

Submission on the 2020 review of the United Nations Global Counter-Terrorism Strategy

8 January 2020

Question 1: What activities did you carry out in 2019 that contributed to the implementation of the United Nations Global Counter-Terrorism Strategy, including possible activities in collaboration with national authorities on victims of terrorism?

The International Commission of Jurists (ICJ) is an international non-governmental organization of senior judges and lawyers from around the world, working since 1952 to promote the rule of law and legal protection for human rights, at the global, regional and national levels.

Following the previous GCTS review, the ICJ and other organizations jointly called for respect for human rights and protection of and participation by civil society to have a greater role in the formulation, interpretation and implementation of the GCTS.¹ In line with this call, the ICJ has subsequently contributed to the implementation of the Strategy in a number of ways, including:

- Participating in UNOCT expert meetings to provide input to the Handbook “Children Affected by the Foreign-Fighter Phenomenon: Ensuring a Child Rights-based Approach”.²
- Coordinating civil society engagement at the UN Human Rights Council on resolutions relevant to terrorism, counter-terrorism and human rights, and supporting the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The ICJ and other NGOs have among other priorities, sought to maintain the Council’s appropriate focus on preventing and responding to violations of human rights while countering terrorism, and recognizing and upholding the human rights of victims of terrorism, against efforts by some States to distort, distract or dilute that focus.³
- Intervening in European Court of Human Rights cases concerning terrorism, counter-terrorism, and human rights, to provide the Court with relevant legal and factual materials.⁴

¹ E.g. ICJ joins call for human rights and civil society in UN counter-terrorism strategy, <https://www.icj.org/uncts2018/> (11 July 2018).

² https://www.un.org/counterterrorism/ctitf/sites/www.un.org.counterterrorism.ctitf/files/ftf_handbook_web_reduced.pdf

³ See e.g. ICJ hails renewal of UN expert on counter-terrorism and human rights, <https://www.icj.org/hrc40-srcthr-final/> (22 March 2019).

⁴ <https://www.icj.org/landmark-rulings-expose-romanian-and-lithuanian-complicity-in-cia-secret-detention-programme/>; <https://www.icj.org/lithuania-icj-and-ai-intervene-in-case-of-complicity-in-us-led-rendition-before-european-court-of-human-rights/>; <https://www.icj.org/european-court-of-human-rights-icj-and-others-intervene-in-case-of-former-amnesty-turkey-director-taner-kilic/>; <https://www.icj.org/turkey-icj-intervenes-before-european-court-of-human-rights-in-case-of-detention-of-mp/>

- Convening regional roundtable discussions and workshops with judges and lawyers in Europe and Central Asia on such topics as: the application and human rights impacts of counter-terrorism legislation;⁵ international law relevant to extraditions and expulsions.⁶
- Publishing reports and statements, and making submissions to UN human rights processes such as Treaty Body reviews and the Universal Periodic Review, on relevant issues in countries including Turkey,⁷ Uzbekistan,⁸ the United States of America,⁹ Egypt,¹⁰ Saudi Arabia,¹¹ and Pakistan.¹²
- Compiling and publishing a compilation of international standards and guidance on the Human Rights of Victims of Terrorism,¹³ and briefing States in New York on the topic at an event organized by Spain, Afghanistan and UNOCT.¹⁴
- Participating in two expert roundtables (sponsored by the OSJI, ISI, Asser Institute, and Ashurst Law firm) towards the development of Principles on Deprivation of Nationality as a Counter-Terrorism and National Security Measure.
- Participating in a UNHCR expert meeting and consultation on draft Guidelines on Stateless no 5: Loss and Deprivation of Nationality under articles 5-9 of the 1961 Convention on the Reduction of Statelessness.
- At its 19th World Congress, in Tunis in March, the ICJ adopted *the Tunis Declaration on Reinforcing the Rule of Law*,¹⁵ which specifically addresses terrorism and counter-terrorism (among a broader range of contemporary issues):

⁵ <https://www.icj.org/eu-roundtable-discussion-on-the-impact-of-counter-terrorism-laws-on-children-and-on-minority-ethnic-and-religious-groups/>; <https://www.icj.org/eu-roundtable-discussion-among-judges-and-lawyers-on-the-application-of-counter-terrorism-legislation/>; <https://www.icj.org/njcm-and-icj-hold-a-roundtable-discussion-among-judges-and-lawyers-on-the-application-of-counter-terrorism-legislation-in-the-eu/>.

⁶ <https://www.icj.org/central-asia-regional-workshop-of-prosecutors-on-extradition-expulsion-and-international-law/>; <https://www.icj.org/central-asia-first-regional-workshop-of-prosecutors-on-extradition-mutual-legal-assistance-and-international-law/>.

⁷ <https://www.icj.org/turkey-icj-submission-to-the-un-universal-periodic-review-upr/>; <https://www.icj.org/turkey-lifting-of-state-of-emergency-a-welcome-start-now-restore-rule-of-law/>; <https://www.icj.org/un-committee-against-torture-icj-and-ihops-joint-submission-on-turkey/>;

⁸ <https://www.icj.org/uzbekistan-icj-submits-report-to-un-committee-against-torture/>

⁹ <https://www.icj.org/universal-periodic-review-of-the-usa-icj-and-other-groups-make-submission/>

¹⁰ <https://www.icj.org/egypt-amidst-the-crackdown-lawyers-are-also-a-target/>; <https://www.icj.org/egypt-authorities-must-release-hundred-of-persons-detained-for-exercising-their-fundamental-freedoms/>; <https://www.icj.org/egypt-immediately-release-lawyer-mahienour-al-massry-and-others-arbitrarily-detained/>; https://www.icj.org/wp-content/uploads/2019/03/Egypt-Adalah_ICJ-UPR-Advocacy-Non-Legal-Submissions-2019-ENG.pdf; <https://www.icj.org/egypt-mass-convictions-and-death-sentences-in-rabaa-dispersal-case-are-a-gross-miscarriage-of-justice/>; <https://www.icj.org/egypt-authorities-must-release-arbitrarily-detained-individuals/>;

<https://www.icj.org/egypt-authorities-must-end-the-arbitrary-detention-of-human-rights-lawyer-mohamed-ramadan/>

¹¹ <https://www.icj.org/saudi-arabia-three-clerics-face-imminent-unfair-trial-and-possible-execution/>

¹² <https://www.icj.org/pakistan-as-military-courts-lapse-government-must-prioritize-reform-of-the-criminal-justice-system/>

¹³ <https://www.icj.org/victimsofterrorism2019/>

¹⁴ <https://www.icj.org/icj-highlights-rights-of-victims-of-terrorism-to-un-delegations/>

¹⁵ <https://www.icj.org/icj-congress-2019-the-tunis-declaration-video/>

31. Fifteen years after the ICJ issued its Berlin Declaration [on Upholding Human Rights and the Rule of Law in Combating Terrorism] the world faces heightened and new challenges to the Rule of Law and human rights because of States' responses to terrorism and other security challenges. Well-established and cherished legal principles continue to be called into question in all regions of the world. Resort to ill-conceived responses to terrorism and to new security threats continues, undermining the Rule of Law and human rights protections, without compelling scientific evidence that those responses actually work.

32. States continue to shift from criminal law based responses to administrative means to address real and purported security challenges, with far reaching consequences but less human rights protection. Recourse to states of exception has severely diminished or deprived persons of their rights protection under the Rule of Law. So-called exceptional measures - such as the use of indefinite detention and internment without charge or trial, special courts, and extended jurisdiction of military tribunals - have often been announced as temporary but have become permanent in law or in practice. At times, some States have resorted to extrajudicial executions, including by targeted killings, under the pretense of countering terrorism.

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34. Recourse to overly broad notions of 'violent extremism', terrorism, sedition, rebellion and 'hate speech', and to vaguely defined preparatory or ancillary offences far removed from any violent act of terrorism, erode the principle of legality and in some cases effectively criminalize the exercise of freedoms of expression, assembly, association and political participation.

36. The ICJ condemns terrorism and affirms that all States have an obligation to take effective measures against terrorism, including for the purposes of protecting human rights. No grievances can justify terrorist acts or inflicting terror on the population. Those individuals and groups that commit terrorist acts, crimes under international law and gross human rights abuses must be held accountable.

37. The ICJ reaffirms the centrality of the Rule of Law and human rights in upholding the right to security of all people. Security and human rights are not conflicting objectives but are complementary and mutually reinforcing. In contrast, violations of the Rule of Law and of human rights are conducive to the spread of terrorism or other crimes.

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41. The ICJ will oppose the use of security and counter-terrorism laws and practices to suppress human rights defenders, civil society, political opposition, marginalized or disadvantaged groups within their societies, or other persons expressing dissent.

Question 2: How do you see the contribution(s) of civil society in general and of your organization in particular to the implementation of the United Nations Global Counter-Terrorism Strategy?

The ICJ contributes to implementation of the UN Global Counter-Terrorism Strategy through its independent activities at the global, regional and national level. Despite holding ECOSOC consultation status since 1957, however, like other civil society organizations the ICJ increasingly faces barriers to participation in inter-governmental processes relevant to implementation of the Strategy. This is partly due to a trend of moving such processes out of ordinary New York- or Geneva-based formal UN sessions where ICJ's ECOSOC status would normally allow participation, to non-UN or nationally-hosted processes where civil society participation is excluded, or permitted only on a highly selective basis. Financial barriers also limit ICJ's ability to participate in such processes and to otherwise contribute. The ICJ also sees a need for an independent civil-society-led process similar to the series of hearings, and the research, analysis, and ultimate report, of the ICJ Panel of Eminent Jurists in 2009,¹⁶ and is currently seeking resources for such an initiative.

Question 3: How do you assess progress made in the implementation of the United Nations Global Counter-Terrorism Strategy since 2006, and specifically since its last review by the General Assembly in 2018?

While recognizing the wide variation between different governments and contexts around the world, the ICJ remains deeply concerned that, overall, implementation of the GCTS by States and other stakeholders tends to over-emphasize military and hard security responses, on one hand, while expanding a range of repressive administrative measures without sufficient judicial controls, on the other hand.

As a result, too frequently, implementation fails to adequately focus on the central role that States' ordinary criminal justice systems should play, with independent and impartial courts applying precisely defined criminal offences in a fair manner, free of abuse or manipulation by law enforcement or other executive agencies.

Further, ICJ remains concerned that there is not enough recognition and action in practice for the essential role of respect, protection and fulfilment of all human rights of all persons without discrimination, not only in relation to counter-terrorism measures, but across all rights and all segments of society, as an essential and highly effective means for preventing terrorism. (Indeed, the ICJ considers failures to respect, protect and fulfil all human rights on a non-discriminatory basis as a major contributor to conditions conducive to the spread of terrorism.)

The ICJ is further particularly concerned that the credibility of implementation of the GCTS, and indeed the credibility of global efforts against terrorism as a whole, is undermined by certain governments' deliberate abuse and misapplication of overbroad counter-terrorism offences and measures to target human rights defenders and non-violent political opponents.

The Secretary General's 2019 report on "Cooperation with the United Nations, its representatives and mechanisms in the field of human rights" stated, for instance:

¹⁶ <https://www.icj.org/report-of-the-eminant-jurists-panel-on-terrorism-counter-terrorism-and-human-rights/>

I am concerned at the continued trend in the use of national security arguments and counter-terrorism strategies by States as justification for blocking access to the United Nations. Reported cases include individuals or organizations being charged with terrorism, blamed for cooperation with foreign entities or accused of damaging the reputation or security of the State. These have also been used to justify restrictions on foreign funding. A disproportionate number of cases of enforced disappearance or detention, many which have been deemed arbitrary by United Nations experts, relate to these national security arguments. This is a worrisome trend that I have addressed publicly, including in my previous report, and, regrettably, it continues.¹⁷

The UN Special Rapporteur's March 2018 report to the Human Rights Council found that "the security pandemic has translated into various measures that States have taken that have curbed civic space", and that this is not incidental, but "suggest the hard-wiring of misuse into counter-terrorism measures taken by States around the globe."¹⁸ Her report highlighted as key enablers of abuse, among other things: overly broad definitions of terrorism; legislation criminalizing the legitimate exercise of fundamental freedoms; legislation strictly regulating the existence of civil society; overbroad provisions on prohibitions of support for terrorism; increased use of administrative measures; undue delegation to private actors; and abuse of legal systems and law enforcement.

Question 4: What are your suggestions for the future implementation of the United Nations Global Counter-Terrorism Strategy in terms of issues requiring additional attention and efforts, as well as new and emerging challenges?

The ICJ recommends a reduction of the emphasis on military and hard security responses and reversing the trend towards adoption of repressive administrative measures that lack sufficient judicial controls. Instead, implementation should give priority to the central role that States' ordinary criminal justice systems should play, with independent and impartial courts applying precisely defined criminal offences in a fair manner, free of abuse or manipulation by law enforcement or other executive agencies.

States, the UN and other stakeholders should formally recognize, and take effective action in practice to ensure, the essential role of respect, protection and fulfilment of all human rights of all persons without discrimination, not only in relation to counter-terrorism measures, but across all rights and all segments of society, as an essential and highly effective means for preventing terrorism.¹⁹

To maintain the credibility of implementation of the GCTS, and indeed the credibility of global efforts against terrorism as a whole, States, the UN and other stakeholders should rigorously and consistently monitor for, and condemn and effectively respond to, governments' deliberate abuse and misapplication

¹⁷ Report on the Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, A/HRC/42/30, 9 September 2019, at para. 90.

¹⁸ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on "the impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders", A/HRC/40/52, 1 March 2019.

¹⁹ In this regard, in implementing the Counter-Terrorism Strategy, the UN and Member States should not see human rights and counter terrorism as competing objectives to be "balanced" against each other as part of a zero-sum process. As the ICJ affirmed in its 2004 Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism: "There is no conflict between the duty of States to protect the rights of persons threatened by terrorism and their responsibility to ensure that protecting security does not undermine other rights. On the contrary, safeguarding persons from terrorist acts and respecting rights both form part of a seamless web of protection incumbent upon the State."

of overbroad counter-terrorism offences and measures to target human rights defenders and non-violent political opponents. All States, as well as the UN and other stakeholders, should work together to ensure that victims of human rights violations in the context of countering terrorism can access and receive effective remedy and reparations in line with UN standards, and that States recognize and uphold the human rights of victims of terrorism.

At the Human Rights Council, General Assembly, and elsewhere, States and other stakeholders must steadfastly and consistently oppose ongoing efforts by certain governments to distract, distort, or dilute attention and resources away from the current focus of the UN Special Rapporteur and other UN human rights mechanisms on preventing and responding to violations of human rights perpetrated by States in the context of countering terrorism and on upholding the human rights of victims of terrorism.²⁰

The ICJ welcomes and offers its support for recent initiatives at the General Assembly to better recognize and concretely address the situation and the needs and rights of victims of terrorism.²¹

Question 5: What are your recommendations for the United Nations system and the United Nations Office of Counter-Terrorism in particular to support Member States in implementing the United Nations Global Counter-Terrorism Strategy by Member States, both in terms of method of work and thematic focus?

The ICJ notes that, at the moment, among the various relevant regional conferences, there is no regional conference dedicated to human rights in countering terrorism. The ICJ recommends that UNOCT should, ideally with the support of one or more appropriate States, convene a regional conference prior to July 2019, on Pillar IV of the GCTS and mainstreaming human rights in Pillars I – III. Participation in such a regional conference of international (as well as regional and national) human rights NGOs, and UN-accredited National Human Rights Institutions, should be guaranteed. This and other engagement on human rights issues with civil society could among other things also help UN OCT, other UN bodies, and member States, to ensure that relevant programming and other activities are not manipulated or misused by certain governments to enable or contribute to or conceal or distract from counter-terrorism practices that violate human rights.

The ICJ considers that the credibility and impact of implementation of the Strategy would be greatly strengthened by mainstreaming human rights throughout Pillars I to III of the Strategy, while maintaining and enhancing Pillar IV.

In formulating programming and other activities for implementation of the GCTS, UNOCT, other UN bodies, and member States should recognize that efforts to effectively counter terrorism are undermined when human rights are violated in the context of countering terrorism, whether due to deliberate or to inadvertent application of counter-terrorism measures to individuals, groups or situations to which they should not be applied, including among other things through overbroad definitions of terrorism or failure to ensure such measures are subject to effective control by competent and fully independent and

²⁰ ICJ hails renewal of UN expert on counter-terrorism and human rights", <https://www.icj.org/hrc40-srcthr-final/> (22 March 2019); NGOs urge States at UN to uphold human rights while countering terrorism, <https://www.icj.org/ga74-terrhrletter/> (24 October 2019); Keeping Human Rights and Counter-Terrorism in Focus at the UN", Andrew Smith and Matt Pollard, Just Security, <https://www.justsecurity.org/66777/keeping-human-rights-and-counter-terrorism-in-focus-at-the-un/> (30 October 2019).

²¹ See <https://www.icj.org/victimsofterrorism2019/> and <https://www.icj.org/icj-highlights-rights-of-victims-of-terrorism-to-un-delegations/>

impartial judicial authorities. Implementation activities should accordingly include a focus on monitoring, identifying and effectively responding to violations of human rights committed in the context of countering terrorism, including by promoting States' recognition and fulfilment of their obligations, commitments and best practices in preventing and remedying violations of human rights arising from counter-terrorism measures. The UN, including UNOCT, and member States should recognize that doing so is both an end in its own right and also greatly contributes to the effective prevention of terrorism.

The findings and recommendations of UN human rights mechanisms including particularly Treaty Bodies and Special Procedures, as well as Vienna-based rule-of-law bodies, should be consistently incorporated into and reflected in all relevant UN, regional and national processes for review and implementation of the GCTS.

As mentioned above, the ICJ welcomes recent initiatives at the General Assembly to better recognize and concretely address the situation and the needs and rights of victims of terrorism, including the call on all States to develop and implement National Action Plans.²² The UN, UNOCT, member States and other stakeholders should recognize and give effect to a human-rights based approach to victims of terrorism. Key issues include: effective, rapid and simple access to assistance; access to justice and the truth; recognition and remembrance; avoiding exploitation and re-traumatization; preventing further attacks or violence, while respecting the rule of law and human rights; ensuring involvement of victims' representatives in designing, implementing and assessing measures for victims; and the importance of international cooperation. It is essential to ensure that efforts to promote and protect human rights of victims of terrorism are not discriminatory and do not create hierarchies between victims of different kinds of violent crimes, and to prevent such efforts from being exploited or manipulated by certain governments for other purposes, such as to undermine efforts to ensure that all counter-terrorism measures fully respect and protect human rights.

Additionally, ICJ recommends:

- Establishment of an independent, adequately funded and sufficiently empowered human rights oversight entity within the Global Coordination Compact, with the capacity to receive and respond publicly to information and complaints from civil society organizations;
- Establishment and resourcing of a Civil Society Unit within UNOCT, with a mandate set out in a clear and publicly available policy on civil society access to relevant UN processes and effective participation in the decision-making of UN OCT, building on existing ECOSOC access rights and best practices identified by OHCHR, ensuring effective and regular disclosure of information relating to counter-terrorism and human rights, and with specific outreach initiatives to national and regional actors with human rights expertise, including those who may not have regular access to New York;²³
- Increasing the allocation of financial and human resources to the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including resources based in New York, so that the mandate is able to more effectively carry out its work of providing independent expertise, oversight and scrutiny;
- Increasing meaningful engagement of the UN counter-terrorism architecture with OHCHR and with other UN Special Procedures mandate-holders who monitor abuses of counter-terrorism laws and practices;

²² See <https://www.icj.org/victimsofterrorism2019/> and <https://www.icj.org/icj-highlights-rights-of-victims-of-terrorism-to-un-delegations/>

²³ UN Doc A/HRC/40/52.

- Creating, with the full and effective participation of civil society organizations, a series of benchmarks and indicators for assessing States' compliance with their international human rights obligations as they relate to the implementation of the GCTS.