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REPORT OF THE SUB-COMMISSION ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS

Written statement* submitted by International Commission of Jurists,
a non-governmental organization in special consultative status

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

[17 January 2003]

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

Terrorism and Human Rights

1. The International Commission of Jurists (ICJ) congratulates the Special Rapporteur on Terrorism and Human Rights, Ms. Kalliopi K. Koufa, for her report (E/CN.4/Sub.2/2002/35), which provides a broad view of the challenges posed by present circumstances. It is indisputable that the fight against terrorism has gained a new momentum due to the 11 September events in New York and also the adoption of Resolution No 1373 (2001) by the United Nations Security Council. This Resolution was adopted on 28 September 2001 under Chapter VII of the Charter of the United Nations.

2. In the framework of Resolution N° 1373 (2001) of the Security Council, both at the international and national levels, various measures and initiatives have been adopted or are in the process of being adopted. Many of these initiatives and measures test, and in some cases plainly contravene, human rights and principles of international law. We are witnessing a worrisome erosion of human rights, international refugee law and international humanitarian law. As expressed by the Special Rapporteur, " Responses to terrorism have themselves been dramatic, sometimes undertaken with a sense of panic or emergency. (...) (These) 'close-to-panic' reactions may have serious implications for international and human rights law, as well as humanitarian law".¹

3. According to international law, there is no doubt that all States and the international communities have the right and duty to fight criminality, particularly when such acts, due to their nature, objectives and means employed, amount to terrorist acts. However, all States also have the obligation to respect principles of criminal law and international human rights law. Thus, as reaffirmed by the United Nations Commission on Human Rights: "all measures to counter terrorism must be in strict conformity with international law, including international human rights standards".²

4. The ICJ agrees with the statement of the High Commissioner for Human Rights that " An effective international strategy to counter terrorism should use human rights as its unifying framework. The suggestion that human rights violations are permissible in certain circumstances is wrong. The essence of human rights is that human life and dignity must not be compromised and that certain acts, whether carried out by State or non-State actors, are never justified no matter what the ends. International human rights and humanitarian law define the boundaries of permissible political and military conduct. A reckless approach towards human life and liberty undermines counter-terrorism measures."³

¹ United Nations document, E/CN.4/Sub.2/2002/35, paragraph 59.

² Resolution No 2002/35 of 22 April 2002, paragraph 22 of the Preamble. Similarly, see Resolutions N° 2001/37, Resolutions N° 2000/30, 1999/27 and 1998/47, of the Commission on Human Rights.

³ Report of the High Commissioner submitted pursuant to General Assembly resolution 48/141 - Human rights: a uniting framework. United Nations document E/CN.4/2002/18. 27 February 2002, paragraph 5

5. The treaty-based monitoring bodies have been able to study the announced or adopted measures at the national level in the framework of Resolution 1373. Thus, the Human Rights Committee has expressed its views on several States⁴. The Committee advised that "The State party should ensure that any measures it undertakes in this regard (in fulfilment of Resolution No 1373) are in full compliance with the provisions of the Covenant, including, when applicable, the provisions on derogation contained in article 4 of the Covenant" ⁵. Similarly, the Committee has criticised some measures ordering the expulsion of asylum seekers, suspected of committing acts of terrorism, to their countries of origin; arbitrary detention and undue limitations on judicial safeguards; and the introduction in criminal legislation of vague or imprecise legal definitions of terrorism, which constitutes a violation of the criminal law principle of legality (*nullum crimen sine lege, nulla poena*). The Committee stated that "The State party must ensure that measures taken under the international campaign against terrorism are fully in conformity with the Covenant" and that observance of the principle of *non-refoulement* should be guaranteed⁶. In addition, the Committee against Torture has expressed its concern about the expulsion of foreigners suspects of terrorism following an expeditious proceedings, which contravenes the Convention⁷. Similarly, the Committee has reiterated that special circumstances, such as the fight against terrorism, could not be invoked in order to justify the practice of torture.⁸

6. In August 2002, the Committee on the Elimination of Racial Discrimination (CERD), adopted a *Statement on racial discrimination and measures to combat terrorism*, in which it emphasised "that measures to combat terrorism must be in accordance with the Charter of the United Nations and that they are only legitimate if they respect the fundamental principles and the universally recognised standards of international law, in particular, international human rights law and international humanitarian law"⁹. The CERD demanded "that States and international organisations ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin" and insisted "that the principle of non-discrimination must be observed in all matters, in particular in those concerning liberty, security and dignity of the person, equality before the courts and due process of law, as well as international co-operation in judicial and police matters in these fields"

7. However, the control carried out by the human rights treaty- bodies, with regard to announced or adopted counter-terrorism measures in the framework of the Resolution No 1373, is limited. Both the Human Rights Committee and the Committee against Torture as well as the other treaty-bodies, carry out this supervision, primary, in the context of the periodical review of State-Parties' reports submitted to the respective treaty-body. The treaty bodies can also exercise this

4 Egypt (CCPR/CO/76/EGY), New Zealand (CCPR/CO/75/NZL), United Kingdom of Great Britain and Northern Ireland (CCPR/CO/73/UK), CCPR/CO/73/UKOT, Sweden (CCPR/CO/74/SWE), and Yemen (CCPR/CO/75/YEM).

5 "Concluding observations of the Human Rights Committee - United Kingdom of Great Britain and Northern Ireland" United Nations document CCPR/CO/73/UK, CCPR/CO/73/UKOT, 5 November 2001, paragraph 6. It is important to point out that in spite of this, in December 2001, the United Kingdom derogated from article 5(1) of the European Convention on Human Rights.

6 "Concluding observations of the Human Rights Committee - Sweden" United Nations document CCPR/CO/74/SWE, 24 April 2002, par. 12.

7 CAT/C/CR/28/6, 6 June 2002, paragraph 6(b)

8 CAT/C/XXVIII/Concl.5, 16 May 2002, paragraph 4.

9 United Nations Document A/57/18 (Chapter XI) (C.) (General Comments), Paragraph 3.

control in the framework of the individual communication procedure, whose proceedings may take several years. Although these monitoring mechanisms are important, both are ex post facto, with a limited preventive effect- and limited to the States which have ratified the respective treaties. Furthermore, only a few States are subject of study every year. The monitoring system of the treaty-bodies is, therefore, unable to sufficiently respond to the challenges that Resolution 1373 of the Security Council poses. As similar conclusion may be reached with regards to the thematic procedures of the Commission on Human Rights. Such procedures approach the issue from the thematic point of view of their respective mandates, which does not propitiate a comprehensive and global control of the phenomenon. Announcements from the Chair of the Counter-Terrorism Committee (CTC), created by the Security Council, aimed at including a human rights component in the monitoring of the implementation of Resolution 1373, are important. However, this measure is insufficient because the control carried out by the CTC is basically exercised from a criminal law perspective and human rights seem to play a secondary role.

8. Taking into account the consequences of Resolution 1373 (2001), the ICJ considers essential that the Commission on Human Rights establish a permanent monitoring mechanism that examines the compatibility of counter-terrorism measures with international human rights law, international refugee law and international humanitarian law. This mechanism should have a mandate that includes monitoring and prevention powers. Such a mechanism could identify those announced or adopted measures, which do not comply with international standards with a view to recommending modifications. In order to carry out its mandate, this mechanism should be based on existing international instruments, including treaties and declarations. Finally, its mandate should also be based on the jurisprudence of human rights courts and bodies. Such jurisprudence provides a valuable framework on means to counterbalance terrorist acts within the rule of law by indicating the kind of measures that may be adopted, the circumstances in which such measures could be adopted and the conditions of their implementation.
