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Keynote Speech by Nicholas Howen, Secretary-General International Commission of Jurists (ICJ) *Conference: International Law in an Age of Conflict* Organized by the British Council Damascus, Syria, 10 April 2007

Your Excellencies, ladies and gentlemen,

I am honored and delighted to address such a gathering of senior lawyers from Syria and around the world. For the next two days you will be exploring to what extent we share a common set of international legal norms. Underlying different interpretations of international law, do we share similar values and a way of thinking? And you will explore whether international legal rules can help to bring clarity, order and justice to acute problems of war, peace and violence that we face today. Does international law stand the test of reality or does it need to be updated?

International law, shared interests and values

Let me set out my perspective. I speak to you today as the Secretary-General of the International Commission of Jurists (ICJ), based in Geneva. The International Commission of Jurists was established 55 years ago. We are a global network of senior judges and lawyers from all regions of the world, including the Middle East. We are united by international law that protects human rights and the rule of law.

I – and the ICJ – believe that international law indeed *is* a common language that reaches across cultural, legal, religious, political and regional divides. Most relevant for this conference are international human rights law, the laws of war (international humanitarian law), international criminal law, refugee law and the law on the use of military force. In a globalised and interconnected world, these bodies of law provide a powerful, and I would argue relatively clear, set of norms. If they are followed, the world could be a more peaceful and just place, a place where the rule of law is decisive, where the rights of nations and human rights of individuals and groups are respected. Often the problem is not in the norms, but in their enforcement

I do not agree with those who see international law as merely a tool to help states co-exist with each other. I agree rather with those who believe in the "international law of cooperation". That is, an international system based on shared values and common interests, in which states, judges, lawyers and others in civil society, work together to defend and promote those values. I consider that international lawyers have a duty to interpret and apply international law in a way that strengthens and does not undermine the international legal system we are still in the process of creating.

Today I will focus on the extent to which the bodies of international law I have mentioned can help describe different forms of terrorism we face today and guide effective and just responses, with some comments on the use of military force. Indeed, the strength of our rule of law can usually be judged by whether it holds up in times of actual or perceived crisis. This is when we as lawyers are really tested. I will present views and opinions about international law and its application, to serve as a basis for more thorough discussion.

We still seem to face an acute sense of global insecurity that does not spare any region of the world. The "war on terrorism" has had a profound impact on current legal and policy approaches to terrorism and continues to challenge the international legal framework. But terrorism and counter terrorism measures are not new. We have witnessed cycles of terrorism and counter terrorism in all regions over many decades, many of which persist. I believe that we must learn much more from the successes and failures of history. This region in particular has suffered from both long-standing and newer forms of terrorism.

There are many reasons why people carry out terrorist acts, including ideology, quest for territory, human rights grievances, a sense of hopelessness, social injustices, exclusion or failure of the political system to resolve conflicts peacefully. While terrorist acts are never acceptable, the complexity of the cases should be mirrored by complex and suitable political, legal, economic and cultural responses that do not just tackle the symptoms.

What terrorism is and what terrorism is not – the importance of an international definition

But first, what phenomenon are we talking about? Debates about definitions can be sterile. But in this area deciding what is terrorism is highly significant – although highly politically charged. Deciding what terrorism is and is not will logically point to the law that regulates what responses to terrorism are lawful.

We know that despite attempts since at least 1937, there is still no internationally agreed definition of terrorism. Unfortunately, without an agreed definition, many governments have adopted broad and vaguely-formulated terrorist offences that rudely violate the basic principle of legality. They are often accompanied by a wide range of equally broad secondary offences, relating to membership in a terrorist organization, providing support to or associating with terrorist organizations, or broadly defined speech offences, such as glorification of terrorism.

Some definitions found in regional treaties do not help. The ICJ considers that the definitions of terrorist acts in the Arab Convention on Suppression of Terrorism has led to vaguely formulated criminal offences in a number of Arab countries. In Europe, the recently-adopted Council of Europe Convention on the Prevention of Terrorism refers to public provocation of terrorism, which has justified far-reaching speech offences in the Russian Federation and the United Kingdom.

But we are not in a legal no-mans land. I consider that international humanitarian and human rights law, in particular, do shape the contours of an acceptable approach to what is terrorism.

First what terrorism is not.

Terrorism should not be equated with a war or armed conflict, particularly the use of the term the "war on terrorism". I can understand the "war on terrorism" as a rhetorical phrase like the "war on poverty". But the conflation of terrorism with warfare is conceptually and legally incorrect. In a speech in London in October last year, John Bellinger, the US State Department Legal Adviser, reiterated the US position in a more specific way. He said: "the United States was (in 2002) and continues to be in an armed conflict with Al Qaida, one that is conceptually and legally distinct from the conflict with the Taliban in Afghanistan"[1]. However, terrorist acts, such as taking hostages and seizing aircraft, can be carried out during an armed conflict, when international humanitarian law applies, or in peacetime, when international humanitarian law is irrelevant. Operations against Al Qaida and affiliated groups' can only follow the logic of war when they are carried out in the midst of a true armed conflict in a certain territory against a clearly identified party. The US also draws selectively from international humanitarian law to unjustifiably classify some of the detainees in Guantanamo Bay as "enemy combatants", denying them basic rights Many of those detained in Guantanamo Bay and elsewhere have not been apprehended in situations that could be considered armed conflicts and have deprived the protection of domestic law and international human rights law.

But there is also a deeper question of the future of our international legal system. Article 51 of the UN Charter allows a state unilaterally to repel an armed attack (tradtionally understood as meaning from another state) in the exercise of the right to self-defence. There was an arguable legal case in 2002 that the relationship between Al Qaida and the Taliban Government was such that the US was justified in striking back at the Taliban Government in Afghanistan and related Al Qaida forces. But the US says it is continuing to wage an armed conflict against Al Qaida and its affiliated groups, regardless of the involvement of any state and in addition without clear territorial limits. I would encourage you in the working groups to consider the implications for our international legal order if the limited, unilateral right of self-defence permitted under the UN Charter was extended beyond the usual meaning of a conflict between two states. The well-respected Egyptian jurist, Georges Abi-Saab, has asked, and I quote:

> *"Can there be a war, in the formal legal sense, between a State and a transnational criminal group or organization? Doesn't this confer on such a group the dignity of subject of international law? And with what implications? If criminals are considered subjects of international law, the law of war becomes applicable to them in its entirety, including the fundamental principle of jus in bello which is that of the equality of the parties, as well as the status of prisoners of war for captured combatants and their impunity for the mere participation in hostilities and their acts of war which are not prohibited by the law of armed conflict. Moreover, wouldn't that privatize war, and take us back to the days before Grotius? Would the international legal system survive such a reconfiguration or are we to invent a completely new one?"*[2]

[1] Speech by John Bellinger, *Legal Issues in the War on Terrorism*, London School of Economics, 31 October 2006.
[2] Georges Abi-Saab, "The Proper Role of International Law in Combating Terrorism". in Andrea Bianchi (ed), *Enforcing International Law Norms Against Terrorism*, Hart Publishing, Oxford and Portland Oregon, 2004, pp. xii-xxii, at xvi.

Furthermore, characterising the conflict with Al Qaida as a war would justify military action against Al Qaida, regardless of whether a state had effective control, or even general control over Al Qaida in its territory. See the tests developed by the International Court of Justice in the *Nicaragua Case* to determine when a state can be held responsible for the acts of a non-state actor, recently reaffirmed by the Court in the Bosnian Genocide Case. Secondly, terrorism cannot be equated with the legitimate resort to arms in some limited situations. Governments sometimes say that any armed resistance they meet is a form of terrorism and therefore illegitimate. This is clearly incorrect. The right to self-determination is a recognized human rights. International law also recognises the legitimacy and legality of national liberation movements using violent means to fight against foreign occupation, colonial domination and racist regimes. Some, but not all armed conflicts can be justified in this way.

However, it is equally true that terrorist acts are not a lawful tactic under international law, whether carried out by a government, or by a non-state group in the exercise of a right of resistance. Members of a national liberation movement who attack civilians, who spread terror to pursue their objectives, would be criminally responsible.

In this regard, we have concerns about regional counter-terrorism conventions in the Arab world and in Africa. The Arab Convention on Suppression of Terrorism and the OAU Convention on the Prevention and Combating of Terrorism seem to suggest that "any means" could be lawfully employed by groups exercising their right to self-determination. Nevertheless, if individuals carry out terrorist acts, this does not criminalize an otherwise lawful struggle against foreign occupation, colonial domination and racist regimes.

Thirdly, terrorism is not the same as political opposition. Increasingly we see states cashing in on the rhetoric of the "war on terrorism". It allows governments to dismiss political opponents as "terrorists" and to claim to have a licence to suppress the rights to freedom of expression, assembly and association.

I believe that we would get much closer to an agreed definition of terrorism if we focused more on the act and its consequences, with the necessary intent, and less on the perceived negative or positive qualities of the person or group carrying out the act. The status of the group carrying out a terrorist act is more in the eye of the beholder. The former United Nations Secretary-General, Kofi Annan, may have pointed to some core elements when he supported the approach of the UN High Level Panel on Security Threats, chaired by former Thai Prime Minister Anand Panyarachun. That Panel said that terrorism should be seen as constituting acts intended to cause death or serious bodily harm to civilians and non-combatants, with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from any act.

This definition is also not perfect. But it does remind us that terrorist acts can be carried out not only by non-state actors, but equally by governments. The uncomfortable truth that governments commit terrorist acts is another casualty in the discourse of the "war on terrorism", which tries to say that terrorism is only committed by non-state groups.

In the end, international law tells us that a terrorist act can never be legally justified, regardless of the motivation or causes leading to the terrorist act. It is a criminal act. If carried out by a government, it violates international human rights law. If carried out during an armed conflict by any party, it violates international humanitarian law. In certain

circumstances the perpetrators could be criminally responsible if their acts amount to war crimes or crimes against humanity under customary international law or might even be prosecuted by the International Criminal Court under the Rome Statute.

Counter-terrorism responses and human rights – erosion of rule of law

Let me now turn to the response to terrorism and lessons that should be learned, from the perspective of the rule of law and international law. My remarks are based on the experience of the ICJ which, almost from its very beginnings, dealt with terrorism, counter terrorism, states of emergency and internal security doctrines.

I accepted the position of Secretary-General of the ICJ three years ago because I was deeply concerned at what I saw as an erosion of some of the most basic norms of international human rights and humanitarian law and of the rule of law in the fight against terrorism.

States bear a heavy responsibility to protect people from terrorist attacks. Terrorism creates victims. But unfortunately, we are seeing again that counter terrorism also creates victims.

We have seen governments again trying to justify the use of torture to extract information from terror suspects. Attempts have been made to redefine torture to exclude psychological pain. Governments are holding detainees beyond the protective reach of the courts, including in unacknowledged and secret detention and without recourse to *habeas corpus*. Incommunicado detention is now more widespread and in more countries government ministers can put terror suspects in preventive or administrative detention for prolonged periods of time without charge or trial. Terrorist suspects have been transferred from one country to another outside any legal processes of extradition or deportation, often for the mere purpose of interrogation in places where there are fewer legal constraints on interrogation techniques. States have limited fair trial guarantees, including the right to be tried in reasonable time, the right to be tried by an independent tribunal, access to lawyers and the right to appeal.

Many of these patterns are common features of long-standing laws and measures against terrorism or other perceived threats to national security. But the post 9/11 environment has breathed new life into these old laws and measures and has also led to the introduction of new counter-terrorism laws and measures in many countries.

The counter terrorism response is more than a series of specific measures or laws. It is a way of thinking. It is a security-dominated approach. It says that rights and freedoms interfere with security of the state. It says that existing laws and norms unduly constrain the discretion of the executive to take whatever action is deemed necessary to protect national security against terrorist threats.

But a human rights approach to counter terrorism was reaffirmed by the other ICJ, the International Court of Justice in July 2004, in its advisory opinion on *the legal consequences of the creation of the wall in the Palestinian occupied territories*. The court said three things.

First, the Court reaffirmed that international human rights law should be used when assessing the validity of security measures to prevent, in that case, suicide attacks against civilians.

Secondly, the Court confirmed the opinions that have been long held by the International Commission of Jurists and UN and regional human rights bodies, that where there is an armed conflict, both international human rights and humanitarian law apply. These two bodies of law are complementary, even if the *lex specialis* of international humanitarian law may be used to interpret provisions of international human rights law and sometimes take precedence over it. The Court also clearly confirmed that human rights law binds states wherever they exercise effective control, even if outside their territories.

Thirdly, the Court rejected the argument that the right of a state to self-defence and the obligations of all states to comply with Security Council Resolution 1373, supercede international human rights and humanitarian law obligations.

At the policy level, internationally, there is a broad acceptance that human rights and the rule of law should guide counter-terrorism measures and that there is no conflict between human rights and security. This is reflected in the work of the United Nations High Level Panel on Security Threats, Security Council and General Assembly resolutions, statements and reports by the Secretary General of the United Nations, and of course in the resolutions, statements and decisions of various universal and regional human rights bodies. Practice, however, is somewhat different, especially working out what this means for the day-to-day work of the police, the military, anti-terrorist units and the courts.

Indeed, what I hear very regularly, especially outside legal circles, is that the terrorist threats today are new and unprecedented and that existing laws are out of date and inadequate because they hamper the ability of the state to prevent and stop terrorism. And that therefore we should change the law. International lawyers are obliged to respond to these criticisms.

I think three questions would need to be answered in any response and I hope these will be considered in the working groups.

First, are the terrorist threats faced today so qualitatively different to past threats that they demand that international norms be changed? The issue needs considerable investigation. However, it is clear that many if not most of the terrorist threats of today are a continuation of long-standing threats for which human rights law was crafted and refined. The issue is whether the means and methods of the newer threats, sophisticated, global network of groups linked to Al Qaida or similar groups are fundamentally different and require new laws and fewer constraints to tackle? This could benefit from more discussion in this group.

The second question is whether the international legal norms already permit governments to act robustly against terrorism. On this point we can be clearer. The international legal norms I am referring to, such as the International Covenant on Civil and Political Rights, were drafted by states themselves, who have always had a keen sense of their own national security. Such standards already build in a balancing act between national security and individual rights. They already give governments a significant margin of appreciation to change laws and procedures, but within limits. The problem is that those limits are now regularly breached.

The third question is whether the international norms and rule of law principles of our existing international legal order reflect values that are worth defending. This goes back to my earlier description of international law as a reflection of common interests and values.

Some of these basic legal values include legality, proportionality, the need for checks and balances and accountability. Some of the basic human rights values include the dignity of all human beings, non-discrimination and the absolute nature of some rights such as the prohibition on torture.

These are very real questions that need to be explored.

Counter terrorism and Human rights lessons to be learned

Your Excellencies,

In August 2004 the International Commission of Jurists brought to Berlin 160 leading lawyers and jurists from our network and from around the world, to examine terrorism, counter terrorism and the rule of law. That gathering adopted the Berlin Declaration (***the ICJ Berlin Declaration on Upholding human rights and the rule of law while combating terrorism***), which I hope can be distributed before the end of the conference, in Arabic and English. This is the only document I know of that concisely sets out 11 international legal norms that should guide all counter-terrorism measures. It reflects decades of practical experience and lessons learned across the world.

The following year, in October 2005, the ICJ appointed eight world-renowed judges and lawyers to form the ***ICJ Eminent Jurists Panel on Terrorism, Counter terrorism and Human Rights***. This independent body is chaired by Arthur Chaskalson, the first Chief Justice of post-apartheid South Africa. The Panel is spending two years conducting a global enquiry into the impact of terrorism and counter-terrorism and the dilemmas states face. They are exploring which counter terrorism policies do not raise any human rights concerns and which do, and whether international standards should change to cope with contemporary forms of terrorism. So far, the Panel has held twelve regional and country hearings, in Colombia, the USA, Northern Ireland and the UK mainland, the Russian Federation, Morocco for the Mahgreb, India and Pakistan for South Asia, South East Asia, South America, Australia and East Africa. The Panel will visit Egypt for a Middle East hearing in May, at which I hope representatives of both state authorities and civil society will attend. The panel will issue a global report towards the end of this year.

I will try to distil a few of the lessons to be drawn from the ICJ's work over 50 years and the emerging concerns raised in hearings of the ICJ Eminent Jurists Panel.

(1) Do not turn the exceptional into the normal

Governments that declare states of emergency or otherwise pass exceptional measures, often extend these for inordinately long periods of time. In a major study on states of emergencies around the world in 1981, the ICJ documented the corrosive effect of long-term emergencies on the rule of law in various regions of the world. Measures designed originally to be a temporary solution and an exception to the rule again and again became the rule itself. The Eminent Jurists Panel has so far heard evidence of such patterns in its hearings in Northern Ireland, in South Asia and Latin America. Such long-term exceptional measures distort the legal system.

Human rights law (especially Article 4 ICCPR) permits governments to declare a state of emergency if there really is a threat to the life of the nation. Not all terrorist threats even justify the declaration of a state of emergency. And once declared, each and every suspension of a right must be temporary, justified as necessary because no other measure will be effective – ie it is a last resort – and must be proportionate to meet the threat faced.

The ICJ would welcome an open and public debate in the Middle East about the necessity of maintaining long-standing emergency powers and the possibility of them being lifted, without their provisions being transferred into other, counter terrorism or national security legislation. We need to recall that the purpose of any emergency powers is to facilitate the return to normality. That should mean a return to the ordinary justice system.

(2) Maintain the role of an independent civilian judiciary as a check and balance

At times of real or perceived national security threats we often see a shift of power to the executive at the expense of the legislature and the judiciary. Governments will often have to act swiftly. But it is at such difficult times that an independent and impartial judiciary is often the last or only protector of the rule of law and human rights. In many countries we see that the public is often frightened of the real or perceived terrorist threat and ready to give up rights, usually the rights of others. The executive and legislature feel that they need to be seen to be responding to terrorism swiftly and achieving quick results. The courts must be a check to the emergence of unfettered executive powers, especially during any state of emergency. States should therefore not remove the important supervisory role of the courts for counter-terrorism operations.

Yet we see governments around the world actively trying to *de facto* or *de jure* exclude or weaken the role of the courts. The most dramatic example is the practice of holding terror suspects outside the protective reach of the courts and without judicial review or *habeas corpus.* In some countries governments impost legal impediments such as immunity clauses contained in many counter-terrorism laws that limit or prevent individuals going to a court to obtain an effective remedy and reparations for human rights violations committed during counter-terrorism operations. And governments plead state security privileges to prevent information being revealed to a court that could lead to state agents being accountable for gross human rights violations.

The judiciary should not play an obstructionist role when a government is under pressure to react to an unprecedented, acute and immediate crisis. But it is for judges, relying on legal principles, to take a long term view. I cannot say it better than the UN High Commissioner for Human Rights, Madam Louise Arbour, who has said (speaking at the ICJ Berlin Biennial in August 2004):

> *"Put buntly, the judiciary should not surrender its sober long term principle analysis of issues to a call by the Executive for extraordinary measures grounded in information that cannot be shared, to achieve results that cannot be measured".*

I think there are some signs that a number of courts are pulling back from an over deferential approach. Only in February the Canadian Supreme Court struck down the government's use of immigration procedures to indefinitely detain and deport foreigners with suspected links to terrorism. The highest courts in both the UK and the USA have

declared invalid laws that removed rights of detainees. The Indonesian Constitutional Court declared that a law under which some of those suspected of major bombings in Bali in 2002 were tried was unconstitutional because it was retroactive.

(3) Bring terror suspects to justice before ordinary, civilian courts

Security Council Resolutions under Chapter VII of the United Nations Charter oblige States to bring terrorist suspects to justice. International human rights law imposes a similar obligation Some states, however, deliberately avoid trying terror suspects in the normal the criminal justice system. Instead of bringing them before a court of law to determine their guilt or innocence, they resort to parallel systems of administrative detention without charge or trial or other forms of administrative control such as preventive control orders. Other governments use exceptional or special courts that can avoid usual fair trial standards applicable in ordinary civilian courts.

Particularly problematic in this regard is the militarization of the justice system. In most cases – if not all – such responses have led to serious violations of the right to a fair trial. Moreover, they risk creating parallel and often discriminatory legal structures that have a long-term corrosive effect on the rule of law. This risk is particularly heightened in protracted states of emergency. International human rights and humanitarian law both guarantee of everyone to be tried before an independent and impartial tribunal. The UN Human Rights Committee has recently reaffirmed in its General Comment on states of emergencies, that even in a genuine state of emergency a state has to respect the right to a fair trial and comply with fundamental principles of justice. Moreover, it has stressed that all guarantees under article 14 ICCPR have to be met in any case that imposes the death penalty. This is a clear rebuke to those who claim that a person suspected of a particularly grave crime, such as terrorism, which carries heavy punishment, should have lesser trial rights than those suspected of more ordinary crimes.

In the experience of the International Commission of Jurists the ordinary, independent, civilian justice system is able to cope with terrorist cases, even if some rules of procedure are modified at times. There is no credible evidence that suggests that military tribunals are better equipped to deal with terrorism cases. There is growing international consensus that trial by military tribunals of civilians violate international fair trial standards. The United Nations Human Rights Committee and the United Nations Working Group on Arbitrary Detention have often concluded that military tribunals virtually never satisfy the requirements of a fair trial. The same rulings can be found in regional human rights rulings in Europe, the Americas and Africa.

(These experiences are reflected in principle 7 of the ICJ Berlin Declaration which reads: "States must ensure, at all times and in all circumstances, that alleged offenders are tired only by an independent and impartial tribunal established by law and that they are accorded full fair trial guarantees, including the presumption of innocence, the right to test evidence, rights of defence, especially the right to effective legal counsel, and the right to judicial review. States must ensure that accused civilians are investigated by civilian authorities and tried by civilian and not by military courts".)

(4) Do not erode the absolute prohibition of torture

It is not by accident that the prohibition against torture is an absolute right in universal and regional human rights treaties and the Geneva Conventions and is a rule of customary international law that binds all states on this earth. It can never be suspended, it can never be derogated from under any circumstances. Cruel, inhuman or degrading treatment or punishment is also plainly prohibited at all times under international law.

Attempts to redefine and bypass this norm have been the most astounding erosion of the rule of law. The temptation to use 'exceptional means' to extract information is particularly strong in counter-terrorism cases where investigators feel a heavy pressure to produce quick results. But this must be resisted. Some states have tried to redefine torture by excluding mental suffering. Others have used euphemisms for torture such as 'coercive interrogations', 'moderate physical force', 'enhanced interrogations'. The use of such language is not new. No matter what words are used: the use of force in interrogations for the purpose of obtaining information is likely to result in torture.

In our experience torture is hardly ever coincidental. It is the result of a deliberate policy, failure of accountability mechanisms and the lack of legal safeguards such as ensuring detainees have access to lawyers, families and doctors without delay and ensuring judges supervise detentions. These open the door to systematic torture.

The global ban on torture has also been undermined by security agencies accepting evidence obtained by torture during interrogation by a third country. The use of evidence obtained by torture, be it by agents of the State or those of a third country in any judicial or quasi-judicial proceedings violates article 15 of the Convention against Torture and corresponding customary international law. This was reaffirmed by the UK House of Lords in December 2005 – though the judges left open the possibility of British security agencies using for operational purposes (ie not in court) information that may have been extracted by torture elsewhere.

States sometimes do not know how to deal with terror suspects who are foreigners, who they do not have enough admissible evidence to try in a court, but are unable to keep them indefinitely detained. Governments have begun to return such suspects to countries where torture or other ill-treatment is known to be systematic. The question under international human rights and refugee law is whether there is a real risk that a person will be tortured or ill-treated if he or she is returned to another country. So far procedures have not been found to ensure that such a real risk does not exist, especially where a person is transferred outside of normal extradition or deportation procedures.

The ICJ has been especially concerned at the practice of so-called extraordinary renditions, where terrorist suspects are transferred from one country to another without any legal processes, often for the purpose of interrogation. Such practices involve multiple human rights violations, including violations of the right to liberty, the right to freedom from torture and cruel, inhuman or degrading treatment, the right to a fair trial and the right to a remedy for violations of human rights. Where such transfers lead to secret or unacknowledged detention, they amount to enforced disappearance under customary international law. It is ironic that states again resort to secret detentions and enforced disappearances in the name of national security at a time that the United Nations have just adopted a new landmark Convention Against Enforced Dissappearances.

Sometimes a court can challenge such practices. In 2001 in the South African Constitutional Court decided the case of *Mohammed vs. the President of the Republic of South Africa*. The court decided that the arrest and detention in South Africa of a Tanzanian suspected of involvement in the 1998 US embassy bombings in Africa and his handing over to United States FBI agents violated the South African constitution, because of the lack of due process and because he could face the death penalty. Extradition procedures are not an obstacle to prevent cooperation, especially if they are tightened to ensure sufficiently swift but fair procedures.

(5) Always ensure accountability of security forces and intelligence agencies

One of the most troublesome trends in counter-terrorism around the world is the lack of accountability for counter-terrorism operations. Under international law there is a clear obligation for States to bring to justice those responsible for acts of torture or other gross human rights violations to justice. Yet, governments often raise obstacles. They say they must 'protect the morale' of the police or other counter terrorism forces. There will be no accountability if the rule of law in a country is generally weak, or if laws grant immunity to state agents. So, in reality, we are faced with a considerable gap between the large number of serious allegations of such violations and the few investigations into allegations and subsequent prosecutions.

An emerging theme in the work of the ICJ Eminent Jurists Panel is the need to strengthen democratic accountability of intelligence services and military authorities, that are often effectively beyond the reach of the law.

Such lack of accountability is likely to encourage torture, enforced disappearances and other crimes committed in the name of fighting terrorism. In many cases, especially if placed in the context of conflict, it will also create serious resentment in the communities affected.

(6) Prevent discrimination against, and marginalization of, minority communities

Finally, in several of the hearings, the members of the ICJ Eminent Jurists Panel have heard evidence of the real dangers of a government punishing or alienating minority communities in the name of fighting terrorism. Terrorism has no religion, ethnicity or origin. However, extraordinary counter-terrorism laws are frequently applied in a discriminatory way against minorities. States have also instituted policies, such as racial profiling, which have a particularly negative effect on minority communities. This is legally wrong, but also likely to be counter-productive. One of the most effective strategies in countering terrorism is to obtain good human intelligence. This is dependent on the trust toward the authorities in such communities, which is best gained by policies that are respectful of their rights.

It is also particularly important to maintain a free society and respect the freedom of the media and the role of civil society and human rights defenders. They are themselves an effective safeguard against spreading terrorism. Unfortunately, we see that in many countries human rights defenders and civil society activists are marginalized and that in some cases, they are even labeled as terrorist associates or supporters.

Conclusion

Ladies and gentlemen, I have only been able to touch on some of the legal issues raised by counter terrorism measures. In essence, however, I would like to stress that as lawyers we should maintain a principled approach to counter-terrorism, which denounces terrorist acts as criminal acts but maintains the rule of law principles that the international community has created and developed over more than 50 years of experience.

Let me add in this regard, that such a response is also in our long-term interest as it will also be the most effective way to counter terrorism. In the hearings of the Eminent Jurists Panel it has repeatedly been mentioned that excessive counter-terrorism laws and policies are often counter-productive. This is because they have a corrosive effect on the rule of law in the country, and often lend to arbitrary and discriminatory application. This exacerbates tensions and creates an environment prone to violence.

The Panel heard, for example, how the internment policies in Northern Ireland in the 1970s served as a recruiting ground for the Irish Republican Army. In Sri Lanka, the emergency regulations and the far-reaching Prevention of Terrorism Act have exacerbated cycles of violence.

Let me close by saying that as Secretary General of the International Commission of Jurists I am truly delighted to have the opportunity to address representatives of the legal community in Syria. As mentioned in the Berlin Declaration we believe that the judiciary and the legal community, including lawyers, prosecutors and bar associations have a particularly vital role to play in upholding human rights and the rule of law in times of crisis.

Thank you.

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