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### **SPECIFIC HUMAN RIGHTS ISSUES: NEW PRIORITIES, IN PARTICULAR TERRORISM AND COUNTER-TERRORISM**

**An updated framework draft of principles and guidelines concerning  
human rights and terrorism**

**Second expanded working paper prepared by Kalliopi K. Koufa**

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\* Pursuant to General Assembly resolution 60/251 of 15 March 2006 entitled “Human Rights Council”, all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, including the Sub-Commission, were assumed, as of 19 June 2006, by the Human Rights Council. Consequently, the symbol series E/CN.4/Sub.2/\_, under which the Sub-Commission reported to the former Commission on Human Rights, has been replaced by the series A/HRC/Sub.1/\_ as of 19 June 2006.

## **Summary**

The present report is submitted in response to Sub-Commission on the Promotion and Protection of Human Rights resolution 2005/31, which endorsed a request from the sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism. It requested the Coordinator to update her draft guidelines and principles, taking account of its discussions at the fifty-seventh session of the Sub-Commission.

The present report emphasizes the need for clear and detailed guidelines on the observance and protection of human rights in the fight against terrorism in order to give clear guidance to States and to contribute to efforts to balance security interests with human rights. In her report, the Coordinator expands, in a preliminary manner, on issues that either were not included in previous reports or could benefit from further elaboration.

Section I of the present report outlines certain general principles and focuses in particular on the issue of derogations. The report emphasizes that any guidelines and principles must be interpreted in the light of general principles of international law, with attention to the emergence of norms of customary international law.

Section II of the present report provides an updated “Framework draft of principles and guidelines concerning human rights and terrorism”, including provisions related to the duties of States regarding terrorist acts and human rights; general principles relating to counter-terrorism measures; counter-terrorism measures and the definition of terrorism; exceptions and derogations; specific principles relating to arrest, detention and trial; penalties; asylum, forcible transfers and extradition; freedom of opinion and expression; freedom of thought, conscience and religion; privacy and property rights; freedom of association and assembly; and the rights of victims of terrorist acts. The Coordinator provides a detailed commentary on each provision.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1 - 19	4
A. Background to the second expanded working paper .....	1 - 8	4
B. The value of general or overarching principles in guidelines .....	9 - 17	5
C. Remarks and recommendations .....	18 - 19	8
II. Framework draft of principles and guidelines concerning human rights and terrorism .....	20 - 64	9
A. Preamble .....		9
B. Scope of application and general principles .....	20 - 24	10
C. Specific guidelines and principles .....	25 - 64	11

## **I. INTRODUCTION**

### **A. Background to the second expanded working paper**

1. The Sub-Commission on the Promotion and Protection of Human Rights, in its resolution 2003/15 entitled “Effects of measures to combat terrorism on the enjoyment of human rights”, requested that the Sub-Commission study the compatibility of counter-terrorism measures adopted at the national, regional and international level with existing international human rights standards, giving particular attention to their impact on the most vulnerable groups, “with a view to elaborating detailed guidelines” (para. 5). It further appointed Kalliopi K. Koufa to coordinate this effort by gathering the necessary documentation for the effective work of the Sub-Commission (para. 6).

2. The Coordinator submitted a working paper entitled “A preliminary framework draft of principles and guidelines concerning human rights and terrorism” (draft guidelines) to the Sub-Commission at its fifty-sixth session (E/CN.4/Sub.4/2004/47), which contained a brief note on Sub-Commission resolution 2003/15, as well as the preliminary draft guidelines themselves.

3. After review of the preliminary draft guidelines, the Sub-Commission, by its decision 2004/109 entitled “Guidelines and principles for the promotion and protection of human rights when combating terrorism”, decided to establish a sessional working group at its fifty-seventh session, with the mandate to “elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism, based, *inter alia*, on the preliminary framework draft of principles and guidelines contained in the working paper prepared by Ms. Koufa”.

4. Aware of the continued urgency of the Sub-Commission on the matter, the Coordinator continued work on guidelines and principles and submitted an expanded working paper (E/CN.4/Sub.2/2005/39) to the Sub-Commission at its fifty-seventh session. Part I of the expanded working paper consisted of an introduction containing a brief background and a discussion of the role of guidelines and principles in general, the evolution of guidelines and other standard-setting instruments on this topic in regional and institutional bodies, the necessity for a comprehensive formulation of guidelines and principles at the United Nations level, and the traditional role of the Sub-Commission in initiating guidelines and principles within the United Nations system. The Coordinator also commented on the utility of an expert seminar on this topic that could be organized by the Office of the United Nations High Commissioner for Human Rights. Part II of the working paper contained the expanded draft guidelines, with additional commentary.

5. At its fifty-seventh session, the Sub-Commission nominated five of its members<sup>1</sup> to sit on the sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism and authorized two public meetings on 2 and 3 August 2005. At its first session, the sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism elected the Coordinator as Chairperson-Rapporteur (Chairperson).

6. The sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism benefited greatly by the active participation of 10 other members of the Sub-Commission. Nine of the many non-governmental organizations that attended also took the floor. The sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism had before it the Chairperson's two prior drafts of guidelines and a number of other relevant documents.<sup>2</sup> Among its many actions and recommendations was a request that the Chairperson update her draft guidelines in the light of its debates.<sup>3</sup> The Sub-Commission, in its resolution 2005/31, endorsed its recommendation that the Chairperson continue work on the draft guidelines. The present document is submitted in response to that recommendation.

7. The updated draft guidelines contained in the present document benefited greatly from these debates. A particularly useful aspect of the debate was the articulation of important issues that had not yet been included in previous drafts or that stood to benefit from more detail. The Chairperson has sought to include or expand on these issues in this draft. However, she notes that several of these issues are to be the subject of the working papers to be submitted to the sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism at its next session, and therefore her treatment of them here is still to be regarded as preliminary, as she has not yet had the benefit of that work.

8. Subsequent to submitting her report to the Sub-Commission, the Chairperson agreed to a request by members of the sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism that she prepare a paper on the issue of overarching "general principles" and derogations to be submitted to the working group at its next session. Due to factors surrounding the replacement of the Commission on Human Rights by the new Human Rights Council, and the fact that the Chairperson was also asked to submit updated draft guidelines, she decided to include an abbreviated section on general principles and derogations, rather than submit a separate document.

## **B. The value of general or overarching principles in guidelines**

9. Many sets of guidelines and principles set out by United Nations or regional bodies contain references to major documents and legal concepts both in the preambular paragraphs and in a general section. For example, in the draft principles on human rights and the environment, annexed to the final report of the former Special Rapporteur on Human Rights and the environment, there are three preambular paragraphs setting out the major international instruments related to human rights and the environment and five relating to the concepts in human rights law of universality, indivisibility and interdependence.<sup>4</sup> The Principles on housing and property restitution for refugees and displaced persons, submitted by the Special Rapporteur to prepare a comprehensive study on housing and property restriction in the context of the return of refugees and internally displaced persons contain a special section on the overarching

principles of particular relevance to that topic, including the right of non-discrimination, the equality of men and women and the right to adequate housing.<sup>5</sup> This articulation of what might appear evident can become very important as these sets of guidelines and principles are studied and acted upon at national, regional and international levels.

10. A major reason to include reference to the relevant instruments and overarching principles is that no set of guidelines or principles sits in isolation but must always be interpreted in the light of international law as a whole. It is particularly important that documents issued at the United Nations level contain such articulation, as regional and national action in all areas of international law must meet the standards mandated by the Charter of the United Nations and instruments ratified in conjunction with the Charter.<sup>6</sup>

11. A second reason to include reference to relevant instruments and overarching principles relates to the emergence of customary international norms, and the requirement that all States be alert to new norms. This is especially true when customary norms evolve into norms of *jus cogens* or *erga omnes*. As no one can predict when a new norm will emerge, it is useful to have a reminder of these concepts in any international document. This is especially true when addressing the issue of terrorist acts and States' responses that the recent past has been shown to be reactive, carried out without regard to customary norms and with derogations from human rights norms that are not warranted by the circumstances.

12. Reference to the doctrines of *jus cogens* and *erga omnes* is particularly valuable because not all States have ratified human rights documents whose principles are at stake in the context of counter-terrorism measures. In a situation where a right at stake is considered a norm of *jus cogens*, a State which has not ratified an instrument containing that right is still bound to respect it. In a similar fashion, as the duty to respect basic human rights is also accepted as an obligation *erga omnes*, States which have not ratified an instrument containing the particular right must fully respect that right.<sup>7</sup>

13. National, regional and international courts and tribunals can never be viewed as sitting apart from international law as a whole. While they may be reviewing a very narrow issue from a particular international instrument, all courts and tribunals are guided by the whole of international law and cannot pass a judgement that is incompatible with it. This is even the case with particular commissions established under specific treaties. For example, the Inter-American Court of Human Rights has ruled that human rights provisions of treaties other than the American Convention on Human Rights: "Pact of San José, Costa Rica", are subject to its review.<sup>8</sup>

14. The importance of overarching principles is underscored when addressing which circumstances justify derogations and which rights may be subject to limitations or derogations of human rights in the context of terrorism. As the Human Rights Committee affirmed, many rights not specifically set out in article 4 of the International Covenant on Civil and Political Rights but which arise from overarching principles are also non-derogable during situations that meet the criteria for derogation. While not providing an exhaustive list of such rights, the Committee did indicate, inter alia, arbitrary detention, taking of hostages, imposing collective punishments, forcible transfer of persons without requisite criteria met, carrying out

disappearances or incommunicado or unacknowledged detention, the right to a fair trial, and certain rights of minorities may not be subject to derogations because of provisions of general international law.<sup>9</sup>

15. Although focusing on which rights may not be subject to derogation, the Human Rights Committee also touched on the issue of what circumstances invoke the right to derogate.<sup>10</sup> This issue is of the greatest importance in protecting human rights in the context of terrorism, as many acts of terrorism occur as single or multiple acts that take place in a relatively short time. Terrorist groups are not combatants seeking to engage a State in an armed conflict. Thus great care must be taken to ensure that the risk is fully to the life of the nation before derogations can legally occur.<sup>11</sup> In her study on this topic, Sub-Commission expert Nicole Questiaux sets out what she refers to as the “principle of exceptional threat”: the threat must be imminent, a danger must be such that normal measures cannot maintain public order, a danger must be to the whole of the population or territory, and the existence of the nation, as such, is at risk.<sup>12</sup> General principles of law relating to aggression, breaches of the peace, friendly relations, and the like can also be helpful in determining whether or not a State is sufficiently at risk of an act of terrorism to justify derogations.<sup>13</sup>

16. The right of States to impose exceptions or limitations on rights is in some ways less clear-cut. For example, the Universal Declaration of Human Rights has an omnibus provision (art. 29, para. 2) allowing limitations when determined by law, and “solely for the purpose of securing the recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.<sup>14</sup> The International Covenant on Civil and Political Rights addresses limitations and exceptions either with a similar *ordre public* provision or a specific listing of exceptions. Such specific limitations are: prison, military, emergency or civil obligations are not forced labour for purposes of the article 8, freedom from slavery; the death penalty does not violate article 6, providing for the right to life, and article 22, freedom of association, rights of the armed forces and police may be restricted. The Covenant provides for *ordre public* exceptions or limitations in regard to freedom of movement (art. 12), exclusion of the press and public from a criminal trial (art. 14), freedom of religion (art. 18, para. 3 relating only to manifestation of a religion), freedom of expression and the press (art. 19, para. 3), freedom of assembly (art. 21), and freedom of association (art. 22, para. 2).<sup>15</sup>

17. Reviewing bodies have evaluated restrictions and limitations in a similar fashion to derogations. For example, in its general comment No. 10 (1983) on freedom of opinion, the Human Rights Committee states that limitation on article 19, free speech and freedom of the press rights, must be “necessary” for the purpose imposed, and the purpose must be necessary for national security or public order. Further, the right itself may not be jeopardized. Specifically addressing specifically freedom of expression in the context of terrorism, both the European Court of Human Rights and the Inter-American Commission on Human Rights concurred that some restriction might be necessary to prevent inter-communal hostilities or protect national security, but expressed concern over provisions that are vague.<sup>16</sup> It is difficult to assess what is a legitimate or overstepping *ordre public* outside of a particular situation. However, it is clear that there will be rapidly developing jurisprudence on this due to new or amended anti-terrorist national laws and increased human rights concerns over them.

### **C. Remarks and recommendations**

18. The Chairperson has recognized, and the sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism concurred, that if guidelines are to be useful they must not only be comprehensive but also sufficiently detailed. This reflects the vital need of the United Nations to adopt clear and detailed guidelines on the observance and protection of human rights in the fight against terrorism in order to give clear guidance to States and to contribute, in particular, to the daunting question of balances between security and rights. In her work, the Chairperson has taken the time to reflect on observations of many of the special procedures of the Commission on Human Rights (now of the Human Rights Council), expressing concern for both national legislation and for specific actions and programmes of States as they seek to address actual acts of terrorism or to avert future ones. In this light, the Chairperson considers that the process of producing this draft, which takes into consideration both the concerns expressed and the future refinements and reflections of this United Nations expert body and its sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism, should lead to clarity as well as to meaningful and practical answers, under international law, to the various challenges posed to the observance and protection of human rights and freedoms in the fight against terrorism. In particular, the Chairperson hopes that these guidelines will prove especially useful to Martin Scheinin, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. In his report to the Commission on Human Rights at its sixty-second session, Mr. Scheinin refers to his intention to focus on legislative issues (E/CN.4/2006/98, para. 10), and issues relating to the definition (E/CN.4/2006/98, para. 27) that will, of course, require a legal frame of reference.<sup>17</sup> In this regard, the Chairperson warmly welcomes any collaboration or interaction between the Special Rapporteur and the Chairperson and the sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism in the hope that such interaction will result in the optimal legal framework.

19. In the present paper, the Chairperson has not set out updated information about the efforts at regional levels to address protecting human rights in the context of combating terrorism, as these are widely disseminated and, of course, consulted by the Chairperson as she progresses in her work. However, in her previous submissions of the draft guidelines, the Chairperson pointed to the usefulness of holding a seminar or similar event in which a wide range of participants, including those involved with formulating regional guidelines, could provide their views. Such seminars have frequently been held in the process of formulating guidelines and principles, and due to the wide array of concerns to be addressed in this endeavour, may be especially useful. While still facing the uncertainties of future United Nations human rights work, the Chairperson nonetheless urges the High Commissioner for Human Rights to consider the efficacy of holding such a seminar in the coming year.



## **II. FRAMEWORK DRAFT OF PRINCIPLES AND GUIDELINES CONCERNING HUMAN RIGHTS AND TERRORISM**

### **A. Preamble**

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, and all other international and regional human rights instruments,

Guided also by all norms of customary and treaty-based humanitarian law, with particular note of norms of *jus cogens*, obligations *erga omnes*, and general principles of law,

Recalling the Rome Statute of the International Criminal Court,

Taking note of the jurisprudence of the international and regional human rights forums established by human rights treaties, including both general comments and case law, as well as statements, declarations and recommendations of special procedures of the Human Rights Council,

Reaffirming the fundamental importance, including in the response to and threat of terrorism, of respecting all human rights and fundamental freedoms, all norms of customary and treaty-based humanitarian law, and all norms of refugee law and the rule of law in general,

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

Acknowledging the important contribution of measures at national, regional and international levels against terrorism, consistent with international law, in particular international human rights law, refugee law and humanitarian law, for the functioning of democratic institutions, the maintenance of peace and security, as well as the need to continue international understanding and cooperation in the fight against terrorism and to strengthen the role of the United Nations in this regard,

Deeply deploring the increasing number of violations of human rights, humanitarian law and refugee law in the context of the fight against terrorism,

Affirming that acts, methods and practices of terrorism are activities aimed at the destruction of human rights,

Affirming also the unequivocal condemnation of all acts of terrorism,

Deeply deploring the suffering caused by terrorism to the victims and their families and to the international community as a whole,

Welcoming the initiatives to promote and protect human rights in the context of the fight against terrorism at the national, regional and international level,

Noting the need for universal, comprehensive guidelines and principles concerning human rights and terrorism,

Convinced that universal, comprehensive guidelines and principles will greatly assist in the fight against terrorism, in particular by encouraging international solidarity, political and legal harmony, and clear understanding by the international community as a whole of the rights and obligations of all in this context,

Declare the following guidelines and principles.

## **B. Scope of application and general principles**

### **Scope and application**

20. The principles and guidelines concerning human rights and terrorism are meant to provide a tool to evaluate measures adopted at the local, regional and international level for conformity with existing law.

21. The principles and guidelines concerning human rights and terrorism apply equally to all States, and to all regional and international bodies.

### **General principles**

22. All international, regional, bilateral, multilateral and national action concerning terrorism should be fully in conformity with the Charter of the United Nations and the Statute of the International Court of Justice, all general principles of law, all norms of human rights as set out in international and regional treaties, all norms of treaty-based and customary humanitarian law and all norms of international refugee law. Particular attention should be paid to the international law principles of *pacta sunt servanda*, *jus cogens*, and *erga omnes* as well as to rulings, pronouncements or decisions of United Nations or regional treaty bodies such as case opinions, comments, commentary, guidelines or sets of principles on specific treaty articles or issues.

23. International, regional treaties and bilateral or multilateral agreements relating to terrorism that do not specifically address human rights, humanitarian or refugee law should be interpreted and acted upon, as necessary, to conform with all universally binding norms of these bodies of law.

24. International action to combat terrorism should focus heavily on prevention of terrorism or terrorist acts. To the degree possible, international action should focus on the development and implementation of forward-looking strategies rather than being responsive or reflective of individual acts or series of terrorist acts.

## Comments

Action relating to terrorism must be firmly based in the whole body of existing international law: it should not function outside international law in any way. Paragraph 3 is self-evident and reflects the importance of the principles of *pacta sunt servanda*, *jus cogens* and *erga omnes*. It also reflects article 38, paragraph 1 (c), of the Statute of the International Court of Justice, which provides that “the general principles of law recognized by civilized nations” are a primary source of international law. The Geneva Conventions, of 12 August 1949, and the Additional Protocols thereto of 8 June 1977 stress this repeatedly. Paragraph 5 above reflects the [Coordinator’s/Chairperson’s] concern about hasty and overreaching measures that do not help in addressing terrorism and eventually have to be curtailed or eliminated. Such measures are highly likely to violate fundamental principles of law. It also reflects her belief that full commitment to the promotion and protection of human rights and full respect for humanitarian and refugee law is an obligation *erga omnes* as well as a practical basis for effective action against terrorism.

## C. Specific guidelines and principles

### Duties of States regarding terrorist acts and human rights

25. All States have a duty to promote and protect human rights of all persons under their political or military control in accordance with all human rights and humanitarian law norms.
26. All States have a duty to protect and promote, on a non-discriminatory basis, the safety and security of all persons under their political or military control in accordance with all human rights and humanitarian law norms. Special attention should be given to the protection of vulnerable groups, such as children, the elderly, the infirm or the disabled, who could be unduly affected by terrorist acts. All States also have a duty to protect and promote the safety and security of non-citizens from terrorist acts.
27. All States have a duty to prevent terrorist acts. Special attention should be given to secure works and installations containing nuclear materials or other hazardous or dangerous forces as well as objects and supplies, such as foodstuffs and drinking water, essential for survival.
28. All States have a duty to promote and carry out national and international policies and practices that reduce or eliminate the causes of terrorism. No State shall engage in national or international policies or practices that create a climate for terrorist retaliation or that may enhance the recruitment of persons by terrorist groups.
29. All States have a duty to refrain from producing undue fear or apprehension of terrorist acts, out of proportion to the real threat, among their citizens or residents.
30. There shall be no impunity for terrorism or terrorist acts.
31. All States have a duty to cooperate with international, regional or other institutional bodies, or with other States in all aspects, including but not limited to the needs arising from specific terrorist acts, the prevention of terrorism and the protection of human rights, humanitarian law and refugee law.

## Comments

This section is largely based on the Charter of the United Nations, the Universal Declaration of Human Rights (especially art. 28), and the principles, such as “due diligence”, that are set out in the Chairperson’s study. The provision of the duty to refrain from producing undue fear is essential to guarantee citizen confidence in actual counter-terrorism measures so as to prevent measures that undermine human rights and humanitarian law norms. At the 2005 session of the sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism, many participants emphasized vulnerable groups, including Emmanuel Decaux, Marc Bossuyt, Françoise Hampson, Florizelle O’Connor and the Association of World Citizens. The work on guidelines relative to impunity, initially undertaken by Sub-Commission members Mr. Joinet and Mr. Guisse and recently updated, consolidated, and presented to the Commission by Ms. Orentlicher, the Independent expert to update the Set of Principles to Combat Impunity (E/CN.4/2005/102 and Add.1), will provide guidance in this regard and will not be duplicated here. The Secretary-General has been especially concerned with addressing the root causes of terrorism, as has the High-level Panel on Threats, Challenges and Change, as reflected in its report “A more secure world: our shared responsibility”. A State’s duty to cooperate with international or regional bodies, or with other States arises from its *erga omnes* obligations. Regional recommendations such as the European Parliament recommendation on the role of the European Union in combating terrorism (EU A5-0273/2001), reflect the *erga omnes* obligation for both cooperation in combating terrorism and cooperation in assuring full compliance with human rights. At the fifty-seventh session of the Sub-Commission, in the sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism, Mr. Bossuyt, Ms. Chung, and Ms. Mbonu emphasized a State’s duty to cooperate. The section on judicial cooperation will be expanded on review of the working paper to be submitted by Ms. Hampson.

## General principles relating to counter-terrorism measures

32. Counter-terrorism measures must comply fully with all rules of international law, including human rights and humanitarian law, as interpreted by treaty bodies, experts of Charter-based bodies, regional human rights bodies and all other sources of international law. Special attention should be paid to insure that all laws, acts and policies in this regard reflect the right to non-discrimination on any basis and are not carried out in a way that fosters racism, xenophobia, religious intolerance, or any undue social unrest. States should pay particular attention to ensure that counter-terrorism measures fully respect the right to self-determination.

33. Evaluation of the potential impact on human rights, humanitarian law or refugee law of a proposed measure to combat terrorism shall take place in advance of its adoption.

34. Due attention shall be paid to the impact of counter-terrorism measures on vulnerable groups. In addition to ensuring that counter-terrorism measures do not adversely affect vulnerable groups such as children, the elderly, the infirm or the disabled, States should ensure that counter-terrorism measures do not adversely affect migrant workers, journalists, teachers, religious leaders or any other groups.

35. Counter-terrorism measures should to the degree possible foster international solidarity and cooperation.

### **Comments**

Most of this section is self-evident. The Chairperson has placed special emphasis on the duty of prior evaluation for a variety of reasons. First of all, while implicit in pronouncements at the international, regional and national level, the duty of prior evaluation of counter-terrorism measures has not been explicitly stated. The Chairperson has already expressed concern with measures enacted hurriedly and in response to specific terrorist acts. The process to repeal measures that violate human rights can be very difficult, with a need for citizens' groups to engage in lengthy and costly legal actions or extensive action with legislators. While these are undertaken, the laws unduly curtailing human rights are in effect, ensuring both violations and making legal action more difficult, especially as some counter-terrorism measures have limited the right of persons or groups to challenge them in the national courts. Prior evaluation is essential to prevent this. As pointed out by experts in 2005 at the first session of the sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism, counter-terrorism measures may involve certain groups which in normal circumstances would not be viewed as vulnerable ones. In the prior consideration, then, actions should be evaluated both from the perspective of full compliance with international law but also to ensure that an otherwise permissible action does not have adverse consequences for any group. In the light of this, general comments No. 16 (1988) on the right to privacy, No. 22 (1993) on freedom of thought, conscience or religion and No. 27 (1999) on freedom of movement of the Human Rights Committee are relevant.

### **Counter-terrorism measures and the definition of terrorism**

36. Counter-terrorism measures shall directly relate to terrorism and terrorist acts, not actions undertaken in armed conflict situations or acts that are non-terrorist crimes. Definitions of terrorist acts must be very carefully drawn so as to clearly set out their elements. Due attention should be paid to what are elements of the acts that support the term "terrorist" when applied to a crime:

(a) Military operations undertaken in times of armed conflict shall be evaluated in the light of all existing rules relating to such operations. Military operations that are not prohibited shall not be treated as terrorist acts. The use of force undertaken by a people with the right of self-determination shall not be treated in general as a terrorist act or the group using such force as a terrorist organization: only a particular act that meets the definition of a terrorist act shall be considered as such. Acts that constitute terrorist acts in an armed conflict, regardless of the type of conflict, must be acted upon, as are all other violations of humanitarian law, in strict conformity with the rules set out in humanitarian law instruments and not by other means;

(b) States shall not use either the issue of terrorism or the existence of a terrorist act in the conduct of an armed conflict as an excuse to deny the right of self-determination of a people or to avoid application of humanitarian law in situations of armed conflict;

(c) Crimes not having a quality of terrorism, regardless of how serious, shall not be subject to counter-terrorism exceptions or derogations, even when carried out by a suspected terrorist or terrorist group. Definitions of terrorist crimes must be in conformity with all applicable international norms such as *nullum crimen sine lege* or the principle of individual criminal responsibility. In particular, definitions should clearly set out what elements of the crime are to be considered as “terrorist”.

## Comments

This article addresses the two biggest definition problems: separating terrorism from armed conflicts and terrorist crimes from ordinary crimes. The Chairperson’s study on “terrorism and human rights” focused more on the armed conflict definitional problem, but important principles discussed in the report such as *nullum crimen sine lege* and the principle of individual criminal responsibility apply mainly in the criminal law field. This article largely draws from these parts of the [Chairperson’s] study as well as from the norms of humanitarian law relied on in that study and jurisprudence regarding terrorist crimes. Especially relevant are the many comments, cited in the study, made in United Nations and regional bodies, expressing concerns with overly broad definitions of terrorist acts. As the Chairperson pointed out in her study, great specificity is required because a charge or conviction of a terrorist crime may be used to justify, for example, denial of bail, enhanced sentences or special penalties.

## Exceptions and derogations

37. Any derogations from, exceptions to, or limitations of human rights law in the context of counter-terrorism measures must be in strict conformity with the rules set out in the applicable international or regional instruments. A State may not institute such measures unless that State has been subjected to terrorist acts that would justify them. States shall not invoke derogation or *ordre public* clauses to justify taking hostages or to impose collective punishments:

(a) Measures imposing derogations, exceptions or limitations of rights must be justified by the circumstances, must relate to the circumstances, and must be fully reported as required by the applicable human rights instruments;

(b) Great care should be taken to ensure that exceptions and derogations that might have been justified because of an act of terrorism meet strict time limits and do not become perpetual features of national law or action;

(c) Great care should be taken to ensure that measures taken are necessary to apprehend actual members of terrorist groups or perpetrators of terrorist acts in a way that does not unduly encroach on the lives and liberties of ordinary persons or on the procedural rights of persons charged with non-terrorist crimes;

(d) Measures imposing derogations, exceptions or limitations following a terrorist incident should be carefully reviewed and monitored in a regular and timely fashion;

(e) Measures imposing derogations, exceptions or limitations may not be overly broad or vague, but must be sufficiently clear so as to fully inform all who might be affected, and meet criteria of necessity and proportionality;

(f) Measures imposing derogations, exceptions or limitations of human rights should be subject to effective legal challenge in the State imposing them.

### **Comments**

In general, only certain mercenary groups, not terrorist groups, have the capacity to threaten the existence of a State, and then only a small or poorly defended one. This section draws largely on the report prepared by Sub-Commission Special Rapporteur Nicole Questiaux (E/CN.4/Sub.2/1982/15) and general comment Nos. 5 (1981) on derogations, 21 (1992) on humane treatment of persons deprived of their liberty, and 29 (2001) on derogations during a state of emergency, of the Human Rights Committee. Of particular note is that the Human Rights Committee, in general comment No. 21 (1992), is firm that a derogation under article 4 of the International Covenant on Civil and Political Rights requires a threat to the life of a nation, which generally assumes an armed attack on a State that has the immediate potential to overtake the State. In the view of the Committee, other types of catastrophes may not entitle a State to take exceptional measures. The final report of the Special Rapporteur on human rights and states of emergency Leandro Despouy, to the Sub-Commission at its forty-ninth session (E/CN.4/Sub.2/1997/19 and Add.1), is also instructive in this regard. Additionally, the *Digest of jurisprudence of the United Nations and regional organizations on the protection of human rights while countering terrorism* indicates that this issue has been frequently addressed in all the regional bodies. This issue is particularly difficult relative to freedom of speech, assembly, association and freedom of religion and belief because they are subject to limitations on grounds of public order (*ordre public*).

### **Specific principles relating to arrest, detention, trial and penalties of alleged terrorists**

38. No person shall be arrested for a terrorist act unless there are reasonable grounds to support the arrest. No person may be detained solely on the bases of race, colour, national origin, ethnicity or any other factor. Evidence used to justify the arrest of a person must meet all international standards. Abduction and hostage-taking are prohibited in all circumstances:

(a) No person shall be arrested based on evidence obtained by means of a search that violates international standards. While in certain circumstances area-wide searches may be undertaken or restrictions on freedom of movement imposed to facilitate seizure of evidence, there must be sufficient grounds of the presence of terrorists or evidence to justify such searches, and they should be undertaken in a way that least varies from international standards. Forcible transfers of persons on the pretext of securing evidence without compelling grounds permitted under international law constitute crimes against humanity;

(b) No person shall be arrested based on evidence obtained under torture, or cruel, inhuman or degrading treatment;

(c) No person shall be arrested solely on evidence provided by a person already detained.

39. Persons detained under suspicion of engaging in or planning terrorist acts have at all times the right to know the charges against them. A charge of being a terrorist is insufficient, and must be accompanied with charges of specific acts.

40. Persons detained under suspicion of engaging in or planning terrorist acts have at all times the right to counsel from the moment of arrest.

41. Persons detained under suspicion of engaging in or planning terrorist acts have at all times the right to the presumption of innocence.

42. Persons detained under suspicion of engaging in or planning terrorist acts have the right to remain silent. Exercise of the right to remain silent shall not carry with it any penalties or presumptions.

43. Persons detained under suspicion of engaging in or planning terrorist acts and held in administrative detention must be brought before competent legal bodies promptly, generally within four days.

44. Persons detained under suspicion of engaging in or planning terrorist acts may not be subjected to torture, cruel, inhuman or degrading treatment. No evidence obtained under these conditions may be admitted into evidence or in any way be used to support a conviction. Persons detained for trial in one State may not be transferred to any other State for interrogation purposes and any evidence obtained in these circumstances shall not be admitted into evidence or used in any way to support a conviction.

45. All international and national norms relating to legal proceedings must be followed in any case involving persons charged with terrorist acts. In particular, fundamental requirements of fair trial must at all times be respected. States may limit media or public presence at such trials if the interest of justice so demands. However, there must be some mechanism for observation or review of any trial with limited access of the media or general public to guarantee its fairness.

46. The use of military tribunals should be limited to trials of military personnel for acts committed in the course of military actions. The use of military tribunals to try a person accused of terrorist acts must meet all requirements of international humanitarian law for such tribunals.

47. The right to submit writs such as habeas corpus and *amparo*, as well as the legal means to prepare and submit these writs, may not be denied to any person arrested and charged with a terrorist act.

48. No person can be convicted of a terrorist act unless that person has been fully able to present witnesses and evidence in his or her defence and to cross-examine witnesses and evidence against him or her, and unless the trial has had all other elements of fairness, impartiality or other requirements of fundamental legal principles.

49. No person can be convicted of a terrorist act unless at all times he or she has had access to competent legal counsel. Such counsel must be provided by the State if the person does not have adequate means.



50. Penalties for convicted terrorists shall conform with all international and national rules, especially those relating to the death penalty and life sentences without possibility of parole. While participation in a terrorist act may be grounds for evoking “special circumstances” that can be used to justify higher penalties, no penalty may be cruel, inhuman or degrading.

51. No person convicted of a terrorist act can be denied the right to appeal, including to relevant regional or international tribunals or mechanisms. All elements of a fair trial must be present in any appeal.

52. Conditions of detention, whether pretrial, during trial or post-conviction, must conform to all international standards, except that in exceptional circumstances, provided for in conformity with international and national law, persons accused or convicted of terrorist acts may be detained in facilities apart from persons accused or convicted of ordinary crimes, provided that rules relating to the prohibition of prolonged solitary detention are obeyed. Under no circumstances may a person be held in either unacknowledged or incommunicado detention.

### Comments

This section draws largely on non-discrimination principles from many international and regional human rights treaties and on related principles in humanitarian law; on article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and commentary of the Committee against Torture; on the general comments Nos. 5 (1981) on derogations, 8 (1982) on the right to liberty and security of persons, 21 (1992) on humane treatment of persons deprived of their liberty, and 29 (2001) on derogations during a state of emergency of the Human Rights Committee; and on the directives of the Working Group on Arbitrary Detention and the jurisprudence of regional human rights bodies. While there is some variance in the regional human rights bodies regarding the length of time persons may be held in administrative detention, the European Court of Human Rights is quite firm that persons detained for terrorist-related offences (or any other charges) must be brought before a judicial officer within four days. *Brogan and Others v. the United Kingdom*, European Court of Human Rights, 29 November 1988 (para. 62). The Human Rights Committee, in its general comment No. 29 (2001), indicates that the prohibition of unacknowledged detention is absolute due to its status as a norm of general international law (para. 13 (b)). This rule is further supported by obligations regarding both prisoners of war and civilian detainees in humanitarian law. The Geneva Conventions, of 12 August 1949, and the Additional Protocols thereto of 8 June 1977 contain explicit fair trial requirements that are not subject to derogation. The Human Rights Committee sees no reason for derogation from them in other emergency situations falling short of war (general comment No. 29 (2001), para. 16). The Committee, while not mentioning any particular writs (such as habeas corpus or *amparo*), declares that the legal means to challenge the lawfulness of a detention is essential to protect non-derogable rights. Humanitarian law, and articles 7 (1) (d) and 7 (2) (d) of the Rome Statute of the International Criminal Court address the absolute nature of the rule against deportation or forcible transfer. The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex) also address this point, as does Sub-Commission member Paulo Sérgio Pinheiro in the guidelines he has developed on the right to housing (E/CN.4/Sub.2/2004/22 and Add.1; E/CN.4/Sub.2/2005/17 and Add.1). There are many international instruments relating to the conditions of detention, such as the Standard Minimum Rules for the Treatment of Prisoners, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and United Nations Rules for the

Protection of Juveniles Deprived of their Liberty. *The Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights While Countering Terrorism* cites many decisions in the regional human rights bodies on these issues.

### **Asylum, forcible transfers and extradition**

53. All national policies involving asylum, extradition, removal and forcible transfers must conform to international, regional and national law. In particular, there must be full respect for the principle of non-refoulement and full regard to laws relating to the death penalty or other harsh sentences. No person shall be transferred to any State unless there is a verifiable guarantee that there will be full protection for all human rights in the receiving State. Diplomatic assurances by the receiving State are insufficient to prove that the transferred person's rights would be fully respected. Until the transferred person's status is fully settled in accordance with all applicable international and national law, the transferring State remains liable for that person. A transferring State must seek the return of any transferred person whose rights are at risk.

54. Mass deportation and prolonged forcible transfer are crimes against humanity.

55. As extradition is a major procedure in counter-terrorism agreements and measures, all States should endeavour to elaborate extradition rules that are compatible with the rules of other States and with international law.

56. Persons detained on grounds of having engaged in a terrorist act may not be transferred by one State to another State except under legally recognized extradition, expulsion or deportation procedures that fully conform with all international human rights and humanitarian rules.

57. Transfers of persons detained on grounds of having engaged in a terrorist act should not be carried out when there is reasonable cause to believe that a request for transfer is motivated by prejudice, discrimination or other impermissible bias or when there is any reason to believe that the person for whom the transfer is sought would not have a fair trial in conformity with all rules of international law relating to the administration of justice, or would be subjected to conditions of detention that fully meet all international standards. In particular, States sending a person should affirm that there are no unjustifiable exceptions, limitations or derogations in place in the receiving State.

### **Comments**

This section draws on general comment No. 31 of the Human Rights Committee, basic rules of asylum law, relevant provisions of humanitarian law (especially articles 45 and 49 of the Fourth Geneva Convention), the above-mentioned section of the Rome Statute of the International Criminal Court, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the report of the Organization of American States (OAS) special rapporteur on migrant workers (OEA/Ser.L/V/II.111, Doc.20 rev.16 (2001) and the OAS report on terrorism and human rights (OEA/Ser.L/V/II.116, Doc.5 rev.1corr.(2002)). The Sub-Commission's expert, Paulo Sérgio Pinheiro, draws on the same sources in his draft guidelines on the right to housing. The issue of transfers includes the concept of "rendition", and

in this regard draws on the work of the Working Group on Arbitrary Detention and, in particular, the joint urgent appeal issued on 1 July 2003 (E/CN.4/2004/56/Add.1, para. 1823). This section awaits the paper on international judicial cooperation to be presented by Françoise Hampson.

### **Freedom of opinion and expression**

58. All rules relating to freedom of opinion and expression, including the freedom of the press, shall be in strict conformity with international human rights and humanitarian law norms. Restrictions or limitations to these rights on the basis of national security or *ordre public* must specifically relate to the exigencies of circumstances and may not be overbroad, vague and may not unduly encroach upon the rights themselves.

### **Comments**

This section awaits the paper to be prepared by Marc Bossuyt and Ibrahim Salama before it is more fully developed. Human Rights Committee general comment No. 10 (1983), as well as a number of rulings by the European Court of Human Rights and commentary by the Inter-American Commission on Human Rights, are useful references.

### **Freedom of thought, conscience and religion**

59. All rules relating to freedom of thought, conscience and religion shall be in strict conformity with international human rights and humanitarian law. The rights to freedom of thought, conscience and religion are non-derogable and may not be curtailed in any way for whatever reason. The right to manifest one's religion may be subject to limitations on the basis of national security or *ordre public*, providing that the criteria of sufficient circumstances, and the principles of necessity and proportionality, are fully met. Any limitation must be reviewed with sufficient frequency to ensure that the criteria for imposing limitations still exist.

### **Privacy and property rights**

60. All rules relating to privacy and property rights shall be in strict conformity with international human rights and humanitarian law norms. States shall not encroach, either electronically or by any other means, on correspondence or other private communications, without warrants issued with sufficient cause. Property may not be seized as part of counter-terrorism measures without warrants issued on the basis of sufficient cause. All persons or groups whose property has been seized or whose assets have been frozen have the right to challenge these actions through full and fair legal proceedings, which, owing to the gravity of seizing property or freezing assets in democratic societies and the principle of the presumption of innocence, shall be pre-emptory.

### **Comments**

Many international and bilateral agreements on the exchange of information and intelligence between States give cause for concern in relation to the right to privacy, as do many anti-terrorist measures introduced since 11 September 2001. The Human Rights Committee, in its general comment No. 16 (1988) on the right to privacy, provides basic rules relating to privacy. Property rights are guaranteed in article 17 of the Universal Declaration of Human Rights. Regional human rights declarations and conventions must also be consulted in determining what is

sufficient cause. The European Court of Human Rights has ruled that some “secret surveillance” might be allowed during genuine emergency situations, but this is not unlimited (*Klass and Others v. Germany*, European Court of Human Rights, judgement of 6 September 1978, Series A, No. 28). The issue of housing rights is relevant, and the above-mentioned guidelines by Paulo Sérgio Pinheiro on the right to housing will provide that framework.

### **Freedom of association and assembly**

61. All rules pertaining to the rights of association and assembly shall be in strict conformity with international human rights and humanitarian law norms. The international community should be especially vigilant in its review of any limitations on these rights by States, or the detention or prosecution of any person charged for membership or association with a group labelled terrorist by a State:

- (a) Great care should be taken to ensure that any limitations on these rights are specifically targeted at terrorist groups and set out with great precision to avoid affecting non-terrorist groups or persons who have not directly participated in a terrorist act;
- (b) As the right to freedom of association and assembly is especially important in the context of asylum rights, States should also take great care to ensure their full protection in that context;
- (c) While the right to strike may be denied to military and police personnel, a general restriction on the right to strike may only be imposed regarding the provision of essential services whose suspension could jeopardize the safety of all or part of the general public;
- (d) Limitations to the right of freedom of association or assembly should not be undertaken that unduly criminalizes these rights and puts in jeopardy the full functioning of a democratic society.

### **Comments**

These rights, broadly recognized as both civil individual and political rights, are both derogable and subject to *ordre public* limitations, but might be misused by States to suppress political dissent. Therefore, their undue restriction by the State may entail even greater animosity against it and have as well little effect in combating threats to its national security. The International Covenant on Civil and Political Rights (arts. 21 and 22), the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, art. 11), the American Convention on Human Rights (arts. 15 and 16), the African Charter on Human and Peoples' Rights (arts. 10 and 11), and the Universal Declaration of Human Rights (art. 29), all permit the restriction of these rights for reasons of national security, public safety, public order, public health and morals, or the protection of the rights and freedoms of others; however, States must ensure that the expression of alternative political views, as well as peaceful meetings, are permitted and that administrative or criminal measures are subject to judicial challenge or review. For this reason, due diligence is required to ensure that States are not invoking terrorism as a pretext to curtail these rights essential to a democratic society and to ensure fair labour

standards for workers. This section draws mainly on the International Bar Association's Task Force on International Terrorism Report, *International Terrorism: Legal Challenges and Responses*, the OAS Report on Terrorism and Human Rights (OEA/Ser.L/V/II.116, Doc.5 rev.1corr. 22 October 2002) and the Chairperson's additional progress report on terrorism and human rights (E/CN.4/Sub.2/2003/WP.1). The section also draws on the Trade Union Freedom Committee of the International Labour Organization. Regarding the possible criminalization of groups or otherwise protected rights relating to freedom of association and assembly (as well as certain other rights), the Working Group on Arbitrary Detention commented also on lack of precision in national legislation and the use of terms with strong implications (e.g. acts of treason, enemy propaganda).

### **Rights of victims of terrorist acts**

62. Victims of terrorist acts committed by States are entitled to full remedies for the violations of their rights in conformity with international law relating to effective remedies and reparations. National legislation should provide means by which victims of sub-State terrorism can receive full remedies.

63. States should investigate the situation of persons alleged to have been victims of terrorist acts as well as the possibilities of future terrorist acts to protect persons from becoming victims of terrorist acts.

64. Any person or class of persons unduly affected by counter-terrorism measures, as well as groups who advocate for rights, should have the right to an effective remedy against the State implementing those measures, regardless of the nationality of the affected persons or class of persons. States may establish expedited procedures, especially for vulnerable groups such as children, the elderly, the infirm or the disabled, as well as for non-citizens.

### **Comments**

Because of the potential for significant social harassment and human rights violations as well as encroachment into long-established procedural rights, persons unduly affected by such measures should be able to challenge them offensively and on an expedited or priority basis. Similarly, interested groups seeking to challenge, for example, overly broad or vague definitions need to have legal standing in this regard. Such undue effect, for example, could arise were a State to cordon off a neighbourhood for a long period of time, or mandate that all adult men of a certain ethnic background report to the local law enforcement agency once a month, or that no person of a certain national origin is able to purchase property near a military base. The guidelines on compensation, formulated by independent experts, Theodor van Boven and Cherif Bassiouni, 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 (General Assembly resolution 60/147, annex), which are now under review and amendment at the Commission, provide the standards in this regard and will not be repeated here. The Chairperson awaits the working paper Emmanuel Decaux is to submit on this topic. Gaspar Biro expressed concerns over the duty to investigate the situation of victims of terrorism.

## Notes

<sup>1</sup> Ibrahim Salama (Africa), Shiqiu Chen (Asia), Gaspar Biro (Eastern Europe), Florizelle O'Connor (Latin American and the Caribbean) and the coordinator (Western Europe).

<sup>2</sup> For more detail of the session, see E/CN.4/Sub.2/2005/43: Report of the sessional working group to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism, prepared by its Chairperson-Rapporteur.

<sup>3</sup> The sessional working group with the mandate to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism also authorized four working papers to be submitted by members and experts on: (1) general and overriding principles of international law and on exceptions and derogations; (2) freedom of expression; (3) international judicial cooperation; and (4) the rights of victims as these topics relate to terrorism and counter-terrorism measures. It also endorsed the proposal of the Chairperson-Rapporteur to explore the possibility of a focused seminar, and that it should continue at the next session of the Sub-Commission.

<sup>4</sup> E/CN.4/Sub.2/1994/9, annex I and Corr.1.

<sup>5</sup> E/CN.4/Sub.2/2005/17, paras. 3.1-9.2.

<sup>6</sup> This rule does not mean that a regional or national rule cannot provide for greater rights than determined to be minimum by the Charter of the United Nations or United Nations bodies, but they may not be lesser. For example, some States have provisions for prisoners that exceed the Standard Minimum Rules for the Treatment of Prisoners, but may not have any that fall short.

<sup>7</sup> The doctrines of *jus cogens* and *erga omnes* are particularly important in regards to the principles of self-determination that, as the Chairperson has noted repeatedly in the course of her study on terrorism and human rights, has been the focus of much contention: self-determination is both a norm of *jus cogens* and an obligation *erga omnes*. See Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge, Cambridge University Press, 1995), p. 133, providing an abundant bibliography. While the International Court of Justice has only set out some examples of human rights norms as obligations *erga omnes*, there is little dissention that all of the civil and political rights generate obligations *erga omnes*. See, for example, Statement by the Inter-American Commission on Human Rights (IACHR), Organization of American States, Press communique No. 13/93, 25 May 1993.

<sup>8</sup> Advisory opinion: "Other treaties" subject to the Consultative Jurisdiction of the Court, Inter-American Commission on Human Rights, Ad.Op. No. OC-1/82, 24 September 1982. In addition to acceptance of jurisdiction of other treaties and basic principles at the Organization of American States, both the United Nations human rights bodies and the Council of Europe have long accepted this. See, for example, *Becker v. Denmark*, E. Comm'n H.R., 1976 Y.B. Eur. Conv. H.R. 461, in which the Commission construed the Convention in terms of the Geneva Conventions, of 12 August 1949, and the Additional Protocols thereto of 8 June 1977.

<sup>9</sup> Human Rights Committee, general comment No. 29.

<sup>10</sup> Ibid., paras. 2-4.

<sup>11</sup> The Chairperson points out that the derogation clause in the American Convention on Human Rights requires a “war, public danger or other emergency that threatens the independence or security of a State Party”. American Convention on Human Rights, article 27. See also article 15 of the European Convention on Human Rights.

<sup>12</sup> E/CN.4/Sub.2/1982/15, paras. 55-59. Mme Questiaux also indicated the four emergency situations that arise from a political crisis rather than from a force majeure: international armed conflicts, wars of national liberation, non-international armed conflicts and situations of internal disorder or dissention. She also pointed out that her mandate was to address derogations in situations that fall short of war. Ibid., paras 27-31. Neither Mme Questiaux nor the Human Rights Committee addressed derogations in the context of terrorism.

<sup>13</sup> The Chairperson points out that normally the possible enemy placing a State at risk is well known and its location established because the enemy is typically another State or an internal armed opposition group. Terrorist groups operate in a very different way, and their location may be unknown.

<sup>14</sup> Article 29, paragraph 3 provides that the rights may not be exercised against the purposes and principles of the United Nations.

<sup>15</sup> The International Covenant on Economic, Social and Cultural Rights has only a few restrictions and limitations built in due to the nature of the subject matter, the main restriction addressing the right to strike of armed forces and the police.

<sup>16</sup> See, for example, *Zana v. Turkey*, Eur. Ct. H.R., Judgement of 25 November 1997; *Report on Human Rights and Terrorism*, OEA/ser.L/V/II.116, Doc. 5, Rev.1, Corr., 22 October 2002.

<sup>17</sup> The Chairperson is especially concerned with the implications of the misuse of the term “terrorism” that the Special Rapporteur set out in this paragraph.

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