Secretary-General on implementation of General Assembly resolution 57/219, UN doc. E/CN.4/2003/120, para. 7.



- <sup>37</sup> Ibid., para. 8.
- <sup>38</sup> See Commission on Human Rights resolution 2003/68 of 25 April 2003.
- <sup>39</sup> Ibid., preambular para. 2.
- <sup>40</sup> Ibid., para. 3.
- <sup>41</sup> Ibid., para. 4.
- <sup>42</sup> Ibid., para. 5. In para. 6, in countering terrorism States are encouraged to take into account the relevant United Nations resolutions and decisions on human rights, the recommendations of the special procedures and mechanisms of the Commission, as well as the comments and views of the human rights treaty bodies.
- <sup>43</sup> Ibid., para. 7.
- <sup>44</sup> See, for instance, Commission resolution 2003/37 of 25 April 2003, para. 10.
- <sup>45</sup> E/CN.4/Sub.2/2002/35, para. 56.
- <sup>46</sup> See GAOR, Fifty-seventh Session, Supplement No.18 (A/57/18).
- <sup>47</sup> Ibid., paras. 412-434 (in particular para.429) and paras. 315-343 (in particular para. 338) respectively.
- <sup>48</sup> CAT/C/XXVII/Misc.7.
- <sup>49</sup> See CAT/C/CR/28/6 of 6 June 2002, para.6 (b).
- <sup>50</sup> See CAT/C/CR/28/4 of 28 May 2002, para. 4.
- <sup>51</sup> See E/CN.4/Sub.2/2003/35, paras. 51-55.
- <sup>52</sup> See CCPR/CO/75/YEM of 26 July 2002.
- <sup>53</sup> See CCPR/CO/75/MDA of 26 July 2002, para. 8.
- <sup>54</sup> See CCPR/CO/75/NZL of 7 August 2002.
- <sup>55</sup> See CCPR/CO/76/EGY of 28 November 2002.
- <sup>56</sup> See CCPR/CO/77/EST of 3 April 2003.
- <sup>57</sup> In this light, see also the briefing by Sir Nigel Rodley, Vice-Chairperson of the Human Rights Committee to the Security Council Counter-Terrorism Committee at UN Headquarters on 19 June 2003.
- <sup>58</sup> UN doc. A/57/173 of 2 July 2002.
- <sup>59</sup> Ibid., p.4 ff.
- <sup>60</sup> See UN doc. E/CN.4/2002/106 of 27 February 2002, paras. 96-106.
- <sup>61</sup> See UN doc. E/CN.4/2003/104 of 3 January 2003, paras. 19-20.
- <sup>62</sup> Ibid., para. 89.
- <sup>63</sup> The first joint statement was issued on 10 December 2001, on the occasion of United Nations Human Rights Day and was subsequently included in annex IV of UN doc. E/CN.4/2002/75.
- <sup>64</sup> See UN Press release of 30 June 2003, entitled "UN rights experts 'alarmed' that anti-terror measures pose threat to liberties", available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/F1A1ADCFDCA24DEC1256D550031E966?op>.
- <sup>65</sup> Available at [www.g8.fr/evian](http://www.g8.fr/evian).
- <sup>66</sup> Ibid., para. 1.
- <sup>67</sup> Ibid., para. 2. The Special Rapporteur is pleased with this indication of the need to address also the root causes of terrorism, as a part of counter terrorist activities, and of course with the mention of the rule of law and human rights. She would have been happier with a more forthright statement in this document of the need to ensure that counter terrorist plans conform to international standards of human rights and humanitarian law.

- <sup>68</sup> Official Journal of the European Communities No.L 164/3 of 22 June 2002. The Special Rapporteur provided information about the Framework Decision in E/CN.4/Sub.2/2002/35, paras. 35-37.
- <sup>69</sup> Official Journal of the European Communities No. C 331 E/111 of 31 December 2002.
- <sup>70</sup> S/2002/928, annex and enclosure.
- <sup>71</sup> Ibid., p. 4.
- <sup>72</sup> Statement made on 27 March 2002, available on the Council of Europe's website, [www.coe.int](http://www.coe.int).
- <sup>73</sup> Statement made on 23 May 2002.
- <sup>74</sup> Council of Europe Publishing Co., ISBN 92-871-5021-4.
- <sup>75</sup> See E/CN.4/Sub.2/2002/35, para. 40.
- <sup>76</sup> The text is also available at: [http://www.coe.int/T/E/Communication\\_and\\_Research/Press/Theme\\_Files/Terrorism/CM\\_Guidelines\\_20020628.asp](http://www.coe.int/T/E/Communication_and_Research/Press/Theme_Files/Terrorism/CM_Guidelines_20020628.asp).
- <sup>77</sup> See, also E/CN.4/Sub.2/1982/15; General comment No. 29 on states of emergency (Art. 4) adopted by the Human Rights Committee on 24 July 2001 (CCPR/C/21/Rev.1/Add.11).
- <sup>78</sup> See also Council of Europe document H (2002) 4, Strasbourg, July 2002, for texts of references used for the preparation of the Guidelines.
- <sup>79</sup> CommDH/Rec (2002) 1, involving Chechnya.
- <sup>80</sup> CommDH (2002) 7, Opinion 1/2002, involving the United Kingdom.
- <sup>81</sup> From news statement on the website of the Council of Europe Office of the Commissioner for Human Rights.
- <sup>82</sup> Doc. 9649 of 9 January 2003.
- <sup>83</sup> Available at [www.osce.org/oidir/documents/newsletter/new02apr.php3](http://www.osce.org/oidir/documents/newsletter/new02apr.php3).
- <sup>84</sup> See FSC/DEC/6/02 of 20 March 2002 and FSC/JOUR/365 of 5 June 2002.
- <sup>85</sup> Information about this Assembly as well as the full text of the Berlin Declaration are posted on the OSCE website, [www.osce.org](http://www.osce.org), under events, 2002.
- <sup>86</sup> The conclusions and recommendations of the Baku Conference are available at: [http://www.osce.org/odhr/documents/freedom\\_of\\_religion/baku2002\\_concl.php3](http://www.osce.org/odhr/documents/freedom_of_religion/baku2002_concl.php3)
- <sup>87</sup> See OSCE/MC(10).JOUR/2, Annex 1 of 7 December 2002.
- <sup>88</sup> Ibid., para. 20.
- <sup>89</sup> Ibid., paras. 22 and 28 respectively.
- <sup>90</sup> E/CN.4/Sub.2/2002/35, paras. 46-47. For the text of the Inter-American Convention Against Terrorism, see OEA res. AG/RES. 1840 (XXXII-0/02) of 3 June 2002. On 2 December 2002 Canada became the first country to ratify it.
- <sup>91</sup> OEA res. AG/RES.1906 (XXXII-0/02) of 4 June 2002.
- <sup>92</sup> Ibid., op. para. 1.
- <sup>93</sup> OEA/Ser.L/X.2.3, CICTE/DEC.1/03 rev.2, 29 January 2003.
- <sup>94</sup> Ibid., op. para. 11.
- <sup>95</sup> Declaration of Panama, OEA/Ser.G/PC/INF. 4798/03 of 12 February 2003.
- <sup>96</sup> OEA/Ser.G/CP/RES.837 (1354/03) of 12 February 2003.
- <sup>97</sup> Text at [www.cidh.oas.org/res.terrorism.htm](http://www.cidh.oas.org/res.terrorism.htm).
- <sup>98</sup> Ibid.
- <sup>99</sup> OEA/Ser.L/V/II 116, Doc.5.rev.1 corr. available also at [www.cidh.oas.org/Terrorism](http://www.cidh.oas.org/Terrorism).
- <sup>100</sup> The full text of this and other resolutions of the session is available at: [www.oic-oci.org](http://www.oic-oci.org).
- <sup>101</sup> See E/CN.4/Sub.2/2002/35, p. 17.
- <sup>102</sup> The full statement is available at: [www.oic-oci.org](http://www.oic-oci.org).



<sup>103</sup> The Special Rapporteur has not included initiatives regarding the Association of South East Asian Nations (ASEAN), which is still working on a regional agreement to combat terrorism, as there is as yet no draft for a regional instrument, but expresses concern that earlier ASEAN documents regarding terrorism do not address human rights.

<sup>104</sup> See statement of D. Bulakhov, CIS Executive Committee, to the Lisbon High Level Conference on Preventing and Combating Terrorism, 12 June 2002, available at [www.cis.minsk.by/English/eng.-lisbon.htm](http://www.cis.minsk.by/English/eng.-lisbon.htm).

<sup>105</sup> In July 2002 the African Union(AU) replaced the Organization of African Unity (OAU). All conventions promulgated by the OAU are continued under the AU.

<sup>106</sup> The Convention was adopted in July 1999 in Algiers.

## <자료> 국제인권단체 '테러와의 전쟁과 인권'에 관한 공동 선언(2003.10.31)

### 인권과 반테러 문제에 관한 국제 감독 메커니즘의 필요성에 관한 공동 선언

이 문서에 서명한 우리 비정부기구들은

모든 국가가 인권과 기본적 자유의 존중과 보호, 그리고 향상을 보장해야 할 의무를 갖고 있음을 고려하고,

2002년 12월 18일의 유엔총회 결의 57/219호, 2003년의 유엔 안전보장이사회 결의 1456호와 2003년 4월 25일 유엔인권위원회 결의 2003/68호가 국가가 취한 어떠한 반테러조치도 국제법, 특히 국제인권법과 난민법, 인도법에 따른 의무에 부합하도록 해야 함을 확인하고 있음을 상기하며,

모든 국가가 반테러조치를 취할 수 있는 국제법상의 권리와 의무를 모두 갖고 있음을 유념하면서도, 각국이 그러한 조치를 취함에 있어 인권법과 국제인도법, 난민법, 법의 지배 원칙과 형법상의 원칙들로부터 파생되는 의무들을 비롯하여 국제법상의 다른 모든 의무들 또한 명백히 보유하고 있음을 확인하며,

어떠한 국가도 테러행위가 가진 사악한 성격과 극도의 위험성을 국제법상의 의무 위반을 정당화하는 명분으로 사용할 수 없으며, 반테러조치들 못지 않게 국제법상 의무를 파생시키는 기준들 역시 인간의 안전 보호를 목적으로 하고 있음을 강조하며,

테러와의 전쟁이라는 이름으로 많은 국가들이 인권법과 국제인도법, 난민법, 법의 지배 원칙과 형법상의 원칙들을 존중해야 할 국제적 의무에 명백히 배치되는 조치들을 채택 혹은 발표하고 있는 현실에 놀라움을 금치 못하며,

각국 정부에 의해 채택 혹은 구상되고 있는 특정한 반테러조치들, 그 중에서도 특히 사법심사 없는 행정명령에 따른 구금 조치; 장기간의 독방 감금; 강제불송환 원칙이나 망명에 관련된 원칙들을 위반하면서 고문당할 위험에 놓인 사람들을 이송, 송환, 인도, 입국 금지 또는 추방하는 조치; '테러리즘' 또는 '테러리스트 단체'의 개념을 포괄적으로 정의함으로써 법적 원칙들을 위반하고 기본적 자유를 행사하는 합법적 행위를 범죄시킬 수 있도록 하는 조치; 고문 또는 잔인하고 비인간적이거나 굴욕적인 처우와 처벌, 생명권에 대한 침해를 방지하기 위한 기본적 보호장치의 제거;



공정한 재판과 결사의 자유, 기본적 노동권, 망명권과 비차별의 원칙 등을 침해하는 조치의 채택이 인권과 기본적 자유를 침식해 왔거나 향후 침식할 수 있음을 깊이 우려하며,

수많은 특별절차 메커니즘을 통해 밝혀진 바와 같이, 특정 반테러조치들이 인권옹호자, 이주민, 난민신청인, 난민, 국가적·민족적·종교적·언어적 소수자들, 정치활동가들과 언론인들의 권리 향유에 미치고 있는 부정적 결과들에 대해서도 우려하며,

여러 유엔 인권조약 기구들과 유엔인권위원회의 특별절차 메커니즘이 반테러조치들이 인권에 미치는 영향을 감독하는 데 중요한 역할을 수행해 왔음에 고무되고, 특히 시민·정치적권리에 관한 국제규약 4조에 관한 자유권위원회(인권이사회)의 일반논평 29호; 조약상 당사국의 의무는 결코 유보될 수 없으며 어떠한 상황에서도 준수되어야 한다는 점을 상기시키고 있는 2001년 11월 22일 고문방지위원회의 성명서; 인종차별철폐위원회에 의해 채택된 인종차별과 반테러조치에 관한 성명서; 많은 나라에서 테러와의 전쟁이라는 이름으로 모든 인권의 실질적 향유에 부정적 영향을 미치는 정책과 법률, 조치들이 잇따라 채택되고 있는 현실에 심각한 우려를 표명하고 있는 2003년 6월 27일 특별보고관들의 공동성명서가 가진 중요성을 강조하며,

모든 국가가 각 인권조약의 당사국은 아니기에 인권조약에 대한 감독체계가 전세계를 포괄하지는 못하며, 조약기구의 활동이 보고서 제출 주기에 따라 제약을 받고 있어 시의적절한 감독을 하기 힘들며, 그리하여 일례로 자유권위원회(인권이사회)의 경우 일년에 기껏해야 15개국의 보고서만을 검토할 수 있을 뿐이라는 사실을 고려하며,

유엔인권위원회에 의해 권한을 위임받은 주제별 특별절차에 따른 감독도 그 임무의 성격이 제한적이고 특수화되어 있어 크게 제한당하고 있음을 또한 고려하며,

'인권 향상과 보호를 위한 소위원회'가 임명한 테러리즘과 인권에 관한 특별보고관의 보고서가 양자의 상호관계를 분석하는 데 기여하고 있다는 점과 소위원회가 결의 2003/15호에 따라 세부 기준을 정교화하기 위한 목적으로 국제인권기준과 반테러조치의 양립 가능성을 추가 연구하기로 했다는 점에 고무받으면서도, 현재 위임받은 임무와 권한이 제한돼 있는 소위원회가 특정 국가에 대한 감독을 수행할 수는 없다는 점에 대해서도 주목하며,

유엔총회 결의 57/219호와 유엔인권위원회 결의 2003/68호에 따라 인권고등판무관이 반테러조치를 취할 시 인권과 기본적 자유를 향상하고 보호해야 할 국가의 의무에 관한 일반 권고를 발표할 것을 요구받고 있음을 인식하고, 이와 관련하여 인권고등판무관실이 '안전보장이사회 결의 1373호 6항에 따른 보고서 제출을 위한 지침 및 세부지침'과 '대테러활동 시 인권 보호에 관한 유엔과 지역기구의 법체계 요람' 등 이미 취한 조치들을 환영하며,

인권과 반테러조치와 관련하여 지역적 차원에서 기울인 다양한 노력, 특히 유럽의회 각료위원회

의 '테러와의 전쟁에 관한 인권 가이드라인'과 미주인권위원회의 '테러리즘과 인권에 관한 보고서'에 대해 흡족하게 생각하나, 대다수 국가들과 관련해서는 어떠한 지역 감독 메커니즘도 활용할 수 없으며, 기존의 정부간 지역 인권체계들 내에는 각국의 반테러조치가 국제인권의무와 규범에 부합하는지를 지역적 차원에서 감독할 메커니즘이나 절차가 없다는 점을 심각하게 우려하며,

유엔 안전보장이사회의 반테러위원회가 지금까지 자신의 업무에 대한 인권적 분석을 수용하길 거부했고, 다양한 전문 자문진 가운데 한 명의 인권전문가조차 임명하지 않았으며, 유엔총회와 유엔인권위원회는 물론 다른 어떠한 유엔기관도 이 분야에서 각 회원국들이 취한 조치들을 검토할 수 있는 특정한 임무를 부여받은 인권 감독 메커니즘을 설치하지 않고 있다는 점에 실망하며,

각국이 취한 국내의 반테러조치들, 특히 2001년 유엔 안전보장이사회 결의 1373호의 이행과 관련된 조치들이 국제규범과 인권에 부합하는지를 감독할 수 있는 보편적이고 포괄적인 유엔 메커니즘이나 체계가 존재하지 않으며, 인권조약기구들과 유엔인권위원회의 특별절차 메커니즘에 따라 실행된 감독 내용에는 상당한 격차가 존재한다는 점을 깊이 우려하며,

1. 모든 유엔 회원국들이 채택하거나 구상하고 있는 국내 반테러조치들이 국제규범과 인권의무에 부합할 수 있도록 감독하고 지원할 유엔 메커니즘의 설치가 긴급하고 필수불가결함을 강하게 확신한다.
2. 2004년 60차 유엔인권위원회가 가장 우선적으로 인권과 반테러조치 문제에 관한 독립적 메커니즘을 설립할 것을 촉구한다.
3. 유엔인권위원회가 설립될 메커니즘에 각국의 대테러 활동이 국제인권의무에 부합하도록 감독하고 지원하는 임무를 부여할 것을 촉구한다.
4. 포괄적인 인권적 접근이 이루어질 수 있도록 보장하기 위해 그 메커니즘은 다음과 같아야 한다.
  - (a) 현장 방문(situ visits)을 실시할 권한을 가져야 한다.
  - (b) 유엔 안전보장이사회 결의 1373호를 이행하는 과정에서 각국이 인권적 의무를 보다 잘 이행할 수 있도록 지원하기 위해 유엔 안전보장이사회의 반테러위원회와 대화와 협력을 지속해 나가야 한다.
  - (c) 자유권위원회(인권이사회), 인종차별철폐위원회, 고문방지위원회, 아동권리위원회, 여성차별철폐위원회, 사회권위원회 등 모든 관련 조약기구들의 분석과 견해, 권고를 고려하며 연관지어 활동해야 한다.



(d) 유엔인권위원회와 인권위원회의 특별절차, 인권의 향상과 보호를 위한 소위원회를 비롯하여 유엔헌장에 기반을 두고 있는 모든 관련 기관들의 분석과 견해, 권고를 고려하며 연관지어 활동해야 한다.

(e) 인권과 인민의 권리에 관한 아프리카 위원회, 유럽의회, 유럽 고문방지위원회, 유럽인권재판소, 유럽연합의 기본적 권리에 관한 독립 전문가 네트워크, 미주인권위원회, 미주인권재판소, 유럽안보협력기구의 민주주의 인권 사무국 등 지역기구들의 분석과 견해, 권고 또한 고려하며 연관지어 활동해야 한다.

(f) 유엔인권고등판무관실과 활동을 조율해나가야 한다.

5. 지역의 정부간 기구들, 특히 아프리카연합, 아세안, 유럽의회, 유럽연합, 아랍연맹, 유럽안보협력기구, 미주기구, 이슬람회의기구 등 현재 반테러조치와 연관된 기구들은 각 회원국들이 채택하거나 구상하고 있는 반테러조치들이 국제인권법과 인도법에 부합할 수 있도록 하는 효과적 시스템을 개발하고 강화할 것을 촉구한다.

2003년 10월 31일

<초동 서명 단체>

- 국제 고문반대 비정부기구 연합 (The Coalition of International Non-Governmental Organizations Against Torture, CINAT)
- 국제앰네스티 (Amnesty International)
- 고문방지연합 (Association for the Prevention of Torture)
- 고문철폐를 위한 국제 크리스찬 행동 연맹 (International Federation of Action by Christians for the Abolition of Torture)
- 국제법률가위원회 (International Commission of Jurists)
- 고문 피해자를 위한 국제 재활회 (International Rehabilitation Council for Torture Victims)
- 구제: 고문생존자를 위한 배상추진기구 (Redress: Seeking reparation for Torture Survivors)
- 세계고문방지기구 (World Organization against Torture, OMCT)
- 국제인권연맹 (Federation Internationale des Ligues des Droits de l'Homme, FIDH)
- 인권감시 (Human Rights Watch)
- 국제인권서비스 (International Service for Human Rights)
- 세계퀘이커친우협의회 (Friends World Committee for Consultation, Quakers)

[번역: 배경내/이주영]



Quaker United Nations Office



JOINT DECLARATION ON THE NEED FOR AN INTERNATIONAL MECHANISM TO MONITOR HUMAN RIGHTS AND COUNTER-TERRORISM

FOUNDING SIGNATORIES:

- The Coalition of International Non-Governmental Organizations against Torture (CINAT):
- Amnesty International
- Association for the Prevention of Torture (APT)
- International Federation of Action by Christians for the Abolition of Torture (FIACAT)
- International Commission of Jurists
- International Rehabilitation Council for Torture Victims (IRCT)
- Redress: Seeking Reparation for Torture Survivors
- World Organization against Torture (OMCT)
- Fédération Internationale des Ligues des Droits de l'Homme (FIDH)
- Human Rights Watch
- International Service for Human Rights
- Friends World Committee for Consultation (Quakers)



The undersigned Non-Governmental Organisations,

*Considering* that all States have an obligation to ensure the respect, protection and promotion of human rights and fundamental freedoms;

*Recalling* UN General Assembly Resolution 57/219 of 18 December 2002, UN Security Council Resolution 1456 of 2003 and UN Commission on Human Rights Resolution 2003/68 of 25 April 2003, each of which affirm that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights law, refugee law and humanitarian law;

*Mindful* that every State has both the right and duty under international law to take measures to combat terrorism and *reaffirming* that in so doing States unequivocally retain all other obligations under international law, including those deriving from human rights law, international humanitarian law, refugee law and the principles of the Rule of Law and criminal law;

*Emphasising* that the odious nature and extreme gravity of acts of terrorism cannot serve as a justification for any State to breach its international law obligations and that the standards giving rise to these obligations, no less than counter-terrorism measures, are aimed towards protecting the security of the person;

*Profoundly alarmed* that in the name of fighting terrorism a number of States have adopted or announced measures that are clearly incompatible with international obligations in respect of human rights law, international humanitarian law and refugee law and the principles of the Rule of Law and criminal law;

*Gravely concerned* that human rights and fundamental freedoms have been or may be undermined by certain counter-terrorism measures adopted or contemplated, including, *inter alia*, the practices of administrative detention without judicial review; prolonged incommunicado detention; transfer, return, extradition, denial of entry, or expulsion of persons at risk of being subjected to torture in contravention of the principle of *non-refoulement* or asylum; the adoption of loose definitions of 'terrorism' or 'terrorist organisations', capable of resulting in breaches of the principle of legality and allowing for the criminalisation of legitimate acts in exercise of fundamental freedoms; the removal of basic safeguards to prevent torture or cruel, inhuman or degrading treatment or punishment and violations of the right to life; the adoption of measures which curtail the right to fair trial, freedom of association, basic labour rights, the right to asylum and the principle of non-discrimination.

*Concerned also* at the adverse consequences of certain counter terrorism measures for the enjoyment of rights of human rights defenders, migrants, asylum seekers, refugees, members of national or ethnic, religious and linguistic minorities, political activists and journalists, as highlighted by a number of special procedures mechanisms;

*Encouraged* that several UN human rights treaty bodies and Special Procedure mechanisms of the Commission on Human Rights have played a significant role in monitoring the impact of counter-terrorism measures on human rights and *underlining* in particular the importance of General Comment number 29 of the Human Rights Committee on article 4 of the International Covenant on Civil and Political Rights; the

statement adopted on 22 November 2001 by the Committee against Torture reminding States that the Convention obligations are non-derogable and must be observed in all circumstances; the statement on racial discrimination and measures to combat terrorism adopted by the Committee on the Elimination of Racial Discrimination; and the Joint Statement of Special Rapporteurs of 27 June 2003 expressing profound concern at the multiplication of policies, legislation and practices adopted by many countries in the name of the fight against terrorism which negatively affect the enjoyment of virtually all human rights;

*Taking into account* that the human rights treaty supervision system does not have universal scope, as not all States are party to the respective human rights treaties and the work of treaty bodies is restricted by a reporting cycle that precludes timely monitoring, so that the Human Rights Committee, for example, is able only to examine at most 15 reports in a year;

*Taking into account also* that monitoring by the thematic special procedures mandated by the Commission on Human Rights (CHR) is highly limited due to the circumscribed and particularised nature of each mandate;

*Encouraged by* the analytical contribution contained in the reports of the Special Rapporteur on terrorism and human rights of the Sub-Commission on the Promotion and Protection of Human Rights and the decision by the Sub-Commission in Resolution 2003/15 to further study the compatibility of counter-terrorism measures with international human rights standards with a view to elaborating detailed guidelines, but also *noting* that the Sub-Commission within the terms of its present mandate and capacities is not able to undertake country-specific monitoring;

*Recognising* that under both General Assembly Resolution 57/219 and Commission on Human Rights Resolution 2003/68 the Office of the High Commissioner on Human Rights is requested to make general recommendations concerning the obligation of States to promote and protect human rights and fundamental freedoms while taking action to counter terrorism and *welcoming* initiatives the Office has already taken in this regard, including the Guidance and Further Guidance for the submission of reports pursuant to paragraph 6 of Security Council Resolution 1373 and the Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights while Countering Terrorism;

*Noting with satisfaction* various regional efforts in respect of human rights and counter-terrorism measures, particularly the Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism and the Report on Terrorism and Human Rights of the Inter-American Commission on Human Rights; *greatly concerned*, however, that in respect of the great majority of States, no regional monitoring mechanisms are available and that existing intergovernmental regional human rights systems are not endowed with the mechanisms or procedures to supervise the compliance of national counter-terrorism measures with international human rights obligations and norms at the regional level;

*Acknowledging with disappointment* that the Counter-Terrorism Committee of the UN Security Council (CTC) has so far declined to accept the application of a human rights analysis to its work and has failed to appoint a human rights specialist among its various



expert advisers and that neither the General Assembly, the Commission on Human Rights nor any other United Nations organ has established any human rights monitoring mechanism with the specific mandate to review the measures undertaken by Member States in this field;

*Deeply concerned* that no universal and comprehensive UN mechanism or system exists to monitor the compatibility of domestic counter-terrorism measures with international norms and human rights, especially such measures related to the implementation of Security Council resolution 1373 of 2001, and that there exists a substantial gap in monitoring exercised by the human rights treaty bodies and Special Procedures mechanisms of the Human Rights Commission;

1. Express profound conviction as to the urgency and indispensability of the establishment of a UN mechanism to monitor and to help to ensure the compliance of domestic counter-terrorism measures adopted or contemplated by all UN Member States with international norms and human rights obligations.
2. Call upon the United Nations Commission on Human Rights, at its sixtieth session in 2004, to establish as a matter of utmost priority an independent mechanism on the question of human rights and counter-terrorism measures;
3. Request that the Commission mandate such a mechanism to monitor and help ensure the compliance of States with their international human rights obligations in their efforts toward countering terrorism;
4. Request that so as to ensure a comprehensive human rights approach, the mechanism should:
  - (a) have the capacity to undertake *in situ* visits;
  - (b) establish a dialogue and enhanced cooperation with the CTC with a view to assisting States to better meet their human rights obligations in implementing UN Security Council resolution 1373;
  - (c) engage with and take into account the observations and recommendations of all relevant treaty bodies, including the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee Against Torture, the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination Against Women, and the Committee on Economic, Social and Cultural Rights;
  - (d) engage with and take into account the analyses, observations and recommendations of all Relevant Charter-based organs, including the Commission on Human Rights and its Special Procedures mechanisms and the Sub-Commission for the Promotion and Protection of Human Rights;
  - (e) engage with and take into account also the analyses, observations and recommendations of regional institutions and mechanisms, including the African Commission on Human and Peoples Rights, the Council of Europe, the European Committee for the Prevention of Torture, the European Court of Human Rights, the European Union Network of Independent Experts in Fundamental Rights, the Inter-American Commission on Human Rights, the Inter-American Court of

Human Rights, and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe;

(f) Co-ordinate activities with the Office of the UN High Commissioner for Human Rights;

5. Call upon regional inter-governmental organisations, particularly those presently engaged in counter-terrorism efforts and including the African Union, the Association of South East Asian Nations, the Council of Europe, the European Union, the League of Arab States, the Organisation for Security and Cooperation in Europe, the Organisation of American States, and the Organisation of the Islamic Conference, to develop or strengthen effective systems to ensure that counter-terrorism measures adopted or contemplated in Member States are compatible with international human rights and humanitarian law.



14/11/2003



**Press Release**  
**GA/SHC/3766**

Fifty-eighth General Assembly  
Third Committee  
45<sup>th</sup> & 46<sup>th</sup> Meetings (AM & PM)

**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**

Respect for human rights must be integrated in counter-terrorism strategies, representatives today told the Third Committee (Social, Humanitarian and Cultural) as it continued its consideration of alternative approaches to the promotion of human rights and the report of the United Nations High Commissioner for Human Rights.

Representatives highlighted the need to strike a balance between the legitimate security concerns of States and the protection of human rights in accordance with international laws, as they voiced their concerns that human rights were being compromised in the fight against terrorism.

Respect for the rule of law and respect for all human rights — civil and political, economic, social and cultural — were necessary elements in the fight against terrorism on national and international levels, said the representative of Switzerland. In this context, it could be useful to promote cooperation between the Commission on Human Rights and the Security Council and for the General Assembly to encourage the Commission to appoint a Special Rapporteur on the respect for human rights within anti-terrorism measures.

Terrorism was itself a violation of human rights, said the representative of the Russian Federation, stressing the need to condemn and combat terrorism in all its forms and manifestations. Given the global nature of terrorism, he added, it must be tackled by the entire international community through a uniform approach.

The tragic attacks of September 2001 and subsequent events represented major reversals in the promotion and protection of human rights, said the representative of Pakistan. Terrorism violated human rights, and terrorism in all its forms and manifestations must be condemned, pre-empted and fought. However, he stressed, respect for human rights must remain an essential part of any counter-terrorism strategy.

The representative of Sudan said his delegation was particularly concerned about the profound impact of the September 11 events on human rights related to religious freedoms. Actions taken by some States to combat terrorism had threatened the civil liberties of individuals because of their religious beliefs. The impact on the rights of migrants to asylum was also of concern. His delegation called for continued dialogue and negotiations based on human rights considerations to reverse that trend.

The representative of Qatar, condemning terrorism in all its forms and manifestations, highlighted the need to distinguish between terrorism and the legitimate struggle for self-determination. Violating human rights when fighting terrorism was tantamount to helping terrorists win a battle they could not win on their own.

Speakers also stressed the intrinsic link between development and the enjoyment of human rights. Dignity and human well-being could not be protected in the face of grinding poverty, said the representative of India. He said his Government had consistently argued that national capacity building should be at the centre of the international community's efforts to promote human rights.

Fighting poverty was also about promoting human rights, said the representative of Norway. There was no dichotomy between development and human rights. An individual's quality of life depended on both political liberty and economic opportunity. Time and time again it had been seen that oppressive regimes did not foster sustainable development.

The representative of the Republic of Korea said she was encouraged by the growing interaction between human rights and development activities in the United Nations system. The interdependence of human rights, democracy and development was a lesson her country had learned through its own experience in socio-economic growth and democratization. Development devoid of advances for human rights and democracy could not be sustained.

Also addressing the Committee today were the representatives of Algeria, China, Australia, Mexico, New Zealand, Mali, Tunisia, Israel, Cuba, Jamaica, Lebanon, Liechtenstein, Nigeria, Burkina Faso, Serbia and Montenegro, Thailand, Mongolia and Eritrea.

The Observers of Palestine and the Holy See also spoke, as did the representatives of the Food and Agriculture Organization and the International Organization for Migration.

The representative of the Democratic People's Republic of Korea spoke in exercise of his right of reply.

The Committee will reconvene Monday, 17 November at 10 a.m., to continue its consideration of human rights questions, including alternative approaches to the promotion of human rights and fundamental freedoms and the report of the United Nations High Commissioner for Human Rights.

**Background**

The Third Committee (Social, Humanitarian, and Cultural) will continue its consideration of human rights questions, including alternative approaches for improving the effective enjoyment of human rights, and human rights situations.

Before the Committee is a report of the Secretary-General on the effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (document A/58/255), which states that the international community has focused increasing attention on the protection of minority rights. Problems faced by minorities, including the non-recognition of identities, social and economic inequality and exclusion from decision-making processes, are recognized as root causes of minority-related problems or conflicts. The Office of the United Nations High Commissioner for Human Rights and the Working Group on Minorities have been pursuing regional approaches on minority issues, strengthening international cooperation for the better protection of minority rights and enhancing international, regional and national systems of minority protection so as to reduce tensions and prevent conflict. The focus identified as central for that purpose, is the effective participation of minorities in public life and in social and economic development. The Office of the High Commissioner plans to continue building the capacity of civil society to work on minority issues at the national, subregional and regional levels, and to use the United Nations Guide for Minorities, as a basic training tool.

A report of the Secretary-General on the right to development (document A/58/276), responding to a General Assembly resolution 57/223 with the same name, which requested the Secretary-General to bring the resolution to the attention of Member States, United Nations and other international organs and bodies and non-governmental organizations. The report contains the replies received from Germany, Japan, Cuba, Guatemala, and Syria, as well as replies received from specialized agencies, United Nations departments, programmes and funds, and other international organizations. An addendum to the report (document A/58/276/Add.1) contains the replies received from Azerbaijan and Venezuela.



A report of the Secretary-General on human rights and unilateral coercive measures (A/59/279) responds to a General Assembly request to continue to collect the views of Member States and information on the implications and negative effects of unilateral coercive measures on their populations, and to submit an analytical report on the topic. The Secretary-General sent a note verbale to all permanent missions on 25 June 2003, however, to date no replies have been received.

A report of the Secretary-General on protection of human rights and fundamental freedoms while countering terrorism, (A/58/266), contains an overview of comments received from governments and international and non-governmental organizations, in response to a letter of the United Nations High Commissioner for Human Rights seeking views and information on the protection of human rights, while countering terrorism. It also provides a review of rights that have come under significant pressure worldwide as a result of counter-terrorism measures, including the rights to life and to freedom from torture, due process rights and the right to seek asylum.

The report concludes that while there is no doubt as to the legitimacy and urgency of the need for States to take resolute action against terrorism, human rights have come under significant pressures as a result of counter-terrorism measures. Respect for human rights should be seen as an essential part of an effective counter-terrorism strategy, not an impediment to it. States must consider availing themselves of the technical assistance available to help them in fully integrating human rights protections into measures taken against terrorism. Both the Office of the High Commissioner and regional organizations have notified the Counter-Terrorism Committee of the Security Council of their willingness to provide this kind of assistance.

The Committee also has before it a report of the Secretary-General on human rights and mass exoduses, (document A/58/186), which acknowledges the links between human rights and mass exoduses related to situations of displacement, facilitation of return and prevention. The report reviews the efforts of the various United Nations mechanisms and institutions, on behalf of persons affected by mass exoduses. It surveys the work of such humanitarian development organizations as the United Nations High Commissioner for Refugees, the World Food Programme, the United Nations Development Programme and the United Nations Children's Fund, among others.

The specific case of internally displaced persons is also addressed, particularly regarding the work of the Representative of the Secretary-General on internally displaced persons and the newly established internally displaced persons unit in the Office for the Coordination of Humanitarian Affairs. The report concludes that the second reform programme of the Secretary-General emphasizes human rights and, in particular, the need to build strong national mechanisms, capacities and institutions for the protection and promotion of human rights. The challenge for the United Nations today is to implement, effectively and efficiently, action plans that will assist States in making those proposals a reality.

A report of the Secretary-General on the progress of efforts to ensure the full recognition and enjoyment of the human rights of persons with disabilities (document A/58/181) focuses on the issue of procedural safeguards for persons with mental disabilities. It analyses briefly the key international human rights instruments relating to persons with mental disabilities, with a view to identifying the main substantive standards and procedural guarantees applicable regarding persons with intellectual and psychiatric disabilities. In particular, the report considers such issues as legal capacity, involuntary institutionalization and involuntary or forced treatment, and reviews the way in which these international standards are transposed into domestic legislation.

An addendum to the report (document A/58/181/Add.1) contains responses by Chile, El Salvador and India to a questionnaire by the Secretary-General on the human rights of persons with disabilities.

The Committee also has before it a report of the Secretary-General on strengthening the United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity (document A/58/185). The report states that the Secretary-General has invited Member States to present practical proposals and ideas that would contribute to the strengthening of relevant United Nations action, and it contains the reply of Libya on the matter. Two addendums to the report,

containing the replies of the Governments of the Russian Federation and Cuba (documents A/58/185/Add.1 and 2).

A report of the Secretary-General on strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization (document A/58/212) describes the work of the United Nations over the previous biennium in providing electoral assistance. It presents an analytical framework that describes the role that elections play in furthering a number of goals of the Organization, including conflict prevention, peace-building and development. Stressing the role of the focal point for electoral assistance activities, it describes how the various parts of the United Nations system work in close coordination to provide electoral assistance that is effective, prompt and consistent with the body of experience that has been built up over the previous decade.

The report also describes how electoral assistance is increasingly incorporated into major United Nations peacekeeping and peace-building missions, and notes the value of including electoral experts at political negotiations aimed at ending or preventing conflicts. Finally, the report signals that the United Nations electoral assistance mechanisms will need to be enhanced if they are to continue to provide effective and quality support in the face of steadily increasing demands for such support.

Also, there is a report of the Secretary-General on globalization and its impact on the full enjoyment of all human rights (document A/58/257). The report follows a request to the Secretary-General to seek the views of Member States and relevant United Nations agencies on globalization and its impact on human rights and to submit a substantive report on this subject to the General Assembly at its fifty-eighth session. It contains the response of the Government of Lebanon on the issue.

The Committee will review a report of the United Nations High Commissioner for Human Rights on human rights education and public information activities undertaken by various actors between December 2002 and July 2003 (document A/58/318). The report highlights advancements in the strengthening of national, regional and international programmes for human rights education. Included, is a summary of activities undertaken by governments, United Nations agencies and nongovernmental organizations in the field of human rights education.

The report calls on regional and international organizations and institutions to continue supporting national initiatives by facilitating the sharing of information by creating networks, training trainers and related activities. It urges governments to fulfil commitments made at the international level to develop national strategies for human rights education that are comprehensive and participatory.

There is also a note by the Secretary-General on the human rights situation of the Lebanese detainees in Israel, (A/58/218), which states that no reply has been received from Israel to the Secretary-General concerning the Economic and Social Council's endorsement of a decision of the Commission on Human Rights on this issue.

A report of the Office of the United Nations High Commissioner for Human Rights on the human rights situation in Sierra Leone (document A/58/379), which contains information on events through the beginning of August 2003. It says the human rights situation in Sierra Leone has improved significantly since the last report of the High Commissioner submitted to the General Assembly in February 2003.

The report notes that Government authority has been re-established nationwide; the judicial system and courts are being restored; and magistrate courts and police formations have almost reached the pre-war levels of deployment. All of those developments have contributed to a climate of increased respect for human rights. However, structural deficiencies linked to the recent history of abuses and violations have obstructed the emergence of a society based on the rule of law. This is most evident in the judicial system and must be urgently addressed.

Current human rights challenges in Sierra Leone include addressing impunity relating to past abuses and preventing ongoing violations, while building local capacities to protect and promote human rights, especially of vulnerable groups, such as children, refugees, women and migrants.



Progress in the overall peace process has led to arrangements for the gradual withdrawal of the United Nations Mission in Sierra Leone (UNAMSIL), currently scheduled for December 2004. Discussions are currently ongoing on the nature of the post-UNAMSIL residual United Nations presence in Sierra Leone. The report stresses the importance of retaining a core human rights component capable of monitoring the human rights situation, providing technical cooperation and assisting the building of national capacity in the area of human rights.

#### Statements on Human Rights

ABDALLAH BAALI (Algeria) said his Government adhered to the principle of universality of human rights. However, that recognition of universality did not mean that there was only one social or political model for the respect for human rights. Universality in human rights only meant something if, as stated in the Vienna Declaration, it was based on the recognition of cultural, historical and geographic diversity. Such universality must also be based on international norms and principles of international law, such as that of equality between sovereign States, non-interference in the internal affairs of another States, and the respect for other States' political, economic and social systems.

The report of the High Commissioner stated that terrorism was one of the major challenges before the international community, he said. Algeria agreed that terrorism had caused many deaths and had injured others, but it would have liked to see the report focus further attention on the link between human rights law and terrorism. Terrorism was a grave violation of human rights and fundamental freedoms, and Algeria had paid a heavy price concerning terrorism. The democratic transition process had now seen the establishment of elected pluralist institutions. Several political parties were now active, and many of these parties were represented within the National Assembly.

ZHANG YISHAN (China) said that in the past 10 years, guided by the Vienna Declaration and Programme of Action, the international community had made considerable progress and striking accomplishments, in promoting and protecting human rights. However, many problems still existed in the field of human rights, as conflicts, turmoil, and even armed conflict and bloodshed, still plagued the international community. Only when the international community established a new security concept with mutual trust, mutual benefit, equality and coordination at the core, would it be possible to ultimately prevent massive violations of human rights and meet mankind's aspirations for lasting peace and prosperity for all. He stressed that the legitimate concerns of the developing countries must be addressed.

Economic, social and cultural development was the key to the realization of human rights, as poverty and disease were the major obstacles to the enjoyment of those rights, he said. The international community, and the developed countries in particular, must, through effective international cooperation, help the developing countries overcome their real difficulties in the process of development so as to create conditions for the full realization of various human rights and fundamental freedoms. The correct approach to the issue of human rights was to strengthen exchanges of views and cooperation. The world was diversified, and it was quite natural that there were divergent views and differences on the issue on human rights. Only by way of dialogue and cooperation could human rights be promoted.

Over the last 20 years of China's reform and opening up to the outside world, the percentage of the Chinese living in poverty had fallen, and its 1.3 billion people, by and large, enjoyed a relatively decent living standard. China was actively improving its political democracy and legal system to ensure democratic elections, a democratic decision-making process, and democratic management. However, as was the case with other countries, there was still room for improvement in the promotion and protection of human rights in China. The Government would continue to do its utmost to further improve the human rights situation in China.

YVE KNOWLES (Australia) said her country was committed to working cooperatively with governments around the world to promote democracy, good governance and the rule of law, which were the necessary preconditions for the enjoyment of human rights. She urged all governments to strive to find ways to advance the human rights of their people. Australia was committed to assisting the Iraqi people to deal with the legacy of human rights abuses by Saddam Hussein's regime, and strongly encouraged the international community to actively support rehabilitation efforts in the interests of a secure, stable and prosperous Iraq.

She expressed Australia's concerns about the human rights situation in Myanmar, calling on the Myanmar Government to release Aung San Suu Kyi from house detention immediately, and to release all political prisoners. The uses of forced labour and child soldiers in Myanmar were of particular concern. She said Australia was also gravely concerned about the sustained human rights abuses occurring in Zimbabwe, and called on the Mugabe Government to begin genuine political dialogue with the opposition and to establish a framework for political reconciliation and economic recovery. The human rights situation in the Democratic People's Republic of Korea was also of concern.

She added that Australia supported efforts of Iran to promote the rule of law and to protect human rights in there. It also welcomed China's increasing willingness to acknowledge shortcomings in its human rights practices and its frank approach to their bilateral human rights dialogue. However, it was still greatly concerned about China's detentions and executions over the past year for political crimes or for the expression of dissenting views.

Australia welcomed the formation of the Transitional Government in the Democratic Republic of Congo and applauded the key role played by West African countries in negotiating the recent ceasefire in Liberia. She also welcomed a Nigerian state court decision in September to acquit Amina Lawal, who had been sentenced to death by stoning for adultery. Australia continued to be very concerned about the deplorable treatment of children by the Lord's Resistance Army (LRA) in northern Uganda and urged the LRA to immediately cease its child abductions. Her Government also urged the Ugandan Government to continue efforts to end the conflict.

P.M. TRIPATHI (India) said that as a signatory to both the principal Covenants on Human Rights and all other major human rights instruments, his country had consistently sought to promote human rights. India's constitution guaranteed all its citizens the full enjoyment of fundamental rights and freedoms, and an independent judiciary, a free press and a pluralistic society lay at the core of its democratic institutions. As the largest democracy, India reiterated its firm commitment to promote and protect human rights and fundamental freedoms.

He said the direct relationship between development and the enjoyment of human rights was undeniable, as was the relationship between freedom and human rights. But dignity and human well-being could not be protected in the face of grinding poverty. India had consistently argued that national capacity-building should be at the centre of the international community's efforts in the promotion of human rights.

India considered the growing intrusiveness in the functioning of the United Nations mechanisms in areas that fell within the purview of States, a matter of great concern. That trend could not be justified on the logic of national capacity-building. The threat to human rights structures came, as much from such intrusiveness, as it came from unchecked proliferation and duplication of mandates. His Government, therefore, welcomed the Secretary-General's reform agenda.

Turning to the fight against terrorism, he said terrorism violated the most fundamental of all human rights, namely the right to life, of the victims. Ensuring the security of their people was the first responsibility of all Governments. The challenge lay in striking the right balance between ending terrorism and adhering to international law and human rights standards.

PATRICIA OLAMENDI (Mexico) said that President Fox had taken a number of key steps to develop a national human rights policy based on the following pillars — accession to international instruments for the protection of human rights, openness to scrutiny and international cooperation, and a willingness to respect the recommendations of the competent human rights bodies. Among concrete actions taken were the establishment of the Governmental Commission on Human Rights Policy and human rights units in the vast majority of federal Government offices; the entering into force of a federal law to prevent and eliminate discrimination; and the establishment of a Special Prosecutor Office for the investigation of crimes of the past.

Another area in which significant progress had been made was in the implementation of various cooperation programmes, she said. The Programme of Technical Cooperation between Mexico and the Office of the High Commissioner for Human Rights was in the second phase of



its implementation, and a survey of the human rights situation in Mexico, prepared by the Office of the High Commissioner, would be presented in the near future. In addition, negotiations on a cooperation agreement with the European Commission had concluded, and this would help to strengthen the mechanisms for negotiation and dialogue between the Government and civil society organizations.

In recent years, Mexico had launched major initiatives that had gained the consensus and support of States committed to human rights, in all regions of the world, she said. Issues such as human rights, in the fight against terrorism, the human rights of migrants, the rights of women, or the status of persons with disabilities and of indigenous peoples, were of particular importance and required the full attention of the international community.

She reiterated her Government's concern at the continuation of policies and practices that affected the human rights of migrants in various parts of the world. The universal force of human rights did not allow for double standards. The international community could not turn its back on the more than 150 million people living outside of their countries of origin.

DON MACKAY (New Zealand) saluted the courage of all defenders of human rights — especially those in countries that chose to ignore international standards. The freedom of expression, included unfettered media freedom, was indeed a fundamental human right. He raised concern about the human rights situation in Zimbabwe and attempts of the Government to exert influence over the distribution of humanitarian aid by international relief organizations. New Zealand also urged the Government of Nigeria to strengthen its judicial institutions at all levels and to abolish capital punishment. Within Sudan's transition to democracy, New Zealand called on the Government to comply with its obligations under international human rights instruments.

He expressed concern at the innocent people dying on both sides of the Israeli and Palestinian conflict and urged both sides to refrain from violence, to identify those responsible for human rights violations and bring them to justice, and to observe fully international human rights standards. The Palestinian Authority must reject violence, and Israel needed to desist from imposing obstacles to reconciliation, notably the security wall around the West Bank. The Government of Iran was urged to ensure fair administration of justice, freedom of expression and association, and the safety of minorities. The Afghan Transitional Authority and the Afghan Human Rights Commission were encouraged to continue to address the intimidation and violence against political and civil society activists, and the issue of women's rights.

New Zealand urged the Government of Myanmar to heed the voice of the international community, and the Government of the Democratic People's Republic of Korea to respect its international obligations and to allow access to independent human rights observers. He welcomed the continued improvement in the socio-economic conditions in China, but regretted that the visit of the Special Rapporteur for Torture had again been delayed. New Zealand also continued to urge China to expand dialogue with the Dalai Lama and to bring about a greater participation by the Tibetan people in decisions regarding their development.

He said New Zealand had been disappointed with the outcome of the East Timor Ad Hoc Human Rights Tribunals in Indonesia and hoped that the appeals process would be consistent with international legal standards. Finally, he continued to be disturbed by reports of human rights abuses in Chechnya and Ingushetia committed by both parties to the conflict.

ISSA KONFOUROU (Mali) said one of his Government's primary concerns was to preserve the dignity and equality of citizens before the law, with no distinctions as to race, religion, or gender. To back the establishment of democracy, it had strengthened its mechanisms and created institutions charged especially with promoting and protecting human rights.

Mali recognized and guaranteed fundamental public freedoms, especially the freedom of opinion, freedom of the press, freedom of association, religious freedom and the right to vote. His country had more than 30 private newspapers and more than 150 independent radio channels.

He stressed that the effective implementation of international human rights instruments hinged on stronger regional and international cooperation in the efforts to combat human rights

violations. Mali was committed and ready to make its contributions to that end.

ALI HACHANI (Tunisia) said the continued violations of human rights of people under foreign occupation were a concern for the Government of Tunisia. The magnitude and the systematic nature of the imposed suffering of the Palestinian people required the concerted action of the international community. Similarly, the suffering of those living in abject poverty was a concern to his Government. Concerted and coordinated action was needed by the international community to eradicate poverty and ensure the promotion and respect of human rights. When working towards the realization of human rights, it was important to remember that no right took precedence over others and that civil and political, and economic, social and cultural were equally important.

Concerning human rights education, he said that such initiatives played a significant role in bringing forward a culture of human rights promotion. In this connection, he paid tribute to the mechanisms and special procedures of the Commission on Human Rights, particularly the important work of the Special Rapporteur on the freedom of religion. Within Tunisia, reforms had been undertaken that strengthened the freedom of expression. Activities had also been undertaken in the fields of education, health, habitat and in combating poverty and exclusion.

ELFATHI MOHAMED AHMED ERWA (Sudan) said his country had a profound interest in the universality of human rights, and the international community was duty-bound to follow the situation of human rights everywhere. His delegation had sought to avoid politicizing human rights and applying double standards in discussions about human rights. His Government hoped a just way of settling problems within his country would be found, as war had produced the most serious violations of human rights — a logical outgrowth of armed conflict. There had been major progress in peace negotiations between his Government and the liberation movement in the South, and his Government hoped steps would be taken in the right direction toward peace and the advancement of human rights.

He stressed that human rights were the pillar for attaining United Nations objectives around the world and in the fight against terror and poverty. Sudan reaffirmed the importance of restoring a proper balance between the enjoyment of human rights for all individuals and legitimate security concerns, while respecting principles of international law.

Addressing his delegation's concerns about freedom of religion and creed, he said the events of September 11 had a profound impact on human rights, particularly in connection with religious beliefs. Actions had been taken to combat terrorism that had also threatened civil liberties, such as the right of migrants to asylum and the protection of human rights. He stressed the need for dialogue and negotiations based on human rights considerations and concerns for fundamental freedoms.

Protecting the right to development required a recognition that food must not be used as a political weapon, he said, that as the right to food was indeed a fundamental right. Too many people were suffering from hunger and malnutrition, and the numbers had risen dramatically in recent years. He noted that more than 33 per cent of African children suffered from malnutrition. Hunger should not be inevitable in a world where more than enough food was being produced.

KJERSTI RODSMOEN (Norway) said it was of great concern that in the name of the fight against terrorism, many countries were adopting policies, laws and practices that were having negative effects on the enjoyment of human rights. Countries had the right and duty to protect themselves from terrorist acts, but the fight against terrorism must take place within the boundaries of international human rights and humanitarian law.

She stressed that fighting poverty was also about promoting human rights and there was no dichotomy between development and human rights. Quality of life depended on both political liberty and economic opportunity. Access to health care and education was essential in realizing the right to physical integrity and freedom of expression. Empowered individuals were powerful agents of development. Time and time again it had been seen that oppressive regimes did not foster sustainable development.

She noted the reports of Special Rapporteurs, in which it was demonstrated that it was in times of conflict and disturbance that human rights violations were most likely to occur.



Addressing human rights issues must therefore be an essential part of all conflict resolutions and peace-building efforts. The necessity for confidence-building measures, for human rights education and support in the process of building societies based on human rights and the rule of law could not be emphasized enough.

Mr. RODUIT (Switzerland) expressed concern about the polarization and politicization present within the Commission on Human Rights and said that such attitudes threatened its credibility and authority. Switzerland was therefore actively involved in the reform of the Commission's working methods in order to ensure its objectivity and transparency in addressing human rights issues. He suggested that focus be put on geographical and thematic resolutions, in order to strengthen their impact and make them more constructive. It would also be useful to focus more on the work of national human rights institutions during the meetings of the Commission. These national institutions, much like non-governmental organizations, played a significant role in the promotion of human rights.

Concerning the fight against terrorism, he said that the respect of all human rights — civil and political, economic, social and cultural — and respect for the rule of law were necessary elements to combat and eradicate terrorism on the national and international levels. In this context, it could be useful to promote cooperation between the Commission on Human Rights and the Security Council. He added that the General Assembly could encourage the Commission to address this topic by the appointment of a Special Rapporteur on the respect for human rights within anti-terrorism measures and by giving more visibility to the Subcommission Special Rapporteur on terrorism and human rights by inviting her to present her report before the Third Committee. In conclusion, he stressed the importance of involving women in human rights promotion, taking into account their particular vulnerabilities, as well as the importance of involving the private sector in the protection and promotion of human rights.

ZE'EV LURIA (Israel) said his Government recognized the growing importance of teaching the younger generation about human rights, a subject emphasized in the Secretary-General's report on human rights education, and was deeply committed to the promotion of such education. Israel believed that continuous development of that subject — which included formulation and implementation of curricula appropriate for every student in the school system — was crucial for Israeli society. That became clear when one considered the heterogeneous nature of Israeli society, comprised of Arabs and Jews, religious and secular, persons, veteran Israelis and new immigrants from many countries. It was particularly important in light of the ongoing conflict with the Palestinians.

In contrast to the former view that Israeli society should be a "melting pot" for the various groups of which it was composed, today the prevailing concept was multiculturalism, he said. As part of the efforts to foster understanding between Jews and Arabs, schoolbooks were including for the first time "Palestinian Narrative", presenting the story of the Palestinians next to the story of Zionism and the return of the Jews to their homeland.

In addition to the regular curriculum, he said the Israeli authorities ran various informal frameworks that contributed to human rights education. One of these was the Youth and Society Administration of the Ministry of Education, which was responsible for the operation and guidance of Israel's informal and extracurricular system. Among its goals were education towards an era of peace in the Middle East, coexistence among the different ethnic and cultural groups who lived in Israel, fostering a democracy way of life, and narrowing socio-economic gaps.

LUIS ALBERTO AMOROS NUNEZ (Cuba) said neoliberal globalization had brought about inequality and an unjust international order, in which 20 per cent of the world's poorest people consumed one per cent of its resources, while the 20 per cent living in developed countries used 80 per cent of global resources. The enormous gap between the rich and the poor was not just widening between developed and developing countries, but also within the first world itself. The right to development would be unattainable if the international community did not act firmly. To promote and protect the rights of individuals it was necessary to overcome conditions wherein a minority of the global population had full access to the wealth of humankind.

He noted that in the various parts of the United Nations human rights machinery there was an increasing amount of political manipulation and selectivity, with some countries seeking to impose on the rest of the world their pattern and model of democracy and human rights, in

order to impose their interests and domination. They were politicizing human rights work and promoting double standards. This unbalanced approach favoured civil and political rights to the detriment of economic, cultural and social rights and the right to development. This politically motivated approach of rich countries in the North that were promoting their notions of democracy was slanderous towards the countries of the South. The world could not be standardized in the image and likeness of a few countries in the North.

MUSHTAQ VICTOR (Pakistan) said the denial of human rights bred hatred and disillusionment — with ignorance and poverty adding fuel to the fire. The tragic attacks of September 2001 and subsequent events represented major reversals in the promotion and protection of human rights. Terrorism violated human rights, and State terrorism against occupied peoples was the worst form of terrorism. Terrorism in all its forms and manifestations must be condemned, pre-empted and combated. However, respect for human rights must remain an essential part of counter-terrorism strategy, he said. Some States had exploited the international campaign against terrorism to justify their repression of people in areas such as Palestine and Kashmir.

He stressed that the struggle of peoples, including armed struggle against foreign occupation, aggression and colonialism, and for self-determination, did not constitute terrorism. The people of Jammu and Kashmir continued to be deprived of their right to self-determination and still awaiting the implementation of pledges made to them by India and the international community more than fifty-five years ago. Over 80,000 Kashmiri men, women and children had been killed in the past 15 years; thousands had disappeared and been maimed; and many thousands remained incarcerated in jails and torture cells. The international community must impress upon India to end its campaign of repression and seek a peaceful resolution of the Jammu and Kashmir dispute.

He concluded that poverty was the single most significant cause of the violations of human rights. Human rights could not be guaranteed in an environment of abject poverty and denial of the inalienable right to development. Developing countries continued to contend with acute problems of unsustainable debt burden, reverse financial flows, unequal terms of trade and lack of market access. The poorest countries required sustained and comprehensive assistance to achieve their goals of social advancement and economic growth as the best means of protecting human rights in these countries.

FLORENCE A. CHENOWETH, Director, New York Liaison Office of the Food and Agricultural Organization of the United Nations (FAO), said Heads of State and Government at the World Food Summit: Five Years Later, held in Rome in 2002, had reaffirmed the right of everyone to have access to safe and nutritious food. In addition, they had invited the FAO Council to establish an Intergovernmental Working Group to elaborate, in a period of two years, a set of voluntary guidelines to support Member States' efforts to achieve the progressive realization of the right to adequate food in the context of national food security. Accordingly, the FAO Council had formally established the Intergovernmental Working Group, and FAO remained optimistic that the negotiations would be concluded within the allotted time frame.

However, she said there were still a number of challenges that must be overcome. Those related in the first instance to the legal status of the right to food, which not all FAO and United Nations members recognized as a legally binding norm. A second difficulty arose from the wording of the mandate of the Intergovernmental Working Group, to focus on "the context of national food security". As the FAO Assistant Director-General had stressed, in the modern, globalized world, no country was an island, and policies in one country could affect the enjoyment of the right to adequate food in another. It was therefore difficult not to address the international dimensions of the right to adequate food in the guidelines.

She said the International Alliance Against Hunger — a partnership among governments, food producers and consumers, community organizations, scientists, academics, religious groups, NGOs and all of society — represented a new resolve to work together at all levels to reduce poverty and to guarantee the world's citizens a basic human right — freedom from hunger.

LUCA DALL'OGGIO, International Organization for Migration (IOM), said that, in the context of globalization, migration and development, the role of migrants as relevant development agents had been rightly underlined. Among other issues, it had been pointed out that the channelling of migrant's remittances to source countries far surpassed official



development assistance flows from developed countries to developing countries, and had exceeded an estimated US \$80 billion in 2002. That fact implied, perhaps paradoxically, that the most substantive contribution to the poor and low-income countries came from the most vulnerable and weaker population of the wealthiest countries — the emigrants. Empowering migrants represented therefore not only a moral obligation, but also an important investment for both countries of origin and destination.

The IOM welcomed the entry into force of the United Nations Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families and the Convention against Transnational Organized Crime in July and September this year respectively, he said. Awareness raising, technical cooperation, advisory services and capacity-building would be crucial to broaden the ratification on these legal instruments and, above all, support State parties in their effective implementation. IOM worked with governments to ensure that migration legislation and control mechanisms were compatible with international legal norms and that migrants were treated in accordance with human rights principles. More broadly, the IOM was closely engaged in efforts to portray a more realistic picture of the contribution migrants made to host societies. The IOM was working with media, migrants associations and civil society at large to improve the perception of migrants in recipient communities, enhance their presence and to foster their social integration and labour insertion.

#### Statement in Exercise of Right of Reply

The representative of the Democratic People's Republic of Korea (DPRK), exercising his right of reply, said the representative of Japan continued to attempt to degrade his country by calling its name incorrectly. He advised the representative of Japan to call his country by its official name as registered at the United Nations.

He said his Government categorically rejected Japan's allegations regarding the "abduction" issue. The fundamental responsibility for the "missing" issue touted by Japan rested with Japan itself. Referring to atrocities committed by Japan during its occupation of Korea for more than 40 years in the first half of the 20<sup>th</sup> century, he asked how one could compare such huge human casualties with only a few missing persons. If the root cause of the "missing" issue was to be eliminated, it was logical that Japan liquidate its past crimes.

Japan had implemented none of its commitments under the Pyongyang Joint Declaration of September 2002, inter alia, the liquidation of its past crimes, he said. It had unilaterally abrogated its obligations under the bilateral agreements. For more than one year, it had detained five survivors of the "missing" persons, who had gone to Japan for a home visit for a period of 10-15 days and were supposed to come back to Pyongyang to consult with family members about their future. If the solution of the "missing" persons issue was a top priority related to the security of the people as Japan insisted, it should send the survivors back home to Pyongyang where their family members were waiting.

The Committee resumed its debate on human rights issues in the afternoon.

STAFFORD NEIL (Jamaica) said the effective promotion and protection of human rights must be based on balanced approaches that took into account the entire dimensions of the human person and human needs. It was therefore essential that economic, social and cultural rights were adequately promoted alongside the fundamental civil and political rights. Respect for cultural diversity was an integral part of ensuring balanced approaches to human rights questions. While respect for cultural diversity must always be upheld, it must not provide a pretext for human rights violations.

As human rights activities were central to the achievement of the purpose of the United Nations, it was also imperative that the actions of the international community were guided by the principles of objectivity, non-selectivity and impartiality, he said. To that end, every effort must be made to reject the politicization of human rights and the use of human rights questions to advance politically motivated agendas in the conduct of international relations.

He added that it was essential that the shared principles and common values articulated within the framework of international norms in the field of human rights were translated into concrete results for the benefit of the individual. It was therefore essential to strengthen existing treaty bodies and human rights mechanisms and procedures in order to monitor the

implementation of the commitments made under relevant human rights instruments. It was also vital that reporting procedures were simplified to make them less burdensome for Member States. Improved coordination and the standardization of reporting requirements to reduce the growing complexity of the current human rights machinery must be at the forefront of initiatives to ensure that countries with limited resources could fulfil their reporting obligations in this regard.

ANTOINE CHEDID (Lebanon) said Lebanon had throughout its history exerted great efforts to preserve and promote human rights. It had participated actively in drawing up international legislation for human rights and believed that freedom, democracy and religious tolerance were basic human rights without which no human society could grow and prosper. Lebanon had people who followed different religions and creeds and who practiced their beliefs with dignity and tolerance. Mosques and churches coexisted with acceptance of each other.

He said the right to development focused on the link between political, economic, cultural and social rights. The right of people to live in their homeland was a basic right underscored by human rights laws. Since 1948, Palestinian refugees had been living in refugee camps in Lebanon. It was their basic right to return to the homeland from which they were evicted by the occupying force. Lebanon strongly rejected the nationalization of Palestinians as a violation of their human rights. The United Nations had always recognized the right of Palestinians to return home. Lebanon condemned Israel's continual rejection and refusal to implement Security Council resolutions, thus preventing the right of Palestinian refugees to return to their homes.

He added that it was regrettable and shameful that the Special Rapporteur was prevented from visiting Israeli prisons to investigate the status of Lebanese detainees captured on Lebanese territory and detained in Israeli prisons in violation of their human rights.

CHRISTIAN WENAWESER (Liechtenstein) said the reporting system under the human rights treaties was one of the core elements of United Nations human rights work, and its effectiveness should therefore be one of the principal goals of work in this area. There was a very clear need to take practical measures to maximize the effectiveness of the system. Practical measures could go a long way in addressing the problems that treaty bodies and States parties to conventions encountered in their work on reporting on obligations arising from human rights treaties. An informal dialogue between treaty bodies and States parties, as well as among treaty bodies, was conducive to further progress.

He added that the treaty body system was part of the bigger picture of the human rights machinery, and the issue of resources remained a major concern in that respect. The budget of the Office of High Commissioner of Human Rights (OHCHR) remained very seriously underfunded and it was unacceptable that one of the core activities of the Organization was to a large extent funded by voluntary contributions. His delegation therefore hoped the General Assembly would come to the conclusion that allocating more resources to OHCHR, as well as to the Division for the Advancement of Women, would be a worthwhile investment.

GRIGORY F. LUKYANTSEV (Russian Federation) said the loss of the High Commissioner for Human Rights was a loss to the entire international community. Defending human rights was of extreme importance to attaining the goals of the United Nations, as was technical cooperation. Unfortunately, the work of the Third Committee and the Commission on Human Rights had been characterized by politicization and double standards. That was not conducive to developments within human rights and played into the hands of those aiming to bring rivalry and suspicion into international relations.

He said one of the global challenges facing the international community was terrorism. The international community must condemn and combat terrorism in all its forms and manifestations. The Russian Federation agreed that terrorism was a violation of human rights. Given the global nature of terrorism, it must be tackled by the entire international community through a uniform approach. One must not allow for any double standards, since terrorism could not be justified under any circumstances. Each individual had the right to be free from fear and be protected against terrorism.

The Russian Federation had put forward a set of measures aiming to protect human rights from terrorism, he said. The Commission on Human Rights had welcomed that initiative, and it was hoped that the Third Committee would respond in the same manner. In that



connection, he regretted the reduced effectiveness of the Commission's work, a development closely related to the politicization among States.

Briefly reacting to a statement made by the representative of New Zealand, he said that inaccurate information had been used when commenting on the situation of internally displaced persons in the Northern Caucasus. The representative of New Zealand was encouraged to read the report of the Special Representative who had just completed a visit in the region.

FIDELIS E. IDOKO (Nigeria) said the Nigerian delegation recognized that terrorism posed a serious threat to international peace and security and appreciated the need to combat it in all its forms and manifestations. However, he believed that caution must be exercised at all times to ensure that measures aimed at eliminating terrorism did not become the excuse for human rights abuses, especially in dealing with matters concerning legitimate asylum seekers, immigrant workers and visitors. The human being, if deprived of freedom and related rights, would be stripped of humanity. The need to guarantee human rights could therefore not be overemphasized, and a regime for that purpose was indeed imperative.

Nigeria was a federation with immense cultural, linguistic and religious diversity, he said. This implied that the constituent states that made up the federation enjoyed considerable measures of autonomy. That autonomy or power to make laws was enshrined in the Nigerian constitution, which could only be repealed through appropriate constitutional amendment. That explained why some states in the country had introduced the Sharia law. The Sharia law adopted by those states did not necessarily contradict the Nigerian constitution. It was pertinent to mention that the accused, if found guilty, had the right to appeal to a higher court. Amina Lawal or Rakiya Mohammed could not be stoned to death predictably because the Sharia Court of Appeal quashed the verdict of the lower court. It was important to note that, since the introduction of Sharia in some states, no one had ever been stoned to death in Nigeria.

ALAIN EDOUARD TRAORE (Burkina Faso) said his country called for international solidarity to support young and emerging democracies and to provide them with the means to achieve their economic, social and cultural rights. For this reason, Burkina Faso was against trade policies in the North that gave subsidies to farmers, which resulted in crushing farmers in the South.

He stressed that the countries of Africa needed solidarity to defend their rights and interests that were constantly threatened. Burkina Faso had proposed the holding of a special meeting of heads of States in 2004 to discuss strategies to fight poverty. There could be no development without stability. In this regard, his Government welcomed the relative calm that had come about. However, there were still pockets of conflict that continued to be harmful to human rights. Burkina Faso was especially concerned about civilians, many of them women and children, who continued to suffer in Côte d'Ivoire as a result of armed conflict. His country called on all protagonists to engage in dialogue to resolve their differences.

He said Burkina Faso saluted the efforts of the United Nations, African Union and all organizations working toward a lasting peace and the defence and promotion of human rights. For more than a decade his country had been dedicated to enshrining the rule of law and guaranteeing equality for women and men before the law. Democracy required the protection of the enjoyment of all human rights. However, Burkina Faso would not tolerate any actions that endangered its national unity and territorial integrity.

KYUNG-WHA KANG (Republic of Korea) said she was encouraged by the growing interaction between human rights and development activities in the United Nations system. That human rights, democracy and development were interdependent and mutually reinforcing was a lesson that her country had learned, not without trial and error and sometimes with pain, through its own experience in socio-economic growth and democratization. Development devoid of advances for human rights and democracy could not be sustained. Human rights, in turn, could not thrive where the dignity of the human person was not guaranteed in the face of poverty, starvation, underdevelopment and disease.

She said that the interplay between human rights and development was made clear by the problem of human trafficking. Fighting trafficking in persons, especially women and children, was high on the human rights agenda of the Republic of Korea. The Government continued to strengthen measures to provide protection and assistance to the victims of domestic as well as cross-border trafficking, and to toughen the penalties against the perpetrators. She also

stressed that human rights continued to suffer in many corners of the world, and that Governments had the primary responsibility in promoting and protecting the human rights of their citizens.

To promote and protect human rights, the Commission on Human Rights and its special procedures must continue to actively carry out the work of revealing patterns of human rights violation and working with governments to redress those situations, she said. The Republic of Korea continued to enhance the standards by which human rights were upheld in various sectors of society. The current focus was on strengthening protection for vulnerable groups and weeding out discriminatory elements in the laws.

MARIJA ANTONIJEVIC (Serbia and Montenegro) said that most of the present day challenges faced by the international community, such as violent conflicts and terrorism were inextricably linked with the enjoyment of human rights. That was why the promotion and protection of human rights should constitute a major element in conflict prevention activities. The sharp increase in terrorist attacks in recent years had brought about a new dilemma — how to effectively combat that evil while fully respecting the internationally recognized human rights standards. The fight against terrorism should not result in a departure from established international norms and principles, she said.

The main responsibility for ensuring and protecting human rights rested with States, she continued, and a clear political commitment in that respect was essential. Today, the Government of Serbia and Montenegro was seeking to strengthen the human and minority rights situation within the country and to establish democracy and the rule of law. It had ratified all fundamental international human rights instruments and had undertaken legislative measures aimed at their implementation.

Nevertheless, the progress achieved in her country had been overshadowed by the dire situation of human rights in the Serbian province of Kosovo and Metohija where non-Albanian communities in the province still faced persecution, lack of freedom of movement and discrimination in the enjoyment of economic and social rights. Without the substantial improvement in the situation of the non-Albanian communities in Kosovo and Metohija, the prospects of long-term stability in the province remained slim, she said. The responsibility in that regard rested clearly on the United Nations Interim Administration Mission in Kosovo (UNMIK) and Provisional Institutions of Self-Government.

NADYA RASHEED, Observer of Palestine said any assessment of human rights violations against Palestinians must be made in the context of foreign occupation. Israel's occupation of Palestinian lands was a brutal and cruel form of colonization. Palestinian refugees had endured great injustices and hardships for more than 50 years and continued to be deprived of basic human and national rights. Since September 2000, Israel's war crimes, State terrorism and systematic human rights violations against Palestinians had continued unabated. More than 2,600 Palestinians had been killed and another 40,000 seriously injured. Israeli occupying forces continued to destroy homes, property, road infrastructure, and water and electricity networks in the occupied Palestinian territory, including East Jerusalem.

The separation wall under construction further restricted Palestinians' freedom of movement and access to health and education, and resulted in the illegal seizure of Palestinian property, she continued. Only by ending the occupation and the ongoing colonization of Palestinian land would Palestinians be granted their basic and fundamental human rights, including the creation of a Palestinian State, with East Jerusalem as its capital. Israel could not be allowed to continue committing serious violations and grave breaches with impunity.

PRAVIT CHAIMONGKOL (Thailand) stressed the interdependence of all types of rights. Specifically, he said people could not truly enjoy civil and political rights if their rights to adequate food, clothing, shelter, education, and health services, were not respected. Similarly, people who were living in societies characterized by discrimination and torture could not really benefit from the fruits of development. Therefore, the promotion and protection of human rights should be extended to all sectors of society, especially those experiencing marginalization. And development efforts must benefit all people, including disabled persons.

Noting that the State should be held responsible for both development and human rights promotion, he said that, for its part, his Government was implementing programmes dealing with universal access to health care, increased job opportunities, and broader access to the Internet.



It was also promoting human rights education through its national plan of action. The international community could contribute by helping countries strengthen their national capacities to enhance awareness of human rights and democracy. It could also open markets in order to facilitate trade and investment and thereby encourage international economic development.

Regarding the United Nations, he pledged his country's support to the Office of the High Commissioner for Human Rights. However, he also called for a streamlining of the Organization's work in that area. His delegation had co-sponsored resolutions on human rights defenders, and had invited the Special Representative for Human Rights Defenders to visit Thailand. During the Special Representative's trip, she had met with the heads of independent human rights institutions, as well as with the Prime Minister and high-ranking Government officials, and his country had thus demonstrated its determination to uphold its reputation as an open and tolerant society.

PUREVJAV GANSUKH (Mongolia) said that over the past years, efforts had been made by the international community to promote human rights. However, in a number of cases there had been no notable progress. The international community must therefore continue and intensify efforts to protect human rights to strengthen the rule of law and promote democracy at both national and international levels.

He said the Ulaanbaatar Declaration and Plan of Action on Democracy, Good Governance and Civil Society adopted last September at the Fifth International Conference of New or Restored Democracies provided for a number of measures towards protecting and promoting human rights that would greatly contribute to strengthening and consolidating democratic processes and protecting and promoting human rights around the world. One of the important provisions of the Declaration was related to setting up and strengthening national institutions and mechanisms to ensure that basic democratic principles and human rights were fully respected and guaranteed.

An important issue was also the harmonization of national legislation with international human rights instruments and their effective implementation. Continued efforts had been made by Member States to give full effect to the human rights treaties within their respective jurisdiction, he said. In Mongolia, an intensive process of legislative change had taken place to ensure the consistency of national law with international standards. Next year, the fifth parliamentary elections would be held in Mongolia. The previous four elections had been recognized as free and fair, serving as testimony of further consolidation of democratic norms and institutions in his country.

AMARE TEKLE (Eritrea) said his country's constitution had clear provisions on political and civil rights, as well as economic, social and cultural rights. Since independence, Eritrean development policy had been informed by the conviction that an informed and productive population was a sine-qua-non for the creation of a national social order that would protect and promote the realization of the rights and freedoms enunciated in its constitution.

He said it was encouraging that the international community had recognized the inextricable link between human rights, peace and development as well as the need for a holistic approach that ensured that development issues were broadly defined. His delegation believed there was a dialectical relationship between human rights, peace and development. Peace was a precondition for rehabilitation, reconstruction and prosperity.

He called on the Committee to consider the human rights consequences of Ethiopia's rejection of the decision of the Boundary Commission, which was threatening to derail the peace process. The Security Council had declared that Ethiopia must obey the decisions of the Boundary Commission. The people of Ethiopia had as much right as the Eritrean people to peace and development. The international community must not sit idle as both peoples were denied these rights, because of Ethiopia's rejection of the Boundary Commission's decision and its violation of the Eritrea-Ethiopia Algiers Agreements.

CELESTINO MIGLIORE, Observer of the Holy See, said that among the fundamental freedoms of every human being was the freedom of religion. This freedom lay at the foundation of the edifice of human rights because it affected the primordial relationship of the human being with the Creator. A right social order required that all, as individuals and as communities, should be able to profess their religious faith and conviction with full respect for others. Religious

freedom contributed decisively to develop citizens, who were genuinely free and helped them fulfil their duties with greater responsibility.

In some countries, manifestations of religious intolerance still existed in serious prohibitions to religious instruction of children and young people, restrictions in the concession of visas to religious personnel, lack of freedom in the use of mass media, denial of permits to build new places of worship, hate propaganda and violence against religious minorities. He stressed that every violation of religious freedom, whether overt or concealed, did fundamental damage to the cause of peace. The Holy See hoped that the international community would continue to safeguard the freedom of individuals and of communities to profess and practice their religion as an essential tool to foster peaceful human coexistence.

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