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Terrorism is a threat to the most fundamental human rights, including the right to life, liberty and security of person, enshrined in Article 3 of the Universal Declaration of Human Rights. The issue of terrorism and its detrimental impact on human rights has been on the international agenda for many years. Intergovernmental organizations have been working actively on this issue, because of the escalation of terrorist acts throughout the world and the growing preoccupation of governments with the expansion of this crime. Already in 1937, the **League of Nations** made a first attempt to tackle the problem and adopted the *Convention for the Prevention and Punishment of Terrorism*. However the general definition of the crime and the list of acts of terrorism enumerated therein were the object of severe criticism. Thirty-five years later, in 1972, the **General Assembly** of the United Nations adopted a resolution condemning terrorism in all its manifestations. Since that time, several standard-setting instruments addressing crimes associated with terrorism have been adopted by the United Nations, as well as by regional intergovernmental organizations (see annex). In these documents, it was acknowledged that terrorism threatens the rights of innocent people, jeopardizes fundamental freedoms and seriously impairs the dignity of human beings.

Although a comprehensive definition of terrorism has not yet been elaborated at the international level, States have already agreed on several core elements. The Declaration on Measures to Eliminate International Terrorism, adopted by the General Assembly on 9 December 1995 (Resolution 49/60), declared that “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons, or particular persons for political purposes, are in any circumstances unjustifiable, whatever the consideration of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.” The General Assembly established in 1996 (resolution 210, 17 December 1996) an Ad Hoc Committee to deal with the issue of terrorism. In 2000, this Committee started the drafting of a comprehensive convention on international terrorism.

The harmful impact of terrorism on the full enjoyment of human rights was recognized by the World Conference on Human Rights in 1993. In the Vienna Declaration and Programme of Action it was acknowledged that terrorist acts erode the foundation of democratic societies and impede the rule of law. It was concluded that the international community should take the necessary steps to prevent and combat terrorism.

In 1997, the Sub-Commission on the Promotion and Protection of Human Rights appointed a **Special Rapporteur on Terrorism and Human Rights**. My presentation is based to a large extent on two periodic reports by the Special Rapporteur, Ms Kalliopi Koufa, as well as her additional progress report prepared in August 2003. Ms Koufa should have been among us today, but the need to finalize her third periodic report prevented her from taking part in this panel.

The terrible events of 11 September 2001 placed the fight against terrorism at the top of the international agenda. Significant legislative and other initiatives and measures have been taken at the international and national levels. On 28 September 2001, the **Security Council** adopted resolution 1373, which is binding on all Member States.¹ The Resolution reaffirmed that any act of international terrorism constitutes a threat to international peace and security and the need to combat terrorism by all means, in accordance with the Charter of the United Nations. The Security Council reiterated the principle that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State. It stressed that all States should prevent and suppress any form of financing of terrorist acts. In the same resolution the Security Council stipulated that all States should deny safe haven to those who finance, plan, support or commit terrorist acts and prevent them from using their respective territories for those purposes. The States should ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts is brought to justice and that terrorist acts are considered as serious criminal offences in domestic laws. A number of other measures with a view to prevent and punish terrorist acts, including the exchange of operational information, are foreseen in the Resolution. The States are committed to ensure that refugee status was not abused by the perpetrators or organizers of terrorist acts and that claims of political motivation were not recognized as grounds for refusing requests for extradition of alleged terrorists.

Last but not least, the Security Council established in October 2001 a Counter-Terrorism Committee, consisting of all its members, to monitor implementation of resolution 1373 (2001). By the end of May 2002, 160 States had submitted their reports to the Counter-Terrorism Committee. In response to resolution 1373, a number of States have enacted new criminal legislation to fight terrorism.

On 12 November 2001, the Security Council adopted unanimously the *Declaration on the Global Effort to Combat Terrorism* (resolution 1377). The Declaration called on States to take urgent steps to implement fully Security Council resolution 1373 and invited the Counter-Terrorism Committee to explore ways in which States can be assisted in doing so.

The issue of terrorism has also been discussed intensively in the **General Assembly**.² In resolution 56/160 (2001) entitled "Human rights and terrorism", the General Assembly stipulated that terrorism creates an environment that destroys the right of people to live in freedom from fear, reiterated its unequivocal condemnation of the acts, methods and practices of terrorism in all its forms and manifestations as activities aimed at the destruction of human rights, fundamental freedoms and democracy. It recalled that terrorist acts threaten the territorial integrity and security of States, destabilize legitimately constituted Governments, undermine pluralistic civil society and have adverse consequences for the economic and social development of States. The General Assembly urged the international community to enhance cooperation at the regional and international levels in the fight against terrorism, in accordance with international instruments, including those relating to human rights.

¹ See Second Progress Report on *Terrorism and Human Rights* prepared by Ms. Kalliopi K. Koufa, Special Rapporteur, paras. 25-30.

² See FN N° 1, paras 31-32.

On 20 October 2001, the General Conference of UNESCO adopted a resolution in which it rejected the association of terrorism with any particular religion, religious belief or nationality and considered that the present challenges require a coherent and coordinated response by the organizations of the United Nations system as a whole. Moreover, noting that intolerance, discrimination, inequality, ignorance, poverty and exclusion, among others, provided fertile ground for terrorism, the General Conference affirmed that while acts of terrorism could never be justified whatever the motives, the world community required a global and inclusive vision of development based on the observance of human rights to meet the needs of the most vulnerable populations and segments of society. Finally, it expressed its firm conviction that based upon its mandate and within its areas of competence - education, science, culture and communication - UNESCO had a duty to contribute to the eradication of terrorism, drawing on its character as an intellectual and ethical organization. The entire text of the resolution is included in you files.

While the legitimacy of the struggle against terrorism is universally recognized, several countermeasures have been the subject of concern for universal and regional human rights bodies and mechanisms. They have underlined that an important component of the anti-terrorism strategy should be to ensure that innocent people do not become the victims of counter-terrorism measures. Certain rights such as the right to life, and freedom from torture or other cruel, inhuman or degrading treatment or punishment may not be derogated from under any circumstances. Moreover, anti-terrorism measures should not suppress or excessively restrict other individual rights, including right to respect for private life, presumption of innocence, fair trial, the right to seek asylum, participation in political life, freedom of expression, freedom of thought, conscience and religion and freedom of assembly and association.

The need not to neglect human rights standards while fighting terrorism was repeatedly underlined in international discussions. In this regard, the 2002 report of the **United Nations High Commissioner for Human Rights** to the Commission on Human Rights presents a particular interest. In her report, entitled "Human rights: a unifying framework", she reminded that: "An effective international strategy to counter terrorism should use human rights as its unifying framework.³ The suggestion that human rights violations are permissible in certain circumstances is wrong. The essence of human rights is that human life and dignity must not be compromised and that certain acts, whether carried out by State or non-State actors, are never justified no matter what the ends. International human rights and humanitarian law define the boundaries of permissible political and military conduct. A reckless approach towards human life and liberty undermines counter-terrorism measures." (E/CN.4/2002/18)

In the report, the High Commissioner emphasized that the law and respect for human rights commitments should be placed at the centre of an overall effective strategy to counter terrorism. At the same time she recognized the legitimate concerns for national and international security. The report affirms that "despite global uncertainty, it is essential for everybody to uphold the universal human rights standards that were created collectively. Acts, methods and practices of terrorism aim at the destruction of these standards. This is why it is essential that all States

³ See FN n°1, para. 18 and 58.

implement the operational measures sought by the Security Council in resolution 1373 (2001) in a manner consistent with human rights. At the same time, building a durable global human rights culture, by asserting the value and worth of every human being, is essential if terrorism is to be eliminated. In other words, the promotion and protection of human rights should be at the centre of the strategy to counter terrorism.”

The **Human Rights Committee** adopted a general comment on states of emergency (article 4 of the International Covenant on Civil and Political Rights, General Comment 29, adopted 24 July 2001-CCPR/C/21/REF.1/Add.11), just before the terrorist attacks of 11 September 2001.⁴ This general comment is of great significance with regard to the limits imposed by international human rights law on States in their fight against criminality and especially in the matter of counter-terrorism. In the opinion of the Human Rights Committee, States parties to the Covenant may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles that guarantee a fair trial, including the presumption of innocence. The Human Rights Committee also pointed out that only the courts of law may judge and convict a person for a criminal offence. In this context, the Human Rights Committee has also specified that safeguards related to derogation as provided for in article 4 of the Covenant are based on the principles of legality and the rule of law, which are inherent to the Covenant as a whole. Moreover, as certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. It also emphasized that the presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court in order to enable the court to decide without delay on the lawfulness of detention must not be diminished by the decision of a State party to derogate from the Covenant.

On 22 November 2001, the **Committee against Torture** issued a statement reminding States Parties of the non-derogable nature of most of the obligations undertaken by them under the Covenant. The Committee expressed its confidence that whatever responses to the threat of terrorism are adopted by States Parties, such responses will be in conformity with their obligations under the Convention.

The **Committee on the Elimination of Racial Discrimination**, on 8 March 2002, issued a statement on terrorism, in which it recalled that the prohibition of racial discrimination is a peremptory norm of international law of a non-derogable nature.⁵ The principle of non-discrimination must be observed in all areas, particularly in matters concerning liberty, security and dignity of the person, equality before tribunals and due process of law. It expressed its intention to monitor, within the framework of its mandate, the potentially discriminatory effects of legislation and practices adopted in the framework of the fight against terrorism.

⁴ See FN n°1 paras. 51-55.

⁵ See FN n°1 para. 56.

Addressing the root causes of terrorism has now also become a rather highly contentious area, with a number of States and scholars insisting that, as there is no justification whatever for terrorism, there should be no effort made to try to understand its root causes.⁶ Instead, they argue there should be ever more militant action against terrorists and terrorist groups, with the goal of wiping them out. This position is met with dismay by the majority, who insist that it is foolhardy to ignore review of root causes, which are, in some situations, directly or indirectly related to the non-realization of human rights. It seems, however, that the study of root causes could be very helpful in designing viable strategies and means of eliminating terrorism. Structural prevention of terrorism requires a comprehensive approach that considers the root causes of insecurity and conflict. It is not adequate to respond only to the apparent causes of violence. It is imperative to address the underlying conditions that lead individuals and groups to violence. There is no doubt that claims of domination, discrimination and denigration of individuals and groups are often the triggering factors.

The main purpose of our discussion is to think together how we can achieve the twofold objective: to fight against terrorism while fully respecting human rights standards. The international community has expressed its resolve to prevent, combat and eradicate terrorism. As Koïchiro Matsuura, Director-General of UNESCO, stated: "...the struggle against terrorism should not be considered as the exclusive responsibility of State authorities. It is the common task of educators, mass media professionals, religious leaders and civil society as a whole which should further entrench a culture of human rights". In order to construct a solid human rights culture, required to root out terrorism, there is a need to bridge the gap between human rights norms and their application in reality. I would like to conclude my presentation with the words of Kofi Annan, Secretary-General of the United Nations, who stated: "...there is no trade-off to be made between human rights and terrorism. Upholding human rights is not at odds with battling terrorism: on the contrary, the moral vision of human rights – the deep respect for the dignity of each person – is among our most powerful weapons against it" (press release SG/SM/8885, 20 September 2003).

⁶ See FN n°1 paras. 61-54.

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