



**Droits et Démocratie**  
**Rights & Democracy**

Centre international des droits de la personne et du développement démocratique  
International Centre for Human Rights and Democratic Development

# **Promoting Human Rights and Democracy in the Context of Terrorism**

Report of Rights & Democracy's Think Tank  
Ottawa, May 30, 2002



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## **Report of the Think Tank on Promoting Human Rights and Democracy in the Context of Terrorism**

**Thursday, May 30, 2002  
at the Department of Foreign Affairs and International Trade  
Lester B. Pearson Building, 125 Sussex Drive  
Ottawa, Ontario**

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## BACKGROUND

On May 30, 2002, Rights & Democracy organized a one-day Think Tank in Ottawa on the theme of ‘Promoting Human Rights and Democracy in the Context of Terrorism.’ The purpose of this report is to record, develop and disseminate the day’s discussions.

This was the fourth annual Think Tank organized by Rights & Democracy. The first sought the views of the human rights constituency on potential strategic directions for Rights & Democracy at the dawn of the 21<sup>st</sup> century. The second focused upon the experiences of non-governmental organizations with urgent action and important opportunities operations. The third addressed the challenges of financing the United Nations’ mechanisms for the protection and promotion of human rights.

The theme of the fourth Think Tank was proposed by Rights & Democracy’s Board of Directors in response to the catastrophic terrorist attacks on the United States on September 11, 2001, and the consequent international reaction of States engaged in the ‘war on terrorism’: a proliferation of national security laws and drastic anti-terrorist measures. Indeed, no human right is exempt from the impact of terrorism, from the most fundamental rights to life, liberty and dignity, to the rights associated with a democratic society and the rule of law, to rights relating to social peace, public order and human security.<sup>1</sup>

The Think Tank provided an open forum for government officials, parliamentarians and representatives of civil society organizations to:

- analyze legislation and practices related to security in various countries, which have an impact on civil liberties, human rights and democracy;
- identify the structural causes of problems that drive people to engage in violence and terrorist activities;
- find ways to ensure that States respect their obligations to international human rights law and humanitarian law in the context of the security regime;
- discuss State positions on terrorism and the security of citizens, which have an impact on human rights and democracy;
- assess how non-governmental organizations (NGOs) can continue to help their partners in countries that do not distinguish between human rights activists/defenders and terrorists;
- propose channels for action to ensure the accountability of States and non-State actors.

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<sup>1</sup> See Kalliopi K. Koufa, UN Special Rapporteur on Terrorism, “Human Rights and Terrorism: Progress Report,” June 27, 2001, p. 28; see also Kalliopi K. Koufa, “Human Rights and Terrorism: Preliminary Report,” June 7, 1999, pp. 8-11.

## **ACKNOWLEDGEMENTS**

On behalf of the Board of Directors of Rights & Democracy we would like to acknowledge and thank all the participants of the Think Tank for sharing their time, concerns and insights. A list of the participants is attached at the end of this report (Annexe I).

We wish to extend special thanks to the presenters, moderators and rapporteurs for their dedication and expertise. A copy of the programme is attached at the end of this report which lists the names of the presenters and the titles of their presentations (Annexe II).

Rights & Democracy also wishes to extend its gratitude to the Department of Foreign Affairs and International Trade for generously providing us with their conference room and simultaneous translation services.

## OPENING COMMENTS

Kathleen Mahoney, Chairperson of the Board of Directors of Rights & Democracy, welcomed the participants and made the introductory statement. She noted that not a single human right is exempt from the impact of terrorism and that human rights and civil liberties are under attack from both terrorism and counter-terrorism. She proposed that the participants consider the following issues during the Think Tank: Can governments combat terrorism through military means and still respect human rights and democratic values? How can civil society organizations of the North support their partners in the South in cases where States make no distinction between freedom fighters and terrorists? Was the military response to the terrorist attacks on New York on September 11, 2001 justified in law, and have the rights of those taken prisoner been respected?

Iris Almeida, Director of Programmes of Rights & Democracy, then provided an overview of the theme, drawing from some of the issues raised in the background paper prepared by herself and Lloyd Lipsett (Annexe III). She highlighted the objectives and results expected from the Think Tank. She noted that while there is international consensus to condemn terrorism, enhanced by 19 international treaties on the subject, these treaties contain divergent definitions of the term 'terrorism.' Moreover, as an International Convention on Terrorism is still being drafted, there is as of yet no internationally recognized definition of the term. Military responses to terrorism must be tested for their conformity with international law, while the underlying symptoms of terrorism, such as social inequalities, poverty, underdevelopment and lack of pluralism and democracy must be addressed urgently and seriously.

Instead of providing a lengthy chronological transcript of the day's discussions, this report summarizes the key themes that were elaborated in the various presentations, commentaries and plenary sessions.<sup>2</sup>

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<sup>2</sup> In this regard, the report draws upon the eloquent closing remarks of Vitit Muntarbhorn (Chulalongkorn University, Thailand and Board Member of Rights & Democracy).

## DISCUSSIONS

### Key Challenges for Human Rights and Democracy

#### *1. Understanding the Environment Behind Terrorism*

One of the most important challenges is to understand the environment behind terrorism, particularly the ‘root causes’ and ‘fertilizers’ of terrorism. The events of September 11<sup>th</sup> were unequivocally condemned by all participants. The motivation to understand the phenomenon of terrorism is not to justify it, but rather to ensure the prevention of future terrorist attacks. As the international community strives for long-term peace and security, it must also proactively address the hopeless socio-economic conditions and repressive political systems that prevail in many parts of the world which can drive people to despair and violence.

Participants first voiced their general concerns about the present global environment: the vast economic inequalities that persist despite the promises of globalization; the repressive political regimes that are tolerated despite the general rhetoric of freedom, democracy and infinite justice; and, the selectivity with respect to human rights whereby alarming poverty, repression and suffering in many parts of the world are consistently ignored by the international community. Of particular concern in the context of global terrorism are the severe poverty in Afghanistan, the growing tensions in the Middle East due to the spiraling Israeli-Palestinian conflict and the grave consequences of economic sanctions on the lives of ordinary citizens in Iraq.

Lack of democracy, disrespect for human rights, armed conflicts, blocked democratic transitions, underdevelopment, poverty and the lack of respect for the right to self-determination may all provide the setting for the discontent and frustration that lead to terrorism. This is aggravated by the current preoccupation with globalization and the propulsion of a free-market economy that, despite its promises of prosperity and better standards of living for all, fails to provide adequate safety nets, especially for those on the sidelines of the market system. These discrepancies are worsened by the pervasiveness of denigration, dispossession, humiliation and marginalization that ultimately results in a sense of desperation conducive to violence.

#### *2. The Multiple Facets of Terrorism*

As the participants of the Think Tank sought to understand the phenomenon of terrorism, it became apparent that there are not only legal dimensions, but also political, psychological and cultural dimensions.

Terrorism is illegal, and thus demands an effective response from the law. It is, however, also a political act. When space for competing or alternative views to be expressed through non-violent democratic processes is not provided, the risk of violent expression increases. Moreover, it can be understood as a psychological act whereby terrorists aim to create a symmetry of fear where there is asymmetry between the stakeholders on other issues. This implies that if there is asymmetry in regard to material-power relations at one level, the resort to violence by terrorists is a

psychological means of redressing that imbalance precisely because it is aimed at undermining those who have the upper hand in the power relations.

Terrorism is also steeped in cultural dilemmas. Currently, the demonization of various religions and cultures is rampant, and regrettably, it is a pretext for more repression of those who advocate democracy and human rights. Ironically, it is often the very lack of democracy and disrespect for human rights that may fuel the discontent leading to the escalation of terrorism since the non-violent channels for airing dissent are blocked. In the various reactions in law and policy today, there is the worrying trend that more racism and xenophobia are being stirred, which will result in further discrimination and stigmatization of innocent civilians. This is most evident in the national laws and policies relating to those seeking asylum whereby actual or potential refugees are being made scapegoats for terrorism, when in fact in international law, a terrorist cannot be classified as a refugee.

Finally, it must be recognized that terrorism is linked with a variety of protagonists—sometimes the State, sometimes non-state actors. Since it is a multi-actor phenomenon, it needs a multi-actor approach to finding solutions.

### ***3. Terrorism as a Catch-all Phrase***

A predominant concern of the Think Tank was the lack of an internationally recognized definition of ‘terrorism.’ As we struggle to conceptualize and articulate a clear definition of terrorism, we are challenged by the fact that many different actors use fear and violence to further their political ends. It is imperative to distinguish between State terrorism, State-sponsored (or State-linked) terrorism and terrorism perpetrated by non-state actors. Moreover, there are different targets of this fear and violence, so we must also distinguish between intra-State terrorism, inter-State terrorism and international terrorism.

With so many variations and nuances on the concept of ‘terrorism,’ we must be prudent in the use of a single, politically-loaded term. We must resist the temptation to use terrorism as a catch-all phrase for all serious domestic or international crimes. Precise terms that are recognized in international law and jurisprudence must be used to describe crimes that are labeled ‘terrorism’.

### ***4. The Relationship Between Law, Human Rights and Security***

Given the recognition of the primacy of human rights in many national constitutions and international covenants, the national security laws enacted since September 11<sup>th</sup> should be informed by and comply with them. However, most of the experiences with national security laws and anti-terrorist measures since September 11<sup>th</sup> have been negative. Not only do many of these laws deviate from international law, they have been used (or have the potential to be used) to repress legitimate dissent and stifle democratic opposition. Many participants were dismayed to note that the ‘war on terrorism’ has been an excuse for some governments to target old political opponents and repackage repressive measures.



For example, it is alarming that the Malaysian *Internal Security Act*, which uses terrorism as a pretense to arrest, torture and indefinitely detain political opponents without trial, is now being presented by the Malaysian government as a model of anti-terrorist legislation. In Peru, there are significant concerns that recent reforms to the anti-terrorist *Decree No. 25475* will be rolled back. In India, the *Prevention of Terrorist Ordinance (POTO)*, which was previously struck down as unconstitutional by the Indian Supreme Court, was reinstated after September 11<sup>th</sup>.

Many concerns were voiced about the secret military tribunals that have been authorized in the United States by the President. In addition, there were concerns that the Prisoners of War from Afghanistan are not being treated in accordance with the Geneva Conventions and international humanitarian/human rights norms.

Canadian NGOs also voiced concerns about the recent anti-terrorist legislation in Canada. The Canadian legislation is far-reaching, with several new bills (C-36, C-35, C-11 and C-55) and amendments to the *Criminal Code*, the *Official Secrets Act*, the *Evidence Act*, and the *Proceeds of Crime (Money-Laundering) Act*. The specific concerns with the Canadian legislation are symptomatic of problems with anti-terrorist laws throughout the world. Some of these concerns include:

- the lack of clarity to help differentiate terrorist acts from legitimate dissent (e.g. workers' strikes, aboriginal or environmental protests could be classified unjustly as terrorism);
- immigration laws and procedures could lead to deportation of persons who may be subject to torture upon return to the country of origin;
- an organization in Canada can be designated as colluding with terrorists abroad even though the organization has no knowledge of the alleged terrorists or their acts;
- the public may be prevented from accessing information and judicial proceedings concerning terrorists;
- increased powers of preventive arrest;
- threats to the right against self-incrimination;
- extensive powers of the authorities to impinge on privacy rights of citizens (e.g. wiretaps);
- failure to integrate a comprehensive 'sunset clause' into the legislation to ensure review of such legislation and a timeframe for limiting extensive State powers/discretion;
- insufficient civilian and Parliamentary oversight over the implementation of the anti-terrorist measures;
- the rise of ethnic-profiling by law enforcement and immigration forces.

Participants readily acknowledged that some aspects of national security laws and some increased security measures could be justified, provided that they actually serve to increase human security. Nonetheless, there is a need for vigilance so as not to become embroiled in a permanent 'war against terrorism,' an endless state of emergency justifying infringements on rights and freedoms, particularly those of the most vulnerable in society such as refugees and recent immigrants.

The strength of the rule of law is tested in challenging times such as these. Fundamental human rights and freedoms have been enshrined in national constitutions and international covenants so that they will not be eroded or discarded at the first whiff of crisis. There are serious concerns that the rule *of* law—and its integral principles such as equality before law; consistency in application of law; transparency of law—is being transformed into a repressive rule *by* law as a consequence of the ‘war on terrorism.’

Another important message was that there should be no conflict between human rights and security. The dichotomy between human rights and security is false. If we focus on the concept of human security—where security is promoted as a means to protect the human rights of citizens rather than an end in itself—then it is natural that human rights should inform our national security laws and anti-terrorist measures. When dealing with security, there is a delicate balance between a State’s responsibility to protect the rights and freedoms of its citizens, on the one hand, and the increase of repressive power of the State on the other. The fear is that this balance is being redrawn in a manner that endangers rights and freedoms.

Finally, there were concerns about the economic costs of these security measures. When vast portions of nations’ budgets are being redirected towards the military and border security, there is less money available for democratic development and human rights initiatives in domestic and foreign aid budgets.

### ***5. The Role of the Media and Public Education***

Since the international community has fashioned its response to September 11<sup>th</sup> as a ‘war on terrorism,’ we must recall the old adage that “the first casualty of war is the truth.” Participants warned that phobias are being created around the world through imbalanced and sensational media presentations. This is particularly problematic in repressive regimes, where the media is directly controlled by the government, but it is also a concern in democratic countries where media control is increasingly concentrated in a few private hands.

Often the consequences—and we must question whether these are unintended or intended consequences—of the images projected in the media are to create a sensational, chilling effect which erodes the solidarity between North and South, East and West. We must be extremely wary of the increasingly negative portrayal of Islam in the media. Indeed, we must resist the tendency to paint the entire Arab world and the Muslim religion with the same prejudicial brush and to judge millions of people as terrorists. There is a handful of people of all races and creeds whose words, policies or actions promote hatred and violence. We must question how racist conceptions affect popular support for war-mongering, regressive laws and racist policies as well as their impact on minority groups and newly arrived immigrants.

Furthermore, imbalanced media coverage encourages selectivity in our thinking about human rights. In conflict situations—such as the Israeli/Palestinian conflict or the Indian/Pakistani stand-off over Kashmir—there is a tendency to acknowledge that only one side, typically one’s military allies and trading partners, is suffering from human rights abuses, without concern for ordinary civilians caught in the crossfire on both sides.

Therefore, as we seek to foster long-term peace and security, we must find channels for accurate, balanced information that can lead to productive cross-cultural dialogue and cooperation. There is a desperate need for civic and human rights education around the world to counter the prejudices and bigotry that are perpetuated by the media and to educate citizens, particularly youth, in the value of respect for difference and the need to manage pluralism and diversity and to promote human rights, peaceful co-existence and tolerance.

### ***6. The Relative Experiences of North and South***

The participants of the Think Tank represented a wide range of experiences and perspectives from all corners of the globe. In the various presentations and comments of the day, a degree of relativity between North and South and East and West was evident. In particular, we were reminded that the negative human rights impact of trade and investment liberalization policies cause social tension and economic hardships of large numbers of people in the South. Also, there were significant concerns about the new alliances between governments of industrialized countries and repressive regimes in developing countries in the 'war against terrorism' which risk having dramatic effects on fledgling human rights and democratic movements. Also of concern is the tendency of some governments who claim to have strong democratic traditions to adopt drastic anti-terrorist measures similar to those of repressive regimes. Finally, the overwhelming influence of the United States and their hegemonic policies pursued in the interest of controlling oil and gas resources all over the world is a serious concern.

Although the Think Tank participants approached the phenomenon of terrorism from diverse perspectives, their voices all agreed that human rights and democratic values must guide our responses to security. There were many common concerns about the dangers of national security legislation and the tendency of legislators to ignore international law.

While we must be mindful of the relativity of our experiences, especially as we seek to build lasting coalitions for global peace and human security, we should nonetheless recall our shared discourse of human rights, democratic development and international justice. These universal values can provide a common vision for a more equitable and hopeful world.

### ***7. US Unilateralism and the Role of the United Nations***

One of the key concerns raised at the Think Tank is the tension between the work of the United Nations and the increasing unilateralism of the United States.

The UN is a logical place to address the phenomenon of terrorism in a productive manner. It has a long history of dealing with terrorism prior to September 11<sup>th</sup>. For instance, there are 19 international treaties on terrorism and numerous Security Council, General Assembly and UN Commission on Human Rights resolutions that touch upon various aspects of terrorism. Moreover, since September 11<sup>th</sup>, there have been a number of important Security Council resolutions on terrorism, in particular Resolution 1373,

which calls upon all member States to implement certain counter-terrorist measures; there are renewed attempts in the Sixth Committee of the General Assembly to draft a comprehensive treaty on terrorism; and a Counter-Terrorism Committee (the CTC) has been created within the Security Council. While there are some important human rights concerns about these UN measures, such as the lack of human rights expertise in the CTC, at least the work of the UN is multilateral, fairly transparent and carried out within a framework of international law.

However, the US administration has become increasingly unilateral in its international relations since September 11<sup>th</sup>. Examples of US unilateralism include: the initiation of a military campaign against Al-Qaeda and the Taliban regime without prior authorization from the Security Council; repeated threats to launch military and covert operations against Iraq; active attempts to undermine the integrity of the Rome Statute on the International Criminal Court; disregard of the Geneva Conventions with respect to the treatment of Prisoners of War from Afghanistan; and attempts to make demands on governments to change their domestic policies (e.g. Canadian immigration policy).

Given the immense economic and military strength of the US and its determination to pursue a wide-ranging 'war on terrorism,' there is a sense that the multilateral work of the UN and the diplomacy of moderate, like-minded States will have less impact on international relations. Not only does this heightened unilateralism have serious implications for long-term peace and security, it also has a devastating effect on the development of international rule of law and on the legitimacy and effectiveness of the UN.

There was agreement that the work of the UN must not be abandoned despite its flaws and weaknesses. Not only does the UN provide a locus for multilateralism and the development of international law, it also can be used as a principled counterweight against the excesses of US foreign policy.

### ***8. The Impact of Anti-terrorism on Migration***

Another key challenge that received significant attention during the Think Tank was the impact of anti-terrorist measures on migration. In Security Council Resolution 1373, the member States of the United Nations were called upon to take measures to ensure that no asylum seeker be a terrorist. While it was acknowledged that States must be increasingly vigilant about terrorists crossing borders, it is important that anti-terrorist measures do not become an excuse for racist immigration policies based on stereotypes.

A number of participants reminded us of States' obligations to refugees and asylum-seekers under the *Convention on the Status of Refugees*. Of particular concern is the obligation of *non-refoulement*: States are forbidden to return asylum-seekers to countries where they may face serious violations of their human rights such as torture or execution. However, such international obligations may very well be ignored in instances where an asylum-seeker comes from a race or region associated with terrorism. In the present atmosphere of global fear, it is quite possible that immigration officials will err on the side of 'security' even if it entails a violation of international human rights. Credible human rights organizations have documented a dramatic rise in ethnic profiling

in immigration policies and at border-controls since September 11<sup>th</sup>. This raises important concerns about racism and the right of non-discrimination based on race, colour, religion, gender and creed.

Participants noted that the fair treatment of refugees has important democratic significance. Recent immigrants—especially refugees and asylum-seekers—are among the most vulnerable members of our society; the manner in which these ‘not-quite-citizens’ are treated is a litmus test of the equality of our laws, the strength of our democratic values and the extent of our compassion.

### ***9. Establishing Mechanisms for Justice and Accountability***

One of the recurring themes of the Think Tank was the importance of pursuing international justice and accountability of terrorists rather than pursuing policies of military retribution. In this regard, it was noted that the events of September 11<sup>th</sup> could be defined as serious domestic and international crimes such as hijacking, murder and crimes against humanity. It was also noted that there are precedents set through the work and judgments of the *ad hoc* International Criminal Tribunals for the former-Yugoslavia and Rwanda, as well as the Lockerbie tribunal where international justice has been the response to these events.

The participants warmly welcomed the establishment of the International Criminal Court. They expressed the view that the Court offers a beacon of hope for justice through prosecution of individuals responsible for heinous crimes and reparation for the victims. They particularly welcomed the inclusion of gender-related crimes in the *Rome Statute on the International Criminal Court*. Although the current statute of the ICC provides no subject-matter jurisdiction over terrorism *per se*, it is possible that a serious terrorist attack could come under the jurisdiction of the court as a crime against humanity. However, despite the promise of this new institution of international justice, there are already serious threats to its future effectiveness as the US administration seeks to undermine it by attempting to negotiate bilateral impunity agreements with individual countries to exempt US military and civilian personnel from the jurisdiction of the Court.

Another message that was heard during the Think Tank was that we must think broadly about justice. International justice is not only about accountability and reparation through tribunals and courts, it also involves a long-term quest for cross-cultural reconciliation. Justice encompasses social justice, which calls for the eradication of deep social inequalities such as poverty, economic, social and cultural underdevelopment, ignorance, lack of political pluralism and democracy.

## RECOMMENDATIONS

Responding to threats of terrorism will remain a major focus of international affairs over the coming years. It is essential that we insist in our policy dialogue with world leaders and in our public education work that human rights and democracy are not expendable whatever the circumstances. In combating terrorism, it is imperative that the full range of human rights enunciated in the *Universal Declaration of Human Rights*, and codified in international human rights covenants and in international humanitarian law be respected. Our attention should in particular emphasize the non-derogable rights that must be protected at all times. Participants proposed the following framework of action.

### *1. The Assertion of Political Leadership to Adopt a Comprehensive Approach*

In the present environment, when human rights and democracy are threatened by both terrorism and by the United States led 'war on terrorism,' it is important that we develop a comprehensive approach to thinking about and working towards global peace and security to enable us to challenge militaristic and racist attitudes, policies and laws.

It is essential that we seek not only to fight, but to prevent terrorism. One way of working for prevention is to examine the environments which give birth to future terrorists and to seek to improve them. The risk of terrorism will decrease when there is true democratic development, when dissent and antagonism are constructively engaged in the non-violence of democratic politics. This requires the right to equality and justice in political outcomes at the national, regional and international levels, with concrete improvements in the health, education, prosperity and hope of all people.

Another angle in constructing a comprehensive approach is to assess the phenomenon of terrorism through a multi-faceted lens. The legal aspect of the question of terrorism is extremely important in order to monitor and challenge policies such as national security laws enacted in response to UN Security Council Resolution 1373 that restrict rights and freedoms of citizens.

The social and political conditions that breed terrorism must also be given adequate attention and addressed with urgency and seriousness. Emphasis must be given to concrete action strategies that will assist in mobilizing the political will of States, in particular the wealthiest nations, to take effective action to eradicate poverty, and provide for the right to development, including health and education in developing countries. This requires that adequate resources be allocated by States in their domestic and foreign aid budgets to promote social and economic development rather than engagement in wars and purchases or stockpiling of huge amounts of military arsenal.

### *2. The Commitment to Work Within a United Nations Framework*

It is important to participate in the drafting of a comprehensive and internationally recognized Convention on Terrorism. This work will contribute to overcoming the current ambiguity and lack of coherence in policies of States with regard to who is a terrorist and how the phenomenon of terrorism should be effectively addressed. A clear

definition of ‘terrorism’ must respect the right of self-determination and not threaten in any way the rights of legitimate civil society actors, including human rights defenders.

Additionally, it is important to monitor the work of the UN Security Council, particularly Resolution 1373 that outlines key counter-terrorism measures binding upon States, and to follow closely the work of the Counter-Terrorism Committee. The fact that States are obliged to report periodically on their counter-terrorist measures to the Counter-Terrorism Committee provides an opportunity for transparency. NGOs may use this as a means of monitoring State performance.

### ***3. Systematic Vigilance to Ensure Balance Between Law and Security***

The international human rights framework already accommodates the concerns of national security. In principle, there is no inconsistency between human security/human rights and national security. Therefore, the principles of human security and the rule of law should guide the actions of decision makers. Effort needs to be made to overcome the current practices and policies that reveal the lack of adherence of States to international norms and standards. Some of the ways that international human rights and humanitarian law should guide legislators in the context of the ‘war on terrorism’ are:

- Article 4 of the International Covenant on Civil and Political Rights (ICCPR) provides that certain human rights are non-derogable under any circumstances. It also provides a very specific and constrained regime for temporarily derogating from some human rights in a state of emergency;
- the 1951 *Convention on the Status of Refugees* provides important rights for asylum-seekers, including the right of *non-refoulement*;
- the four Geneva Conventions of 1949 and their protocols provide specific guidelines for the treatment of Prisoners of War.

The quest for a balanced approach between anti-terrorism legislation and the protection of public freedoms should take into account:

- the need to promote substantive laws at the national level that respect human rights, e.g. protection against torture and inhuman treatment;
- the need to promote procedural safeguards for those who are arrested under national security related laws, including access to lawyers, expeditious access to the courts and independence of the judiciary;
- the need to address the concerns of special groups such as women, children, refugees/asylum-seekers, minorities and indigenous peoples;
- the need to ensure that there are checks and balances against abuses of power and that State power is not untrammelled;
- the need to abide by international human rights standards, particularly to ensure that those national provisions attempting to derogate from human rights (clawbacks) do not derogate from non-derogable rights such as the right to life and freedom from torture and that derogations are reasonable, proportional to the threats and in conformity with the fundamental interests of society and democracy;

- the need to promote the view that human rights/human security and national security are compatible and that they are both accommodated in international law and the international human rights framework.

#### ***4. The Promotion of Justice and Accountability***

We must counter discrimination and promote mutual respect between different cultures. Where human rights violations take place on this front, one entry point for accountability is through the judicial system at the national level, and there is thus a need to promote access to a justice system that is independent, fair and effective. National Reconciliation and Truth Commissions can be established in countries where massive and systematic human rights violations occurred as a means of rendering transparent the facts at stake and emphasizing reconciliation, without judicial sanction and revenge.

It is imperative to redouble our effort to support a strong and effective International Criminal Court by promoting universal ratification of the *Rome Statute on the International Criminal Court* and assisting States who are interested and committed to introduce domestic legislation which is in compliance with it. At the international level, this newly created International Criminal Court will be effective in countering impunity and establishing accountability for individuals involved in war crimes, crimes against humanity and genocide only if States cooperate with it and withstand attempts by the US to diminish its integrity. While the term ‘terrorism’ does not appear in the 1998 *Rome Statute of the International Criminal Court*, terrorist acts may fall under some of the offences noted, such as crimes against humanity. The success of the Court requires that States provide it with the necessary financial and political support to function independently and impartially.

#### ***5. Building a Global Coalition for Human Rights and Democracy***

As States are engaged in the ‘war on terror,’ it is crucial that civil society organizations demonstrate leadership and cooperate together to build a global coalition for human rights and democracy. This initiative should be as broad-based as possible and include concerned politicians, community organizations, independent media organizations, women’s groups, trade unions, churches, aboriginal peoples, and professional associations. It should also be truly international with a democratic leadership that represents the different regions and cuts across the barriers between North and South, East and West. Insofar as possible, the coalition should seek to convey a concerted and balanced message on global peace, human security and respect for international law. Given the alarming tendency towards unilateralism and militarism in the US administration, international civil society should make special efforts to engage and support American civil society organizations in their efforts to mobilize public opinion for multilateral and peaceful policy options.

The key focuses of the global coalition should be:

##### ***a. The Need for Public Education***

While anti-terrorism measures based upon recognized international legal standards are important, there is a need to nurture a sense of empathy for marginalized



groups, non-discrimination and respect for human rights and democracy through a broad socialization and education process from a young age. It is important to promote respect for pluralism in order to overcome the demonization of some religions and cultures and to 'demystify' prejudices. Initiatives that provide a space for reflection and avenues for cooperation among youth of different ethnic communities to work for peace, justice and democracy must be encouraged.

*b. Monitoring the Implementation of Anti-Terrorist Measures*

It is essential to work towards the development of an effective implementation of human rights and monitoring processes and mechanisms at both the national and international levels to ensure transparency in the adoption and implementation of laws, policies and practices that have an impact on human rights and democracy in the context of terrorism and counter-terrorism. The participation of NGOs and civil society in monitoring the actions of States and non-state actors on terrorism is essential to ensure checks and balances in countering discrepancies in principle and practice. At an international level, it is important to monitor the UN Security Council's Counter-Terrorism Committee. This participation needs to be supported with political, technical and financial resources.

The efforts of education and monitoring will provide civil society organizations with the information and analysis needed to actively work to put human rights and democratic development on the global agenda.

Montreal, Canada  
September 3, 2002

**ANNEXE I****Promoting Human Rights and Democracy in the Context of Terrorism  
LIST OF PARTICIPANTS**

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**BLAIKIE, Bill**, M.P.  
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**BOUCHARD, Thérèse**, Canadian Centre for International Studies and Cooperation  
**BROADBENT, Edward**, Political Scientist, former President of Rights & Democracy  
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**BUCK, Kerry**, Canadian Human Rights Commission  
**CALLAHAN, Kevin**, Management Coordinator, Rights & Democracy  
**CAMPBELL, Alan**, Political Section, High Commission for the United Kingdom of Great Britain and Northern Ireland  
**CLOUTIER, Marie-France**, Comptroller, Rights & Democracy  
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**FILSON, Gerald**, Baha'i Community of Canada  
**FITZGERALD, Alison**, International Legal Resources Centre  
**FOSTER, John**, North-South Institute  
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**GLADKIKH, Olga**, Coady International Institute  
**GREGSON, Susan**, Director, Human Rights, Humanitarian Affairs and International Women's Equality (AGH) Division, DFAIT  
**GUNN, Joe**, Canadian Conference of Catholic Bishops  
**HARVEY, M. Elaine**, Unitarian Universalist Association  
**HECHT, Mark Erik**, Human Rights Internet  
**HILL, Gina**, Human Rights Research and Education Centre, University of Ottawa  
**JEELANI, Mushtaq A.**, Kashmiri-Canadian Council  
**KANE, Molly**, Executive Director, Inter Pares  
**KELLY, Kristie**, Human Rights Internet  
**KERTZMAN, Her Excellency Fanny**, Ambassador, Embassy of Republic of Colombia  
**KLEEBANK, Susan**, Counsellor, Embassy of the Federative Republic of Brazil  
**KUMAR, Corinne**, El Taller  
**LAM, Dr. Thu Van**, Vietnamese Canadian Federation  
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**MATAS, David**, member, Board of Directors, Rights & Democracy  
**McDONOUGH, Alexa**, Party Leader, New Democratic Party  
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**VALOIS, Isabelle**, South Asia Partnership Canada  
**VAN BILJOUW, Augie**, Deputy Director of Communications, Rights & Democracy  
**VERMA, His Excellency Rajanikanta**, High Commissioner, High Commission for the Republic of India  
**VERNON, Eric**, Canadian Jewish Congress  
**WESCHLER, Joanna**, UN Representative, Human Rights Watch

## ANNEXE II

### Promoting Human Rights and Democracy in the Context of Terrorism

#### PROGRAMME

- 9 h 00 – 9 h 15** Welcome and Introductions  
*\*Kathleen Mahoney, Chair, Board of Directors, Rights & Democracy*
- 9 h 15 – 9 h 30** Overview of the theme, objectives and results expected  
*\*Iris Almeida, Director of Programmes, Rights & Democracy*
- 9 h 30 – 10 h 45** **Human Rights, Democracy & Terrorism**
- Moderator:  
*\*Warren Allmand, past President of Rights & Democracy*
- National Security Legislation in the Context of Globalization - How to Defend Civil Liberties and Protect Human Rights Defenders?**  
*\*Sivarasa Rasiah, Board Member of SUARAM; and Legal Counsel, Tenaganita – Women’s Worker, Malaysia*
- Citizen Insecurity and Impunity in the Americas – How to Build Democracy Under the Rule of Law?**  
*\*Sofia Macher, Commissioner – Truth Commission, Peru; and Board of Directors, Rights & Democracy*
- Authoritarian Regimes: New Allies of the Coalition Against Terrorism – What Impacts do War and Militarisation Have on the Struggles for Human Rights, Peace and Democracy?**  
*\*Ravi Nair, South Asia Human Rights Documentation Centre, India*
- Commentary on the presentations:  
*\*Rachad Antonius, University of Montreal, Canada-Egypt*  
*\*Willy Mutunga, Kenya Human Rights Commission, Kenya; and Board of Directors, Rights & Democracy*
- 10 h 45 – 11 h 00** Health Break
- 11 h 00 – 12 h 00** Plenary discussion
- 12 h 00 – 13 h 00** **Security Legislation and Practices: Canadian NGO Perspectives**
- Moderator:  
*\*David Matas, Board of Directors, Rights & Democracy*
- \*André Paradis, Ligue des droits et libertés*  
*\*Alex Neve, Amnesty International – Canadian Section*

- 13 h 00 – 14 h 00** Lunch (on-site)
- 14 h 00 –14 h 30** **The United Nations System and Countering Terrorism – Does it Provide a Framework for Addressing the New Challenges to Human Rights?**  
*\*Joanna Weschler, Human Rights Watch, USA*
- 14 h 30 –14 h 45** **Strengthening the Political Discourse and Action for Human Rights and Democracy**  
*\*Corinne Kumar, El Taller International, and Asian Women’s Human Rights Council*
- 14 h 45 –16 h 00** Plenary Discussion:  
**Strategies to ensure accountability of State and non-state actors for human rights violations and heinous crimes**
- 16 h 00 –16 h 15** Health Break
- 16 h 15 –16 h 45** A summary of the key issues and strategies for potential action  
*\*Vittit Muntarbhorn, Chulalongkorn University, Thailand*
- 16 h 45 –17 h 00** Concluding Comments and Note of thanks  
*\*Kathleen Mahoney*

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## ANNEXE III

# Promoting Human Rights and Democracy in the Context of Terrorism and the Security State

Prepared for  
**Rights & Democracy's**  
**Think Tank**  
**May 30, 2002**

By  
**Iris Almeida**  
**Lloyd Lipsett**

Rights & Democracy (the International Centre for Human Rights and Democratic Development) is a Canadian institution with an international mandate. It is an independent organization, which promotes, advocates and defends the democratic and human rights set out in the *International Bill of Human Rights*. In cooperation with civil society and governments in Canada and abroad, Rights & Democracy initiates and supports programmes to strengthen laws and democratic institutions, principally in developing countries. Rights & Democracy focuses its work on four thematic priorities: Democratic Development, Women's Rights, the Rights of Indigenous Peoples and Globalization and Human Rights; and two special operations: International Human Rights Advocacy and Urgent Action & Important Opportunities.

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**PROMOTING HUMAN RIGHTS AND DEMOCRACY IN THE  
CONTEXT OF TERRORISM AND THE SECURITY STATE**

## Introduction

The core of the global human rights agenda is to ensure the dignity and worth of the human person whenever and wherever human rights are trampled by State or non-state actors. One of the most pressing concerns for Non-Governmental Organizations [hereinafter “NGOs”] in current international relations is to promote a concept of “security” that is measured with reference to the security of human beings and not just the security of States. Above all, human security demands a respect for the most basic and fundamental human rights—that civilians should never be deliberately harmed, tortured or killed—regardless of political ends, military objectives or ideological causes. We are painfully aware that in many countries conflicts and wars continue to take innumerable innocent lives around the world. In many cases, we know the perpetrators of egregious crimes are still at large. The victims who are fortunate enough to be alive are left to mourn their dead and rebuild their communities with scarce or non-existent resources. Given the pervasiveness of human rights violations, it often appears that international attention to the plight of the victims is inadequate and humanitarian intervention on their behalf is inconsistent. The rapid increase in the numbers of socially excluded and economically marginalized people in different regions of the world contributes to political instability, civil war and terrorism. The eradication of poverty deserves serious attention and coherent action plans by States, both in the developing and the industrialised world.

Ever since the horrible terrorist attacks in New York City on September 11<sup>th</sup>, 2001, the global problems of violence and the absence of security — that so often appear to be a distant phenomenon — have suddenly become pressing concerns in international relations between States. The horrifying images of planes swooping out of the sky, buildings crumbling to the ground and thousands of civilians being killed amidst the debris not only have caused widespread panic and fear, but have also shattered much preoccupation and indifference. Clearly, the September 11<sup>th</sup> terrorist attacks must be unequivocally condemned and the culprits brought to justice. Overnight, the United States and its allies have mobilized the international community into a full-scale “war on terrorism”. Nonetheless, we must question whether the international response to September 11<sup>th</sup> — conceived as a “war on terrorism” — will provide a foundation for long-term global peace and human security.

The old paradigms of international peace and security, of international human rights, of democratic values and practices have been severely challenged by the perverted logic of terrorism and the inflammatory rhetoric of anti-terrorism. However, these times of crisis are also times of opportunity. Questions in the mind of many citizens during these troubled times are:

- Can civil society organizations, working among themselves and together with States, reinforce national and international commitments to human rights and strengthen the global architecture of peace, development and democracy?
- Can our governments combat terrorism over the long-term without giving the struggle for human rights and democratic development a far more central role in their policies and practices?

- How can representatives of civil society enhance the democratic values of respect, tolerance and debate, strengthen diversity and insist upon accountability from governments?
- How can civil society organizations in the North continue to support their partners in those countries in the South, where there is no distinction made between freedom fighters, development activists, human rights defenders and terrorists?

This paper will focus on some of the key issues related to the promotion of human rights and democracy in the context of terrorism and the security state. First, we will explore the conceptual link between human rights and terrorism and outline the historical attempts to deal with terrorism at the United Nations. Then we will examine some of the issues raised by the military response to the heinous acts of September 11<sup>th</sup> and discuss the international criminal law options for bringing the perpetrators to justice. We will also raise some concerns about the proliferation of national security laws. Lastly, we will emphasize why human rights and democracy should occupy a central place on the national and international policy agenda.

We hope that the ideas that follow will be discussed and refined in the upcoming months as the military actions in Afghanistan are terminated, the perpetrators of the heinous acts on the US are captured and convicted and as national and international security legislation and measures are implemented.

### **Is There A Conceptual Link Between Terrorism And Human Rights?**

When we make the link between terrorism and human rights, we focus primarily on the human rights concerns associated with States' responses to terrorist activities.<sup>3</sup> However, we must not ignore the devastating impact that acts of terrorism have on human rights as well as the role played by non-state actors. As stated by Ms. Kalliopi K. Koufa, the UN Special Rapporteur on Terrorism, in her progress report on "Human Rights and Terrorism", "there is probably not a single human right exempt from the impact of terrorism".<sup>4</sup>

In her preliminary report, the Special Rapporteur divides the human rights that are threatened by terrorism in the following three conceptual clusters:

- (i) rights to life, liberty and dignity;<sup>5</sup>

<sup>3</sup> This is a logical focus given that human rights promotion and protection is traditionally conceived as an obligation of States rather than non-State actors.

<sup>4</sup> Kalliopi K. Koufa, "Human Rights and Terrorism: Progress Report", June 27, 2001, p. 28. The Special Rapporteur specifically mentions the following rights in her progress report: the right to life, the right to freedom from torture and arbitrary detention, women's rights, children's rights, health, subsistence, democratic order, peace and security, the right to non-discrimination, and any number of other protected human rights norms.

<sup>5</sup> Kalliopi K. Koufa, "Human Rights and Terrorism: Preliminary Report", June 7, 1999, p. 8.

"Thus, it is clear that there is a close link between terrorism and the enjoyment of human rights and freedoms. This link is seen directly when groups or individuals resort to acts of terrorism and, in so doing, kill or injure individuals, deprive them of their freedom, destroy their property, or use threats and intimidation to sow fear. The link can be seen indirectly when a State's response to terrorism leads to the adoption of policies and



- (ii) rights relating to a democratic society;<sup>6</sup> and
- (iii) rights relating to social peace and public order.<sup>7</sup>

The conceptual linkage between terrorism and human rights has been an important part of the international discussion about terrorism at the United Nations ever since the 1993 Vienna World Conference on Human Rights. Beginning with the Vienna Declaration and Programme of Action,<sup>8</sup> the relationship between terrorism and human rights has been repeated and refined in successive resolutions of the UN General Assembly, the UN Commission on Human Rights [hereinafter, the “Commission”] and the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities<sup>9</sup> [hereinafter, the “Sub-Commission”].

For example, the Commission’s resolution 2001/37 of 23 April 2001 is one of the most comprehensive resolutions on “Human Rights and Terrorism” and provides the reader with a sense of how the link between terrorism and human rights is articulated in

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practices that exceed the bounds of what is permissible under international law and result in human rights violations, such as extra-judicial executions, torture, unfair trials and other acts of unlawful repression, that violate the human rights not only of the terrorists but of innocent civilians.”

<sup>6</sup> *Ibid* at p. 10.

“Terrorists threaten the very foundation of civilized life. By seeking to achieve their aims through violence, they reveal their unwillingness to subject their views to the test of a fair political process. ... In fact, terrorism can threaten democratic society in various ways. By using violence and fear as a political tool, terrorism can undermine the legitimate authority of Governments; influence ideological and political factors in order to impose its own model of society; impede citizens in their use of their rights to have a say in the decisions that affect their lives; subvert pluralism and democratic institutions through the creation of negative conditions for the functioning of the constitution; halt the democratic process and democratization; undermine free political, economic social and cultural development; impair the quality of democratic society for all, even when it does not actually threaten its survival; lead to more terrorism and militancy.”

<sup>7</sup> *Supra* note 3 at p. 11.

“Indeed, killing innocent people, destroying property and fostering an atmosphere of alarm and terror amount not merely to a violation of the rights of the direct victims but to a solicitation of further serious breaches of human rights. In response to the terrorists’ despicable conduct and the threats posed to society, the authorities of the State which is responsible for bringing the terrorist violence to an end are entitled to adopt counter-terrorist measures and may not be constrained by the normal limits of official measures for the prevention of ordinary crimes. As a consequence, there is a real danger that the State will overreact to the threat of terrorism and slide towards repression and violation of the human rights not only of the terrorists but of the rest of society whose rights and liberties might be diminished in the course of discovering, apprehending and convicting the terrorists. The damaging impact and effects of terrorism on social peace and public order may, in the long run, threaten the very existence of the State.”

<sup>8</sup> *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23 (12 July 1993).

<sup>9</sup> See General Assembly resolutions 48/122 of 20 December 1993, 49/185 of 22 December 1994, 50/186 of December 1995 and 52/133 of 12 December 1997, 54/109 of 9 December 1999, 54/164 of 17 December 1999 and 56/164 of February 24, 2001.

See also: Commission resolutions 1994/46 of 4 March 1994; 1995/43 of 3 March 1995; 1996/47 of 19 April 1996; 1997/42 of 11 April 1997; 1998/47 of 17 April 1998; 1999/27 of 26 April 1999 and 2001/37 of 23 April 2001.

See also: Sub-Commission resolutions 1994/18 of 25 August 1994; 1996/20 of 29 August 1996; 1997/39 of 28 August 1997; 1998/29 of 26 August 1998.

the UN system. In particular, Commission resolution 2001/37 condemns all acts, methods and practices of terrorism:

...as acts aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and the rule of law and having adverse consequences for the economic and social development of the State.

In the aftermath of September 11<sup>th</sup>, we have become painfully aware of how terrorism can affect rights, freedoms, democracy, civil society, rule of law, economic and social development. People are killed, tortured and arbitrarily detained. Civil liberties are under siege. Dissidents are labelled as ‘terrorists’ and silenced. Human rights organizations are harassed by police and intelligence agencies. Emergency measures are implemented at the detriment of respect for the due process of law. New budgets are prepared allocating enormous amounts of tax dollars to security measures while the downsizing of social programmes continues. Alarm bells are ringing.

Moreover, terrorist acts have an devastating impact on trade. As we have seen after the 11<sup>th</sup> of September, the stock markets have plummeted, many companies (in particular in the airline and tourism industry) have gone bankrupt and thousands of people have lost their jobs. In such a climate, the spirit of global equality and solidarity has been eroded.

As a single terrorist incident can have such wide-ranging direct and indirect effects, all terrorism must be unequivocally condemned without regard to its motivation. Yet, as we condemn terrorism because of its effects on human rights, it follows that we must also ensure that our responses to terrorism do not result in further violations of human rights. It is of prime importance that we contextualize our discussion of terrorism within a human rights discourse to ensure that our condemnation and response to terrorism ultimately serves to promote and protect human rights and democracy.

### **How Is Terrorism Being Dealt With By The United Nations?**

While the terrorist attacks of September 11<sup>th</sup> were unprecedented in terms of their magnitude and devastation, terrorism is an issue that has confronted the international community on many prior occasions. Prior to World War II, the League of Nations adopted a Convention for the Prevention and Punishment of Terrorism on 16 November 1937. Although this Convention was not revived by the United Nations after World War II, terrorism has been the subject of UN attention for the purposes of the codification and progressive development of international law since the early 1950s and for the maintenance of international peace and security since the 1970s.

However, the international efforts to combat terrorism have not yet yielded a comprehensive international covenant or approach to terrorism. Rather, there has been a patchwork of 19 international and regional covenants that address individual crimes

associated with terrorism,<sup>10</sup> two General Assembly declarations on measures to eliminate international terrorism, and a significant body of resolutions by the Security Council, the General Assembly, the Commission and the Sub-Commission. Some of the issues that have thwarted previous attempts to negotiate a comprehensive international covenant on terrorism are: (i) the difficulty in finding an acceptable definition of terrorism;<sup>11</sup> and (ii) questions about the accountability of non-state actors in terms of international human rights law.

Nevertheless, since September 11<sup>th</sup>, efforts to prepare a draft comprehensive treaty on terrorism have been redoubled in the *Ad Hoc* Committee on Terrorism.<sup>12</sup> The latest report from the *Ad Hoc* Committee to the General Assembly's Sixth Committee (Legal) give the impression that negotiations are getting closer to resolving the disagreements about some of the provisions of the draft treaty. Negotiations resumed in the *Ad Hoc* Committee during the week of January 28, 2002. There have been warnings, however, that portions of the treaty as now drafted undermine refugee protections, freedom of expression and the laws of war; therefore, it is important that human rights advocates continue to monitor and offer comments on the treaty drafting process.<sup>13</sup>

<sup>10</sup> See also the Secretary-General's report to the General Assembly "Measures to eliminate international terrorism" (A/55/179 of 26 July 2000 and A/55/179/Add.1 of 9 October 2000), which includes a list of the existing 19 international conventions (global and regional) pertaining to international terrorism, and progress in the preparation of a compendium on national laws and regulations relating to the prevention and suppression of international terrorism.

See also UN document A/C.6/56/160.

<sup>11</sup> Some of the issues that must be addressed in a definition of terrorism are: the distinction between terrorism and armed conflict (international or internal); the distinction between State and non-State actors; the distinction between terrorism and the legitimate struggle of occupied people exercising their right of self-determination.

<sup>12</sup> See UN document A/C.6/56/L.9.

<sup>13</sup> Human Rights Watch, "Human Rights Watch Commentary on the Draft Comprehensive Convention on Terrorism" (<http://www.hrw.org/press/2001/10/terrorcom1017.htm>).

Of particular concern to Human Rights Watch are Articles 7, 14 and 15 of the draft text. They offer the following four recommendations:

- **Recommendation 1:** Conformity with International Humanitarian law and Human Rights Law. Nothing in the Comprehensive Convention should be construed as impairing, contradicting, restricting or derogating from the provisions of the Universal Declaration of Human rights, the International Covenants on Human Rights and other international instruments.
- **Recommendation 2:** Article 15 and the Principle of Non-Refoulement. Article 15 of the Comprehensive Convention should make specific reference to the binding principle of non-refoulement as stipulated under the Refugee Convention, international customary law, the Convention against Torture, and the European Convention on Human Rights.
- **Recommendation 3:** Article 7 and Exclusion from International Refugee Protection. There is no need to amend or re-interpret existing provisions under international refugee law to exclude certain individuals from refugee protection. At the very minimum, Article 7 should stipulate that all measures must be adopted in accordance with relevant provisions of international refugee and human rights law.
- **Recommendation 4:** Article 14 and the Expulsion of Refugees. Article 14 should contain language to ensure that any measures regarding extradition are fully in compliance with international refugee protection standards, in particular non-refoulement obligations.

See also: "Human Rights Watch Commentary 2 on the Draft Comprehensive Convention on Terrorism, October 22, 2001 (<http://www.hrw.org/press/2001/10/terrorcom1022.htm>): In its second commentary, Human Rights Watch offers an additional two recommendations:

- **Recommendation 1:** Preserve principles of international humanitarian and human rights law in the definition of terrorism. The wording of Article 2(1)(a) and (b) and Article 18 should not allow

It is also worth noting that two Security Council resolutions,<sup>14</sup> as well as one draft General Assembly resolution,<sup>15</sup> have been adopted since September 11<sup>th</sup>. These resolutions call upon States to adopt further measures to criminalize and prevent terrorism and to strengthen international cooperation in combating terrorism. It is in the context of these UN resolutions, as well as the intense pressure from the US, that most states will be implementing new national security legislation and measures. While this background on the treatment of terrorism in the UN system is important for understanding international law with regard to terrorism, it is somewhat academic given the fact that the US have kept the UN at arm's length throughout the conduct of their "war on terrorism".

Once again, we are confronted with the frustrating reality that the international framework of the rule of law is weakened, rather than strengthened, by unilateral actions outside the UN system. The US stands out because of its resistance to ratify many human rights international treaties such as those on children's rights, women's rights, economic, social and cultural rights, the Rome Statute for the establishment of the International Criminal Court<sup>16</sup> [hereinafter "ICC"], the First additional Protocol of 1977 to the Geneva Conventions of 1949 and to recognize and enforce human rights standards. Although most US citizens enjoy a wide range of human rights under domestic law, the US has not been willing to be subjected to any form of binding international human rights scrutiny.

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interpretations that could weaken accepted principles and practices of international humanitarian or human rights law. – danger that certain acts of violence in internal armed conflicts, which are not presently prohibited by international humanitarian law (although which may be criminal according to national law), into international crimes.

- Recommendation 2: Avoid concepts that would contract principles of international human rights law in the specification of acts of terrorism. The wording of Article 2(3) should not allow interpretations that could undermine the exercise of freedom of expression.

<sup>14</sup> Security Council Resolution 1368 (2001): recognizes the inherent right or individual or collective self-defense; calls on States to work together urgently to bring to justice the perpetrators, organizers and sponsors of the September 11 attacks; calls on the international community to redouble their efforts to prevent and suppress terrorist acts by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions; and expresses the Security Council's readiness to take all necessary steps to respond to the terrorist attacks of September 11 and to combat all forms of terrorism in accordance with its responsibilities under the Charter of the United Nations.

Security Council Resolution 1373 (2001): calls on all States to prevent and suppress the financing of terrorism; to ensure that terrorist acts are established as serious criminal offences in domestic laws and regulations; calls on States to assist one another in criminal investigations or criminal proceedings relating to the financing and support of terrorist acts; calls on States to prevent the movement of terrorists or their groups by effective border controls; to exchange of information regarding terrorist actions; calls on States to fully implement as soon as possible the relevant international conventions and protocols to combat terrorism; to take appropriate measure to ensure that asylum seekers had not planned, facilitated or participated in terrorist acts; and calls on States to enhance coordination of national, sub-regional, regional and international efforts to strengthen a global response to activities that are linked to terrorism.

<sup>15</sup> General Assembly draft resolution on "Measures to eliminate international terrorism" (A/C.6/56/L.22 and Corr.1) that: condemns all acts, methods and practices of terrorism as criminal and unjustifiable; calls upon States to adopt further measures to prevent terrorism and to strengthen international cooperation in combating terrorism; and calls upon States to enact appropriate domestic legislation to implement the provisions of the various anti-terrorist conventions and protocols, to ensure that the jurisdiction of their courts enables them to bring to trial the perpetrators of terrorist acts.

<sup>16</sup> *Rome Statute of the International Criminal Court*, UN Doc. A/CONF.183/9 (1998).

While it remains to be seen whether the US will begin to work more cooperatively within the UN system once its military operations have ceased, we are left with familiar questions about the efficacy of the UN system and the strength of international law to curb the unilateralism of powerful States.

### **How Effective are Military Responses to Terrorism?**

As we know, the US responded to the terrorist attacks of September 11<sup>th</sup> by launching military operations in Afghanistan against the Taliban regime and the prime enemy, Osama Bin Laden. Although American military actions have been supported by a broad coalition of its allies, they must nonetheless be measured against international law. Broadly speaking, there are two distinct issues that must be addressed when dealing with the use of force in international law. First, we must consider whether the initial decision to launch military action was justified (i.e. the *jus ad bellum*). Second, we must consider whether the specific military operations were conducted in a justifiable manner in accordance with international humanitarian law and international human rights law (i.e. *jus in bello*). Additionally, we must remember that military action is only permitted by the UN Charter in two exceptional cases. The first is the states' "inherent right of self-defence" under Article 51 of the UN Charter. The second is the authorization of the use of force by the Security Council, under Chapter VII, Articles 39-42.

Although it is impossible to fully discuss these issues with the sparse information available at the present time, we can nonetheless raise some questions and outline some concerns about the military response to terrorism:

- Was the initial decision to launch military action justifiable in terms of *prospective* self-defense? Or was it rather impermissible retaliation?
- Why have the members of the military coalition not sought the authorization of the United Nations for the use of force, either before or after the beginning of the military operations?
- Were the bombing raids on Afghanistan conducted in accordance with the targeting principles of distinction and proportionality between military objectives and civilians?
- Have any of the weapons used in the attacks on Afghanistan caused unnecessary suffering and civilian casualties? Will the victims and their families receive reparation?
- Have the ground troops on both sides of the conflict respected humanitarian protections for civilians, prisoners of war, wounded or sick?
- Have the inalienable and non-derogable human rights of those not given the protection under international humanitarian law — such as the members of the Taliban being detained as prisoners of war — been respected?
- If there have been violations of international humanitarian law or international human rights, will they be punished and by whom?<sup>17</sup>

In considering these questions, it is important to note the dangerous precedent that the present military response to terrorism represents. As stated by Interights:

<sup>17</sup> See: Interights, "Responding to September 11: The Framework of International Law,"

(<http://www.interights.org>).

See also: Human Rights Watch, "Legal Issues Arising from War in Afghanistan and Related Anti-Terrorism Efforts" (<http://www.hrw.org/campaigns/september11/ihlqna.htm>).

It is in times of greatest strain that legal boundaries are most important. The shocking attacks of 11 September 2001 ... took place, not in a normative void, but against a backdrop of established international law and developing international practice in addressing atrocities. So far as the international response to 11 September disregards the law, the implications for human rights are potentially grave, not only in the present situation but for the future. Excepting the current situation from the framework of international law will discredit and undermine the universality of the rule of law, laying foundations for future violations.<sup>18</sup>

Already we have seen the rhetoric of “war on terrorism” infecting and exacerbating the Israeli-Palestinian crisis, and the India-Pakistan standoff over Kashmir. While the use of force may be an appropriate response to terrorism in certain instances, the international community should remain extremely vigilant in these troubled times to ensure that States respect all their international law obligations.

### **Is There Merit in International Criminal Prosecutions vs. Military Action?**

In the aftermath of September 11<sup>th</sup>, many concerned citizens and organizations have called for governments to pursue justice through national and international criminal prosecutions rather than to seek vengeance and retaliation through military action.<sup>19</sup> Although the legal framework for prosecuting terrorism at the national and international levels is imperfect, there are sufficient tools—in terms of laws and judicial institutions—to bring the perpetrators of the terrorist attacks to justice without creating an escalating cycle of violence, suffering and human rights violations. Moreover, justice through international criminal prosecutions would serve to strengthen the international rule of law and to increase the long-term prospects of worldwide peace and security.

The terrorist attacks of September 11<sup>th</sup> constitute crimes under international and national laws. In particular, the attacks fit within the evolving international jurisprudence relating to crimes against humanity. They also are international crimes under a number

<sup>18</sup> Interights, “Responding to September 11: The Framework of International Law,” (<http://www.interights.org>), p. 2.

<sup>19</sup> See: Letter from Warren Allmand, P.C., O.C., Q.C. to the Right Honourable Jean Chrétien dated September 21, 2001:

“[T]his terrible crime reinforces once again the need for a strengthened system of international criminal justice, rather than a retaliatory war that will bring about only more death and dangerous destruction. ... As many others have pointed out, this was an act of terrorism, a grave crime against humanity which should be punished according to international law – *after* the guilt of those responsible has been proven.”

See also CICC statement “US Tragedy Must Be Addressed Through Systems of Justice”, September 2001, (<http://www.iccnw.org/html/CICCSecretariat.html>):

“We view these acts as serious crimes which must not go unpunished. At the same time, we urge that they be addressed through national and international justice mechanisms and international institutions. The obvious international nature of these attacks underscores the need for greater multilateral cooperation to outlaw, investigate, prosecute and bring to justice those who commit serious crimes of concern [to] the global community. ... The International Criminal Court (ICC), likely to be established within the next one to two years, will be a new and powerful institution to address genocide, crimes against humanity and war crimes. Many coalition members and government representatives believe that acts of terrorism such as those committed on September 11 will fall within the definition of the crimes under the jurisdiction of the future ICC.”

See also: Women’s Caucus for Gender Justice – “Statement on Terrorist Attacks in the US” (<http://www.iccnw.org/html/Women%27sCaucus.html>).

of the treaties relating to acts of terrorism such as hijacking. Moreover, they also constitute the most serious crimes such as murder under national laws.

There are well-established principles of international criminal law that give domestic courts the universal jurisdiction to prosecute the most serious international crimes, such as crimes against humanity. Even if a particular State has not taken the proper legislative steps to permit it to exercise universal jurisdiction, or if a particular State has not ratified the treaties relating to specific terrorist acts, there are well-established rules and practices for the extradition of suspects to another nation where they may be brought to justice.

Furthermore, in recent years, there have been some significant examples of *Ad Hoc* international tribunals that have been created to deal with serious international crimes. The International Criminal Tribunals for the Former-Yugoslavia<sup>20</sup> [hereinafter “ICTY”] and for Rwanda<sup>21</sup> [hereinafter “ICTR”], are dealing with the most serious war crimes and crimes against humanity and the investigation and apprehension of complex networks of criminals. The international tribunal in Lockerbie, Scotland has been praised for its thoroughness and fairness in the contentious trials of two terrorist bombers.

Therefore, it would be possible for the UN Security Council to create another *Ad Hoc* international tribunal to deal with the September 11<sup>th</sup> attacks. Such an *Ad Hoc* tribunal could draw upon the experience of the ICTY, ICTR and Lockerbie tribunal, as well as other hybrid national-international tribunals. Furthermore, if necessary, the Security Council could authorize the use of force to apprehend suspects and bring them to be judged by a tribunal created for that purpose.

We must ask ourselves whether the military response will trump the international rule of law? NGOs have worked for many years in a concerted and tireless manner, along with a large number of like-minded States, to contribute to the global effort to establish the ICC. This process of building the institutional architecture for a strong and effective ICC is a bold attempt to protect the vulnerable and the innocent. It is a significant effort to isolate, stigmatize and hold criminally responsible those individuals who commit heinous crimes. Once established (after sixty States ratify the *Rome Statute*), the ICC can potentially send a strong message that no individual—government official, military officer or Head of State—is above the law.

It is hoped that when the ICC comes into existence, it will develop specialized procedures, expertise and resources for the administration of justice in difficult international situations and become a viable alternative to military action against those who commit massive violations of human rights. With the proper political and financial support of States, the ICC stands to become a powerful institution for promoting global justice and the international rule of law. As we look beyond the September 11<sup>th</sup> attacks, the promotion of the ICC should definitely become a priority for those who believe that justice rather than force is the appropriate response to egregious crimes.

<sup>20</sup> *The International Criminal Tribunal for the Former Yugoslavia*, UN Doc. S.C. Res. 808 (1993).

<sup>21</sup> *The International Criminal Tribunal for Rwanda*, S.C./Res/995 (1994), UN Doc. SCOR, 49<sup>th</sup> Sess., 3453<sup>rd</sup> met., at 1.

This discussion about *Ad Hoc* international tribunals and the ICC leads to some serious questions about the current prospects for international justice. At present, just as the US stands in opposition to the creation of the ICC,<sup>22</sup> we can anticipate that the US will not support any other *Ad Hoc* international criminal tribunal to deal with the culprits of the September 11<sup>th</sup> attack. Indeed, it would seem that the US preferred forum for any terrorist trials will be in the secret military tribunals recently authorized by President Bush. Not only do these military tribunals raise a host of serious concerns about discrimination, lack of due process and violations of defendants' rights, they also undermine global confidence in the international rule of law. If criminal justice rather than military force is the proper response to terrorism, then justice must be done—and must be seen to be done—in accordance with the principles of due process and the rights of the accused.

Finally, as we advocate the strengthening of the international rule of law to cope with future incidents of terrorism and violations of human rights, we must speak out against the politics of selectivity of powerful States. There will be a lack of confidence in the possibility of international justice when there are double standards where allies and economic interests are concerned and when certain States operate above the law. As the blindfold on the statue of justice reminds us, we must strive towards impartiality and consistency in the application of the law.

### **The Status of Prisoners under International Humanitarian Law**

Since the commencement of US military operations in Afghanistan in October 2001, there has been a lot of debate over the status and treatment of Taliban and al-Qaeda fighters detained by anti-Taliban Afghan forces and by the US armed forces. The treatment of detainees in an armed conflict is governed by international humanitarian law. The four Geneva Conventions of 1949 set out a comprehensive legal framework aimed at protecting captured combatants and civilians during armed conflict. The US has labelled all persons in its custody as "unlawful combatants", "battlefield detainees" or "illegal combatants", and has indicated that while they may be treated in accordance with the Geneva Conventions, there is no obligation that the US so treat them.

The US is ignoring fundamental international standards, and is determining its own standards and system for detainees. The protection and treatment of captured combatants during an international armed conflict is detailed in the *Third Geneva Convention relative to the Treatment of Prisoners of War*, which defines prisoners of war (POWs) and enumerates the protections of POW status. The US must remember that

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<sup>22</sup> Senator Jesse Helms proposed a bill to Congress—*American Service Member Protection Act (ASPA)*—which would: prohibit all American cooperation with the ICC; prohibit all military assistance to most of the States that have ratified the *Rome Statute* (excluding NATO States and the “major non-NATO allies” as well as Taiwan); prohibit the transmission of US national security law or law enforcement information to States that have ratified the *Rome Statute*; restrict American participation in UN peace-keeping operations; authorize the President to use “all necessary and appropriate means” to liberate an American citizen detained by the ICC – language which traditionally includes the use of force. See also: FIDH communiqué dated October 3, 2001: “The American government supports a law prohibiting military assistance to States that have ratified the ICC!” (<http://www.fidh.org/communiq/2001/ij0310a.htm>).



under the Geneva Conventions, no detainee can be without a legal status. There is a presumption in Article 5 of the *Third Geneva Convention*<sup>23</sup> that a captured combatant is a POW unless determined otherwise by “a competent tribunal”. Furthermore, captured combatants who are not entitled to POW status, have been described as “unlawful combatants” or “non-privileged combatants”, although neither term is found in the Geneva Conventions, are protected under the *Fourth Geneva Convention* relative to the Protection of Civilian Persons in Time of War. All persons apprehended in the context of an international armed conflict must receive a minimum level of protection under the Geneva Conventions.

### **National Security Laws, Repression of Political Opponents and Hate Crimes**

In virtually every nation, part of the response to September 11<sup>th</sup> has been the hasty enactment of new national security and emergency legislation and the implementation of new surveillance and investigative measures to combat terrorism. Although States must ensure that their national security legislation and measures are adequate to protect their citizens, every national security and emergency law poses a serious danger to human rights. Invariably, these new national security laws increase the powers of the police, intelligence agencies and the military and can—as experience has demonstrated in the past in many parts of the world—result in a corresponding diminution of civil rights and liberties of citizens.

National security laws are not a new phenomenon. Rather, history teaches us that, time and time again, laws that are enacted to deal with legitimate threats to national security can end up being used to violate human rights, suppress political dissent and destroy civil society. Therefore, as we examine closely new legislation proposed to deal with terrorism, we must consider how such legislation can be used against ordinary citizens, political activists and human rights defenders. We must also consider the implications of new surveillance technologies and procedures that may be used by police, intelligence and security forces.

Once we understand the long-term implication of new security legislation and measures, we must ensure that they do not unduly intrude on the civil liberties of citizens. In addition to the protection of rights and freedoms in national constitutions, there are important international human rights norms that help delineate the proper balance between national security and civil liberties. In particular, Article 4 of the *International Covenant on Civil and Political Rights* prohibits the enactment of measures that are discriminatory or that derogate from the core human rights (the right to life, freedom from torture, freedom from slavery, freedom from imprisonment for failure to pay a debt, freedom from retroactive penal laws, the right to be recognized as a person before the law, and freedom of thought, conscience and religion).<sup>24</sup>

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<sup>23</sup> Article 5 of the *Third Geneva Convention* states : “Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy” belong to any of the categories for POWs, “such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal”.

<sup>24</sup> Additional principles that apply to national security laws are contained in the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, the Paris

As stated by Mary Robinson, United Nations High Commissioner for Human Rights, in a joint statement with Walter Schwimmer, Secretary-General of the Council of Europe and Ambassador Gerard Stoudmann, Director of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, “any measures restricting human rights in response to terrorism [must] strike a fair balance between legitimate national security concerns and fundamental freedoms that is fully consistent with their international law commitments. ... ‘The purpose of anti-terrorism measures is to protect human rights and democracy, not to undermine these fundamental values of our societies’.”<sup>25</sup>

Furthermore, it is crucial that the application of national security laws and measures is supervised by civilian-democratic institutions such as the judiciary, national human rights institutions, Ombudsman offices, and other specialized watchdog bodies. Without such democratic oversight, even the most balanced national security laws and measures can be abused.

Every new national security law must be carefully scrutinized to ensure that each diminution of civil liberties is justified in terms of the relevant international human rights treaties. Countries whose national security laws have already attracted criticism include the following:

- Canada: Bill C-36.<sup>26</sup>
- United States: Attorney-General’s emergency directive of September 19, 2001, the *Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism (USA Patriot Act)*, Immigration and Naturalization Service rule (66 Fed. Reg. 48,334, September 20, 2001) and Presidential directive authorizing the military tribunals.<sup>27</sup>
- European Union: proposal for European Union-wide security measures.<sup>28</sup>
- United Kingdom: *Anti-Terrorism, Crime and Security Bill 2001*.<sup>29</sup>

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Minimum Standards of Human Rights Norms in a State of Emergency, and the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. These principles are discussed in the reports of the Special Rapporteur on States of Emergency, Mr. Leandro Despouy.

<sup>25</sup> UN News Centre, “Anti-terror fight must not curb human rights, Robinson says in a joint statement”, December 4, 2001.

<sup>26</sup> See CBAO, “Submission on Bill C-36 *Anti-terrorism Act*”, October 2001.

See also transcript of Standing Committee on Justice and Human Rights meeting of November 8, 2001.

<sup>27</sup> See Amnesty International, “Memorandum to the US Attorney General – Amnesty International’s concerns relating to the post 11 September investigations”, November 2001, AI doc: AMR/51/170/2001. See also: Human Rights Watch, “Letter to Attorney General John Ashcroft, September 28, 2001, (<http://www.hrw.org/press/2001/09/ashcroft0928-ltr.htm>); “Human Rights Watch Criticizes Anti-Terrorism Legislation”, October 22, 2001, (<http://www.hrw.org/press/2001/10/terrorism1022.htm>); “US: Military Commissions Can’t Compare to International Courts – Due Process Standards Much Lower for Proposed US Trials”, December 4, 2001, (<http://www.hrw.org/press/2001/12/miltrib1204.htm>); and “US: New Military Commissions Threaten Rights, Credibility”, November 15, 2001, (<http://www.hrw.org/press/2001/11/miltribs1115.htm>).

See also: FIDH communiqué dated November 15, 2001

(<http://www.fidh.org/communiq/2001/usa1511f.htm>).

<sup>28</sup> See Human Rights Watch, “European Union: Security Proposals Threaten Human Rights”, November 6, 2001, (<http://www.hrw.org/press/2001/11/eusecurity.htm>).

<sup>29</sup> See Human Rights Watch, “Commentary on the Anti-Terrorism, Crime and Security Bill 2001”, November 16, 2001, (<http://www.hrw.org/backgrounder/eca/Ukleg1106.htm>).

- India: *Prevention of Terrorism Ordinance (POTO)*.<sup>30</sup>
- Malaysia: justification of the *Internal Security Act*;
- Russia: proposal for amendments to national laws to allow for detention of terrorist suspects for up to 30 days without a charge or access to a lawyer.<sup>31</sup>

Beyond this list, we anticipate that dozens of other national security laws will be enacted and anti-terrorist measures implemented over the coming months and years. While such laws and measures may initially assuage the fears of some citizens, we must be aware that every expansion of police and military power carries the potential for abuse. Furthermore, as governments become increasingly preoccupied with security, we face a serious challenge to preserve transparency and openness, tolerance and freedom that characterizes democracy.

### **Protecting and Promoting Human Rights And Democracy**

In addition to our concerns about new national security legislation, there are a growing number of reports that certain governments are using the “war on terrorism” as a pretext to clamp down on civil liberties and to stifle legitimate political dissent. For example:

- China: suppression of “terrorists” in Xinjiang Uighur Autonomous Region;
- Egypt: defence of unfair trials and torture as effective anti-terrorist tactics.<sup>32</sup>
- Kyrgyzstan: clampdown on Islamic activists;
- Macedonia: portrayal of Muslim and Albanian opponents as “terrorists”;
- Russia: “war against terrorism” against Chechen dissidents;
- Turkey: detention and torture of Hizbullah opposition group;
- Zimbabwe: prosecution of journalists as terrorists.

Obviously, we must condemn any government that is using the events of September 11<sup>th</sup> in an opportunistic manner to weaken their respective opposition parties and to strengthen their control. Moreover, we must ask ourselves to what extent these attacks on civil liberties and political dissent will become the norm? We remark with dismay that, even in countries with strong democratic traditions, important civil liberties and democratic values are under siege.

### **Right to Privacy**

The right to privacy is one of the civil liberties most threatened in the security-conscious post-September 11<sup>th</sup> world. Not only is the right to privacy protected by many national constitutions, it is also protected by article 2 of the *Universal Declaration of Human Rights*. Yet, as police and security forces scramble to apprehend terrorist suspects, the use of the latest high-tech surveillance equipment against the entire population seems justified. For example, in the United Kingdom, a regime of video-surveillance on the streets are installed to monitor the activities of the Irish Republican Army. In China, communication over the internet can be monitored by an all-

<sup>30</sup> See Human Rights Watch, “Anti-Terrorism Legislation”, November 20, 2001 (<http://www.hrw.org/backgrounder/asia/india-bck1121.htm>).

<sup>31</sup> Amnesty International, “The backlash – human rights at risk throughout the world”, October 3, 2001.

<sup>32</sup> Human Rights Watch, “Opportunism in the Face of Tragedy: Repression in the name of anti-terrorism”, (<http://www.hrw.org/campaigns/september11/opportunismwatch.htm>).

encompassing surveillance network known as ‘the Golden Shield’.<sup>33</sup> In the United States, telephone companies are not so resistant to the Federal Bureau of Investigation’s attempts to intercept telephone messages.<sup>34</sup> The technology already exists to transform our world into an Orwellian landscape where ‘Big Brother’ is always watching. We must carefully consider whether the potential threat of future acts of terrorism justifies subjecting the entire population to the chilling effect of constant surveillance.

### **Freedom of Expression and Freedom of Association**

An important part of the “war on terrorism” is the elimination of terrorists and terrorist networks. Under many national security laws, it has become a crime to be part of a terrorist group. Although individuals and groups that are plotting terrorist activities are legitimate target of police action, we must be very precise about what constitutes ‘terrorist activities’. Otherwise, an individual or a small group of people with “different views” or anti-establishment ideas could be considered a terrorist threat that must be silenced and suppressed.

We must not permit the criminalization of political dissent. We must remember that freedom of expression and freedom of association are important human rights protected at the national and international levels. We must also recall that freedom of expression is the basis of debate and that freedom of association is the basis of pluralism. Without debate and pluralism, democracy withers and society stagnates. Although violence and threats cannot be tolerated, we must seek to engage different points of view and groups of people into a meaningful political process. We must be vigilant that we do not label individuals or groups as ‘terrorists’ simply to save the effort of dealing with a different point of view.

### **Non-Discrimination**

In the aftermath of September 11<sup>th</sup>, there have been reports throughout the world of disturbing increases in racial, ethnic and religious “hate crimes” against Muslims and Arabs. Unfortunately, the authorities have not always been quick to denounce such racism, prosecute “hate crimes” and to provide adequate police protection to racial, ethnic and religious groups. We must preserve the principle that no person may be discriminated against on the basis of race or religion. It is absolutely crucial that we do not allow the actions of a small lunatic-fringe to taint perceptions about the entire Arab world or Muslim faith. We must not allow the “war against terrorism” to stop the fight against racism.

Not only must we fight racism within our society, we must fight it at our borders. As States tighten their borders to prevent the movement of terrorists, there are grave dangers that legitimate refugees and asylum-seekers will be considered ‘terrorists’ and will not receive the protections to which they are entitled under refugee covenants such as the 1951 Convention on the status of Refugees. This situation is particularly acute in the

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<sup>33</sup> Walton, Greg, *China’s Golden shield Corporations and the Development of Surveillance Technology in the People’s Republic of China*. Published by Rights & Democracy in 2001, p. 5.

<sup>34</sup> Ratner, Michael, *The Fragile Superpower US : no longer the land of the free*. Le Monde Diplomatique, November 2001, p. 4 and 12.

region surrounding Afghanistan, but we can anticipate further refugee crises in many countries that immigration officials are admittedly in a difficult position since they must ensure, on the one hand, that legitimate refugees are granted asylum while, on the other hand, that no terrorists receive asylum or enjoy impunity. This means that governments must implement careful screening processes to distinguish between refugees and terrorists without falling into the trap of racial, ethnic and religious discrimination and simplistic stereotyping. Moreover, they must also ensure that such screening processes are designed to protect the human rights and due process rights of detainees.

As stated by the United Nations High Commissioner for Refugees, Mr. Ruud Lubbers:

Refugees are the victims of terrorism, not its perpetrators. Governments must not resort to mandatory or arbitrary detention of asylum seekers or to other procedures that did not comply with the standards of due process. Resettlement programmes should be maintained and should not discriminate against particular ethnic groups or nationalities. States also must continue to respect their obligations under the 1951 Convention on the status of Refugees. When properly applied, that instrument does not provide a safe haven nor does it extend any immunity from prosecution to those engaged in terrorist activity.<sup>35</sup>

As the international community continues to respond to September 11<sup>th</sup>, it is important that women's voices are an integral part of the on-going debate in accordance to the first strategic objective (E1) of the Beijing Platform for Action (1995) for the participation of women in conflict resolution decision-making<sup>36</sup> and to the UN Security Council Resolution 1325 on Women, Peace and Security of October 31, 2000.

However, many women's rights groups believe that the counter-terrorist measures adopted following the September 11<sup>th</sup> attacks have created a world-wide backlash of women, feminist organizations and those advocating the human rights of women. Experience has demonstrated that in situations of conflict and when terrorists strike women are the first to be silenced and attacked. This is a painful reminder of the urgent need and responsibility of States and the international community to ensure the full participation of women in decision making processes and in proposing policy options to deal with terrorism.

It is important to understand that terrorism has drastic impacts on entire regions, communities and on women in these communities. For example, in the current "war on terrorism" in Afghanistan, women who have been denied for many years their human rights by the Taliban regime are now at risk of becoming victims of egregious violations of human rights and humanitarian law as a result of the military intervention. It is crucial that those responsible for the violations be brought to justice and the seriousness of gender-based war crimes be recognized and persecuted with full vigour.

As stated by the Women's Caucus for Gender Justice of the ICC:

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<sup>35</sup> GA/SHC/3667, 19 November 2001, "Refugees Victims of Terrorism, Not Its Perpetrators, High Commissioner Tells Third Committee, As Refugee Debate Opens" (<http://www.un.org/News/press/docs/2001/GASHC3667.doc.htm>).

<sup>36</sup> *Women's Advocacy for Peace and Disarmament, a Long Story*. ([www.un.org/Depts/dda/gender/note2.pdf](http://www.un.org/Depts/dda/gender/note2.pdf)).

There is a distinct lack of women's voices and perspectives on all sides of the discussions in different parts of the world responding to the events of September 11. Countless women have been working on issues of peace and security for years and have expertise and insights into terrorist violence and methodology. Yet, our voices are not sought after nor heard amidst the battle cries of military and civilian leaders – in direct contravention to a Security Council mandate contained in resolution 1325 relating to Women, Peace and Security. ... In this resolution, the Security Council stressed the need to increase women's role in decision-making with regard to conflict prevention and resolution. We call on all governments involved in discussions about responses to the events of September 11 to ensure the 'equal participation and full involvement' of women 'in all efforts for the maintenance and promotion of peace and security' as per resolution 1325.<sup>37</sup>

As part of this mandate, it is essential to recognize the dedicated women of Afghanistan who struggle for human rights, peace, development and democracy, Dr. Sima Samar, winner of the 2001 *John Humphrey Freedom Award* given by Rights & Democracy, and many others like her, currently deal with the incredible challenge of rebuilding a war torn and devastated country.

## Conclusion

When governments suppress human rights of their citizens and restrict participation and debate, they close off avenues of peaceful dissent and stifle democracy. In many parts of the world, governments leave their citizens with the desperate choice of tolerating the status quo, being forced into exile or choosing the path of violence. We have seen numerous examples where democratic political options are closed off, the voices and actions of non-violent dissent are upstaged and vigilantism and terrorism triumph. Terrorism can impact on the full range of human rights and democratic values at both the national and international level. At the national level, terrorism creates a climate of fear, suspicion, discrimination and hatred in which democracy cannot flourish. As governments use national security legislation and anti-terrorist measures against individuals, dissidents and opposing political groups, the vibrancy of civil society wanes. We must be very concerned about how the new rhetoric of terrorism will be used to stigmatize and discredit legitimate dissent at the national level. For example, will anti-globalization activists face repressive security measures designed for terrorists? Will human rights organizations associated with unpopular causes be paralyzed by accusations of terrorism? Will legitimate grievances and claims for freedom and democracy be silenced as incitements of terrorism? Unless we are extremely careful, the unforgiving discourse of terrorism risks stifling the exchange of views that underpins democracy and the development of a consensus within societies about national priorities should be.

Furthermore, beyond the erosion of civil liberties, the quality of democracy risks being diminished over the long-term if governments spend the lion's share of their tax-dollars on security measures to the neglect of much-needed social and economic programmes. Strong democracies require a certain amount of social spending to ensure that every individual has basic right to an adequate standard of living, food, education as well as choices and opportunities to become an active and productive citizen. Although the masterminds of terrorism are often rich and powerful, they use their ideologies to mobilize people who live in deep misery, frustration and despair and are prepared to kill

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<sup>37</sup> Women's Caucus for Gender Justice, "Statement on Terrorist Attacks in the US", (<http://www.iccnw.org/html/Women%27sCaucus.html>).

and die. It is incumbent upon all democratic States and civil society organizations to make genuine efforts to address key global problems and in particular, to promote the realization of human rights at home and abroad. Until we begin to address the root causes of poverty, marginalization and alienation, we will be forced to rely on our borders for peace and security. There is only time before desperate people resort to ingenious and desperate measures to get international attention.

As the Special Rapporteur states in the concluding remarks of her progress report on “Terrorism and Human Rights”:

The full realization of human rights also involves achievement of economic balance among States, including the right to development. In similar fashion, better efforts should be made to achieve improved relations between States, not only because this is mandated in the Charter, but also because it is viewed as essential to the global realization of human rights as indicated in article 28 of the Universal Declaration: quite clearly an international order that is generating terrorist acts hardly qualifies as a ‘social and international order in which the rights and freedoms set forth in th[e] Declaration can be fully realized’.<sup>38</sup>

For NGOs who have pressed since many years for the accountability of perpetrators of crimes against humanity, this is a moment to fight against the impunity of perpetrators of all heinous crimes including terrorism. This a moment to advocate the creation of judicial institutions and the strengthening of the international rule of law. Maintaining the momentum toward the establishment of the ICC in the coming months is one way forward. While it does not offer the solution for all the human rights violations we witness around the world, it is a historical and significant contribution to a democratic world order where criminals come to know they are being watched – they may run, but they cannot hide from justice.

As democrats and freedom-loving people, we cannot allow fear, suspicion, prejudice, vengeance or military might to become the defining feature of international relations. We cannot allow our governments to substitute expediency for the firm commitment to human rights and democracy; rather, we must redouble our efforts to make human rights and democracy the foundation for peace and peace security. We need to educate and mobilize our fellow citizens to resist prejudice, retribution and militarization. We must convince our governments that, regardless of their successes in pursuing particular terrorists, their actions risks reinforcing the logic of terrorism and the cycle of violence unless human rights and democracy are given a central role in their policies and practice.

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<sup>38</sup> *Supra* note 2 at p. 34.