

**Office of the United Nations
High Commissioner for Human Rights**



Human Rights, Terrorism and Counter-terrorism

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CONTENTS

	<i>Page</i>
Introduction.....	1
I. HUMAN RIGHTS AND TERRORISM.....	3
A. What are human rights?.....	3
B. What is terrorism?	5
C. The impact of terrorism on human rights.....	7
D. Accountability and the human rights of victims.....	9
E. Terrorism and other aspects of international law	11
II. HUMAN RIGHTS AND COUNTER-TERRORISM	19
A. The promotion and protection of human rights while countering terrorism.....	19
B. The flexibility of human rights law.....	22
III. SPECIFIC HUMAN RIGHTS CHALLENGES IN THE CONTEXT OF TERRORISM AND COUNTER-TERRORISM.....	30
A. The right to life	30
B. Challenges to the absolute prohibition against torture	32
C. Transfer of individuals suspected of terrorist activity.....	33
D. Liberty and security of the person.....	36
E. Profiling and the principle of non-discrimination.....	37
F. Due process and the right to a fair trial	38
G. The principle of legality and the definition of terrorism.....	39
H. Freedom of expression and the prohibition of incitement to terrorism	41
I. Freedom of association.....	43
J. Surveillance, data protection and the right to privacy	45
K. Economic, social and cultural rights.....	46
Annex: United Nations action to counter terrorism.	57

“The promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy, recognizing that effective counter-terrorism measures and the promotion of human rights are not conflicting goals, but complementary and mutually reinforcing”

United Nations Global Counter-Terrorism Strategy
(General Assembly resolution 60/288, annex)

INTRODUCTION

The human cost of terrorism has been felt in virtually every corner of the globe. The United Nations family has itself suffered tragic human loss as a result of violent terrorist acts. The attack on its offices in Baghdad on 19 August 2003 claimed the lives of the Special Representative of the Secretary-General, Sergio Vieira de Mello, and 21 other men and women, and injured over 150 others, some very seriously.

Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilize Governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. All of these also have a real impact on the enjoyment of human rights.

Security of the individual is a basic human right and the protection of individuals is, accordingly, a fundamental obligation of Government. States therefore have an obligation to ensure the human rights of their nationals and others by taking positive measures to protect them against the threat of terrorist acts and bringing the perpetrators of such acts to justice.

In recent years, however, the measures adopted by States to counter terrorism have themselves often posed serious challenges to human rights and the rule of law. Some States have engaged in torture and other ill-treatment to counter terrorism, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centres, have often been disregarded. Other States have returned persons suspected of engaging in terrorist activities to countries where they face a real risk of torture or other serious human rights abuse, thereby violating the international legal obligation of non-refoulement. The independence of the judiciary has been undermined, in some places, while the use of exceptional courts to try civilians has had an impact on the effectiveness of regular court systems. Repressive measures have been used to stifle the voices of human rights defenders, journalists, minorities, indigenous groups and civil society. Resources normally allocated to social programmes and development assistance have been diverted to the security sector, affecting the economic, social and cultural rights of many.

These practices, particularly when taken together, have a corrosive effect on the rule of law, good governance and human rights. They are also counterproductive to national and international efforts to combat terrorism.

Respect for human rights and the rule of law must be the bedrock of the global fight against terrorism. This requires the development of national counter-terrorism strategies that seek to prevent acts of terrorism, prosecute those responsible for such criminal acts, and promote and protect human rights and the rule of law. It implies measures to address the conditions conducive to the spread of terrorism, including the lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, and socio-economic marginalization; to foster the active participation and leadership of civil society; to condemn human rights violations, prohibit them in national law, promptly investigate and prosecute them, and prevent them; and to give due attention to the rights of victims of human rights violations, for instance through restitution and compensation.

This Fact Sheet has been prepared with the aim of strengthening understanding of the complex and multifaceted relationship between human rights and terrorism. It identifies some of the critical human rights issues raised in the context of terrorism and highlights the relevant human rights principles and standards which must be respected at all times and in particular in the context of counter-terrorism.

It is addressed to State authorities, national and international non-governmental organizations (NGOs), national human rights institutions, legal practitioners and individuals concerned with ensuring the protection and promotion of human rights in the context of terrorism and counter-terrorism.

Specifically, the Fact Sheet is intended to:

- Raise awareness of the impact of terrorism and counter-terrorism on the enjoyment of all human rights;
- Provide a practical tool for practitioners dealing with terrorism, counter-terrorism measures and human rights;
- Provide guidance on ensuring compliance with human rights when countering terrorism;
- Illustrate specific human rights challenges in countering terrorism.

I. HUMAN RIGHTS AND TERRORISM

This chapter sets out the human rights framework before examining the impact that terrorism has on human rights. It then addresses the relationship between terrorism, human rights and other relevant international legal provisions.

A. *What are human rights?*

1. *The nature of human rights*

Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. The full spectrum of human rights involves respect for, and protection and fulfilment of, civil, cultural, economic, political and social rights, as well as the right to development. Human rights are universal—in other words, they belong inherently to all human beings—and are interdependent and indivisible.¹

2. *International human rights law*

International human rights law is reflected in a number of core international human rights treaties and in customary international law.

These treaties include in particular the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. Other core universal human rights treaties are the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Rights of the Child and its two Optional Protocols; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The most recent are the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities and its Optional Protocol, which were all adopted in December 2006. There is a growing body of subject-specific treaties and protocols as well as various regional treaties on the protection of human rights and fundamental freedoms.

International human rights law is not limited to the enumeration of rights within treaties, but also includes rights and freedoms that have become part of customary international law, which means that they bind all States even if they are not party to a particular treaty. Many of the rights set out in the Universal Declaration of Human Rights are widely regarded to hold this character. The Human Rights Committee has similarly observed, in its general comments N° 24 (1994) and N° 29 (2001), that some rights in the International Covenant on Civil and Political Rights reflect norms of customary international law. Furthermore, some rights are recognized as having a special status as norms of *jus cogens* (peremptory norms of customary international law), which means that there are no circumstances whatsoever in which derogation from them is permissible. The prohibitions of torture, slavery, genocide, racial discrimination and crimes against humanity, and the right to self-determination are widely recognized as peremptory norms, as reflected in the International Law Commission's articles on State responsibility. The International Law Commission also lists the basic rules of international humanitarian law applicable in armed conflict as examples of peremptory norms.² Similarly, the Human Rights Committee has referred to arbitrary deprivation of life, torture and inhuman and degrading treatment, hostage-taking, collective punishment, arbitrary deprivation of liberty, and violations of certain due process rights as non-derogable, while the Committee on the Elimination of Racial Discrimination, in its Statement on racial discrimination and measures to combat terrorism, has confirmed the principle of non-discrimination as a norm of *jus cogens*.

3. The nature of States' obligations under international human rights law

Human rights law obliges States, primarily, to do certain things and prevents them from doing others. States have a duty to respect, protect and fulfil human rights. *Respect* for human rights primarily involves not interfering with their enjoyment. *Protection* is focused on taking positive steps to ensure that others do not interfere with the enjoyment of rights. The *fulfilment* of human rights requires States to adopt appropriate measures, including legislative, judicial, administrative or educative measures, in order to fulfil their legal obligations. A State party may be found responsible for interference by private persons or entities in the enjoyment of human rights if it has failed to exercise due diligence in protecting against such acts. For example, under the International Covenant on Civil and Political Rights, State parties have an obligation to take positive measures to ensure that private persons or entities do no inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power.

Human rights law also places a responsibility on States to provide effective remedies in the event of violations.³

Those human rights that are part of customary international law are applicable to all States.⁴ In the case of human rights treaties, those States that are party to a particular treaty have obligations under that treaty. There are various mechanisms for enforcing these obligations, including the evaluation by treaty-monitoring bodies of a State's compliance with certain treaties and the ability of individuals to complain about the violation of their rights to international bodies. Moreover, and particularly relevant to a number of human rights challenges in countering terrorism, all Members of the United Nations are obliged to take joint and separate action in cooperation with the United Nations for the achievement of the purposes set out in Article 55 of its Charter, including universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

A key question is the territorial reach of a State's international human rights obligations. The nature of the general legal obligation of States parties in this respect is addressed in article 2 of the International Covenant on Civil and Political Rights. As confirmed by the Human Rights Committee in its general comment N° 31 (2004), this obligation on States to ensure Covenant rights to all persons within their territory and subject to their jurisdiction means that a State party must ensure such rights to anyone within its power or effective control, even if not situated within its territory. Furthermore, the enjoyment of international human rights is not limited to the citizens of States parties but must be available to all individuals, regardless of nationality or statelessness, such as asylum-seekers and refugees. In an advisory opinion, the International Court of Justice has, similarly, concluded that "the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory." It reached the same conclusion with regard to the applicability of the Convention on the Rights of the Child.⁵

B. *What is terrorism?*

Terrorism is commonly understood to refer to acts of violence that target civilians in the pursuit of political or ideological aims. In legal terms, although the international community has yet to adopt a comprehensive definition of terrorism, existing declarations, resolutions and universal "sectoral" treaties relating to specific aspects of it define certain acts and core elements. In 1994, the General Assembly's Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated

that terrorism includes “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes” and that such acts “are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.”

Ten years later, the Security Council, in its resolution 1566 (2004), referred to “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act”. Later that year, the Secretary-General’s High-level Panel on Threats, Challenges and Change described terrorism as any action that is “intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act” and identified a number of key elements, with further reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004).⁶

The General Assembly is currently working towards the adoption of a comprehensive convention against terrorism, which would complement the existing sectoral anti-terrorism conventions. Its draft article 2 contains a definition of terrorism which includes “unlawfully and intentionally” causing, attempting or threatening to cause: “(a) death or serious bodily injury to any person; or (b) serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or (c) damage to property, places, facilities, or systems..., resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.” The draft article further defines as an offence participating as an accomplice, organizing or directing others, or contributing to the commission of such offences by a group of persons acting with a common purpose. While Member States have agreed on many provisions of the draft comprehensive convention, diverging views on whether or not national liberation movements should be excluded from its scope of application have impeded consensus on the adoption of the full text. Negotiations

continue. Many States define terrorism in national law in ways that draw to differing degrees on these elements.

Specific challenges related to the definition of terrorism and the principle of legality are addressed in further detail in chapter III, section G.

C. *The impact of terrorism on human rights*

Terrorism aims at the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict.

Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the rights to life, liberty and physical integrity. Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights.

The destructive impact of terrorism on human rights and security has been recognized at the highest level of the United Nations, notably by the Security Council, the General Assembly, the former Commission on Human Rights and the new Human Rights Council.⁷ Specifically, Member States have set out that terrorism:

- Threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights;
- Has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilizes legitimately constituted Governments;
- Has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery;

- Has adverse consequences for the economic and social development of States, jeopardizes friendly relations among States, and has a pernicious impact on relations of cooperation among States, including cooperation for development; and
- Threatens the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace and security, and must be suppressed as an essential element for the maintenance of international peace and security.

International and regional human rights law makes clear that States have both a right and a duty to protect individuals under their jurisdiction from terrorist attacks. This stems from the general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognized as part of States' obligations to ensure respect for the right to life and the right to security.

The right to life, which is protected under international and regional human rights treaties, such as the International Covenant on Civil and Political Rights, has been described as "the supreme right"⁸ because without its effective guarantee, all other human rights would be without meaning.⁹ As such, there is an obligation on the part of the State to protect the right to life of every person within its territory¹⁰ and no derogation from this right is permitted, even in times of public emergency. The protection of the right to life includes an obligation on States to take all appropriate and necessary steps to safeguard the lives of those within their jurisdiction. As part of this obligation, States must put in place effective criminal justice and law enforcement systems, such as measures to deter the commission of offences and investigate violations where they occur; ensure that those suspected of criminal acts are prosecuted; provide victims with effective remedies; and take other necessary steps to prevent a recurrence of violations.¹¹ In addition, international and regional human rights law has recognized that, in specific circumstances, States have a positive obligation to take preventive operational measures to protect an individual or individuals whose life is known or suspected to be at risk from the criminal acts of another individual,¹² which certainly includes terrorists. Also important to highlight is the obligation on States to ensure the personal security of individuals under their jurisdiction where a threat is known or suspected to exist.¹³ This, of course, includes terrorist threats.

In order to fulfil their obligations under human rights law to protect the life and security of individuals under their jurisdiction, States have a right

and a duty to take effective counter-terrorism measures, to prevent and deter future terrorist attacks and to prosecute those that are responsible for carrying out such acts. At the same time, the countering of terrorism poses grave challenges to the protection and promotion of human rights. As part of States' duty to protect individuals within their jurisdiction, all measures taken to combat terrorism must themselves also comply with States' obligations under international law, in particular international human rights, refugee and humanitarian law.

D. *Accountability and the human rights of victims*

From a human rights perspective, support for victims in the context of terrorism is a paramount concern. While efforts immediately following the events of 11 September 2001 largely failed to give due consideration to the human rights of victims, there is increasing recognition of the need for the international community to take fully into account the human rights of all victims of terrorism. In the 2005 World Summit Outcome (General Assembly resolution 60/1), for example, Member States stressed "the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief." Similarly, the United Nations Global Counter-Terrorism Strategy reflects the pledge by Member States to "promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation."

In addressing the needs of victims of terrorism, consideration must be given to the distinction between victims of crime, on the one hand, and victims of human rights violations, on the other. While this distinction is not always clear-cut, it is important to note that, in most cases, terrorist-related acts will be addressed as criminal offences committed by individuals and a State will not, in principle, be responsible for the illegal conduct itself. Acts constituting human rights violations are committed primarily by organs or persons in the name of, or on behalf of, the State. In some circumstances, however, the State may be responsible for the acts of private individuals that may constitute a violation of international human rights law.

While a comprehensive analysis of the needs of victims of crime and human rights violations in the context of terrorism, and of responses to those needs, is beyond the scope of this publication, several basic principles should be underscored. In particular, international and regional standards with regard to victims of crime and victims of gross violations of international human rights law and serious violations of international

humanitarian law may be instructive in addressing the needs of victims of terrorism.¹⁴ Certain provisions of the universal treaties relating to specific aspects of terrorism are also relevant to addressing the situations of victims of terrorism.

According to the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, set out in General Assembly resolution 40/34, victims include “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.” Importantly, the Declaration notes that an individual may be considered a victim “regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim”. The term *victim* may include “the immediate family or dependants of the direct victim, as well as persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

The Declaration further outlines the minimum standards for the treatment of these victims according to several basic principles of justice. These require that victims should:

- Be treated with compassion and respect for their dignity;
- Be informed about, and have their views and concerns presented at, legal proceedings;
- Be entitled to proper assistance throughout the legal process;
- Be protected against intimidation and retaliation;
- Have their privacy protected;
- Be offered the opportunity to participate in informal mechanisms for the resolution of disputes, including mediation;
- Enjoy restitution and compensation, as appropriate; and
- Receive the necessary material, medical, psychological and social assistance.

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights

Law and Serious Violations of International Humanitarian Law, adopted in 2005 by the General Assembly in its resolution 60/147, underscore the need for victims to be treated with humanity and respect for their dignity and human rights, and emphasize that appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The Basic Principles and Guidelines also outline remedies to be made available to victims of violations of international human rights and humanitarian law. These include the victim's right to equal and effective access to justice, effective and prompt reparation for harm suffered, and access to relevant information concerning the violations and reparation mechanisms. More specifically, they outline certain obligations on States to provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law, and to establish national programmes for reparation and other assistance to victims, if the parties liable for the harm suffered are unable or unwilling to meet their obligations.

E. Terrorism and other aspects of international law

1. Terrorism and international humanitarian law

International humanitarian law contains a set of rules on the protection of persons in "armed conflict", as that term is understood in the relevant treaties, as well as on the conduct of hostilities. These rules are reflected in a number of treaties, including the four Geneva Conventions and their two Additional Protocols, as well as a number of other international instruments aimed at reducing human suffering in armed conflict. Many of their provisions are now also recognized as customary international law.¹⁵

There is no explicit definition of "terrorism" as such in international humanitarian law. However, international humanitarian law prohibits many acts committed in armed conflict which would be considered terrorist acts if they were committed in times of peace.¹⁶

For example, deliberate acts of violence against civilians and civilian objects constitute war crimes under international law, for which individuals may be prosecuted. This rule derives from the fundamental principle of international humanitarian law related to the protection of civilians in armed conflict, namely the principle of distinction. According to this principle, all parties to a conflict must at all times distinguish between

civilians and combatants. In essence, this means that attacks may be directed only at military objectives, i.e., those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances applicable at the time, offers a definite military advantage. Civilians lose their protection as civilians for such time as they participate directly in the hostilities.

Furthermore, indiscriminate attacks are strictly prohibited according to international humanitarian law. This includes attacks that are not directed at a specific military objective, employ a method or means of combat which cannot be directed at a specific military objective, or employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law, and consequently are of a nature to strike military objectives and civilians or civilian objects without distinction. Indiscriminate attacks include disproportionate attacks, which are also prohibited.

International humanitarian law also specifically prohibits “measures of terrorism” or “acts of terrorism.” These prohibitions aim to highlight individual criminal accountability and protect against collective punishment and “all measures of intimidation or of terrorism.”¹⁷ Furthermore, “acts or threats of violence the primary purpose of which is to spread terror among the civilian population” are also strictly prohibited under international humanitarian law.¹⁸ According to the International Committee of the Red Cross, while even a lawful attack on a military objective may spread fear among civilians, these provisions, related to the conduct of hostilities, seek to prohibit “attacks that specifically aim to terrorize civilians, for example campaigns of shelling or sniping of civilians in urban areas.”¹⁹

It is important to note that, in addition to international humanitarian law, international human rights law continues to apply during armed conflict, subject only to certain permissible limitations in accordance with strict requirements contained in international human rights treaties. In essence, the difference between the two bodies of law is that, whilst human rights law protects the individual at all times, international humanitarian law applies only in situations of armed conflict. In this regard, the Human Rights Committee has stated, in its general comment N° 31, that:

[The International Covenant on Civil and Political Rights] applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be

specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.

The International Court of Justice has also affirmed the applicability of the Covenant during armed conflicts, stating that “the right not arbitrarily to be deprived of one’s life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict.”²⁰ In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court further posited the applicability of human rights law in times of armed conflict, stating “the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in article 4 of the [International Covenant on Civil and Political Rights].”²¹ Most recently, the Court applied both human rights law and international humanitarian law to the armed conflict between the Democratic Republic of the Congo and Uganda.²²

Acts of terrorism which are committed outside of armed conflict generally constitute crimes under domestic and, depending on the circumstances, international criminal law and thus should be regulated through the enforcement of domestic and international criminal law.

2. Terrorism and international criminal law

Over the course of four decades, the international community, under the auspices of the United Nations, has developed 13 conventions relating to the prevention and suppression of terrorism. These so-called sectoral instruments, which address issues ranging from the unlawful seizure of aircraft and the taking of hostages to the suppression of terrorist bombings, contribute to the global legal regime against terrorism and provide a framework for international cooperation. They require States to take specific measures to prevent the commission of terrorist acts and prohibit terrorist-related offences, including by obliging States parties to criminalize specific conduct, establish certain jurisdictional criteria (including the well-known principle of *aut dedere aut judicare* or “extradite or prosecute”), and provide a legal basis for cooperation on extradition and legal assistance.

Most of these treaties relating to specific aspects of terrorism define specified acts as offences and require States to criminalize them. They cover offences linked to the financing of terrorism, offences based on the victim’s status (such as hostage-taking and crimes against internationally

protected persons), offences linked to civil aviation, offences linked to ships and fixed platforms, and offences linked to dangerous materials.²³ According to the International Convention for the Suppression of the Financing of Terrorism, for example, terrorism includes any “act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.” It requires the penalization of specific offences related to the financing of terrorism thus defined.

The Security Council has recognized the ratification and effective implementation of the universal anti-terrorism instruments as a top priority. On 28 September 2001, acting under Chapter VII of the Charter of the United Nations, it adopted resolution 1373 (2001), stating explicitly that every act of terrorism constitutes a “threat to international peace and security” and that the “acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations.” The resolution also requires all States to criminalize terrorist acts; to penalize acts of support for or in preparation of terrorist offences; to criminalize the financing of terrorism; to depoliticize terrorist offences; to freeze funds of persons who commit or attempt to commit terrorist acts; and to strengthen international cooperation in criminal matters.

Depending on the context in which terrorist acts occur, they may also constitute crimes under international law. During the drawing-up of the Rome Statute of the International Criminal Court, several delegations argued for the inclusion of terrorism in the jurisdiction of the Court as a separate crime. The majority of States disagreed, however, precisely because of the issue of the definition. The Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court, adopted in Rome on 17 July 1998, recommended that a Review Conference of the Rome Statute, which may take place seven years following the entry into force of the Statute, namely in 2009, should consider several crimes, including terrorism, with a view to arriving at an acceptable definition and their inclusion in the list of crimes within the jurisdiction of the Court.

Although the Rome Statute does not include “terrorism” as a separate crime, it does contain various offences which may include terrorist conduct, depending on the particular facts and circumstances of each case. A terrorist act might constitute a crime against humanity, an offence defined under article 7 of the Rome Statute to include certain acts

committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.²⁴ Moreover, acts such as deliberate or indiscriminate attacks against civilians or hostage-taking might fall under war crimes, as defined under article 8 of the Rome Statute.

The international criminal law provisions against terrorism have also been addressed in practice by international tribunals. In 2003, the International Criminal Tribunal for the former Yugoslavia convicted, for the first time, an individual for his responsibility for the war crime of terror against the civilian population in Sarajevo, under article 3 of its statute. The Court concluded that the crime of terror against the civilian population was constituted of elements common to other war crimes, in addition to further elements that it drew from the International Convention for the Suppression of the Financing of Terrorism.²⁵

3. *Terrorism and international refugee law*

Alongside the general obligations of human rights law, international refugee law is the body of law which provides a specific legal framework for the protection of refugees by defining the term *refugee*, setting out States' obligations to them and establishing standards for their treatment. Aspects of international refugee law also relate to persons seeking asylum. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol relating to the Status of Refugees are the two universal instruments in international refugee law.

With regard to terrorism and measures taken to counter it, both incorporate a system of checks and balances that takes full account of the security interests of States and host communities while protecting the rights of persons who, unlike other categories of foreigners, no longer enjoy the protection of their country of origin.

As mentioned above, Security Council resolution 1373 (2001) obliges Member States to take a number of measures to prevent terrorist activities and to criminalize various forms of terrorist actions, as well as measures that assist and promote cooperation among countries including signing up to international counter-terrorism instruments. The resolution also touches on issues related to immigration and refugee status. For example, States are required to prevent the movement of terrorists by implementing effective border controls and to secure the integrity of identity papers and travel documents (para. 2 (g)). States are also called upon to ensure

that asylum-seekers that have planned, facilitated or participated in the commission of terrorist acts are not granted refugee status (para. 3 (f)), and that refugee status is not abused by perpetrators, organizers or facilitators of terrorist acts (para. 3 (g)).

It should be noted that, with regard to refugee status and asylum, the resolution did not introduce new obligations into international refugee law. The 1951 Convention already has provisions to ensure that international refugee protection is not extended to those who have induced, facilitated or perpetrated terrorist acts.

The position of the Office of the United Nations High Commissioner for Refugees (UNHCR) is that those responsible for committing terrorist acts must not be permitted to manipulate refugee mechanisms in order to find a safe haven or achieve impunity.²⁶ The framework of international refugee law contains provisions aimed at guarding against abuse and is thus able to respond to possible exploitation of refugee mechanisms by those responsible for terrorist acts.

Firstly, refugee status may be granted only to those who fulfil the criteria of the refugee definition contained in article 1A of the 1951 Convention, i.e., those who have a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” In many cases, persons responsible for terrorist acts may not fear persecution for a reason set out in the 1951 Convention, but may rather be fleeing legitimate prosecution for criminal acts they have committed.

Secondly, according to article 1F of the 1951 Convention, persons who would otherwise meet the refugee criteria of article 1A shall be excluded from international refugee protection if there are serious reasons for considering that they have committed a war crime, a crime against humanity, a serious non-political crime outside the country of refuge prior to admission to that country as a refugee, or have been guilty of acts contrary to the purposes and principles of the United Nations. Particularly relevant is article 1F (b), which relates to the commission of a serious non-political crime by an asylum-seeker prior to the person’s admission to the country of refuge. Acts which bear the characteristics of terrorism will almost invariably amount to serious non-political crimes. UNHCR has issued guidelines²⁷ on the application of exclusion clauses under the 1951 Convention, noting, in particular, their exceptional nature and the need for their scrupulous application.

While indications of an asylum-seeker's alleged involvement in acts of terrorism would make it necessary to examine the applicability of article 1F of the 1951 Convention, international refugee law requires an assessment of the context and circumstances of the individual case in a fair and efficient procedure before a decision is taken. Any summary rejection of asylum-seekers, including at borders or points of entry, may amount to refoulement, which is prohibited by international refugee and human rights law. According to the Universal Declaration of Human Rights, all persons have the right to seek asylum.

Thirdly, persons who have been recognized as refugees, as well as asylum-seekers who are awaiting a determination of their claims, are bound to conform to the laws and regulations of their host country, as specified in article 2 of the 1951 Convention. If they do not do so, they may be prosecuted to the full extent of the law.

In addition, exceptions to the principle of non-refoulement exist under article 33 (2) of the 1951 Convention. Denial of protection from refoulement and return to the country of origin are foreseen if there are reasonable grounds for regarding a refugee as a danger to the security of the country in which he or she is or if, having been convicted of a particularly serious crime, that person constitutes a danger to the community of the host State. Finally, the 1951 Convention provides for the possibility of expulsion to a third country on national security grounds under article 32. Implementation of either of these articles may be carried out only following a decision taken by a competent authority in accordance with due process of law, including the right to be heard and the right of appeal. It is crucial to emphasize, however, that the application of either limitation contained in articles 32 or 33 (2) of the 1951 Convention is subject to the other human rights obligations of the State, specifically article 3 of the Convention against Torture and article 7 of the International Covenant on Civil and Political Rights, whose protection is absolute.

If a person has already been granted refugee status under the 1951 Convention, such status may be cancelled if there are grounds for considering that the person should not have been recognized as a refugee in the first place. This is the case where there are indications that, at the time of the initial decision, the applicant did not meet the inclusion criteria of the 1951 Convention, or that an exclusion clause of that Convention should have been applied to him or her.²⁸ This might include evidence that the person committed terrorist acts. Cancellation of refugee status is in keeping with the object and purpose of the 1951 Convention, if it is

established, in proper procedures, that the person did not fall within the refugee definition at the time of recognition.

Counter-terrorism and national security measures undertaken by States have also had, in some case, an adverse impact on refugee protection. These include unduly restrictive legislative and administrative measures, lack of access to asylum procedures, and the "criminalization" of refugees and asylum-seekers, which has negatively affected public perception.

II. HUMAN RIGHTS AND COUNTER-TERRORISM

As seen in chapter I, terrorism has a direct impact on the enjoyment of human rights. As such, States have a duty to take effective counter-terrorism measures. While the complexity and magnitude of the challenges facing States and others in their efforts to combat terrorism can be significant, international human rights law is flexible enough to address them effectively. This chapter will focus on the relationship between counter-terrorism and human rights, examining more specifically States' obligation to ensure that all counter-terrorism measures themselves comply with human rights standards (sect. A) and the flexibility built into human rights law to deal with exceptional circumstances (sect. B).

A. The promotion and protection of human rights while countering terrorism

Just as terrorism impacts on human rights and the functioning of society, so too can measures adopted by States to counter terrorism. As mentioned above, because terrorism has a serious impact on a range of fundamental human rights, States have not only a right but a duty to take effective counter-terrorism measures. Effective counter-terrorism measures and the protection of human rights are complementary and mutually reinforcing objectives which must be pursued together as part of States' duty to protect individuals within their jurisdiction.

As referred to in chapter I, section E, the Security Council acted swiftly, following the terrorist attacks on 11 September 2001, to strengthen the legal framework for international cooperation and common approaches to the threat of terrorism in such areas as preventing its financing, reducing the risk that terrorists might acquire weapons of mass destruction and improving cross-border information-sharing by law enforcement authorities, as well as establishing a monitoring body, the Counter-Terrorism Committee, to supervise the implementation of these measures. Regional approaches have also been developed in the context of the African Union, the Council of Europe, the European Union, the League of Arab States, the Organization for Security and Co-operation in Europe, the Organization of American States, the Organization of the Islamic Conference, the South Asian Association for Regional Cooperation and other organizations.

There has been a proliferation of security and counter-terrorism legislation and policy throughout the world since the adoption of Security Council resolution 1373 (2001), much of which has an impact on the enjoyment of human rights. Most countries, when meeting their obligations to counter terrorism by rushing through legislative and practical measures, have created negative consequences for civil liberties and fundamental human rights. The most relevant human rights concerns which States should take seriously to ensure that any measure taken to combat terrorism complies with their obligations under human rights law will be highlighted in chapter III.

The central role of human rights and State obligations when countering terrorism

The international community has committed to adopting measures that ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism, through the adoption of the United Nations Global Counter-Terrorism Strategy by the General Assembly in its resolution 60/288. Member States have resolved to take measures aimed at addressing the conditions conducive to the spread of terrorism, including lack of rule of law and violations of human rights, and ensure that any measures taken to counter terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law.

In 2004, the High-level Panel on Threats, Challenges and Change reported that recruitment by international terrorist groups was aided by grievances nurtured by poverty, foreign occupation, and the absence of human rights and democracy.²⁹

The World Summit Outcome, adopted by the General Assembly in 2005, also considered the question of respect for human rights while countering terrorism and concluded that international cooperation to fight terrorism must be conducted in conformity with international law, including the Charter of the United Nations and relevant international conventions and protocols. The General Assembly and the Commission on Human Rights have emphasized that States must ensure that any measures taken to combat terrorism comply with their obligations under international human rights law, refugee law and international humanitarian law. The Security Council has done the same, starting with the declaration set out in its resolution 1456 (2003), in which the Security Council, meeting at the level of Ministers for Foreign Affairs, stated that “States must ensure that

any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.” This position was reaffirmed in Security Council resolution 1624 (2005). In his 2006 report “Uniting against terrorism: recommendations for a global counter-terrorism strategy” (A/60/825), the United Nations Secretary-General described human rights as essential to the fulfilment of all aspects of a counter-terrorism strategy and emphasized that effective counter-terrorism measures and the protection of human rights were not conflicting goals, but complementary and mutually reinforcing ones. Universal and regional treaty-based bodies have likewise frequently observed that the lawfulness of counter-terrorism measures depends on their conformity with international human rights law.³⁰

The United Nations Global Counter-Terrorism Strategy reaffirms the inextricable links between human rights and security, and places respect for the rule of law and human rights at the core of national and international counter-terrorism efforts. Through the Strategy, Member States have committed to ensuring respect for human rights and the rule of law as the fundamental basis of the fight against terrorism. To be effective, this should include the development of national counter-terrorism strategies that seek to prevent acts of terrorism and address the conditions conducive to their spread; to prosecute or lawfully extradite those responsible for such criminal acts; to foster the active participation and leadership of civil society; and to give due attention to the rights of all victims of human rights violations.

Not only is the promotion and protection of human rights essential to the countering of terrorism, but States have to ensure that any counter-terrorism measures they adopt also comply with their international human rights obligations.

The General Assembly has adopted a series of resolutions concerning terrorism since December 1972, addressing measures to eliminate international terrorism as well as the relationship between terrorism and human rights. It has emphasized that States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular international human rights, refugee and humanitarian law.³¹

Under the Charter of the United Nations, the Security Council has primary responsibility for the maintenance of international peace and security, including measures to address terrorism as a threat to international peace and security. The Security Council has undertaken a number of counter-terrorism actions, notably in the form of sanctions against States

considered to have links to certain acts of terrorism (primarily in the 1990s) and later against the Taliban and Al-Qaida, as well as the establishment of committees to monitor the implementation of these sanctions. In 2001, it adopted resolution 1373 (2001), which obliges Member States to take a number of measures to prevent terrorist activities and to criminalize various forms of terrorist actions, and calls on them to take measures that assist and promote cooperation among countries including signing up to international counter-terrorism instruments. Member States are required to report regularly to the Counter-Terrorism Committee (see annex) on their progress.

As seen above, the Security Council has called on States to ensure that counter-terrorism measures comply with international human rights law, refugee law and humanitarian law in several of its resolutions.³² In its report to the Security Council (S/2005/800), the Counter-Terrorism Committee reiterated this call. It also stressed that the Counter-Terrorism Committee Executive Directorate (see annex) should take this into account in the course of its activities.

In addition to the general obligation of States to act within a human rights framework at all times, it should be noted that the universal treaties on counter-terrorism expressly require compliance with various aspects of human rights law. In the context of the International Convention for the Suppression of the Financing of Terrorism, for example, this is illustrated in article 15 (expressly permitting States to refuse extradition or legal assistance if there are substantial grounds for believing that the requesting State intends to prosecute or punish a person on prohibited grounds of discrimination); article 17 (requiring the “fair treatment” of any person taken into custody, including enjoyment of all rights and guarantees under applicable international human rights law); and article 21 (a catch-all provision making it clear that the Convention does not affect the other rights, obligations and responsibilities of States).

B. *The flexibility of human rights law*

The promotion and protection of human rights while countering terrorism is an obligation of States and an integral part of the fight against terrorism. National counter-terrorism strategies should, above all, seek to prevent acts of terrorism, prosecute those responsible for such criminal acts, and promote and protect human rights and the rule of law.

At the outset, it is important to highlight that the vast majority of counter-terrorism measures are adopted on the basis of ordinary legislation. In a limited set of exceptional national circumstances, some restrictions on the enjoyment of certain human rights may be permissible.

Ensuring both the promotion and protection of human rights and effective counter-terrorism measures nonetheless raises serious practical challenges for States. One such example is the dilemma faced by States in protecting intelligence sources, which may require limiting the disclosure of evidence at hearings related to terrorism, while at the same time respecting the right to a fair trial and the right to a fair hearing for the individual.

These challenges are not insurmountable. States can effectively meet their obligations under international law by using the flexibilities built into the international human rights law framework. Human rights law allows for limitations on certain rights and, in a very limited set of exceptional circumstances, for derogations from certain human rights provisions. These two types of restrictions are specifically conceived to provide States with the necessary flexibility to deal with exceptional circumstances, while at the same time—provided a number of conditions are fulfilled—complying with their obligations under international human rights law.

1. *Limitations*

As provided for by international human rights conventions, States may legitimately limit the exercise of certain rights, including the right to freedom of expression, the right to freedom of association and assembly, the right to freedom of movement and the right to respect for one's private and family life. In order to fully respect their human rights obligations while imposing such limitations, States must respect a number of conditions.³³ In addition to respecting the principles of equality and non-discrimination, the limitations must be prescribed by law, in pursuance of one or more specific legitimate purposes and "necessary in a democratic society."

(a) *Prescription by law*

Common to international, regional and domestic human rights instruments and guidelines is the requirement that any measure restricting the enjoyment of rights and freedoms must be set out within, or authorized by, a prescription of law.³⁴ To be "prescribed by law": (a) the law must be adequately accessible so that individuals have an adequate indication

of how the law limits their rights; and (b) the law must be formulated with sufficient precision so that individuals can regulate their conduct.³⁵

Moreover, any criminal law proscription must also comply with the principle of non-retroactivity. Article 15 of the International Covenant on Civil and Political Rights requires, in this regard, that any provision defining a crime must not criminalize conduct that occurred prior to its entry into force as applicable law. Likewise, any penalties are to be limited to those applicable at the time that any offence was committed and, if the law has subsequently provided for the imposition of a lighter penalty, the offender must be given the benefit of the lighter penalty.³⁶

(b) In the pursuance of a legitimate purpose

The permissible legitimate purposes for the interference vary depending on the rights subject to the possible limitations as well as on the human rights treaty in question. They are national security, public safety, public order, health, morals, and the human rights and freedoms of others.³⁷

The important objective of countering terrorism is often used as a pretext to broaden State powers in other areas.³⁸ Offences which are not acts of terrorism, regardless of how serious they are, should not be the subject of counter-terrorist legislation. Nor should conduct that does not bear the quality of terrorism be the subject of other counter-terrorism measures, even if undertaken by a person also suspected of terrorist crimes. Again, this requirement is reflected within various international and regional documents on the promotion and protection of human rights while countering terrorism.³⁹

(c) Necessity and proportionality

What is often referred to as “necessary in a democratic society” is an additional safeguard which requires States to demonstrate that the limitations do not impair the democratic functioning of society. In practice, this means that they must meet the test of necessity and the requirement of proportionality. So any limitation on the free enjoyment of rights and freedoms must be necessary in the pursuit of a pressing objective, and its impact on rights and freedoms strictly proportional to the nature of that objective.

As a general matter, given the impact of terrorism on human rights, security and the functioning of various aspects of international and domestic societies, there is no doubt that the countering of international terrorism

is an important objective which can, in principle, permit the limitation of certain rights. To be justifiable, however, the imposition of such a limitation must satisfy various requirements. Assuming that the right is capable of limitation and that the limiting measure is imposed within the bounds of certain procedural requirements, it must be necessary to achieve a particular counter-terrorism objective. To be necessary, a rational link must exist between the limiting measure and the pursuit of the particular objective.⁴⁰ The existence of a rational link will normally be accepted if the measure logically furthers the objective, although more evidence of this connection might be necessary if such a link is not plainly evident.⁴¹

In that regard, and for the purpose of determining the importance of a particular measure's objective, it will be instructive to determine: how the measure is linked with the countering of an actual or potential threat of terrorism against the State; the measure's contribution to international and regional frameworks on counter-terrorism as well as, subsidiarily, its contribution to other national interests of the State.⁴²

(d) *Example of permissible limitations*

The requirements for a valid limitation of rights can be illustrated in the context of incitement to terrorism and freedom of expression, a subject considered further in chapter III. Prohibiting incitement to terrorism involves a limitation on the ability of persons to express themselves as they wish. Any prohibition against incitement must therefore comply with the requirements for a legitimate limitation on rights and freedoms: the limitation must thus be prescribed by law; be in pursuit of a legitimate purpose; and be both necessary and proportional.

The first requirement, that any limitation must be prescribed by law, means that the prohibition against incitement should take the form of a provision within legislation. As to legitimate purpose, proscribing incitement to terrorism is consistent with the protection of national security or public order, which are both set out as legitimate grounds for the limitation of freedom of expression in article 19 (3) of the International Covenant on Civil and Political Rights. Prohibiting incitement to terrorism is also consistent with its article 20 (2), which requires States to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

The final requirement of necessity and proportionality is relevant to the way in which the proscription is expressed in the legislation and how it is applied. The law prohibiting incitement to terrorism must be expressed

in a way that not only respects the principle of legality, but also ensures that it is restricted to its legitimate purpose. Article 19 of the International Covenant on Civil and Political Rights allows only limitations on the freedom of expression that are “necessary” for the achievement of the purposes listed in its paragraph 3. Prohibiting incitement to terrorism must therefore be limited to what is actually required to protect national security or public order. The provision, and the way in which it is applied, must also be proportional, i.e., for each measure, one must determine whether, given the importance of the right or freedom, the impact of the measure on the enjoyment of that right or freedom is proportional to the importance of the objective being pursued by the measure and its potential effectiveness in achieving that objective.⁴³ The merit of any measure will depend on the importance of the counter-terrorism objective it pursues, as well as on its potential efficacy in achieving it. The imposition of a limitation on rights and freedoms for the purpose of countering terrorism, but by ineffective means, is unlikely to be justifiable. In assessing the impact of a counter-terrorism measure on rights and freedoms, consideration must be given, case by case, to the level to which it limits the right or freedom, and also to the importance and degree of protection offered by the human right being limited.⁴⁴

2. Derogations

In a limited set of circumstances, such as a public emergency which threatens the life of the nation, States may take measures to *derogate* from certain human rights provisions under the International Covenant on Civil and Political Rights. Its article 4 sets out the formal and substantive requirements which a State party must fulfil to derogate legitimately from certain obligations under the Covenant.⁴⁵ A state of emergency must be understood as a truly exceptional, temporary measure to which may be resorted only if there is a genuine threat to the life of the nation. Short of such extreme situations, States must develop and implement effective domestic legislation and other measures in compliance with their international human rights obligations.

Through the intermediary of the United Nations Secretary-General, a derogating State must immediately inform other States parties to the Covenant of the provisions from which it has derogated and of the reasons for which it has done so. Moreover, the State party must be faced with a situation which constitutes a threat to the life of the nation and may take only such measures as strictly required by the exigencies of that situation. This requirement relates to the degree of interference as well as to the

territorial and temporal scope of the measure adopted. This implies that the necessity of the state of emergency itself and the derogation measures should regularly be reviewed by independent organs, in particular the legislative and judicial branch. The measures must also be consistent with other obligations under international law, particularly the rules of international humanitarian law and the peremptory norms of international law.

(a) *Non-derogable human rights*

Derogation from certain human rights set out in international human rights treaties is prohibited, even in a state of emergency. Article 4 (2) of the International Covenant on Civil and Political Rights identifies as non-derogable the right to life, freedom from torture or cruel, inhuman or degrading treatment or punishment, the prohibition against slavery and servitude, freedom from imprisonment for failure to fulfil a contract, freedom from retrospective penalties, the right to be recognized as a person before the law, and freedom of thought, conscience and religion. In its general comment N° 29, the Human Rights Committee has also emphasized that the Covenant's provisions relating to procedural safeguards can never be made subject to measures that would circumvent the protection of these non-derogable rights. Regional human rights law has also emphasized the importance of procedural guarantees. The Inter-American Court of Human Rights, for example, has stated that "writs of habeas corpus and of 'amparo' are among those judicial remedies that are essential for the protection of various rights whose derogation is prohibited... and that serve, moreover, to preserve legality in a democratic society.... The constitutions and legal systems of the States parties that authorize, expressly or by implication, the suspension of the legal remedies of habeas corpus or of 'amparo' in emergency situations cannot be deemed to be compatible with the international obligations imposed on these States by the Convention."⁴⁶

Further to this list of non-derogable rights, article 4 (1) of the Covenant specifies that any derogating measures must not be inconsistent with obligations under international law which, as the Human Rights Committee has pointed out in its general comment N° 29, includes obligations under international human rights law, international humanitarian law and international criminal law. The Committee also identified rights and freedoms under customary international law (which is applicable to all States) that may not be derogated from even if not listed in article 4 (2). The Human Rights Committee has identified as customary law rights: the right of all persons deprived of their liberty to be treated with humanity

and with respect for the inherent dignity of the human person; the prohibitions against the taking of hostages, abductions or unacknowledged detention; the international protection of the rights of persons belonging to minorities; the deportation or forcible transfer of population without grounds permitted under international law; and the prohibition against propaganda for war or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence.

Compliance with international law obligations also prevents the adoption of derogating measures purporting to authorize conduct which would constitute a basis for individual criminal responsibility for a crime against humanity. As the right to a fair trial is explicitly guaranteed under international humanitarian law during armed conflict, the Human Rights Committee has expressed the opinion that the requirements of fair trial must also be respected during a state of emergency. So as to respect the principles of legality and the rule of law, the protection of those rights recognized as non-derogable requires that certain procedural safeguards, including judicial guarantees, are available in all situations. The Committee has emphasized that only a court of law may try and convict a person for a criminal offence and that the presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court (to enable the court to decide without delay on the lawfulness of detention) must not be diminished by a State party's decision to derogate from the Covenant.

(b) *What is a “public emergency which threatens the life of the nation”?*

The ability to derogate under article 4 (1) of the Covenant is triggered only in a time of “public emergency which threatens the life of the nation.” In its general comment N° 29, the Human Rights Committee has characterized such an emergency as being of an exceptional nature. Not every disturbance or catastrophe qualifies as such. The Committee has commented that, even during an armed conflict, measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation. Whether or not terrorist acts or threats establish such a state of emergency must therefore be assessed case by case.⁴⁷

(c) Permissible extent of derogations

Any derogation under article 4 (1) of the Covenant may only be “to the extent strictly required by the exigencies of the situation.” Key to this requirement is the temporary nature of any derogation. The Human Rights Committee has said that the restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant. Any measure derogating from the Covenant must be necessary and proportional.

Article 4 (1) specifies that any derogation of rights in times of emergency may not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. It also provides that any derogating measures must not be inconsistent with the derogating State's obligations under international law, which would include obligations under international human rights, international humanitarian law and international criminal law. Article 5 (1) is of relevance as well. It clarifies that nothing in the Covenant (including the article 4 ability to derogate) can be interpreted as implying any right to engage in activity aimed at the destruction of the rights and freedoms set out in it.

Finally, as with limitations described above, any derogation must comply strictly with the principles of necessity and proportionality.

III. SPECIFIC HUMAN RIGHTS CHALLENGES IN THE CONTEXT OF TERRORISM AND COUNTER-TERRORISM

As discussed in the previous chapters, both terrorism and counter-terrorism affect the enjoyment of human rights. While it is not possible to provide an in-depth analysis of all human rights concerns in the context of terrorism and counter-terrorism measures, this chapter identifies a selection of current and emerging human rights challenges.

A. *The right to life*

Both international and regional human rights law recognize the right and duty of States to protect those individuals subject to their jurisdiction. In practice, however, some of the measures that States have adopted to protect individuals from acts of terrorism have themselves posed grave challenges to the right to life. They include “deliberate” or “targeted killings” to eliminate specific individuals as an alternative to arresting them and bringing them to justice. The Human Rights Committee has stated that targeted killings should not be used as a deterrent or punishment and that the utmost consideration should be given to the principle of proportionality. State policies should be spelled out clearly in guidelines to military commanders and complaints about the disproportionate use of force should be investigated promptly by an independent body. Before any contemplation of resort to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted.⁴⁸

In other cases, States have adopted “shoot-to-kill” law enforcement policies in response to perceived terrorist threats.⁴⁹ In the context of counter-terrorism, the High Commissioner for Human Rights has emphasized the importance of ensuring that the entire law enforcement machinery, from police officers to prosecutors and officers operating detention and prison facilities, operates within the law. She has cautioned that, in the fight against terrorism, extreme vigilance should be applied by those in a position of authority against all forms of abuse of power, and that they should instil a culture of respect for the law above all by those entrusted with its application.⁵⁰

As noted by the Special Rapporteur on extrajudicial, summary or arbitrary executions, “the rhetoric of shoot-to-kill and its equivalents poses a deep and enduring threat to human rights-based law enforcement approaches.

Much like invocations of 'targeted killing,' shoot-to-kill is used to imply a new approach and to suggest that it is futile to operate inside the law in the face of terrorism. However, human rights law already permits the use of lethal force when doing so is strictly necessary to save human life. The rhetoric of shoot-to-kill serves only to displace clear legal standards with a vaguely defined licence to kill, risking confusion among law enforcement officers, endangering innocent persons, and rationalizing mistakes, while avoiding the genuinely difficult challenges that are posed by the relevant threat." The Special Rapporteur has further suggested that States that adopt shoot-to-kill policies for dealing with, for example, suicide bombers "must develop legal frameworks to properly incorporate intelligence information and analysis into both the operational planning and post-incident accountability phases of State responsibility." They must further ensure that "only such solid information, combined with the adoption of appropriate procedural safeguards, will lead to the use of lethal force."⁵¹

Under international and regional human rights law, the protection against arbitrary deprivation of life is non-derogable even in a state of emergency threatening the life of the nation.⁵² The Human Rights Committee has stated that "the protection against arbitrary deprivation of life... is of paramount importance. The Committee considers that States parties should take measures... to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."⁵³ To comply with international human rights law, any State policy which allows the use of lethal force must, therefore, fall within those narrow cases in which the deprivation of life cannot be considered arbitrary.

In order to be considered lawful, the use of lethal force must always comply with the principle of necessity and must be used in a situation in which it is necessary for self-defence or for the defence of another's life. It must always comply with the principle of proportionality, and non-lethal tactics for capture or prevention must always be attempted if feasible. In most circumstances, law enforcement officers must give suspects the opportunity to surrender and employ a graduated resort to force.⁵⁴ "The State's legal framework must 'strictly control and limit the circumstances' in which law enforcement officers may resort to lethal force."⁵⁵

International humanitarian law contains similar provisions against the "targeted killing" of civilians in the context of an armed conflict (see chap. I).

B. Challenges to the absolute prohibition against torture

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute under international law. It is a peremptory norm—or a norm of *jus cogens*⁵⁶—and is non-derogable even in states of emergency threatening the life of the nation under international and regional human rights treaties.⁵⁷

The prohibition of torture and other cruel, inhuman or degrading treatment does not yield to the threat posed by terrorism or to the alleged danger posed by an individual to the security of a State.⁵⁸ In practice, however, States have often adopted policies and methods to confront terrorism that, in effect, circumvent and undermine this absolute prohibition.⁵⁹

For example, the use of torture and other cruel, inhuman or degrading treatment to elicit information from terrorist suspects is absolutely prohibited, as is the use in legal proceedings of evidence obtained by torture, whether at home or abroad, and of “secret evidence” put forward by prosecuting and other authorities in judicial proceedings, in violation of the principle of non-admissibility of evidence extracted by torture, contained inter alia in article 15 of the Convention against Torture.⁶⁰

States’ policies that aim to exclude the application of human rights law to individuals outside their territory may effectively erode the absolute prohibition of torture, cruel and degrading treatment or punishment. According to the Human Rights Committee, the rights enshrined in the International Covenant on Civil and Political Rights apply to all persons who may be within a State party’s territory and to all persons subject to its jurisdiction (see above). This means that a State party must respect and ensure the rights laid down in the Covenant—including the absolute prohibition of torture—to anyone within its power or effective control, even if not situated within its territory. Similarly, the International Court of Justice has stated that, while the jurisdiction of States is primarily territorial, the rights enshrined in the Covenant extend “to acts done by a State in the exercise of its jurisdiction outside its own territory.”⁶¹

Regarding conditions of detention, practices such as the use of secret and incommunicado detention,⁶² as well as prolonged solitary confinement and similar measures aimed at causing stress, may amount to torture, cruel, inhuman or degrading treatment.⁶³

States must ensure that the full range of legal and practical safeguards to prevent torture is available, including guarantees related to the right to personal liberty and security, and to due process rights. These are, for instance, the right for anyone arrested or detained on criminal charges to be brought promptly before a judge and to be tried within a reasonable amount of time or to be released. They also include the right promptly to challenge the lawfulness of one's detention before a court. The Human Rights Committee, in its general comment N° 29, has confirmed that this right is to be protected at all times, including during a state of emergency, thereby highlighting the crucial role of procedural guarantees in securing compliance with the absolute prohibition of torture or any other form of inhuman, cruel or degrading treatment. Additionally, detainees must be given regular access to medical doctors and legal counsel. Finally, States should allow the regular and independent monitoring of detention centres (see also sect. D below).

The entry into force of the Optional Protocol to the Convention against Torture on 22 June 2006 is a significant development towards ensuring the practical protection of detainees against torture and other cruel, inhuman or degrading treatment. It establishes an international Subcommittee on Prevention of Torture with a mandate to visit places of detention in States parties and requires States parties to set up national preventive mechanisms, which are also to be provided with access to places of detention and prisoners. The High Commissioner for Human Rights has encouraged all States to sign and ratify this instrument as an important practical measure and a demonstration of their commitment to preventing torture and ill-treatment, and protecting the human rights of those within their jurisdiction.

C. Transfer of individuals suspected of terrorist activity

States have an obligation to conduct any transfer of detainees in a manner which is transparent and consistent with human rights and the rule of law, including the right to respect for a person's inherent dignity, the right of everyone to recognition before the law and the right to due process. The international human rights legal framework requires that any deprivation of liberty should be based on grounds and procedures established by law, that detainees should be informed of the reasons for their detention and promptly notified of the charges against them, and that they should be provided with access to legal counsel. In addition, prompt and effective oversight of detention by a judicial officer must be ensured to verify the

legality of the detention and to protect other fundamental rights of the detainee. Even in a state of emergency, minimum access to legal counsel and prescribed reasonable limits on the length of preventive detention remain mandatory. Moreover, national authorities have an obligation to prevent human rights abuses and to actively investigate and prosecute any allegation of practices which may involve the transfer or detention of individuals in a manner inconsistent with their obligations under international law.

Particularly since 11 September 2001, some States have reportedly extradited, expelled, deported or otherwise transferred foreign nationals, some of them asylum-seekers, suspected of terrorism to their country of origin or to other countries where they allegedly face a risk of torture or ill-treatment, in violation of the principle of non-refoulement. This principle, set out in article 33 (1) of the 1951 Convention relating to the Status of Refugees, is also recognized in other international instruments, most notably in article 3 of the Convention against Torture⁶⁴ and in article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance. It is also reflected in article 7 of the International Covenant on Civil and Political Rights, which the Human Rights Committee, in its general comment N° 20 (1992), has interpreted to include an obligation on States not to expose individuals to “the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”⁶⁵ According to general comment N° 31, article 2 of the Covenant also entails an obligation on States “not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm... either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.” It is well established in international law that the prohibition of refoulement is absolute if there is a risk of torture or other cruel, inhuman or degrading treatment.⁶⁶ However, this obligation also applies in cases involving a risk of irreparable harm and in cases of arbitrary deprivation of life (including undue imposition of the death penalty), enforced disappearance, torture or cruel, inhuman or degrading treatment, and exposure to a manifestly unfair trial.

The transfer of an individual which takes place outside the rule of law and without due process may lead to a number of human rights violations, notably infringements of the right to liberty and security of the person, the prohibition of torture and other cruel, inhuman or degrading treatment and punishment, the right to recognition everywhere as an individual

before the law, the right to a fair trial, the right to private and family life, and the right to an effective remedy. Depending on the circumstances, it may also amount to an enforced disappearance.⁶⁷

In the context of counter-terrorism, some States have made use of diplomatic assurances, memorandums of understanding and other forms of diplomatic agreement to justify the return or irregular transfer of individuals suspected of terrorist activity to countries where they may face a real risk of torture or other serious human rights abuse. This practice raises a number of serious human rights concerns. The High Commissioner for Human Rights has emphasized that, as a practical matter, these arrangements do not work as in reality they do not provide adequate protection against torture and other ill-treatment, nor, as a legal matter, can they nullify the obligation of non-refoulement. In most cases, assurances are concluded between States which are party to binding international and regional treaties which prohibit torture and cruel, inhuman or degrading treatment or punishment and refoulement to such practices, raising, in any event, the question as to why further bilateral steps are necessary. In addition, even though all persons are entitled to the equal protection of existing treaties, assurances amount to the creation of a two-class system among detainees, by creating special protection for a selected few, while ignoring the plight of many others. Efforts should therefore focus on the full implementation of international human rights obligations through existing structures, notably through the establishment of systems of regular visits, by independent international and national bodies, of places where people are deprived of their liberty.

All States have a positive obligation to ensure that their territory is not used to transfer persons to places where they are likely to be subjected to torture. This includes taking all practical steps to determine whether foreign movements through its territory involve such practices where there are grounds to believe that there is a real risk of irreparable harm. At a minimum, it means ensuring that any transfer of persons from one territory to another is undertaken pursuant to a prescription by law and within the framework of international law. In addition, judicial oversight and review must be available to the detainee prior to any transfer and credible allegations of transfers involving a real risk of torture must be investigated. All the circumstances should be assessed, including the prior practice on the part of the transiting State, the origin and destination of the transiting aircraft or vehicle, and the preparedness or otherwise of the transiting State to share information and/or provide assurances. The United Nations High Commissioner for Human Rights and the Special Rapporteur on the question of torture have emphasized the importance

of remaining vigilant against practices that erode the absolute prohibition of torture in the context of counter-terrorism.⁶⁸

States' international responsibility may be engaged for committing an internationally wrongful act, for bringing assistance or aid to other States in the commission of a wrongful act, for acquiescing in this conduct or for failing to prevent such acts from occurring on its territory. States may also be held responsible when their agents have acted *ultra vires*. In addition, where such violations have taken place, States have a duty to undertake prompt and effective investigations to identify and prosecute those responsible, as well as ensure that the victims are adequately compensated.⁶⁹

D. *Liberty and security of the person*

All persons are protected against the unlawful or arbitrary interference with their liberty. This protection is applicable in the context of criminal proceedings, as well as other areas in which the State might affect the liberty of persons.⁷⁰ In practice, as part of their efforts to counter terrorism, States have adopted measures which have an impact on the liberty of persons, such as: pretrial procedures for terrorism offences, including provisions concerning bail and the remand of persons in custody awaiting trial; pretrial detention (detention before laying a criminal charge against a person for the purpose of further investigating whether that person was involved in the commission, or assisted in the commission, of a terrorist offence); administrative detention (detention to prevent a person from committing, or assisting in the commission of, a terrorist offence); control orders (imposing conditions on a person, short of detention, to prevent that person from committing, or assisting in the commission of, a terrorist offence, including the detention of a person awaiting determination of immigration or refugee status); and compulsory hearings (detention and compulsory questioning of a terrorist suspect, or non-suspect, to gather intelligence about terrorist activities).

As part of its efforts to counter terrorism, a State may lawfully detain persons suspected of terrorist activity, as with any other crime. However, if a measure involves the deprivation of an individual's liberty, strict compliance with international and regional human rights law related to the liberty and security of persons, the right to recognition before the law and the right to due process is essential. Any such measures must, at the very least, provide for judicial scrutiny and the ability of detained persons to have the lawfulness of their detention determined by a judicial

authority.⁷¹ Adherence to due process and the right to a fair hearing is essential for the proper safeguarding of a person's liberty and security.

E. Profiling and the principle of non-discrimination

As underscored in chapter I, section A, the principles of equality and non-discrimination are central to human rights law and are recognized as norms of *jus cogens*.⁷² The Inter-American Court of Human Rights, for example, has stated that "the principle of equality before the law, equal protection before the law and non-discrimination belong to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a principle that permeates all law."⁷³ In the specific context of counter-terrorism, the Committee on the Elimination of Racial Discrimination has said that the principle of non-discrimination is not capable of limitation since it has become a norm of *jus cogens*. This is reflected within various international and regional documents on the promotion and protection of human rights while countering terrorism.⁷⁴

The use of indicator clusters to profile potential suspects may, in principle, be a permissible means of investigation and can be an important law enforcement tool. Generally speaking, profiling is a filtering process involving a single indicator or a cluster of indicators that, when grouped together, present the characteristics of a high-risk person, passenger or consignment. When law enforcement agents use broad profiles that reflect unexamined generalizations, including for the purposes of countering terrorism, these practices may constitute disproportionate interference with human rights. In particular, if one of the indicators on which profiling is based is a person's ethnic or national origin, this raises the question of the conformity of profiling with the principle of non-discrimination.⁷⁵

In its general recommendation N° 30 (2004), the Committee on the Elimination of Racial Discrimination has called on States to ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping. At the regional level, the Inter-American Commission on Human Rights has cautioned that "any use of profiling or similar devices by a State must comply strictly with international principles governing necessity, proportionality and non-discrimination, and must be subject to close judicial scrutiny."⁷⁶ The European Commission against Racism and Intolerance has asked Governments to ensure that no discrimination ensues from legislation and regulations, or their implementation, in the

field of law enforcement checks.⁷⁷ Finally, the European Union Network of Independent Experts on Fundamental Rights has expressed serious concerns about the development of terrorist profiles; profiling on the basis of characteristics such as nationality, age or birthplace, the Experts have cautioned, “presents a major risk of discrimination.”⁷⁸ This is also applicable to the profiling of persons based on their religion. Profiling or similar devices must strictly comply with the principles of necessity, proportionality and non-discrimination; they should be subject to close judicial scrutiny and should be periodically reviewed.⁷⁹

F. Due process and the right to a fair trial

Guaranteeing due process rights, including for individuals suspected of terrorist activity, is critical for ensuring that anti-terrorism measures are effective and respect the rule of law. The human rights protections for all persons charged with criminal offences, including terrorism-related crimes, include the right to be presumed innocent, the right to a hearing with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, and the right to have a conviction and sentence reviewed by a higher tribunal satisfying the same standards.⁸⁰ International humanitarian law provides for substantially similar protections for the trial of persons in the context of armed conflicts.⁸¹

In July 2007, the Human Rights Committee adopted general comment N° 32, revising its general comment on article 14 of the International Covenant on Civil and Political Rights on the right to a fair trial and equality before the courts and tribunals. The revised general comment notes that the right to a fair trial and to equality before the courts and tribunals is a key element of human rights protection and serves to safeguard the rule of law by procedural means. Article 14 of the Covenant aims at ensuring the proper administration of justice and to this end guarantees a series of specific rights, including that all persons should be equal before the courts and tribunals, that in criminal or civil cases everyone has a right to a fair and public hearing by a competent, independent and impartial tribunal, that everyone charged with a criminal offence should have the right to be presumed innocent until proved guilty according to law, and that everyone convicted of a crime should have the right to have his or her conviction and sentence reviewed by a higher tribunal according to law.

The former Sub-Commission on the Promotion and Protection of Human Rights for many years addressed issues related to terrorism and human rights, including the administration of justice through military tribunals.

The use of military and special tribunals or courts to try terrorist suspects may also have a serious impact on due process rights, depending on the nature of the tribunal or court and any restrictions placed on a person facing charges before it.⁸² In particular, the circumstances are rare in which a military court will be the appropriate venue to try a civilian.

A number of other counter-terrorism measures adopted by Member States have had a serious impact on due process-related rights for individuals suspected of terrorism, as well as their families, including the listing and de-listing of individuals and groups as terrorist or associated entities, both by the Security Council Al-Qaida and Taliban Sanctions Committee and by national procedures.⁸³ While targeted sanctions against individuals suspected of involvement in terrorist activity may be an effective tool in a State's efforts to combat terrorism, such procedures pose a number of serious challenges to human rights. Measures should be taken to ensure a transparent listing and de-listing process, based on clear criteria, and with an appropriate, explicit and uniformly applied standard of evidence, as well as an effective, accessible and independent mechanism of review for the individuals and States concerned. At a minimum, the standards required to ensure fair and clear procedures must include the right of an individual to be informed of the measures taken and to know the case against him or her as soon as, and to the extent, possible, without thwarting the purpose of the sanctions regimes; the right to be heard within a reasonable time by the relevant decision-making body; the right to effective review by a competent and independent review mechanism; the right to counsel with respect to all proceedings; and the right to an effective remedy.⁸⁴

G. *The principle of legality and the definition of terrorism*

The existing international legal framework on counter-terrorism sets out obligations in relation to terrorism, without providing a comprehensive definition of the term. Calls by the international community to combat terrorism, without defining the term, might be understood as leaving it to individual States to define what is meant by it. This carries the potential for unintended human rights abuses and even the deliberate misuse of the term.⁸⁵

One specific example in this context is respect for the principle of legality, which is enshrined in article 15 of the International Covenant on Civil and Political Rights and is non-derogable, even in times of public emergency.

It implies that the imposition of criminal liability is limited to clear and precise provisions, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would unduly broaden the scope of the proscribed conduct. Overly vague or broad definitions of terrorism may be used by States as a means to cover peaceful acts to protect inter alia labour rights, minority rights or human rights or, more generally, to limit any sort of political opposition.⁸⁶

As mentioned earlier, none of the current international conventions on anti-terrorism contains a comprehensive definition of the term *terrorism*. Neither do resolutions of the various United Nations bodies set out a comprehensive definition. Instead, the conventions are “sectoral” in nature and address specific subjects, whether air safety, maritime navigation and platforms, the protection of persons, or the suppression of the means by which terrorist acts may be perpetrated or supported.

As mentioned in chapter I, section B, negotiations on a draft comprehensive convention on international terrorism, referred in 2001 to a committee of the General Assembly, continue. Importantly, the draft convention contains a comprehensive definition in its article 2. In view of its comprehensive approach, the adoption of the draft convention would contribute to strengthening the international legal framework by consolidating a number of criminal conducts that the existing, “sectoral” universal conventions do not cover. However, certain aspects of the draft convention remain controversial, in particular the scope of application of the proposed definition of terrorist offences and whether national liberation movements should be excluded or not from its scope of application, as well as its interplay with other provisions of international law.⁸⁷ Moreover, even if a comprehensive definition is agreed upon at international level, human rights concerns may still arise depending on the definition of terrorist-related offences adopted nationally.

In 2004, the Security Council adopted resolution 1566 (2004), in which it called on all States to cooperate fully in the fight against terrorism and, in doing so, to prevent and punish criminal acts that have the following three characteristics, irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature:

- Committed, including against civilians, with the intent to cause death or serious bodily injury, or taking of hostages; and
- Committed with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons,

intimidate a population, or compel a Government or an international organization to do or to abstain from doing any act; and

- Constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

Although the Security Council did not express this to be a definition of *terrorism*, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed support for this approach as a means of confining the term to conduct that is of a genuinely terrorist nature.⁸⁸ This approach is of considerable benefit since it is based on agreed parameters and is compatible with the principles of legality and precision.

Despite the lack of an internationally agreed definition of terrorism, it is clear that acts of terrorism are not justified as the means of achieving self-determination or any other objective. Early resolutions of the General Assembly addressing the issue of terrorism contained express affirmations of the principle of self-determination. In its resolution 3034 (XXVII), for example, the General Assembly urged States to solve the problem of terrorism by addressing the underlying issues leading to terrorist conduct. It reaffirmed the right to self-determination and independence of all peoples, and upheld the legitimacy of national liberation movements. Since its adoption of the 1994 Declaration on Measures to Eliminate International Terrorism, however, the General Assembly has made it clear that this does not legitimate the use of terrorism by those seeking to achieve self-determination.

In its Global Counter-Terrorism Strategy, the General Assembly stated that Member States of the United Nations resolve to “consistently, unequivocally and strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purpose.” The Security Council has expressed in its resolutions 1269 (1999) and 1566 (2004) that all acts of terrorism are unjustifiable, regardless of their motivation.

H. *Freedom of expression and the prohibition of incitement to terrorism*

Prohibiting incitement to terrorism has been used in chapter II, section B, to illustrate the general requirements for any limitation on certain human rights to be prescribed by law, in pursuit of a legitimate purpose, and both

necessary and proportional. This section considers the issue in more detail, as it relates to the right to freedom of expression.

Incitement to terrorism is a strategy commonly used by terrorist organizations to further support for their cause and call for violent action. The Security Council has identified it as conduct which is contrary to the purposes and principles of the United Nations and called on States to adopt measures to prohibit and prevent it.⁸⁹ Proscribing incitement to terrorism is integral to the protection of national security and public order, which are both set out as legitimate grounds for limiting freedom of expression in article 19 (3) of the International Covenant on Civil and Political Rights. It is also consistent with its article 20 (2), which requires States to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Great care must be taken, however, to ensure that any restriction on the right to freedom of expression is both necessary and proportional. This is especially important given that freedom of expression is an essential foundation of a democratic society,⁹⁰ and its enjoyment is linked with other important rights, including the rights to freedom of thought, conscience and religion, belief and opinion.

Although none of the universal terrorism-related conventions explicitly requires the prohibition of incitement to terrorism, the Council of Europe's Convention on the Prevention of Terrorism requires States parties to criminalize the unlawful and intentional public provocation to commit a terrorist offence, defining this as "...the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed" (art. 5 (1)). The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed the view that this provision represents a best practice in defining the proscription of incitement to terrorism.⁹¹ Article 5 of the Convention was the result of careful intergovernmental negotiation and defines what amounts to a "public provocation to commit a terrorist offence" with reference to three elements. There must first be an act of communication ("the distribution, or otherwise making available, of a message to the public..."). Secondly, there must be a subjective intention on the part of the person to incite terrorism ("...with the intent to incite the commission of a terrorist offence... whether or not directly advocating terrorist offences..."). Finally, there must be an additional objective danger that the person's conduct will incite terrorism ("...where such conduct... causes a danger

that one or more such offences may be committed"). This last objective requirement separates incitement to terrorism from an act of glorification of terrorism. The requirement of intention in article 5 (2) reaffirms the subjective element within the definition of public provocation to commit a terrorist offence and requires the act of communication also to be intentional.

A troubling trend has been the proscription of the glorification (*apologie*) of terrorism, involving statements which may not go so far as to incite or promote the commission of terrorist acts, but might nevertheless applaud past acts. While such statements might offend the sensibilities of individual persons and society, particularly the victims of terrorist acts, it is important that vague terms of an uncertain scope such as *glorifying* or *promoting* terrorism are not used when restricting expression. A joint declaration of experts on freedom of expression explains that "incitement *should be understood as a direct call to engage in terrorism, with the intention that this should promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring.*"⁹²

I. Freedom of association

The right to freedom of association, like the right to freedom of expression, is a platform for the exercise and defence of other rights, such as political participation rights and cultural rights. Human rights defenders often use this right as a legal basis for their action. It is central to a democratic society.⁹³

However, it is often limited by States in their response to a real or perceived terrorist threat.⁹⁴ While the right to freedom of association may be subject to derogations and limitations under most human rights treaties, clear safeguards must exist to ensure that they are not used to curb the rights of political opposition parties, trade unions or human rights defenders.⁹⁵ As such, the onus must be on the State to show that the measures taken fall within the permissible aims under international human rights law. This implies that States must not claim that the rights-limiting measures are taken to preserve national security when they are in fact taken to effectively stifle all opposition or to repress its population.

In addition to ensuring that the principles of necessity and proportionality are respected in all cases, specific safeguards are required to ensure that the limitations to the right to freedom of association are construed narrowly.⁹⁶ These include ensuring that the principle of legality is respected

in the definition of *terrorism*, *terrorist acts* and *terrorist groups*. Too wide or vague a definition may lead to the criminalization of groups whose aim is to peacefully protect, inter alia, labour, minority or human rights.

Any decision to proscribe a group or association needs to be taken case by case. General procedural guarantees include ensuring that the assessment is based on factual evidence of the group's activities, which implies that the State may not make the determination before registration has taken place and before the group has started to exercise its activities.⁹⁷ The assessment must be made by an independent judicial body, with full notice to the affected group as well as the possibility of appealing the decision.

With regard to human rights defenders, the Special Representative of the Secretary-General on human rights defenders has made clear that "any organization has the right to defend human rights; that it is the vocation of human rights defenders to examine Government action critically; and that criticism of Government action, and the freedom to express these criticisms, is an essential component of a democracy and must be legitimized in law and practice. States may not adopt laws or practices that would make activities for the defence of human rights unlawful." The Special Representative has highlighted in this respect a number of problems faced by NGOs in the registration process. In her recommendations, she emphasizes that States should not exert a priori scrutiny into the objectives of NGOs. The legality of an organization's purposes and its conformity with the law should be reviewed only when a complaint has been lodged against it, and only an independent judicial body should be given the authority to review its purpose and determine whether it is in breach of existing law.⁹⁸

All measures which result in a limitation on the right to freedom of association must be subject to judicial oversight. "Civilian courts must have jurisdiction to review the provisions and supervise the application of all counter-terrorist measures without any pressure or interference, particularly from the other branches of government."⁹⁹ This principle is fundamental in the context of counter-terrorism, where classified or confidential information may be used as the basis for a decision to proscribe an organization or to place an organization on a terrorist list. The Special Rapporteur on human rights and counter-terrorism has, likewise, stressed the importance of ensuring that all decisions which limit human rights are overseen by the judiciary, so that they remain lawful, appropriate, proportionate and effective, and so that the Government may ultimately be held accountable for limiting the human rights of individuals.¹⁰⁰

J. *Surveillance, data protection and the right to privacy*

Article 17 of the International Covenant on Civil and Political Rights prohibits States parties from interfering with the privacy of those within their jurisdiction and requires them to protect those persons by law against arbitrary or unlawful interference with their privacy. Privacy includes information about an individual's identity, as well as the private life of the person.¹⁰¹

Most States have stepped up security at airports and other places of transit, for instance by collecting biometric data from passengers (such as eye scans and fingerprints), photographs, passport details and the like. States have for a long time provided their security intelligence services with powers of surveillance, including wiretapping and the use of tracking devices. Some States have significantly extended these surveillance powers in recent years. All of these practices involve the collection of information about a person. They therefore limit the privacy of such persons, as well as raising questions about how the data are to be protected. Interference with privacy also arises in the security screening and searching of persons.

Any act which has an impact on a person's privacy must be lawful, i.e., it must be prescribed by law.¹⁰² This means that any search, surveillance or collection of data about a person must be authorized by law. The extent to which this occurs must not be arbitrary, which in turn requires that the legislation must not be unjust, unpredictable or unreasonable. The law authorizing interference with privacy must specify in detail the precise circumstances in which the interference is permitted and must not be implemented in a discriminatory manner.¹⁰³ This does not mean, however, that States enjoy an unlimited discretion to interfere with privacy, since any limitation on rights must be necessary to achieve legitimate purposes and be proportionate to those purposes. Regard must also be had to the obligation of States to protect against the arbitrary exercise of such authorizations. Thus, in *Klass v. Germany* for example, the European Court of Human Rights stated that it must be satisfied that any system of secret surveillance conducted by the State must be accompanied by adequate and effective guarantees against abuse.¹⁰⁴

Where personal information is collected, the data must be protected against unlawful or arbitrary access, disclosure or use. Although jurisprudence on this duty is scarce, the Human Rights Committee, in its general comment N° 16 (1988), has explained that States must take effective measures to ensure that information concerning a person's private life does not reach

the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the International Covenant on Civil and Political Rights. Effective protection should include the ability of every individual to ascertain in an intelligible form, whether and, if so, what personal data are stored in automatic data files, and for what purposes, with a corresponding right to request rectification or elimination of incorrect data.

Other organizations have adopted standards for the collection and processing of personal data. The Council of Europe's Guidelines on human rights and the fight against terrorism, for example, state:

“Within the context of the fight against terrorism, the collection and the processing of personal data by any competent authority in the field of State security may interfere with the respect for private life only if such collection and processing, in particular:

- (i) Are governed by appropriate provisions of domestic law;
- (ii) Are proportionate to the aim for which the collection and the processing were foreseen;
- (iii) May be subject to supervision by an external independent authority.”

K. Economic, social and cultural rights

Efforts to address the human rights implications of terrorism and counter-terrorism measures have tended to focus on the protection of civil and political rights, with little attention paid to their impact on the enjoyment of economic, social and cultural rights. Yet it is clear that terrorism and measures adopted by States to combat it are both influenced by and have an impact on the enjoyment of the economic, social and cultural rights of affected individuals, as well as on broader development objectives. It will be impossible to achieve global security objectives without concerted efforts towards the realization of all human rights. Greater efforts must therefore be made to understand and address the linkages between terrorism and the enjoyment of economic, social and cultural rights. This section will briefly highlight two examples: first, the importance of the realization of economic, social and cultural rights, and development objectives, to prevent the conditions conducive to the spread of terrorism; and second, the impact of certain counter-terrorism measures on the enjoyment of such rights.

Through the Global Counter-Terrorism Strategy Plan of Action, Member States recognize the need to tackle the conditions conducive to the spread of terrorism, including by addressing issues such as socio-economic marginalization, failure to respect human rights and a lack of good governance. These linkages are complex and require careful consideration and analysis. It is clear, for example, that economic and social development, including through international cooperation and assistance, can play a role in reducing support for terrorism by preventing the conditions that give rise to violence in general and to terrorism in particular, and by contributing to long-term social and economic stability. This may include measures to support structural stability, deny groups or individuals the means to carry out acts of terrorism, and sustain international cooperation. Conversely, the diversion of resources normally allocated to social and economic programmes and sectors (such as education, health, water and sanitation), development assistance and poverty reduction, in favour of security and counter-terrorism programming may have serious consequences for the affected countries and communities. As stated by the Development Assistance Committee of the Organisation for Economic Development and Co-operation (OECD), aid allocations should be calibrated carefully where the prevention of terrorism is a relevant development objective. In particular, “budget reallocations [should be] preceded by in-depth analysis of need and aid effectiveness so that development aid contributes to long-term structural stability and does not become an instrument of non-development interests.”¹⁰⁵

The adoption of specific counter-terrorism measures may also have a direct impact on the enjoyment of economic, social and cultural rights. For example, targeted sanctions against individuals suspected of involvement in terrorist activity, such as freezing their financial assets or imposing travel restrictions on them, may be an effective means for tracking, and even preventing, terrorist activity. However, the current targeted sanctions regime poses a number of serious challenges, in particular related to the lack of transparency and due process in listing and de-listing procedures. Targeted sanctions which result in freezing assets, imposing travel bans and other restrictions may also have serious consequences for the ability of the affected individuals and their families to enjoy economic and social rights, as their access to education and employment may be severely restricted. The effective use of humanitarian exemptions may be one important means for limiting the negative impact of targeted sanctions on the enjoyment of economic, social and cultural rights. Similarly, repressive security measures (such as control orders and the construction of physical barriers to limit the movement of certain individuals and groups), adopted with a view to countering terrorism, have severely restricted the ability of

certain individuals and populations to work, and their rights to education, health services and a family life. A human rights analysis of the impact of these counter-terrorism measures merits particular consideration in the light of the serious consequences they may have for the individual, as well as for his or her family and community.

Notes

¹ See, for example, the Charter of the United Nations, Art. 55 (c), the Universal Declaration of Human Rights, art. 2, and the Vienna Declaration and Plan of Action.

² See International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001* (United Nations, 2008), Commentary to art. 26, para. (5), and to art. 40, paras. (3)–(5). See also International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Furundžija*, Case IT-95-17/1, Judgement of 10 December 1998.

³ See Human Rights Committee, general comment N° 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant.

⁴ Case concerning *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), *Merits, Judgment of 27 June 1986, I.C.J. Reports 1986*, paras. 172–201.

⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004*, paras. 111 and 113. See also Case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Judgment of 19 December 2005, I.C.J. Reports 2005*, paras. 216–217. For regional cases, see Inter-American Commission on Human Rights, *Coard et al. v. United States*, Case 10.951, Report N° 109/99, 29 September 1999, para. 37.

⁶ See *A more secure world: Our shared responsibility* (United Nations publication, Sales N° E.05.I.5).

⁷ See, in particular, Security Council resolutions 1373 (2001) and 1377 (2001); General Assembly resolutions 48/122, 49/185, 50/186, 52/133, 56/160 and 58/174, as well as its Declaration on Measures to Eliminate International Terrorism (resolution 49/60); Commission on Human Rights resolutions 2001/37 and 2004/44, Human Rights Council resolution 6/28 and its recent resolution on the protection of human rights and fundamental freedoms while countering terrorism (28 March 2008).

⁸ See Human Rights Committee, general comment N° 6 (1982).

⁹ See Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (N.P. Engel, 2005), p. 121

¹⁰ See Human Rights Committee, views on communication N° 859/1999, *Luis Asdrúbal Jiménez Vaca v. Colombia*, 25 March 2002 (A/57/40 (vol. II), annex IX, sect. W, para. 7.3).

¹¹ See, for example, “Updated Set of principles for the protection and promotion of human rights through action to combat impunity” (E/CN.4/2005/102/Add.1). See also Human Rights

Committee, views on communication N° 195/1985, *Delgado Páez v. Colombia*, 12 July 1990 (A/45/40 (vol. II), annex IX, sect. D).

¹² European Court of Human Rights, *Kiliç v. Turkey*, N° 22492/93, Judgement of 28 March 2000, para. 62. See also Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, Judgement of 29 July 1988 (para. 174).

¹³ See *Delgado Páez v. Colombia*: “State parties have undertaken to guarantee the rights enshrined in the Covenant. It cannot be the case that, as a matter of law, States can ignore known threats to the life of persons under their jurisdiction, just [because] he or she is not arrested or otherwise detained. State parties are under an obligation to take reasonable and appropriate steps to protect them. An interpretation of article 9 which would allow a State party to ignore threats to personal security of non-detained persons within its jurisdiction would render totally ineffective the guarantees of the Covenant” (para. 5.5).

¹⁴ See, for example, the European Convention on the Compensation of Victims of Violent Crimes; Recommendation N° R (85) 11 of the Committee of Ministers on the Position of the Victim in the Framework of Criminal Law and Procedure.

¹⁵ See Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *Customary International Humanitarian Law* (Cambridge, Cambridge University Press, 2005), as well as case law of the International Criminal Tribunals for Rwanda and the former Yugoslavia.

¹⁶ See International Committee of the Red Cross, “International humanitarian law and terrorism: questions and answers”. 5 May 2004, available at www.icrc.org.

¹⁷ Fourth Geneva Convention, art. 33.

¹⁸ Additional Protocol I to the Geneva Conventions, art. 51 (2), and Additional Protocol II to the Geneva Conventions, art. 13 (2).

¹⁹ See “International humanitarian law and terrorism...”.

²⁰ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1995, I.C.J. Reports 1996*, para. 25.

²¹ *Legal Consequences...*, para. 106.

²² See general comment N° 31, para. 11; *Legal Consequences...*, para. 163; and Case concerning *Armed Activities...*, paras. 216–220, 345 (3). See also “Fundamental standards of humanity” (E/CN.4/2006/87, chap. III), and United Nations, *Digest of jurisprudence of the United Nations and regional organizations on the protection of human rights while countering terrorism* (New York and Geneva, 2003), chap. I, sect. (C).

²³ See, for example, *Legislative Guide to the Universal Anti-Terrorism Conventions and Protocols* (United Nations publications, Sales N° E.04.V.7).

²⁴ Christopher Greenwood, “International Law and the ‘War against Terrorism’”, *International Affairs*, vol. 78, N° 2 (April 2002), p. 301. In 2001, the then United Nations High Commissioner for Human Rights described the terrorist attacks which occurred in the United States on 11 September 2001 as a crime against humanity.

²⁵ International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Galić*, Case IT-98-29, Judgement of 5 December 2003. The Tribunal added the following specific elements (para. 133):

- “1. Acts of violence directed against the civilian population or individual civilians not taking direct part in hostilities causing death or serious injury to body or health within the civilian population.
- “2. The offender wilfully made the civilian population or individual civilians not taking part in hostilities the object of those acts of violence.

“3. The above offence was committed with the primary purpose of spreading terror among the civilian population.”

²⁶ See further the reports of the United Nations High Commissioner for Refugees: UNHCR, “Addressing security concerns without undermining refugee protection – a UNHCR perspective” (November 2001); UNHCR, Ten refugee protection concerns in the aftermath of September 11, press release, 23 October 2001.

²⁷ UNHCR, “Guidelines on international protection: application of the exclusion clauses: article 1F of the 1951 Convention relating to the Status of Refugees” (HCR/GIP/03/05); UNHCR, “Background note on the application of the exclusion clauses: article 1F of the 1951 Convention relating to the Status of Refugees” (2003).

²⁸ See UNHCR, “Note on the cancellation of refugee status” (22 November 2004).

²⁹ *A more secure world...*, para. 21.

³⁰ See, for example, Annual Report of the Inter-American Commission on Human Rights 1990–1991, chap. V, sect. II, and *Digest of jurisprudence*

³¹ See, for example, General Assembly resolution 60/158, para. 1,

³² See Security Council resolutions 1456 (2003), annex, para. 6, and 1624 (2005), para. 4.

³³ See Human Rights Committee, general comment N° 31, para. 6, and Siracusa Principles on the limitation and derogation of provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex).

³⁴ See, for example, Human Rights Committee general comment N° 29; Siracusa Principles (E/CN.4/1985/4, annex, paras. 15 and 17); “Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights–Human rights: a uniting framework” (E/CN.4/2002/18, annex, paras. 3 (a) and 4 (a)); Council of Europe, *Guidelines on human rights and the fight against terrorism* (2002), Guideline III; and Inter-American Commission on Human Rights, “Report on terrorism and human rights” (OEA/Ser.LV/II.116, Doc. 5 rev. 1 corr., para. 53).

³⁵ As held, for example, by the European Court of Human Rights in *Sunday Times v. United Kingdom*, N° 6538/74, Judgement of 26 April 1979, para. 49.

³⁶ In the context of terrorism offences, these requirements have been emphasized by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98, para. 49).

³⁷ There are, however, exceptions. See, for example, article 18 of the International Covenant on Civil and Political Rights, which protects the right to freedom of thought, conscience, religion and belief, and does not include national security as a permissible ground for limitations.

³⁸ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has emphasized that offences created under counter-terrorist legislation, along with any associated powers of investigation or prosecution, must be limited to countering terrorism (E/CN.4/2006/98, para. 47). See also “A preliminary framework draft of principles and guidelines concerning human rights and terrorism” (E/CN.4/Sub.2/2005/39, para. 33).

³⁹ See, for example, Siracusa Principles (E/CN.4/1985/4, annex, para. 17); Council of Europe, *Guidelines...*, Guideline III (para. 2); and Inter-American Commission on Human Rights, “Report on terrorism and human rights” (paras. 51 and 55).

40 See, for example, E/CN.4/2002/18, annex, para. 4 (d); Council of Europe, *Guidelines...*, Guideline III (para. 2); and Inter-American Commission on Human Rights, "Report on terrorism and human rights" (paras. 51 and 55).

41 See, for example, the approach of the Supreme Court of Canada to this effect: *Lavigne v. Ontario Public Service Employees Union* [1991] 2 SCR 211 and *Figueroa v. Canada (Attorney General)* [2003] 1 SCR 912.

42 For a discussion on each of these factors, see further Alex Conte, "The ICT project on human rights compliance when countering terrorism: a guide to legislators, policy-makers and the judiciary", in *ISC 2005: Security, Terrorism and Privacy in Information Society*, K. von Knop and others, eds. (2006).

43 See, for example, "Australia: study on human rights compliance while countering terrorism" (A/HCR/4/26/Add.3); "Report of the independent expert on the protection of human rights and fundamental freedoms while countering terrorism, Robert K. Goldman" (E/CN.4/2005/103, paras. 8, 9 and 74); Human Rights Committee, general comment N° 29, paras. 4–5; E/CN.4/2002/18, annex, paras. 4 (b), (e)–(g); Council of Europe, *Guidelines...*, Guideline III (para. 2); and Inter-American Commission on Human Rights, "Report on terrorism and human rights" (para. 51).

44 See, for example, Canadian jurisprudence, in particular *R. v. Oakes* [1986] 1 SCR 103 and *R. v. Lucas* [1998] 1 SCR 439, para. 118.

45 See also article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and article 27 of the American Convention on Human Rights. The African Charter does not contain a derogation clause. According to the African Commission on Human and Peoples' Rights, limitations on the rights and freedoms enshrined in the Charter cannot therefore be justified by emergencies or special circumstances. "The only legitimate reasons for limiting the rights and freedoms of the African Charter are found in article 27 (2), that is, that the rights of the Charter 'shall be exercised with due regard to the rights of others, collective security, morality and common interest.' In addition, the justification of limitations must be strictly proportionate with and absolutely necessary for the advantages which follow. Most important, a limitation may not erode a right such that the right itself becomes illusory" (*Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria*, communications N° 140/94, N° 141/94, N° 145/95, paras. 41–42).

46 Inter-American Court of Human Rights, Advisory Opinion OC-8/87 on habeas corpus in emergency situations, 30 January 1987 (paras. 42–43).

47 Interpreting the comparable derogation provision within the European Convention on Human Rights and Fundamental Freedoms, the European Court of Human Rights has spoken of four criteria to establish that any given situation amounts to "a time of public emergency which threatens the life of the nation". First, it should be a crisis or emergency that is actual or imminent. Second, it must be exceptional, so that "normal" measures are inadequate. Next, the emergency must threaten the continuance of the organized life of the community. Finally, it must affect the population of the State taking measures. On this fourth point, early decisions of the Court spoke of an emergency needing to affect the whole population. The Court appears to have subsequently accepted that an emergency threatening the life of the nation might only materially affect one part of the nation at the time of the emergency. See *Lawless v. Ireland (No 3)*, N° 332/57, Judgement of 1 July 1961, para. 28. See also *Brannigan and McBride v. United Kingdom*, N° 14553/89; N° 14554/89, Judgement of 25 May 1993, contrast with the dissenting opinion of Judge Walsh, para. 2.

48 See A/58/40 (vol. I), para. 85 (15).

49 See “Extrajudicial, summary or arbitrary executions: Report of the Special Rapporteur, Philip Alston” (E/CN.4/2006/53, paras. 44–54) and “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin” (A/HRC/4/26, paras. 74–78).

50 See address by High Commissioner for Human Rights, Louise Arbour, “A human rights framework for fighting terrorism”, Moscow State University/University of International Relations, 11 February 2005.

51 E/CN.4/2006/53, paras. 45 and 51.

52 Both the International Covenant on Civil and Political Rights (art. 6) and the American Convention on Human Rights (art. 4) prohibit the arbitrary deprivation of life, whereas article 2 of the European Convention states that no one shall be deprived of life intentionally and that the use of force which is no more than absolutely necessary may be used in defence of any person from unlawful violence. See also Human Rights Committee, views on communication N° 146/1983, *Baboeram v. Suriname*, 4 April 1985: “The right enshrined in this article is the supreme right of the human being. It follows that the deprivation of life by the authorities of the State is a matter of the utmost gravity. This follows from the article as a whole and in particular is the reason why paragraph 2 of the article lays down that the death penalty may be imposed only for the most serious crimes. The requirements that the right shall be protected by law and that no one shall be arbitrarily deprived of his life mean that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State” (A/40/40, annex X, para. 14.3).

53 See Human Rights Committee, general comment N° 6 (1982). See also Inter-American Commission on Human Rights, “Report on terrorism and human rights” (paras. 87 and 89), citing Inter-American Court of Human Rights, *Neira Alegria et al. v. Peru*, Judgement of 19 January 1995 (paras. 74–75).

54 See Human Rights Committee, views on communication N° 45/1979, *Suárez de Guerrero v. Colombia*, 31 March 1982 (A/37/40, annex XI, paras. 12.2, 13.1–13.3). See also the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (A/CONF.144/28/Rev.1), the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169) and the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65).

55 See E/CN.4/2006/53, para. 48. On the strict requirements regarding the use of force under the European Convention on Human Rights, see, inter alia, European Court of Human Rights, *McCann v. United Kingdom*, N° 18984/91, Judgement of 27 September 1995.

56 See, for example, *Prosecutor v. Furundžija*, para. 144.

57 See articles 7 and 4 (2) of the International Covenant on Civil and Political Rights, articles 3 and 15 (2) of the European Convention on Human Rights, articles 5 and 27 (2) of the American Convention on Human Rights, article 5 of the African Charter on Human and Peoples’ Rights, and common article 3 of the four Geneva Conventions. See also Inter-American Commission on Human Rights, “Report on the situation of human rights of asylum seekers within the Canadian refugee determination system” (OEA/Ser.LV/II.106, Doc. 40 rev., para. 118).

58 See Committee against Torture, views on communication N° 39/1996, *Tapia Páez v. Sweden*, 28 April 1997: “[T]he test of article 3 of the Convention is absolute. Whenever substantial grounds exist for believing that an individual would be in danger of being subjected to torture upon expulsion to another State, the State party is under obligation not to return the person concerned to that State. The nature of the activities in which the person

concerned engaged cannot be a material consideration when making a determination under article 3 of the Convention” (A/52/44, annex V). See also, Human Rights Committee: “The State party should recognize the absolute nature of the prohibition of torture, cruel, inhuman or degrading treatment, which in no circumstances can be derogated from. Such treatments can never be justified on the basis of a balance to be found between society’s interest and the individual’s rights under article 7 of the Covenant. No person, without any exception, even those suspected of presenting a danger to national security or the safety of any person, and even during a state of emergency, may be deported to a country where he/she runs the risk of being subjected to torture or cruel, inhuman or degrading treatment” (A/61/40 (vol. I), para. 76 (15)).

⁵⁹ See, for example, the Report of the Committee against Torture (A/59/44, paras. 67, 126 and 144) and “Torture and other cruel, inhuman or degrading treatment: Report of the Special Rapporteur on the question of torture, Manfred Nowak” (E/CN.4/2006/6).

⁶⁰ See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/61/259, paras. 44–65).

⁶¹ *Legal Consequences...*, para. 111.

⁶² See also Commission on Human Rights resolution 2005/39: “... prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person” (para. 9).

⁶³ See, for example, Human Rights Committee, general comment N° 20 (1992), para. 6, and “Situation of detainees at Guantánamo Bay” (E/CN.4/2006/120, para. 53).

⁶⁴ See E/CN.4/2005/103, para. 52.

⁶⁵ See also European Court of Human Rights, *Soering v. United Kingdom*, N° 14038/88, Judgement of 7 July 1989.

⁶⁶ See for example, European Court of Human Rights, *Chahal v. United Kingdom*, N° 22414/93, Judgement of 15 November 1996, and Louise Arbour, “In our name and on our behalf”, *International and Comparative Law Quarterly*, vol. 55, N° 3 (July 2006), p. 511.

⁶⁷ See, for example, European Commission for Democracy through Law (Venice Commission), “Opinion on the international legal obligations of Council of Europe members States in respect of secret detention facilities and inter-State transport of prisoners”, 17–18 March 2006, Opinion N° 363/2005, CDL-AD(2006)009.

⁶⁸ See, for example, “Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism” (A/HRC/4/88) and the High Commissioner’s statement on Human Rights Day, December 2005; and E/CN.4/2006/6, chap. III. See also Committee against Torture, views on communication N° 233/2003, *Agiza v. Sweden*, 20 May 2005 (A/60/44, annex VIII, sect. A), and Human Rights Committee, views on communication N° 1416/2005, *Alzery v. Sweden*, 25 October 2006 (A/62/40 (vol. II), annex VII).

⁶⁹ See “Alleged secret detentions in Council of Europe member States” (“Marty Report”), AS/Jur (2006) 03 rev, and the follow-up report “Secret detentions and illegal transfers of detainees involving Council of Europe member States: second report”, Doc. 11302 rev.; “Secretary General’s report under article 52 of the European Convention on Human Rights on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies” (SG/Inf (2006) 5, 28 February 2006) and his supplementary report on the subject (SG/Inf (2006) 13, 14 June 2006); Venice Commission, op. cit.

70 Human Rights Committee, general comment N° 8 (1982) on the right to liberty and security of persons (art. 9), paras. 1 and 4.

71 See International Covenant on Civil and Political Rights (art. 9 (3)–(4)). See also African Commission on Human and Peoples' Rights, *International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v. Nigeria*, communications N° 137/94, N° 139/94, N° 154/96 and N° 161/97, para. 83.

72 See, for example, Universal Declaration of Human Rights (arts. 1 and 2) and International Covenant on Civil and Political Rights (art. 26). See further *Digest of jurisprudence...* (chap. III, sect. K).

73 See Inter-American Court of Human Rights, Advisory Opinion OC-18/03 on the juridical condition and rights of the undocumented migrants, 17 September 2003, para. 101.

74 See, for example, E/CN.4/2006/98, para. 48; Human Rights Committee, general comment N° 29 (2001) on states of emergency (art. 4), paras. 8 and 16; and E/CN.4/2002/18, annex, para. 4 (i).

75 See A/HRC/4/26, paras. 32–62.

76 Inter-American Commission on Human Rights, "Report on terrorism and human rights", para. 353.

77 European Commission against Racism and Intolerance, "General policy recommendation N° 8 on combating racism while fighting terrorism" (CRI (2004) 26).

78 EU Network of Independent Experts in Fundamental Rights, "The balance between freedom and security in the response by the European Union and its member States to the terrorist threats" (2003), p. 21.

79 See E/CN.4/2005/103, paras. 71–76, and also A/HRC/4/26, paras. 32–62.

80 See, generally, Human Rights Committee, general comment N° 13 (1984).

81 E/CN.4/2005/103, para. 44.

82 See, for example, African Commission on Human and Peoples' Rights, *Media Rights Agenda v. Nigeria*, communication N° 224/98 (paras. 59–62) and Inter-American Court of Human Rights, *Castillo Petruzzi et al. v. Peru*, Judgement of 30 May 1999 (paras. 128–131, 172).

83 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/61/267).

84 A/HRC/4/88, paras. 17–22.

85 See, for example, E/CN.4/2005/103, para. 32, and E/CN.4/2006/98, para. 26.

86 For a regional example, see *Castillo Petruzzi et al. v. Peru* (para. 121).

87 For the latest developments, see <http://www.un.org/law/terrorism/index.html>.

88 See E/CN.4/2006/98, para. 42.

89 Security Council resolution 1624 (2005), para. 1.

90 See, for example, European Court of Human Rights, *Handyside v. United Kingdom*, N° 5493/72, Judgement of 7 December 1976.

91 A/HRC/4/26/Add.3.

92 See "International mechanisms for promoting freedom of expression", joint declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression (21 December 2005).

⁹³ See, for example, African Commission on Human and Peoples' Rights, *Amnesty International, Comité Loosli Bachelard, Lawyers Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan*, communications N° 48/90, N° 50/91, N° 52/91, N° 89/93 (paras. 78–80).

⁹⁴ See "Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani" (E/CN.4/2006/95): "so-called security or counter-terrorism measures have (...) been used to restrict human rights activities. Human rights defenders and groups have been targeted and subjected to arbitrary actions with the introduction of exceptions to the rule of law and human rights derogations adopted through special security legislation" (para. 52). See also Security Council resolution 1373 (2001). Measures to be adopted by States included freezing the funds of certain entities (para. 1 (c)), preventing certain entities within their territories from making any funds available (para. 1 (d)), refraining from providing any support to certain entities, suppressing recruitment of members of terrorist groups (para. 2 (a)), preventing the movement of terrorist groups (para. 2 (g)) – all of these measures affect "associations".

⁹⁵ See reports of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani (A/59/401 and E/CN.4/2006/95).

⁹⁶ See A/61/267.

⁹⁷ See, for example, European Court of Human Rights, *Sidiropoulos and Others v. Greece*, N° 26695/95, Judgement of 10 July 1998: "the Court does not rule out that, once founded, the association might, under cover of the aims mentioned in its memorandum of association, have engaged in activities incompatible with those aims. Such a possibility, which the national courts saw as a certainty, could hardly have been belied by any practical action as, having never existed, the association did not have time to take any action" (para. 46).

⁹⁸ A/59/401, paras. 49, 51–82.

⁹⁹ See E/CN.4/2005/103, paras. 13–15.

¹⁰⁰ See A/61/267, para. 29.

¹⁰¹ See, for example, Human Rights Committee, views on communication N° 453/1991, *Coeriel et al. v. the Netherlands*, 31 October 1994 (A/50/40 (vol. II), annex X, sect. D). As to the meaning and extent of "private life" see, for example, European Court of Human Rights, *Amann v. Switzerland*, N° 27798/95, Judgement of 16 February 2000, and *Rotaru v. Romania*, N° 28341/95, Judgement of 4 May 2000.

¹⁰² See article 17 (1) of the International Covenant on Civil and Political Rights, article 8 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and article 11 (2) of the American Convention on Human Rights.

¹⁰³ See Human Rights Committee, views on communication N° 35/1978, *Aumeeruddy-Cziffra and Others v. Mauritius*, 9 April 1981 (A/36/40, annex XIII, para. 9.2 (b) 2 (i) 8).

¹⁰⁴ European Court of Human Rights, *Klass v. Germany*, N° 5029/71, Judgement of 6 September 1978, para. 50.

¹⁰⁵ See, for example, Organisation for Economic Development and Co-operation, *A Development Co-operation Lens on Terrorist Prevention: Key Entry Points for Action*, DAC Guidelines and Reference Series (OECD, 2003), available at www.oecd.org.



Annex

United Nations action to counter terrorism

Implementing the Global Counter-Terrorism Strategy

*The United Nations Global Counter-Terrorism Strategy was adopted by the General Assembly on 8 September 2006. This marks the first time that Member States have agreed to a comprehensive, global strategic framework to counter terrorism. The strategy spells out concrete measures for Member States to take individually as well as collectively to: **address the conditions conducive to the spread of terrorism, prevent and combat terrorism and strengthen their individual and collective capacity to do so, and protect human rights and uphold the rule of law while countering terrorism.** The strategy calls for Member States to work with the United Nations system to implement the provisions of the plan of action contained in the strategy and at the same time calls for United Nations entities to assist Member States in their efforts.*

The United Nations departments, programmes, funds and agencies have been taking actions in a number of areas in line with the strategy both in their individual capacity and through joint efforts in the framework of the Counter-Terrorism Implementation Task Force (CTITF):*

Coordination and cooperation

The **Counter-Terrorism Implementation Task Force**, established in 2005 by the Secretary-General, works to ensure overall coordination and coherence among at least two dozen entities throughout the United Nations system involved in counter-terrorism efforts. The Task Force has developed a programme of work and established working groups to carry forward a first set of initiatives to help Member States implement the strategy. **Working groups** include:

- **Facilitating Integrated Implementation of the Strategy:** The working group aims to develop a practical methodology to assist interested Member States, at their request, and in cooperation with Task Force entities and organizations, as appropriate, with the integrated implementation of the strategy.
- **Addressing Radicalization and Extremism that Lead to Terrorism:** The working group aims to offer Member States

assistance in identifying how radicalization and extremism may lead to terrorism and ideas for undermining the appeal of terrorism.

- **Countering the Use of the Internet for Terrorist Purposes:** The working group aims to identify and bring together stakeholders and partners to discuss the abuse of the Internet for terrorist purposes and identify possible ways to combat this abuse at a national, regional and global level.
- **Protecting Human Rights While Countering Terrorism:** The working group aims to support efforts by Member States to ensure the promotion and protection of human rights in the context of counter-terrorism, including through the development of practical tools, and facilitate an exchange of information on priority human rights concerns, as well as good practice examples on the protection of human rights in the context of countering terrorism, drawing on experiences at the national and regional levels.
- **Strengthening the Protection of Vulnerable Targets:** The working group aims to establish appropriate mechanisms to facilitate both the sharing of existing best practices and the development of further best practices to protect vulnerable targets.
- **Supporting and Highlighting Victims of Terrorism:** The working group aims to promote the sharing of best practices between relevant actors in supporting victims of terrorism; lay the foundation for a constructive dialogue between victims and Member States; build solidarity between victims, Member States, the international community and civil society; and galvanize broad support for counter-terrorism efforts by highlighting the plight of victims.
- **Tackling the Financing of Terrorism:** The working group aims to examine the various components of counter-terrorism financing strategies and make proposals that would contribute to increasing the effectiveness of the implementation by Member States of international standards, including the Financial Action Task Force (FATF) Special Recommendations.

The Task Force has established relations and currently is developing **cooperation with a number of regional and subregional organizations**, including: the Organization of the Islamic Conference (OIC), the Islamic Educational, Scientific and Cultural Organization (ISESCO), the European Union (EU), the Council of Europe (CoE) and the Organization for Security and Co-operation in Europe (OSCE).

Addressing the conditions conducive to the spread of terrorism

The Special Representatives and Envoys of the Secretary-General, in providing mediation support and backstopping the **Department of Political Affairs**, have helped to facilitate peace agreements in 13 conflicts around the world since 2001. The Department's recently established Mediation Support Unit and the Peacebuilding Support Office will further enhance the United Nations peacemaking and peacebuilding capacity.

The **United Nations Educational, Scientific and Cultural Organization** promotes dialogue among civilizations, cultures and peoples, including interreligious and interfaith dialogue, through the fostering of exchanges and quality education at different levels of society that advance human rights, democratic citizenship and tolerance, cross-cultural journalist networks, and training in intercultural mediation. The UNESCO Culture of Peace programme assists civil society organizations in denouncing terrorist acts as inexcusable.

The **Department of Public Information** works with Member States, media, educational institutions, non-governmental organizations and civil society to promote dialogue, respect, tolerance and cultural diversity. DPI organizes a series of seminars entitled "Unlearning Intolerance," aimed at examining different manifestations of intolerance, as well as exploring means to promote respect and understanding among peoples. The five seminars held so far focused on: confronting anti-Semitism and Islamophobia, the role of the media in "fanning the flame of tolerance," preventing genocide and the role of political cartoonists.

The **Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism**, operating under the new Human Rights Council, addresses the role of promoting human rights in eliminating conditions conducive to the spread of terrorism. This is done through country-specific work, including country visits, and in thematic reports submitted to the Human Rights Council and the General Assembly.

Preventing and combating terrorism

Sixteen universal legal instruments (13 instruments and three amendments) have been developed and adopted under the auspices of the United Nations and related intergovernmental organizations. Most of these instruments are in force and provide a legal framework for multilateral actions against terrorism and criminalize specific acts of terrorism, including

hijacking, hostage-taking, terrorist bombings, financing of terrorism and nuclear terrorism. They are complemented by resolutions of the General Assembly (49/60, 51/210 and 60/288) and of the Security Council (1267 (1999), 1373 (2001), 1540 (2004), 1566 (2004) and 1624 (2005)).

The **Counter-Terrorism Committee** and its **Counter-Terrorism Committee Executive Directorate** are responsible for monitoring implementation of Security Council resolutions 1373 (2001) and 1624 (2005), and facilitating technical assistance to countries requesting it. On the basis of multiple reports submitted by all 192 Member States and additional sources of information, the Committee is completing preliminary assessments of implementation of resolution 1373 (2001), which calls on all countries to enact measures to prevent terrorist acts, and providing recommendations for improvements. The Committee has also conducted visits to 22 Member States and is planning visits to another 11.

Under the **Al-Qaida and Taliban sanctions regime**, which is managed by the 1267 Committee of the Security Council, the Council requires all States to impose an assets freeze, a travel ban and an arms embargo on individuals and entities who have been placed on the 1267 Committee's Consolidated List on the basis of their association with Al-Qaida, Usama Bin Laden and/or the Taliban. These sanctions measures apply wherever the listed individuals and entities are located. As of November 2007, the Consolidated List contained the names of 367 individuals and 112 entities and 36 States had frozen financial assets as a result of the listings.

The **Monitoring Team**, which assists the 1267 Committee in promoting implementation of the sanctions regime, has so far compiled seven analytical reports assessing the implementation of the sanctions, the changing nature of the threat posed by Al Qaida and the Taliban and the best measures to confront it. The Team has visited more than 60 Member States to discuss how to improve the sanctions regime, and has established cooperation with 28 international and regional bodies. It has also established four regional groups of intelligence and security agencies from various countries as well as a group of bankers and others from the private financial sector to provide further advice and offer proposals for the Security Council's consideration.

The **Committee established pursuant to resolution 1540 (2004) and its experts** have examined reports from 136 Member States (with 85 of those providing additional information) and one organization (the

European Union) on their efforts to meet the requirements of Security Council resolution 1540 (2004), while working to identify deficiencies and suggest improvements in preventing access by non-State actors to weapons of mass destruction and their components.

Military and police components of **United Nations peacekeeping operations** have provided a more secure environment in 16 conflict zones all over the world in the last five years. This has helped to limit terrorist opportunities to recruit and to conduct their operations in these regions.

The **International Atomic Energy Agency** is implementing its second dedicated Nuclear Security Plan (NSP) – the first covered the years 2002-2005 and the second covers 2006-2009 – which is geared to further improve and strengthen security globally of nuclear and other radioactive materials in use, storage and transport by supporting States in their efforts to bolster their national nuclear security regimes.

The **Office for Disarmament Affairs** (ODA) has commenced the first phase of establishing a single comprehensive Bio-incident Database mandated by the strategy. The Database will store detailed information on all reported events (biological incidents) in which a biological agent harms or threatens to harm humans, livestock or agricultural assets. It will also include information on all related reported hoaxes. Consultations on the scope of the Database with interested Member States have taken place. The Office also maintains the roster of experts and laboratories for the Secretary-General's investigation mechanism on alleged use of biological weapons. In early 2007, ODA sent a request to all Member States to provide an updated list of qualified experts and laboratories. The technical guidelines and procedures for such an investigation are currently under review by a group of technical experts.

The **International Civil Aviation Organization** develops treaties, international standards and recommended practices as well as guidance material to protect aircraft, airports and other air navigation facilities. It has performed security audits in 159 Member States as of 31 March 2007, and coordinated assistance to resolve deficiencies identified during the audits. It also addresses the security of travel documents and the rationalization of border clearance systems and procedures.

The **International Maritime Organization** adopted mandatory measures to enhance Maritime Security including the International Ship and Port Facility Security (ISPS) Code which was implemented by

158 Member States representing 99% of the world's merchant fleet (around 40,000 ships) engaged in international voyages and about 10,000 port facilities had their port facility security plans developed and approved.

The **United Nations Interregional Crime and Justice Research Institute** has collected data from the 25 countries of the Euro-Asian region on national strategies to combat illicit trafficking of chemical, biological, radiological or nuclear material and has produced an assessment report and country profiles that identified gaps and best practice in the national strategies to combat illicit trafficking in those materials.

The **World Health Organization** is concerned with public health readiness and response to all public health emergencies of international concern, whatever their origin or source, within the framework of the International Health Regulations (2005). A Global Alert and Response system detects international public health events, performs a risk assessment and is able to mobilize an international network of public health partners to assist countries to respond. Guidance has been prepared to assist countries to assess and improve their readiness for managing the public health consequences of a biological, chemical, radiological or nuclear terrorist incident. WHO has developed standards and provides training for laboratory biosafety and biosecurity, to encourage safe use and safekeeping of biological materials, thus minimizing the risk of their diversion.

***The International Criminal Police Organization (INTERPOL), through a special Task Force, provides a forum for Counter-Terrorism experts to exchange best practices, as well as operational information, in order to identify active terrorist groups and their membership, including organizational hierarchies, methods of training, financing and recruitment of terrorist suspects and groups. INTERPOL maintains a broad range of global databases that contain key information (e.g., wanted individuals, fingerprints, photos, etc.) and has developed technology to make such data, especially its database on Stolen and Lost Travel Documents (SLTD), available at border security points. It also coordinates the circulation of alerts and warnings on suspected or wanted terrorists and assists the UN Security Council with the implementation of the Al-Qaida and Taliban sanctions regime by circulating relevant information on individuals under UN sanctions to law enforcement authorities worldwide. Upon request, INTERPOL assists its member countries in their investigations in the aftermath of a terrorist act by deploying on-site Incident Response Teams (IRTs).*

Building State capacity to counter terrorism

The **Office of Legal Affairs** has prepared publications and conducted seminars and training programmes to disseminate information regarding the universal counter-terrorism instruments and to encourage State participation in these treaty regimes.

The **United Nations Office on Drugs and Crime** has assisted more than 149 countries in becoming parties to and implementing the universal instruments related to the prevention and suppression of international terrorism and in strengthening international cooperation mechanisms in criminal matters related to terrorism, including through national capacity-building. The Office has provided legislative advice on counter-terrorism issues to over 80 countries. The Office has also developed (or is in the process of developing) more than a dozen technical assistance tools, including legislative databases and model legislation, aimed at assisting countries in strengthening their legal regimes against terrorism. The Office continues to deploy professional expertise in the field to train officials of relevant authorities and build institutions to improve countries' capacities in combating money-laundering and the financing of terrorism. The Office moreover assists Member States in building criminal justice systems in accordance with the rule of law and human rights standards.

The **Counter-Terrorism Committee Executive Directorate** has identified and prioritized the technical assistance needs of over 90 Member States and has referred these needs to potential donors. It has also created on the website of the Counter-Terrorism Committee a directory of international best practices, codes and standards for the implementation of resolution 1373 (2001).

The **Monitoring Team** of the 1267 Committee has also collected information and requests from 151 Member States relating to their technical assistance needs for more effective implementation of the Al-Qaida/Taliban sanctions regime, and forwarded this information to both the United Nations Office on Drugs and Crime (Terrorism Prevention Branch) and the Counter-Terrorism Committee Executive Directorate for information and action.

With its field presence in 166 countries, the **United Nations Development Programme** undertakes, at the request of Governments, numerous activities to promote governance and rule of law, including programmes to support the implementation of anti-money-laundering legislation and the strengthening of justice systems.

The **Department of Peacekeeping Operations** provides training to national police and law enforcement officers and officials on criminal matters including kidnapping, information-gathering, hostage-taking, close protection, and the investigation of assassinations, murders and bombings.

The **Department of Safety and Security** is responsible for coordinating the activities of the UN integrated security management system relative to the safety and security of UN staff, assets and operations at all UN duty stations around the world taking into account various threats, including terrorism. The Department, INTERPOL and the Office for the Coordination of Humanitarian Affairs are also working together to develop emergency response capacity for security threats, including terrorism.

In compliance with the ECOSOC resolution on IPO (E/2006/28) adopted in July 2006, the **United Nations Interregional Crime and Justice Research Institute** continued to provide support to numerous Member States engaged in the security preparations of major events such as the Olympic Games and other large-scale sporting events, high-level summits and mass events. It has also provided training to security planners from 17 Latin American countries, while in Europe it has promoted the development of an integrated research area on major event security. In addition, UNICRI has developed a number of technical tools in support of national policymakers and security planners.

The **International Atomic Energy Agency** activities aimed at assisting States have included: more than 100 evaluation missions to help States to identify their own broad nuclear security requirements; arranging for the recovery, disposition and/or storage of approximately 100 high-activity and neutron sources; helping States in training customs and other border officials and installing detection equipment at border crossings; and, operating a 24-hour contact network to facilitate States' cooperation in the event of a nuclear accident or a radiological emergency. The Agency also helps States to implement current and future undertakings to the instruments that form the strengthened international platform in the area of nuclear security, like the recently amended Convention on the Physical Protection of Nuclear Materials, the Convention on the Suppression of Acts of Nuclear Terrorism and Security Council resolution 1540 (2004).

The **Organisation for the Prohibition of Chemical Weapons** contributes to global anti-terrorism efforts by promoting universal adherence to the Chemical Weapons Convention. It is continuing its efforts, within its mandate, to assist States to build capacity to prevent terrorists from

acquiring chemical materials, to ensure security at related facilities and to respond effectively in the case of attack using such materials. The OPCW has inventoried and secured over 71,000 metric tonnes of chemical agents and all former chemical weapons production facilities in the world have been inactivated.

Through its Global Programme on Maritime Security, the **International Maritime Organization** has conducted 60 country needs assessment and advisory missions and 68 national and 50 regional seminars, workshops or courses that have resulted in the training of approximately 6,000 persons on methods for ensuring maritime security. These activities aimed to bring awareness to maritime security and other threats through the understanding and implementation of the provisions of SOLAS chapter XI-2 and the ISPS Code and have encouraged regional and subregional cooperation on counter-terrorism and promoted the prevention of unlawful acts in ports and at sea. IMO's train-the-trainer courses, both at the regional and national level, have trained instructors capable of training others to achieve these aims.

The **International Monetary Fund** has conducted, since early 2002, 61 country assessments on Anti-Money-Laundering and Combating the Financing of Terrorism (AML/CFT) capacity. The Fund has provided technical assistance to 222 countries, through national and regional training workshops and tailored capacity-building assistance such as drafting of legislation and strengthening of financial sector supervision for AML/CFT. About 2,470 officials have participated in IMF-led workshops over the last five years.

The **World Bank** has conducted 32 assessments – 11 jointly with the IMF – on Anti-Money-Laundering and Combating the Financing of Terrorism (AML/CFT) compliance since 2001. Throughout this period, approximately 275 technical assistance missions were performed on a bilateral or regional basis to strengthen all components of an AML/CFT regime. In addition, the World Bank has undertaken 14 bilateral remittance corridor analyses that offer sending and receiving countries new information on the characteristics of remittance flows. This information provides the basis for policy reviews to promote increased flows at lower costs, while enabling better compliance with AML/CFT standards. The World Bank is also in the process of conducting a study on the AML/CFT risks of mobile phone technology for financial services. This study will include recommendations to Governments and stakeholders on how best to regulate this new industry to simultaneously promote business and mitigate the risks.

The **United Nations Educational, Scientific and Cultural Organization** provides frameworks supporting human rights-based approaches to education, learning materials and curricula to promote inclusive pedagogies and diversified content. Inter-university solidarity, understanding and dialogue are promoted through the network of 550 UNESCO Chairs, the Global Learning Portal and the UNITWIN programme, which provides opportunities for young people in all regions. UNESCO has also prepared a code of conduct for scientists to help deter the use of scientific work for terrorist purposes.

***The **International Criminal Police Organization** (INTERPOL) initiates and coordinates numerous training programmes covering different priority crime areas and aimed at enhancing the capacity of States to combat terrorism. To complement the courses, INTERPOL provides corresponding Training Guides, including the “Bio-Terrorism Incident Pre-Planning and Response Guide”. INTERPOL has conducted to date five regional workshops on Bioterrorism, attended by delegates from over 130 countries and has commenced train-the-trainer sessions, which brought together police, health, prosecution and customs, promoting ways to work together. The sessions identify effective strategies for prevention and response, forge subregional cooperation and assess the legal authorization for undertaking critical police functions. INTERPOL has provided support to member countries during major events by deploying specialized teams to bolster national efforts to secure and protect the event. It also developed a Best Practices Guide in Combating Terrorism, available on the CTC website. As part of the CTITF Working Group on Strengthening the Protection of Vulnerable Targets, INTERPOL will establish a Referral Centre in order to facilitate the exchange of expertise, best practices and, where necessary, technical assistance.*

Defending human rights while combating terrorism

The **Office of the United Nations High Commissioner for Human Rights** advocates the promotion and protection of all human rights and the implementation of effective counter-terrorism measures as complementary and mutually reinforcing objectives. OHCHR is examining the question of protecting human rights while countering terrorism by making general recommendations on States' human rights obligations and providing them with assistance and advice, upon their request, in particular in the area of raising awareness of international human rights law among national law-enforcement agencies. The Office provides assistance and advice to Member States on the protection of human rights and fundamental freedoms while countering terrorism, including

the development of human rights-compliant anti-terrorism legislation and policy. Additionally, OHCHR contributes to the Counter-Terrorism Implementation Task Force by leading the Working Group on Protecting Human Rights While Countering Terrorism.

OHCHR is promoting strengthened protection of human rights through leadership and advocacy, providing technical assistance and training, and developing tools to assist practitioners. The Office has focused on deepening the understanding of international human rights obligations in the context of terrorism through focused research and analysis, in particular a fact sheet on human rights, terrorism and counter-terrorism. OHCHR is also in the process of organizing regional seminars on human rights and counter-terrorism, updating the *Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights while Countering Terrorism* and developing a fact sheet on the relationship between international humanitarian law and human rights law.

The **Special Rapporteur** on the Promotion and Protection of Human Rights while Countering Terrorism, operating under the new Human Rights Council, works to identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms. The Special Rapporteur also addresses allegations of human rights violations in the course of countering terrorism. He conducts visits to selected individual countries and has engaged in correspondence with more than 40 countries about their law and practice. He reports regularly both to the Human Rights Council and to the General Assembly, including on selected thematic issues and his country visits.

The **United Nations Interregional Crime and Justice Research Institute** has provided training on witness protection, with a specific focus on the persons who participate or who have participated in terrorist or organized criminal groups as well as on victims of terrorism, for public prosecutors and other relevant investigating officials from 19 Latin American countries. Training activities aim at improving skills to optimize the use of information provided by witnesses in accordance with the right of defence and to promote appropriate approaches to victims of terrorism.

**The Counter-Terrorism Implementation Task Force includes representatives from: the Counter-Terrorism Executive Directorate (CTED), the Department of Peacekeeping Operations (DPKO), the Department of Political Affairs (DPA), the Department of Public Information (DPI), the Department of Safety and Security (DSS), the Expert Staff of the 1540 Committee, the International Atomic Energy Agency (IAEA), the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the International Monetary Fund (IMF), the Monitoring Group of the 1267 Committee, the Office of the High Commissioner for Human Rights (OHCHR), the Office for Disarmament Affairs (ODA), the Office of Legal Affairs (OLA), the Organisation for the Prohibition of Chemical Weapons (OPCW), the Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Interregional Crime and Justice Research Institute (UNICRI), the United Nations Office on Drugs and Crime (UNODC), the World Customs Organization (WCO), the World Bank, and the World Health Organization (WHO). In its planning and coordinating work, the Task Force goes beyond the wider UN system to include other entities, such as the International Criminal Police Organization (INTERPOL).*

***While INTERPOL is not part of the UN system, it is a member of the Counter-Terrorism Implementation Task Force (CTITF) which was established in 2005 and is chaired by the Office of the UN Secretary-General.*

(The above inventory of United Nations counter-terrorism related actions is based on information provided by CTITF member entities.)

For more information please visit: www.un.org/terrorism.

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