



# INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

*" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "*

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## **Oral Intervention**

### HUMAN RIGHTS AND THE FIGHT AGAINST TERRORISM

Mr Chairman,

Last year, the Sub-Commission decided that it would study whether national measures to combat terrorism comply with international human rights standards (resolution 2003/15). The International Commission of Jurists (ICJ) urges the Sub-Commission to implement this important resolution.

In the global "war against terrorism" over the last 2 years, many states and intergovernmental bodies have adopted new legislation, policies and practices in response to the threat of terrorist acts. While governments must protect people from terrorist attacks, new counter-terrorism measures and the rhetoric surrounding them also represent critical threats to the rule of law and human rights. In some countries the "war against terrorism" has given greater legitimacy to long-standing human rights violations carried out in the name of national security. In recent times we have witnessed a worrying erosion of international human rights law, humanitarian law and refugee law.

In many countries, such measures are new. In others, the authorities continue to apply old counter-terrorism measures that have been severely criticized by international human rights bodies. Certain countries face a real threat of terrorism. In others, however, there exists no real threat, but the notion of "fight against terrorism" is being abused to restrict civil liberties and repress political and social opposition.

Several states have adopted counter-terrorism measures which violate the basic principles of the rule of law, such as the separation of powers or the independence of the judiciary. Some are increasingly militarizing judicial functions and have transferred substantial judicial police powers to the armed forces, without any judicial control. Members of the armed forces may search homes, intercept communications and correspondence, or arrest and interrogate persons without judicial warrant.

One common practice has been to introduce vague or imprecise definitions of terrorism into domestic criminal legislation. These often in effect criminalize the legitimate and peaceful exercise of political or social opposition and fundamental freedoms. They also violate the principle of

legality or *nullum crimen, nulla poena sine lege*, universally recognized in international law<sup>1</sup> and reaffirmed in human rights jurisprudence and doctrine.<sup>2</sup>

There is also a growing tendency to eliminate or restrict the concept of “political offence” in domestic legislation and to consider violent forms of political opposition as terrorist acts. Armed opposition groups may certainly commit terrorist acts forbidden by international law, for which they must be prosecuted and tried. This does not mean, however, that all violent acts carried out for political purposes amount to terrorist acts. Political offences and terrorism are two categories, governed by different legal regimes, especially with regard to extradition, amnesty and asylum.

Increasingly governments are also prosecuting suspected authors of terrorist acts before military tribunals, *ad hoc* tribunals or tribunals consisting of judges and prosecutors. Sometimes they have recourse to pseudo-judicial bodies to process individuals accused of terrorism. In several countries, special judicial procedures have been introduced which unduly curtail judicial guarantees. With regard to the deprivation of liberty, “counter-terrorist”-measures have led to arbitrary detentions, frequently accompanied by illegitimate restrictions on the right of *habeas corpus*, if it is not entirely discarded. In some countries, practices such as *incommunicado* detention or prolonged detention without criminal charge lead to violations of international law.

Several countries have restricted the right to seek asylum and have increasingly expelled persons without access to a remedy. More and more, asylum seekers are detained indiscriminately. The High Commissioner for Refugees has said that using the label “terrorist” sometimes conceals political persecution against legitimate activities of political opponents.<sup>3</sup>

In terms of international cooperation, several countries have extradited persons without regard to the universally recognized principle of *non refoulement*.<sup>4</sup> Other states expelled or repatriated people to circumvent extradition proceedings and judicial guarantees prescribed by international law, such as the principle of *non refoulement* and the right to an effective remedy.

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<sup>1</sup> Article 15 of the International Covenant on Civil and Political Rights, Article 7 of the European Convention on Human Rights, Article 9 of the American Convention on Human Rights, Article 7 of the African Charter on Human and Peoples' Rights.

<sup>2</sup> See, for example, Observations and Recommendations of the Human Rights Committee: Algeria, CCPR/C/79/Add.95, 18 August 1998, paragraph 11; Observations and Recommendations of the Human Rights Committee: Egypt, CCPR/C/79/Add.23, 9 August 1993, paragraph 8; Final Observations of the Human Rights Committee: Democratic Peoples' Republic of Korea, CCPR/CO/72/PRK, 27 August 2001, paragraph 14; Final Observations of the Human Rights Committee: Portugal (Macao), CCPR/C/79/Add.115, 4 November 1999, paragraph 12; Observations and Recommendations of the Human Rights Committee: Peru, CCPR/C/79/Add.67, 25 July 1996, paragraph 12; European Court of Human Rights Judgment of 25 May 1993, *Kokkinakis v. Greece*, Series A N° 260-A, paragraph 52; European Court of Human Rights Judgment of 6 November 1980, *Guzzardi v. Italy*, Series A No. 39, paragraph 102; Special Rapporteur of the United Nations on the independence of judges and lawyers, E/CN.4/1998/39/Add.1, paragraph 129; Inter-American Commission on Human Rights, Annual Report 1983- 1984, p. 85, paragraph 7; Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Peru, OEA/Ser.L/V/II.106, Doc. 59 rev., 2 June 2000, paragraph 80.

<sup>3</sup> A/AC.96/965, 11 September 2002.

<sup>4</sup> Convention on the Status of Refugees, Article 33; OAS Convention on Territorial Asylum, Extradition (Article IV); American Declaration on the Rights and Duties of Man, Article 22 (8); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3; Inter-American Convention to Prevent and Punish Torture, Article 13 (4); Declaration on Territorial Asylum, Article 3 (1), Declaration on the Protection of All Persons from Enforced Disappearance, Article 8, Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principle 5. See also the Model Treaty on Extradition adopted by the Eighth Congress on the Prevention of Crime, Article 3. See also the European Convention on Extradition, Article 3, the European Convention on the Suppression of Terrorism, Article 5, the Inter-American Convention on Extradition, Articles 4 and 5.

Mr Chairman

United Nations and regional bodies and mechanisms have considered many of these counter-terrorism measures to be incompatible with international legal obligations. Such jurisprudence, doctrine and recommendations are essential. They indicate which counter-terrorism measures are consistent with the framework of the rule of law and human rights. This was emphasized by the General Assembly (resolutions 57/219 and 58/187) which encouraged “States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourage[d] them to consider the recommendations of the special procedures and mechanisms of the Commission on Human Rights and the relevant comments and views of United Nations human rights treaty bodies”.

The need for clear and detailed guidelines of the United Nations to help states balance the imperative to protect human rights and the duty to combat terrorism is now urgent. Such an instrument would complement the appeal made by the General Assembly (resolutions 57/219 of 2002 and 58/187 of 2003) – reiterated by the Security Council (resolution 1456 (2003) and the Commission on Human Rights (resolution 2003/68) – that “States must ensure that any measures 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>5</sup>

Regional organizations have acted. On 15 July 2002, the Committee of Ministers of the Council of Europe adopted “Guidelines on human rights and the fight against terrorism”.<sup>6</sup> Last June, the General Assembly of the Organization of American States asked the Inter-American Commission on Human Rights to elaborate recommendations for member states on human rights and counter-terrorism. The African Commission on Human and Peoples’ Rights has decided to examine this question in November and December this year.

There are no such guidelines at the universal level. The International Commission of Jurists considers that the Sub-Commission should take on this responsibility.

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<sup>5</sup> Resolution 57/219, Protection of human rights and fundamental freedoms while countering terrorism, adopted on 18 December 2002 and Resolution 58/187, Protection of human rights and fundamental freedoms while countering terrorism, adopted on 22 December 2003.

<sup>6</sup> Available at:

[http://www.coe.int/T/F/Communication\\_et\\_Recherche/Presse/Dossiers\\_th%E9matiques/Terrorisme/CM\\_LignesDirectrices\\_20020628.asp#TopOfPage](http://www.coe.int/T/F/Communication_et_Recherche/Presse/Dossiers_th%E9matiques/Terrorisme/CM_LignesDirectrices_20020628.asp#TopOfPage).