

**Which Justice for Perpetrators of Acts of Terrorism?  
The Need for Guidelines**

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WORKING PAPER

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## **Abstract**

The Security Council considers the domestic criminal justice systems as an essential tool to fight terrorism. In resolution 1373 (2001), the Council obliges states to bring perpetrators of acts of terrorism to justice. Moreover, its resolution 1456 (2003) recognises the relevance of international law, including human rights, in meeting this obligation. However, what is required of states in more concrete terms remains unclear.

This paper seeks to demonstrate that an effective and legitimate implementation of resolution 1373 requires of the Counter-terrorism Committee, in collaboration with its Counter-terrorism Executive Directorate, and with appropriate support of the Security Council, to offer its own guidelines on the interpretation and application of the obligations under the resolution. The content of such guidelines should be transparent, practical and universal in reach; in addition, the implications of relevant fields of international law, including that of human rights, must be reaffirmed and clarified. Only then will the Security Council's commitment to lead a fight against terrorism within the bounds of international law not only be more effective and legitimate but also more credible in the eyes of those who are most seriously affected by its counter-terrorism measures.

The recommendations are put forward in response to an overwhelming evidence of human rights abuses especially of terrorist suspects committed since the adoption of resolution 1373. The importance of the recommendations are contemplated at a time when the UN-led fight against terrorism is being intensified: the Counter-terrorism Committee has been revitalised and its new Counter-terrorism Executive Directorate is about to become fully operational; the Security Council is extending its mandate in the area of counter-terrorism; and may currently be considering the proposals of the Secretary-General's High Level Panel on Threats, Challenges and Change to strengthen state capacity-building in countering terrorism, and to introduce a schedule of predetermined sanctions in case of state non-compliance with resolution 1373.



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## The Obligation to Bring Perpetrators of Terrorist Acts to Justice

The Security Council considers the domestic criminal justice systems as an essential tool to fight terrorism. According to its resolution 1373 (2001), states shall:

ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.<sup>1</sup>

What is required of states in more specific terms to meet this obligation? What does it mean to bring perpetrators of acts of terrorism to justice? What kind of punishment is appropriate for perpetrators of terrorist acts?<sup>2</sup>

A looming fear of future terrorist attacks, possibly with even more detrimental results than those that took place in New York, Washington D.C. and Pennsylvania on 11 September 2001, Madrid on 11 March 2004, and in Russia's North Ossetian town of Beslan on 1 September 2004, have led to the adoption of a wide range of counter-terrorism measures in relation to captured terrorist suspects, including the following:

- arbitrary detention of terrorist suspects;<sup>3</sup>
- indefinite detention of terrorist suspects;<sup>4</sup>

<sup>1</sup> U.N.S.C. Res. 1373 (2001), para. 2(e).

<sup>2</sup> While U.N.S.C. Res. 1373 (2001) appears to focus only persons who have already been found guilty of acts of terrorism, this paper adopts a broader definition of 'perpetrators of acts of terrorism' to also include persons who are suspected and accused of such acts.

<sup>3</sup> See e.g. International Commission of Jurists concludes mission in Colombia, 28 Jan. 2005 [[http://www.icj.org/IMG/pdf/Final\\_PR\\_Colombia.pdf](http://www.icj.org/IMG/pdf/Final_PR_Colombia.pdf)].

<sup>4</sup> See e.g. *U.S. Military Order issued by President Bush on November 13, 2001: Detention, Treatment and Trial of Non-Citizens in the War against Terrorism*, 66 Fed. Reg. 57, 833 (Nov. 13, 2001), which allows for the indefinite detention of 'enemy combatants'; and *U.K. Anti-Terrorism, Crime and Security Act*, part 4. which allows for the indefinite administrative detention of terrorist suspects without trial. See also *Report of the Working Group on Arbitrary Detention: Civil and Political Rights, Including Arbitrary Detention*, 1 Dec. 2004

- the establishment of military commissions to try terrorist suspects;<sup>5</sup>
- secret legal proceedings;<sup>6</sup>
- detention of non-violent dissenters as terrorist suspects;<sup>7</sup> and
- arbitrary executions.<sup>8</sup>

Do these measures meet the obligation of bringing perpetrators of terrorist acts to justice under resolution 1373?

(E.C.N.4/2005/6); and Committee against Torture, *Conclusions and Recommendations to the United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories*, 25 Nov. 2004 (CAT/C/CR/33/3).

<sup>5</sup> *U.S. Military Order issued by President Bush on November 13, 2001: Detention, Treatment and Trial of Non-Citizens in the War against Terrorism*, 66 Fed. Reg. 57, 833 (Nov. 13, 2001). According to Military Commission Order No. 1, military commissions have the power to exclude the accused from hearings and deny him access to evidence against him. See also *Hamdan v. Rumsfeld*, U.S. District Court for the District of Columbia, 8 Nov. 2004 (Civil Action no. 04-1519 (JR)).

<sup>6</sup> See e.g. *Spanish Code of Criminal Procedure*, art. 506(2) as modified by *Organic Law 13/2003* of 24 October 2003. For a comment of the impact of this provision on the right to an effective defense, see Human Rights Watch, *Setting an Example? Counter-terrorism Measures in Spain*, vol. 17, no. 1(D), Jan. 2005, 47 ff [<http://hrw.org/reports/2005/spain0105/spain0105.pdf>].

<sup>7</sup> For example, the government of Uzbekistan considers peaceful religious fundamentalist beliefs and practices to be a threat of terrorism and criminalises such beliefs that fall outside state control. According to Human Rights Watch, the government has subjected thousands of religious Muslims accused of religious extremism—as well as terrorist suspects—to unfair trials and systematic torture and ill-treatment. See Human Rights Watch, 'Uzbekistan, Crackdown on Religious Dissenters Follows Attacks,' 2 Apr. 2004 [<http://hrw.org/english/docs/2004/04/01/uzbeki8386.htm>] and Human Rights Watch, 'Open Letter to the United Nations Counter-Terrorism Committee,' 25 Jan. 2005 [[http://hrw.org/english/docs/2005/01/25/uzbeki1007\\_4.htm](http://hrw.org/english/docs/2005/01/25/uzbeki1007_4.htm)].

<sup>8</sup> See e.g. the *Indian Armed Forces Special Powers Act*, which was passed to redress insurgency in North India. The Act empowers the armed forces to arrest individuals without warrant, to destroy any structure that may be hiding absconders without verification, to search and seizure without warrant and to shoot even to the causing of death. For a comment on the Indian review of this Act, see [[http://www.achrweb.org/reports/india/AFSPA\\_report.pdf](http://www.achrweb.org/reports/india/AFSPA_report.pdf)]. See also Human Rights Committee, *Concluding Observations on Israel*, 21 Aug. 2003 (CCPR/C/078/ISR), para. 15.

## The Limited Relevance of the Anti-terrorist Conventions

Since 2001, the Security Council has reconsidered its disregard of how states understand and seek to meet their obligations under resolution 1373. According to its resolution 1456 (2003):

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.<sup>9</sup>

Though the obligation is a general one, it does point out that the way states bring perpetrators of terrorist acts to justice and punish them must be consistent with international law, and that the concrete counter-terrorism measures that states adopt have an international human rights and humanitarian law dimension that must not be ignored even when the international community is confronted with a threat against international security as serious as that of terrorism.

In particular, the Counter-terrorism Committee (CTC), set up to monitor the implementation of resolution 1373, has recognised a close link between the obligation to bring perpetrators of terrorist acts to justice and existing international anti-terrorist conventions. In discussing problems related to the implementation of resolution 1373, and how to resolve them, the CTC notes that the obligation in question:

is designed to ensure that terrorists have no place of refuge, since each State will be competent to try them or extradite them. However, some states have shown certain reluctance to create such mechanisms in their legislation. Therefore, very broad ratification of the anti-terrorist conventions is among the methods used to achieve this goal ... so as to create an international co-operation network and institutional machinery for mutual assistance and extradition.<sup>10</sup>

The anti-terrorist conventions criminalise specific acts of terrorism, such as financing of terrorism, terrorist bombings, taking of hostages, seizure of aircrafts, violence at airports serving international

<sup>9</sup> See also U.N.S.C. Res. 1535 (2004), preamble.

<sup>10</sup> Report by the Chair of the Counter-Terrorism Committee on the problems encountered in the implementation of Security Council resolution 1373 (2001). Annex to Note by the President of the Security Council, 26 January 2004 [S/2004/70], p. 6.

civil aviation, and so on. Most of the conventions entail provisions on how states are to deal with persons found on their territories who are suspected of these crimes:

The State party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.<sup>11</sup>

Thus, unlike resolution 1373, most of the anti-terrorist conventions set out a procedure for dealing with captured terrorist suspects, a procedure that *a fortiori* rules out a right of states to keep a terrorist suspect in 'indefinite' detention: unless the alleged offender is extradited, the states are obliged 'to submit, without exception whatsoever and without undue delay, the case to the competent authorities for the purpose of prosecution.'<sup>12</sup>

Moreover, according to the *International Convention against the taking of hostages* (1979) and the *Convention for the suppression of unlawful acts against the safety of maritime navigation* (1988):

Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in ... shall be guaranteed fair

<sup>11</sup> *Convention for the suppression of unlawful seizure of aircraft* (1970), art. 7; *Convention for the suppression of unlawful acts against the safety of civil aviation* (1971), art. 7; *International Convention against the taking of hostages* (1979), art. 8 (1); *Convention for the suppression of unlawful acts against the safety of maritime navigation* (1988), art. 10(1); *International Convention for the suppression of terrorist bombings* (1997), art. 8; *International Convention for the suppressing of the financing of terrorism* (1999), art. 10. See also *Convention on the prevention and punishment of crimes against internationally protected persons* (1973), art. 7; *Convention on the physical protection of nuclear material* (1980), art. 10. However, the latter two conventions do not include the last sentence. The *Convention on offences and certain other acts committed on board aircraft* (1963) does not entail a similar provision. Instead, it invokes a more general obligation to the extent that a State party in whose territory a person has been disembarked and is suspected of an act contrary to the convention: 'shall accord such person treatment which is no less favourable for his protection and security than that according to nationals of such Contracting State in like circumstances' (art. 15(2)).

<sup>12</sup> *Ibid.*

treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.<sup>13</sup>

Thus, two conventions invoke a standard of 'fair treatment' that must be respected at all stages of the proceedings. *E contrario*, then, the conventions would outlaw practices and procedures deemed to be grossly unfair, such as interrogation practices amounting to torture, cruel and inhuman or degrading treatment, or the establishment of military commissions to prosecute cases involving persons accused of taking hostages or acting against the safety of maritime navigation if such commissions exclude the person accused of such crimes from hearings and evidence against him or her.

However, the anti-terrorist conventions do not cover any act of terrorism. For example, neither assassinations of businessmen, engineers, journalists or educators; attacks or acts of sabotage by means other than explosives against a passenger, train or bus, or a water supply or electronic power plant; nor cyber-terrorism are covered.<sup>14</sup> Do these acts constitute acts of terrorism under resolution 1373?

In October 2004, the Security Council clarified what it means by acts of terrorism. In resolution 1566 (2004), the Council defines such acts in broad terms as:

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, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political,

<sup>13</sup> *International Convention against the taking of hostages* (1979), art. 8 (2); and *Convention for the suppression of unlawful acts against the safety of maritime navigation* (1988), art. 10(2).

<sup>14</sup> For a comment on the partial criminalisation of acts of terrorism under the international anti-terrorist conventions regime, see Michael Sharf, 'Defining Terrorism By Reference to the Laws of War: Problems and Prospects, International Scientific and Professional Advisory Council, Countering Terrorism Through International Cooperation' (Milan, ISPAC, 2001), p. 135.

philosophical, ideological, racial, ethnic, religious or other similar nature.<sup>15</sup>

In the same resolution, the Council also expanded its counter-terrorism mandate to include 'individuals, groups or entities involved in or associated with terrorist activities, other than those designated by the Al-Qaida-Taliban Sanctions Committee.'<sup>16</sup>

However, the CTC does not adopt any definition.<sup>17</sup> Instead, it refers to the General Assembly's Sixth Committee, which is currently considering a draft Comprehensive Convention on International Terrorism.<sup>18</sup> The Convention, if adopted, would include a definition of acts of terrorism.<sup>19</sup> But, at the moment, the Sixth Committee has no agreed international legal definition to offer.<sup>20</sup>

The draft Convention, if adopted, would also include an unprecedented provision on the obligation of states to ensure a minimum provision of respect for perpetrators of terrorist acts:

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions in international law, including international

<sup>15</sup> U.N.S.C. Res. 1566 (2004), para. 3.

<sup>16</sup> U.N.S.C. Res. 1566 (2004), para. 9.

<sup>17</sup> In fact, there is no definition on the CTC's website. See <http://www.un.org/Docs/sc/committees/1373/definition.html>.

<sup>18</sup> For an overview of the relevant documents of the Sixth Committee, see <http://www.un.org/ga/57/sixth/index.html>.

<sup>19</sup> Draft Comprehensive Convention on International Terrorism, art. 2, reproduced in the *Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996*, sixth session (28 Jan. – 1 Feb. 2002) (A/57/37).

<sup>20</sup> For a more extensive comment on the prospects of arriving at a universally agreeable international legal definition of terrorism, see Carlos Espósito, 'El desacuerdo sobre el avance de la definición de terrorismo internacional en el proyecto de Convenio general sobre terrorismo internacional de Naciones Unidas' [<http://www.fride.org/File/ViewLinkFile.aspx?FileId=398>].

human rights law and, in particular, the Standard Minimum Rules for the Treatment of Prisoners.<sup>21</sup>

Notwithstanding possible future developments, so far, few states have ratified the anti-terrorist conventions.<sup>22</sup> Until all the 191 member states have accepted the terms of these conventions, as well as agreed upon and accepted the draft Conventions, these instruments cannot be understood by the CTC as providing a comprehensive international legal framework for the interpretation and application of resolution 1373.

### The Current Human Rights Policy of the CTC

According to resolution 1456 (2003), states must respect international human rights law in meeting their obligations under resolution 1373. Unlike the anti-terrorist conventions, this field of law embodies a host of rules and principles for bringing perpetrators of terrorist acts to justice, many of which are universal in reach. Still, the recognition of the direct relevance of international human rights law has not led the CTC to make any substantive changes in its human rights policy as announced by its Chairman in 2002:

Monitoring performance against other international conventions, including human rights law, is outside the scope of the Counter-Terrorism Committee's mandate. But we will remain aware of the interaction with human rights concerns, and we will keep ourselves briefed as appropriate.<sup>23</sup>

At present, it is the Office of the High Commissioner for Human Rights (OHCHR) which has the task of informing states about the way in which international human rights law bear on their counter-terrorism efforts. In 2003, the General Assembly asked the OHCHR to: 'make general recommendations concerning the obligation of states to promote and protect human

rights while taking actions to counter terrorism.'<sup>24</sup> Until now, however, the OHCHR has not presented any such recommendations.

The CTC and the OHCHR have exchanged briefings on their working methods and areas of concern since 2002. As a result of resolution 1456 (2003), their relationship is now in the process of being formalised. In its *Proposal for the Revitalization of the Counter-Terrorism Committee* (2004), endorsed by the Security Council,<sup>25</sup> the CTC recommends that one function of its Technical Assistance Office (not yet fully operational) should be to 'liaise with the Office of the UN High Commissioner for Human Rights and other human rights organisations in matters related to counter-terrorism.'<sup>26</sup> Furthermore, in September 2004, the Director of the recently established Executive Directorate of the CTC (CTED), Mr. Javier Rupérez, informed the OHCHR that he intends to include among his staff an expert on human rights, humanitarian law and refugee law, including for the purposes of 'liaising' with the OHCHR and other human rights organisations.<sup>27</sup>

Whether these measures will lead to a clarification of the more precise relevance of international human rights law in meeting the obligations of states under resolution 1373 is yet to be seen. In this context, it should be noted that the human rights bodies of the UN regard themselves as unsatisfactorily equipped to offer guidance to states in their interpretation and application of their obligation to bring perpetrators of terrorist acts to justice. Questions relating to the interpretation and application of the principle of legality, extraterritorial or 'secret'

<sup>21</sup> See draft Comprehensive Convention on International Terrorism, art. 12, *supra* note 19.

<sup>22</sup> *Report of the Secretary General's High Level Panel on Threats, Challenges and Change: A More Secure World: Our Shared Responsibility*, 2 Dec. 2004, para. 149 [<http://www.un.org/secureworld/report.pdf>].

<sup>23</sup> Security Council, 4453<sup>rd</sup> Meeting, Friday, 18 January 2002, 10 a.m., New York.

<sup>24</sup> U.N.G.A. Res. 58/174 (2003). In the same resolution, the General Assembly also requested the OHCHR to: 'examine the question of the protection of human rights while countering terrorism,' and 'provide assistance and advice to States, on their request, on the protection of human rights while countering terrorism, as well as to relevant UN bodies.'

<sup>25</sup> U.N.S.C. Res. 1535 (2004), para. 1.

<sup>26</sup> *Proposal for the Revitalisation of the Counter-Terrorism Committee*. Annex to Letter dated 19 February 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council (S/2004/124), para. 16(c).

<sup>27</sup> *Report of the Secretary-General: Protecting human rights and fundamental freedoms while countering terrorism*, 1 Oct. 2004 (A/59/404). See also *Report of the High Commissioner for Human Rights: Protection of human rights and fundamental freedoms while countering terrorism*, 16 Dec. 2004 (E/CN.4/2005/100).

detention practices, fair trial rights, and inter-state transfer of persons suspected of terrorism, including extradition and 'rendition' prompt answers.<sup>28</sup> However, because of their 'unusual complexities' and/or because of the narrow mandates of the different bodies, the human rights mechanisms have not been able to address any of these questions in depth.<sup>29</sup>

## Human Rights Abuses of Perpetrators of Terrorist Acts

About a year after the adoption of resolution 1373, the Secretary General reported that several human rights had come under significant pressure as a result of national counter-terrorism measures related to terrorist suspects. Among them are respect for the principle of legality, conditions of treatment in pre-trial detention, freedom from torture, fair trial rights and due process guarantees.<sup>30</sup>

Several statements of the Human Rights Committee, the principal organ that monitors the implementation of the *International Covenant on*

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<sup>28</sup> *Study of the United Nations High Commissioner for Human Rights: Protection of human rights and fundamental freedoms while countering terrorism*, 8 Oct. 2004 (A/59/428). The study was requested by the General Assembly in its resolution 58/187 of 27 Feb. 2003 (A/RES/57/219). See also the interim report in the *Report of the Secretary General to the Commission of Human Rights*, 12 Mar. 2004 (E/CN.4/2004/91); and *Report of the Secretary General: Protecting human rights and fundamental freedoms while countering terrorism*, 1 Oct. 2004 (A/59/404).

<sup>29</sup> *Study of the United Nations High Commissioner for Human Rights*, *supra* note 28, para. 43. The UN independent expert on the protection of human rights and fundamental freedoms while countering terrorism, Mr. Robert Goldman, suggests that the problems faced by the human rights bodies of the UN can only be effectively overcome by the creation of a 'special procedure with a multidimensional mandate to monitor States' counter-terrorism measures and their compatibility with international human rights law.' See *Report of the independent expert on the protection of human rights and fundamental freedoms while countering terrorism*, 7 Feb. 2005 (E/CN.4/2005/103), para. 91.

<sup>30</sup> *Report of the Secretary-General: Protection of human rights and fundamental freedoms while countering terrorism*, 8 Aug. 2003 (A/58/266), pp. 12-13. The report was drafted in response to U.N.G.A. Res. 57/219 of 18 Dec. 2002 in which the General Assembly requested the Secretary-General to 'submit a report on the implementation of the present resolution to the Commission on Human Rights at its fifty-ninth session and to the General Assembly at its fifty-eighth session.'

*Civil and Political Rights* (ICCPR) (1996) support this conclusion. In particular, the Committee has expressed concerns about domestic legal definitions of terrorism that are framed so broadly so as to violate the principle of legality.<sup>31</sup> Furthermore, several pre-trial detentions of terrorist suspects violate their right to freedom from torture and ill-treatment, the right to be informed promptly of the reasons for arrest and the existence of any charges against them, and the prohibition against prolonged pre-trial detention.<sup>32</sup> The use of military and other special courts to prosecute terrorism-related offences have led to violations of fair trial rights, including the presumption of innocence as well as other fundamental requirements inherent in the principle of legality and the rule of law.<sup>33</sup> Additionally, the Committee has expressed concerns about 'targeted killings' of those suspected of acts of terrorism.<sup>34</sup>

Also the special procedures of the Human Rights Commission have addressed human rights abuses of terrorist suspects.<sup>35</sup> Both the Special Rapporteur on the question of torture and the Working Group on Arbitrary Detention are deeply troubled by the practice in some states of holding terrorist suspects in incommunicado detention, prohibiting contact with family members, counsel and other outside assistance for certain periods of time.<sup>36</sup> The Working Group on Arbitrary

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<sup>31</sup> See e.g. Human Rights Committee, *Concluding Observations on Morocco*, 5 Nov. 2004 (CCPR/CO/82/MAR/Rev.1), para. 20; and Human Rights Committee, *Concluding Observations on Belgium*, 12 Aug. 2004 (CCPR/CO/81/BEL), para. 24. However, similar concerns have been raised prior to 9/11. See, e.g. Human Rights Committee, *Comment on Egypt*, 9 Aug. 1993 (CCPR/C/79/Add.23), para. 8.

<sup>32</sup> See Report of the Secretary-General, *supra* note 30, para. 40.

<sup>33</sup> See e.g. Human Rights Committee, *Concluding Observations on Benin*, 1 Dec. 2004 (CCPR/CO/82/BEN), para. 12. However, similar concerns have been raised prior to 9/11. See e.g. Human Rights Committee, *Concluding Observations on Peru*, 25 Jul. 1996 (CCPR/C/79/Add. 67), para. 351.

<sup>34</sup> Human Rights Committee, *Concluding Observations on Israel*, 21 Aug. 2003 (CCPR/C/78/ISR), para. 15

<sup>35</sup> For an overview of reports published by the special procedures addressing the impact of counter-terrorism measures on the protection of human rights, see <http://www.ohchr.org/english/bodies/chr/special/counter-terrorism.htm>.

<sup>36</sup> *Study of the United Nations High Commissioner for Human Rights* (1 Oct. 2004), *supra* note 28, para. 23.

Detention is particularly startling by the “arbitrary character of detention in several countries where inquiries into terrorist acts are being conducted.”<sup>37</sup> Furthermore, in January 2005, six UN experts published a joint statement on the detention centre at the U.S. Naval Base in Guantánamo Bay.<sup>38</sup> Many of the inmates are completing their third year of virtually incommunicado detention, without legal assistance or information as to the expected duration of their detention and, in conditions of detention that, according to numerous observers, amount to inhuman or degrading treatment.<sup>39</sup>

To this should be added that the CTC itself as well as other subsidiary counter-terrorism bodies to the Security Council have come to experience more immediate human rights problems in their efforts to counter terrorism than initially envisioned. Indeed, these problems have come to impede the CTC’s implementation efforts as some states are reluctant to adopt the measures it recommends because of their adverse impact on human rights. While the CTC has not recognised any human rights obstacles in the implementation of the obligation of bringing perpetrators of terrorist acts to justice, it has noted that such obstacles have arisen in relation to the obligation of states to prevent and suppress the financing of terrorism.<sup>40</sup> The implementation of this obligation raises questions about legitimate restrictions of the human right to freedom of association.<sup>41</sup>

<sup>37</sup> Report of Working Group on Arbitrary Detention, *Civil and Political Rights, Including the Questions of Torture and Arbitrary Detention*, 15 Dec. 2003 (E/CN.4/2004/3), paras. 50-71, esp. para. 53.

<sup>38</sup> ‘United Nations Human Rights Experts Express Continued Concern About Situation of Guantánamo Bay Detainees,’ 4 Feb. 2005 [<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/F3AF690DC18BFFD6C1256F9E0034AC95?opendocument>]. The Special Procedures have published three other joint statements on the impact of counter-terrorism on human rights on 25 July 2004, 20 June 2003 and 10 December 2001 respectively [<http://www.ohchr.org/english/bodies/chr/special/counter-terrorism.htm>].

<sup>39</sup> *Ibid.*

<sup>40</sup> U.N.S.C. Res. 1373 (2001), para. 1(a).

<sup>41</sup> See *Report by the Chair of the Counter-Terrorism Committee on the Problems Encountered in the Implementation of Security Council Resolution 1373 (2001)*. Annexed to Note by the President of the Security Council, 26 January 2004 (S/2004/70), p. 6. In this report, the CTC has stated that terrorists have used certain non-profit associations, either to disseminate terrorist

Moreover, the Secretary General’s High Level Panel on Threats, Challenges and Change (hereafter the “High Level Panel”) criticises the way entities and individuals are added to the terrorist list maintained by the Security Council.<sup>42</sup> According to the High Level Panel, ‘the absence of review or appeal for those listed raise serious accountability issues and possibly violate fundamental human rights norms and conventions.’ For this reason, it urges the Al-Qaida-Talibans Sanctions Committee to institute a process for reviewing the cases of individuals and institutions claiming to have been wrongly placed or retained on its watch list.<sup>43</sup>

So far, however, none of these human rights concerns have been given any serious attention by the Security Council. Above all, from the standpoint of the CTC, besides freedom of association, human rights have not been considered as posing any problems in the implementation of resolution 1373. Why should such abuses nevertheless be considered?

### **The Human Rights of Perpetrators of Terrorist Acts: A Concern for the Security Council**

One reason for the Security Council to take human rights of perpetrators of terrorist acts seriously is that such a stance would be consistent with its previous practice of protecting the rights of persons suspected, accused and found guilty of serious crimes under international law. The current criminal justice policy of the Security Council to fight terrorism should be contrasted

propaganda or by collecting funds that are channelled to terrorist groups. However, as it notes, ‘it is particularly difficult to monitor such associations, both for technical reasons (the sector is by nature informal) and for political reasons (increased oversight of the associations is considered to be a restriction of public freedoms)’ [emphasis added].

<sup>42</sup> The terrorist list is available at <http://www.un.org/Docs/sc/committees/1267/pdflist.pdf>. The list, last updated on 17 Feb. 2005, includes: (a) 143 individuals belonging to or associated with the Taliban; (b) 1 entity belonging to or associated with the Taliban; (c) 179 individuals belonging to or associated with the Al-Qaida organisation; (d) 114 entities belonging to or associated with the Al-Qaida organisation; and (e) 5 individuals and 11 entities that have been removed from the list.

<sup>43</sup> *Report of the Secretary General’s High Level Panel on Threats, Challenges and Change*, *supra* note 22, para. 154.

with its criminal justice initiatives only a decade earlier in response to the war crimes, genocide and crimes against humanity that took place in the former Yugoslavia and Rwanda.<sup>44</sup> The two *ad hoc* international criminal tribunals established by the Council accord extensive human rights protection to those suspected, accused and found guilty of these crimes.<sup>45</sup> At the time of their establishment, the tribunals seemed to mark the beginning of a new international security agenda that regards the protection of the human rights of perpetrators of serious crimes under international law as an inescapable component of any attempt to counter threats to, or restore breaches of, international security with the help of criminal justice institutions. Moreover, the completion strategies of the two tribunals with the objective to give the domestic justice systems more power to prosecute 'intermediary-level accused' in former Yugoslavia and Rwanda have made the granting of such powers conditional upon the ability and willingness of the domestic justice systems to protect the human rights of the accused.<sup>46</sup> Other recent Security Council supported initiatives to prosecute offenders of serious crimes also exhibit a concern with the human rights of such offenders, for example, in Sierra Leone.<sup>47</sup> One of

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<sup>44</sup> *Statute of the International Criminal Tribunal for the former Yugoslavia*, adopted by U.N.S.C. Res. 808 (1993) (hereafter "ICTY Statute"); *Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia* (hereafter "ICTY Rules of Procedure"); *Statute of the International Criminal Tribunal for Rwanda*, adopted by U.N.S.C. Res. 955 (1994) and last amended on 8 Dec. 2004 (hereafter "ICTR Statute"); and *Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda*, adopted on 29 June 1995 and last amended on 15 May 2004 (hereafter "ICTR Rules of Procedure").

<sup>45</sup> See e.g. ICTY Statute, art. 20 (rights of accused) and art. 24 (penalties are limited to imprisonment); ICTY Rules of Procedure, rule 42 (rights of suspects during investigations); ICTR Statute, art. 20 (rights of accused) and art. 24 (penalties are limited to imprisonment); and ICTR Rules of Procedure, rule 42 (rights of suspects during investigations).

<sup>46</sup> *Report on the Judicial Status of the International Criminal Tribunal for the Former Yugoslavia and the Prospects for Referring Certain Cases to National Courts*, 10 June 2004 (S/2002/678), paras. 4 and 32; and *Completion Strategy of the International Criminal Tribunal for Rwanda*, 15 Apr. 2004 (S/2004/341), paras. 38 and 39.

<sup>47</sup> *Statute of the Special Court for Sierra Leone*. Annexed to agreement between the UN and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, 16 Jan. 2002, pursuant to U.N.S.C. Res. 1315 (2002), art. 17 (rights of the accused) and art. 19

the reasons for the UN reluctance to aid the Iraqi Special Tribunal to train its judges is its use of the death penalty.<sup>48</sup>

A second reason relates to the Secretary General's initiative to 'mainstream human rights', i.e. to enhance the human rights programme and integrating it into the broad range of UN activities.<sup>49</sup> The initiative seeks to counter a longstanding and unfortunate institutionalised 'compartmentalisation' of issues related to international security (on the one hand) and human rights (on the other). So far, the initiative has had but a modest impact on the policies of the Security Council.<sup>50</sup> Nevertheless, mainstreaming human rights is a policy of considerable importance, not the least in the context of the Security Council's counter-terrorism agenda as reflected in resolution 1373. The agenda has the potential of legitimising, even authorising, measures that violate fundamental principles of human rights. Ensuring respect for human rights seems essential to safeguard the legitimacy of policies related to international security in the eyes of those who are seriously affected by them.

Moreover, a change of stance would echo the need for a new security framework. In a speech following the terrorist attacks in New York, Washington D.C. and Pennsylvania, the Secretary General announced that:

We need a new vision of global security for this new period in international relations – a vision that can help bring about a new equilibrium. This new vision must simultaneously respect human rights, confront the asymmetric threat of terrorism, and draw,

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(penalties, other than for juvenile offenders, are imprisonment for a specified number of years); and *Rules of Procedure and Evidence of the Special Court for Sierra Leone*, adopted on 16 Jan. 2002 and last amended on 14 Mar. 2004, rule 42 (rights of suspects during investigations).

<sup>48</sup> 'Daily Press Briefing by the Office of the Spokesman for the Secretary-General and the Spokesman for the General Assembly President,' 22 Oct. 2004 [<http://www.un.org/News/briefings/docs/2004/db041022.doc.htm>].

<sup>49</sup> *Report of the Secretary-General to the General Assembly: Renewing the United Nations: A Programme for Reform*, 14 Jul. 1997 (A/51/950).

<sup>50</sup> See e.g. Carnegie Council on Ethics and International Affairs, 'Mainstreaming Human Rights: Interview with Danilo Turk,' 6 Sep. 2004 [[www.cceia.org/viewMedia.php/prmTemplateID/8/prmID/248](http://www.cceia.org/viewMedia.php/prmTemplateID/8/prmID/248)].

as never before, upon the resources and legitimacy of multilateral cooperation.<sup>51</sup>

The process of bringing life to such a vision has been slow.<sup>52</sup> However, the High Level Panel urges the UN to advance a global comprehensive strategy to fight terrorism in which human rights form a critical part. Such a strategy it holds, must address root causes and strengthen 'responsible States and the rule of law and fundamental human rights.' The Secretary General should take a leading role in developing such a strategy, which should include:

the development of better instruments for global counter-terrorism cooperation, all within a legal framework that is respectful of civil liberties and human rights, including in the area of law enforcement; intelligence-sharing, where possible; denial and interdiction, when required; and financial controls.<sup>53</sup>

Undoubtedly, the Security Council and especially its CTC will be given a prominent role in the actual realisation of this strategy.

## The Need for CTC Guidelines

The need for guidelines is contemplated at a time when the Security Council-led fight against terrorism is being intensified. In the years to come, the CTC will serve as a focal point for counter-terrorism action plans, including assistance programs, undertaken by international and regional organizations. In particular, the CTC aims at taking on a consultative role when action-plans and assistance programmes are elaborated by international organizations for the purpose of

<sup>51</sup> UN Press Release SG/SM/8518. See also 'Secretary-General's message to the International Counter-Terrorism Conference in Riyadh,' 5-8 Feb. 2005 (UN Press Release SG/SM/9708).

<sup>52</sup> However, see e.g. the *Report of the Independent Commission on Human Security: Human Security Now* (2003).

<sup>53</sup> Report of the High Level Panel, *supra* note 22, para. 148 (c). It must be noted that the development of such a strategy is not only a matter of principle; there is also evidence that terrorist attacks have escalated since 9/11 and the ensuing 'war on terror'. Out of the 20 attacks of Al-Qaeda since 1998, 14 of them has taken place after 9/11. See MIPT Terrorism Knowledge Base [<http://www.tkb.org/IncidentGroupModule.jsp?groupid=6&pagemode=incident&startDate=01/01/1968&endDate=11/23/2004>].

implementing resolution 1373.<sup>54</sup> It will also seek to play a more proactive role in the field of technical assistance and strengthen its capacities to give such assistance to states.<sup>55</sup> To this end, the Security Council has established an Executive Directorate (CTED) as a special political mission with the objective of enhancing the CTC's 'ability to monitor the implementation of resolution 1373 (2001) and to effectively continue the capacity-building in which it is engaged.'<sup>56</sup>

Furthermore, resolution 1566 (2004) reflects the Security Council's intention to broaden and deepen the mandate of the CTC. In particular, the resolution establishes a working group consisting of all members of the Security Council to:

consider and submit recommendations to the Council on practical measures to be imposed upon individuals, groups or entities involved in or associated with terrorist activities, other than those designated by the Al-Qaida-Taliban Sanctions Committee, including more effective procedures considered to be appropriate for bringing them to justice through prosecution or extradition.<sup>57</sup>

Finally, the High Level Panel's recommendations on non-compliance, if adopted by the Security Council, would further strengthen the role of the CTC/CTED. One such recommendation is the establishment of a capacity-building trust fund under the CTED. Such a trust fund would aid states who are willing, but currently unable to meet their obligations. The fund would facilitate

<sup>54</sup> *Report by the Chair of the Counter-Terrorism Committee on the problems encountered in the implementation of Security Council resolution 1373 (2001)*, *supra* note 10, p. 4.

<sup>55</sup> *Proposal for the Revitalisation of the Counter-Terrorism Committee*. Annex to Letter dated 19 February 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council (S/2004/124), paras. 7(c) and (f).

<sup>56</sup> U.N.S.C. Res. 1535 (2004), para. 2: 'The revitalized Committee will consist of the Plenary—composed of the Security Council member States—and the Bureau, the latter composed of the Chair and the Vice-Chairs, assisted by the Counter-Terrorism Executive Directorate (hereinafter "CTED") to be established as a special political mission, under the policy guidance of the Plenary, for an initial period ending 31 December 2007 and subject to a comprehensive review by the Security Council by 31 December 2005, so as to enhance the Committee's ability to monitor the implementation of resolution 1373 (2001) and effectively continue the capacity-building work in which it is engaged.'

<sup>57</sup> U.N.S.C. Res. 1566 (2004), para. 9.

the efforts of the UN member states and UN specialised bodies to provide such states with access to effective, legal, administrative and police tools to prevent terrorism.<sup>58</sup> Another High Level Panel recommendation is for the Security Council to devise a schedule of predetermined sanctions for state non-compliance with resolution 1373. Such a schedule is meant to punish states that have the capacity to undertake their obligations, but repeatedly fail to do so.<sup>59</sup>

As it is now, the CTC does not offer its own practical, transparent or general guidelines to states in their interpretation and application of obligations under resolution 1373. Instead, it only provides a compilation of information on standards, best practices and sources of assistance in its 'Directory of Counter-Terrorism Information and Sources of Assistance.'<sup>60</sup> The information in the Directory has been 'submitted to states and organisations wishing to share their expertise in matters relating to resolution 1373 with other states who might benefit from it.'<sup>61</sup> However, the CTC is not responsible for the content. Additionally, the CTC facilitates technical assistance, but the content of the assistance it facilitates is not transparent.<sup>62</sup>

Nevertheless, an effective and legitimate implementation of the obligations under resolution 1373 requires of the CTC, in collaboration with the CTED, and with appropriate support of the Security Council, to offer such guidelines. Such guidelines would give substance to the obligations under the resolution and aid states in meeting them. The availability of practical advice should not be made conditional upon a state's request for such advice. The lack of general access to practical advice fail to consider states that are reluctant towards seeking such advice. It also fails to consider the interest of states and other relevant organisations in knowing what concrete counter-terrorism measures the CTC, in fact, promotes. Furthermore, the provision of general guidelines would express the CTC's commitment to equal treatment practices

<sup>58</sup> Report of the High Level Panel, *supra* note 22, para. 155.

<sup>59</sup> *Ibid.*, para. 156.

<sup>60</sup> See [www.un.org/sc/ctc](http://www.un.org/sc/ctc). The relevant area is 'counter-terrorism legislation.'

<sup>61</sup> See [www.un.org/Docs/committees/1373/ctc\\_da/about.html](http://www.un.org/Docs/committees/1373/ctc_da/about.html).

<sup>62</sup> See U.N.S.C. Res. 1535(2004) and the CTC report S/2004/124 on its own revitalization, *supra* note 55.

and uniform standards.<sup>63</sup> Though technical assistance programmes are designed to consider the particular needs of states asking for advice, it must be possible to present guidelines for giving such assistance that are general enough to be useful for any state that seeks to meet its obligations under resolution 1373. The advancement of practical, transparent and general guidelines will become ever more important in the event that a schedule of predetermined sanctions is put into place. If so, states must be informed by the CTC what they are actually expected to do and be given a fair opportunity to take its directives into account. The guidelines may not only increase the efficacy but also the legitimacy of the CTC mission: a broader support from international public opinion presupposes the ability of states and other organisations (including NGOs) to know what the CTC recommends in terms of actual counter-terrorism measures.

## Ensuring a Minimum Provision of Respect for Persons

Besides being practical and transparent as well as universal in reach, the CTC guidelines should explain the implications of the relevance of international law, including human rights, in meeting the obligations under resolution 1373.<sup>64</sup> While the OHCHR has been given the task to advance general recommendations on the impact of human rights while countering terrorism, the CTC could have an important complementary role.<sup>65</sup> The OHCHR will in all likelihood develop

<sup>63</sup> See Procedures for CTC Visits to Member States, 15 Sept. 2004, para. 2(a) [<http://www.un.org/Docs/sc/committees/1373/procedures.doc>].

<sup>64</sup> The need for such guidelines is reflected in the Council of Europe initiative to adopt such guidelines. See, Council of Europe, Guidelines on human rights and the fight against terrorism (2002).

<sup>65</sup> It must be noted that, in its decision 2004/109, the Sub-Commission on the Protection and Promotion of Human Rights, having considered the working paper prepared by Ms. Koufa entitled 'A preliminary framework draft of principles and guidelines concerning human rights and terrorism' (E/CN.4/Sub.2/2004/47), decided to establish at its fifty-seventh session a 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, based, inter alia, on the working paper prepared by Ms. Koufa. However, whether the outcome of this working group will work its way up through the UN to become a significant instrument remains uncertain.

such recommendations on a right-by-right basis and/or on an instrument-by-instrument basis.<sup>66</sup> The CTC could facilitate the transmission of information in a more accessible manner for the purposes of meeting the obligations under resolution 1373 by presenting the relevant provisions on an obligation-by-obligation basis.

At present, there is no specific international human rights treaty that clarifies the link between different counter-terrorism measures and international human rights obligations. Instead, as the *Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights While Countering Terrorism* (hereafter the “Digest”), published in July 2003,<sup>67</sup> so amply illustrates, the relevant international legal provisions are scattered in international (and regional) human rights law. All international human rights instruments present the rights of individuals in a line-item way. An explanation of which rights become relevant in relation to which obligation under resolution 1373 would greatly facilitate the abilities of states to protect them all in the fight against terrorism.

That said, not all states have ratified all the international and regional instruments neither accepted the competence of the regional human rights courts whose case-law the Digest refers to. The International Covenant on Civil and Political Rights (ICCPR) constitutes a significant body of international human rights law inasmuch as 140 states have accepted its provisions. Still, the fact that 39 states remain outside this principal international legal human rights framework suggests that the ICCPR could not be invoked to the full. In particular, there is a significant reluctance towards accepting the individual complaint procedure under the optional protocol to the ICCPR (1966) (104 ratifications), and the

<sup>66</sup> For the common use of rights-based methodology among the human rights bodies of the UN, see, e.g. *Report of the independent expert on the protection of human rights and fundamental freedoms while countering terrorism*, *supra* note 29, para. 2.

<sup>67</sup> ‘A Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights while Countering Terrorism,’ published by the OHCHR in July 2003, provides an inventory of relevant sources of international human rights law. The Digest was compiled in response to the request by the General Assembly in its resolution 57/219 of 27 February 2003 (A/RES/57/219) in which the OHCHR was requested to ‘examine the question of the protection of human rights and fundamental freedoms while countering terrorism, taking into account reliable information from all sources.’

second optional protocol to the ICCPR aimed at the abolition of the death penalty (1989) (50 ratifications).

Against this background, in order to discern what any person requires in terms of respect, including perpetrators of terrorist acts, regardless of location, nationality or creed, strictly speaking, it would be necessary to rely upon the Universal Declaration of Human Rights (UDHR) (1948), understood as customary international law. The UDHR entails rights of direct relevance for the obligation to bring perpetrators of terrorist acts to justice. The UDHR obliges all states to protect everyone from torture, or cruel, inhuman or degrading treatment or punishment<sup>68</sup> as well as from arbitrary arrest, detention or exile.<sup>69</sup> It also obliges all states to respect the principle of legality and to ensure that everyone is presumed innocent until proved guilty according to law in a public trial at which he has had the guarantees necessary for his defence.<sup>70</sup>

Another possibility is to take into account the widespread support of the ICCPR and offer a more nuanced explanation depending on which group of states is being addressed: those that remain outside its legal bounds (on the one hand),<sup>71</sup> and those that have accepted its terms (on the other). In contrast with the UDHR, the ICCPR entails more detailed provisions. One example is the provision concerning the conditions for arrest and detention.<sup>72</sup> Another example is the inclusion of detailed due process and fair trial guarantees.<sup>73</sup> Furthermore, unlike the UDHR, the ICCPR also includes explicit provisions as to what rights must be respected also in emergency situations. According to the ICCPR, the state obligation to respect the right to be free from torture, cruel, inhuman or degrading treatment or punishment is absolute;<sup>74</sup> and so is also the obligation to respect the principle of legality.<sup>75</sup> The right to life is also

<sup>68</sup> UDHR, art. 5.

<sup>69</sup> UDHR, art. 9.

<sup>70</sup> UDHR, art. 11.

<sup>71</sup> This group of states includes states such as Bahamas, Bhutan, Fiji, Malaysia, Indonesia, Cuba, Pakistan, Saudi Arabia, United Arab Emirate, Oman, Maldives and Tonga.

<sup>72</sup> ICCPR, art. 9.

<sup>73</sup> ICCPR, art. 14.

<sup>74</sup> ICCPR, art. 7 read in conjunction with art. 4(2).

<sup>75</sup> ICCPR, art. 15 read in conjunction with art. 4(2).

a non-derogable right although it does not prohibit the death penalty.<sup>76</sup>

The ICCPR embodies no explicit prohibition against derogations from obligations concerning the conditions for arrest and detention, due process rights and fair-trial guarantees. According to the Human Rights Committee, the absence of such a prohibition does not mean that states have a right to disregard fundamental principles of fair trial, including the presumption of innocence, even in situations of ‘public emergency which threatens the life of the nation.’<sup>77</sup> Under states of emergency, such as if an armed conflict threatens the life of the nation, rules of international humanitarian law become applicable.<sup>78</sup> Moreover, whether rights are non-derogable should be interpreted in the light of whether certain human rights obligations have the status of peremptory norms of international law. According to the Committee, the category of peremptory norms extends beyond the list of non-derogable provisions in the ICCPR.<sup>79</sup> It also appeals to the prohibition against ‘crimes against humanity’ as laid down in the Rome Statute of the International Criminal Court in support of this contention.<sup>80</sup> Against this background, the Committee pronounces that ‘all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person.’<sup>81</sup> Unacknowledged (secret) detentions are not allowed under any circumstances.<sup>82</sup> The obligation to provide remedies for any violation

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<sup>76</sup> ICCPR, art. 6 read in conjunction with art. 4(2).

<sup>77</sup> General Comment No. 29 on States of Emergency (article 4), 31 Aug. 1001 [CCPR/C/21/Rev.1/Add.1], para. 2. This comment should be contrasted with General Comment No. 5 on Derogation of Rights (article 4) [31 July 1981]. The latter does not seek to clarify the non-derogability of certain rights, even under states of emergency, which are not explicitly mentioned in article 4 of the ICCPR as non-derogable.

<sup>78</sup> *Ibid.*, paras. 3 and 9.

<sup>79</sup> *Ibid.* para. 11.

<sup>80</sup> *Ibid.* para. 12.

<sup>81</sup> *Ibid.*, para. 13(a). But see General Comment No. 21 replacing general comment 9 concerning humane treatment of persons deprived of liberty (art. 10) [10 April 1992] which does not elaborate the non-derogability of this provision even if it is not explicitly mentioned under article 4(2).

<sup>82</sup> *Ibid.*, para. 13(b).

of the ICCPR is absolute.<sup>83</sup> Additionally, the Committee notes that:

As certain elements of the right to fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. ... the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected ... 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.<sup>84</sup>

The statement of the Human Rights Committee points to the relevance of other fields of international law, besides that of human rights, to clarify what a minimum provision of respect for persons consists of in more precise terms, including international humanitarian and criminal law. The Committee took a contentious but much needed step when it alluded to the sum-total of international norms that protect the dignity and humanity of human beings at all times and in all places. Its interpretation of what rights under the ICCPR are non-derogable simply does not flow from a textual reading of the ICCPR.<sup>85</sup>

The CTC could take on a much needed role to reaffirm and clarify the relevance of these many different and complex fields of international law in the adoption of counter-terrorism measures.<sup>86</sup> The existence of the UDHR and the widespread support of the ICCPR not only allow, but may also urge it to do so.

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<sup>83</sup> *Ibid.*, para. 14.

<sup>84</sup> *Ibid.*, para. 16.

<sup>85</sup> For example, the Rome Statute of International Criminal Court has been accepted by 97 states.

<sup>86</sup> The analysis in this paper does not purport to be exhaustive. Also relevant are, e.g. the Convention on the Rights of the Child (1989), Standard Minimum Rules for the Treatment of Prisoners (1955), and the Four Geneva Conventions, including their Protocols.

## **Concluding Remarks**

It may be contended that the development of practical guidelines by the CTC is unlikely especially in the light of predominant concerns with rights of states to decide for themselves which counter-terrorism measures are deemed appropriate to meet their obligations under resolution 1373. It may also be contended that a proposal on such guidelines will not receive sufficient support from the Security Council given the belief of Council members that effective counter-terrorism measures may necessitate derogations from fundamental human rights principles. Instead, the CTC will continue to strengthen the contacts and coordination with the OHCHR.

Nevertheless, inasmuch as human rights concerns have become an impediment to the implementation of its own mandate (and the mandates of other subsidiary counter-terrorism bodies of the Security Council) and inasmuch as the CTC seeks to win support from international public opinion—including human rights-abiding states—it may have to reconsider its current stance on human rights.

Of course, we should consider that a revitalised CTC risks losing some of its credibility if seeking to address and respond to the human rights dimension of counter-terrorism measures under resolution 1373 in a more affirmative manner than it does now: it would encounter the same difficulties as the human rights bodies of the UN in developing such guidelines especially considering the fact of differing human rights obligations of states as well as the complexities of the questions that must be addressed. Even so, a change of stance is the most appropriate response to the High Level Panel's call for a global comprehensive strategy to fight terrorism, and a natural development considering the increasing efforts of the Council to aid states in countering terrorism. Moreover, the conditions for the effective implementation of resolution 1373 would be greatly enhanced by the provision of universal access to the sum-total of relevant international norms ensuring a minimum provision of respect for persons coupled with an explanation of their practical relevance in the interpretation and application of the resolution. Finally, the advancement of guidelines would give the CTC the legitimacy it needs in order to be successful in its endeavours to eliminate terrorism.

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