

SOCIAL, HUMANITARIAN AND CULTURAL COMMITTEE

Dear Delegates,

It is a pleasure to welcome you to the Social, Humanitarian and Cultural Committee (SOCHUM) of the VI UFRGS Model United Nations. We have been deeply involved with the Committee's work for several months in order to provide a rich environment for exchanging ideas.

Firstly, it is important to stress that terrorism is currently seen as one of the most important issues of both domestic and foreign policies. Taking the relevance of this topic into account, the measures adopted by governments in order to avoid terrorist actions should be carefully observed, as there is a great risk of incompatibility between counterterrorism and the respect of human rights.

Therefore, our Agenda brings up two topics that, although individually developed, may be analyzed as direct consequences of the same phenomenon: "Avoiding Human Rights Abuses in the Name of Counterterrorism Measures" (Topic A) and "Detainees in the context of terrorism: violations of the legal framework" (Topic B). We believe that two topics that are strongly related can organize the discussions in a very fruitful way, reaching excellent solutions for the presented problems.

The chair of SOCHUM is composed of four students from Universidade Federal do Rio Grande do Sul (UFRGS) who strongly believe in the importance of our simulation, joining with enthusiasm many activities related to international affairs.

Raquel Almeida Chamis is currently a graduate student at the Political Science Masters at UFRGS, being International Politics her field of research. She attended Law School also at this university, where she developed a great interest for Penal Law and Public International Law. She has always been an UFRGSMUN enthusiastic: after taking part as delegate in the first two editions of our model, she composed the staff as a member of SOCHUM in 2005. She is very interested in this committee and glad to join another edition.

Felipe Rocha dos Santos is currently attending the 5th year of UFRGS Law School. From the very beginning, he has cultivated special interest for Public International Law within his studies and extra-curricular activities. In addition to the development of several research projects in the area, he has taken part as a delegate in three editions of UFRGSMUN (2004, 2005 and 2007) and in World MUN 2007.

João Rodrigues Chiarelli is an eight-semester Social Sciences student at UFRGS. He is now at his fifth participation at UFRGSMUN, the second composing the Academic Staff (in 2006, he participated at UNCTAD). He has a great interest for Asian Studies and, for this reason, worked at the Japanese Studies Department of UFRGS in 2005.

Virgínia Francesca Alves de Freitas is a ninth-semester student at the UFRGS Faculty of Letters. Apart from university, she has been engaged for some years with worldwide and regional NGO's, both advocating in favor of human rights and working in creating awareness and fighting against HIV/AIDS. In what concerns simulations, she has taken part as a delegate in the 2006 AMUN and UFRGSMUN.

We would like to remember that this Study Guide is a guideline and has been written to focus your studies. However, we believe that the preparation should not be restricted to this reading: after getting in touch with the themes, all delegates should look for other pieces of information, including those mentioned on the guide. This will certainly make our conference and the debates more interesting.

We hope you enjoy this experience. Until then, we will be glad to help you in any problem you may have, so feel free to contact us at the email addresses provided below. All updates and news concerning the Committee will be promptly post at our website.

See you in November!

Raquel Almeida Chamis
Director

Felipe Rocha dos Santos
Assistant Director

João Rodrigues Chiarelli
Assistant Director

Virgínia Francesca Alves
Assistant Director

INTRODUCTION

The Social, Humanitarian and Cultural Committee (hereinafter SOCHUM) is the Third Committee of the United Nations General Assembly (GA), the main deliberative organ of the United Nations. The GA is composed of representatives of all member nations, each of which has one vote. The decisions of the GA have no legally binding force for governments, although they carry the weight of world opinion, as well as the moral authority of the international community. Its Third Committee addresses the protection of human rights and fundamental freedoms all over the world, especially those in the social and cultural framework.

SOCHUM provides a forum for impartial dialogue and negotiation between countries with different experiences and backgrounds, having all United Nations Member States represented within the committee. First convening in 1948, SOCHUM has become one of the most important bodies in the United Nations, for practically every international or national conflict has a “social” aspect, such as refugees, overpopulation, prostitution, social welfare and discrimination issues.

Therefore, the Committee’s mandate is firmly embedded in the Universal Declaration on Human Rights and, due to the vast range of the problems it deals with, it collaborates with many organizations to implement the General Assembly’s resolutions. Recently, the Committee has focused on topics such as international drug control, social development of youth, promotion and protection of the rights of children, and advancement of women.

Organs such as the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children’s Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Food and Agriculture Organization (FAO), the United Nations Education, Scientific, and Cultural Organization (UNESCO) and the World Health Organization (WHO) are conducted with the help of the committee in countries all over the world to ensure that the General Assembly’s resolutions are implemented.

TOPIC AREA A: AVOIDING HUMAN RIGHT ABUSES IN THE NAME OF COUNTERTERRORISM MEASURES

By Raquel Almeida Chamis, Felipe Rocha dos Santos, João Rodrigues Chiarelli and Virgínia Francesca Alves De Freitas

“Terrorists believe that anything goes in the name of their cause. The fight against terror must not buy into that logic. Human rights principles must not be compromised in the name of any cause”.

Kenneth Roth

1. HISTORICAL BACKGROUND

The attacks of September 11 2001 in the United States of America, followed by other events that occurred in the past few years (as, for instance, March 11 2004, in Madrid, and July 7 2005, in London), resulted in the emerge of a world feeling of insecurity: from such attacks, the spread of the terrorist threat reinforced the duty of States to guarantee the protection of their citizens. Therefore, it can be said that those events may have augmented the tolerance to the constriction of individual freedoms. Generally speaking, in times of tension, many responses can be adopted by governments based on a state of emergency, and there is a patent risk that those measures, imposed in the name of the protection of civil society, violate human rights laws.

In a historical perspective – taking into account that terrorism is not a new phenomenon -, human rights have often been disrespected, what opposes to the idea that fundamental freedoms and the rule of law should be essential tools in the context of the fight against terrorism. Counterterrorism measures, in sum, may toile basic human rights assured by the international community at the Universal Declaration of Human Rights (1948): some rights that have been foreseen by this document – as the prohibition of arbitrary detention and the freedom of speech - have been summarily ignored by some States through their antiterrorist legislations.

Counterterrorism measures that violate human rights aiming to suppress possible actions of radicalism may be observed since the early 1790s, when the radicalism and violence of the French Revolution triggered panic about similar ‘subversion’ occurring in the UK. As a result, many civil liberties were suddenly suppressed by aggressive measures taken by the government of the United Kingdom. According to O’Cinneide, although this period is often

neglected in contemporary debates about emergency powers and terrorism, “all the key ingredients of the cycle of reaction and response are present in the panic and clampdown that followed the ‘Terror’ of the 1789 Revolution” (2006).

During the colonialist period, the British Empire has also used special emergency powers in its territories, considering the suspension of legislative provisions acceptable. The normative standards of the common law and the ideology of the rule of law, often held as justifications for the colonial enterprise, were frequently sidelined during these periods of emergency (O’CINNEIDE, 2006).

The problem of political violence was also visible on the conflict in Northern Ireland, producing a large body of antiterrorism legislation during approximately thirty years (with the European Court of Human Rights in Strasbourg being frequently called upon to adjudicate in conflicts between terrorist suspects and the State, and on one celebrated occasion between two states, the United Kingdom and the Republic of Ireland) (GEARTY, 2005). In Northern Ireland, since the partition of the island, in 1922, special powers legislation has been often utilized in response to spasms of political violence. During the “Troubles” – which consisted in about thirty years of frequent acts of intense violence between elements of Northern Ireland's nationalist community (principally Roman Catholic) and unionist community (principally Protestant) -, special powers provisions were implemented, being enhanced by Northern Ireland (Emergency Provisions) Acts 1973-96. Some of the measures in Northern Ireland were: “new powers of search, arrest and seizure; suspended jury trial for certain types of offences linked to paramilitary activity; extended detention periods before charge, erosion into the right to silence and other traditional constraints in the criminal process and the introduction of a series of new offences and extended police and army powers” (O’CINNEIDE, 2006). During the 1970’s, then, the introduction of rushed responses, in Northern Ireland, may have been excessive. However, from the mid-1980’s on, the counterterrorist strategy was replaced: there has certainly been a wide acceptance that serious mistakes were committed in the initial flush of emergency in Northern Ireland (O’CINNEIDE, 2006).

In parallel, Spain has also been facing the terrorist threat for a long period of time: to the ETA, founded as a Marxist-Leninist group in 1959 – which gained popularity from fighting the dictator Francisco Franco until his 1975 -, the Spanish government has responded with measures that were allegedly beyond the borders of the respect for human rights. The activities conducted by the GAL (Grupos Antiterroristas de Liberación) – a group that some

argue was secretly sponsored by a governmental campaign - resulted in deaths, kidnappings and torture that affected not only alleged ETA members but civilians as well (MILLER, 2008).

In Egypt, it has been alleged that authority was used to arrest individuals that opposed to the government, even detaining them without trial for prolonged periods. Furthermore, reports show cases of civilians that have been judged under military or exceptional state security courts; as well as strikes and public meetings that have been forbidden. Since September 11 2001, the control of the Muslim Brotherhood¹ has also become stronger: many members were accused of being against the government, and some for possessing suspicious literature (HRW, 2003).

In Chechnya, the armed conflict has been described by the Russian government as a counterterrorism operation. The interaction between Chechnya and Russia intensified after the collapse of the Soviet Union (BULUR, 2007) and, since 1999, the imperative of fighting against terrorism was routinely invoked. With violence erupting between them, attacks to insurgents and civilians are routine: it has been alleged that Russian forces have conducted targeted night operations, including masked troops that “raid particular homes, execute targeted individuals, or take them away” (HRW, 2003).

Another civil liberty that has periodically been diminished due to preventive measures to avoid terrorist attacks is the freedom of expression, which, under international law, may be restricted only if it is strongly justifiable. In various countries, such as the Belarus, Canada, India, Nepal, the United Kingdom and the United States, after 2001, new legislation has been introduced to address the threat of worldwide terrorism. The US Patriotic Act, for instance, allowed the Department of State to declare persons seeking entry into the US to be “inadmissible” because they are deemed to have undertaken advocacy that undermines US anti-terrorist efforts. The broad terms of this power “mean that it can be used against practically anyone criticizing the US administration’s approach to combating terror”. In India, the Prevention of Terrorism Ordinance (POTO) makes it a criminal offence for journalists to refuse to hand over information which the authorities consider to be “of material assistance in preventing a terrorist attack.” (MENDEL, 2002).

¹ The Muslim Brotherhood is an Islamic group that intended to implement Shari’a (Qu’ranic law) as the basis of national Law in Egypt. The Brotherhood “has committed itself to working within the current Egyptian system to achieve this objective and renounces—at least in its official statements—the violent tactics of militant splinter groups” (WALSH, 2003).

The fight against terrorism, then, may certainly proliferate the risk of violations of human rights. For decades, States have been applying security measures that, although implemented with aims of protecting its nationals, may result in dangerous restrictions to civil liberties. Especially after 2001, these risks have become patent, as the fight against terrorism rouse as a central feature of several countries' internal and foreign policies.

2. STATEMENT OF THE ISSUE

2.1 The threat of terrorism: a brief analysis.

There is not any definitive concept for terrorism. However, even if this is still a very polemic point, it can be said that terror is manifested by violent actions, whose main purposes are political and whose actors are not governmental.

According to Hobsbawm, some degree of violence has always to be taken into account in the analysis of societies. However, according to this author, the most dangerous factor in generating violence – in internal or international conflicts – is the ideological conviction, which turns into moral justification for barbarism: therefore, all means are adequate to conquer victory (HOBBSAWM, 2007). This idea is strongly related to the effects of terrorism, as a terrorist act is usually defined by its methods of intimidation (BYFORD, 2002).

From a historical perspective, it is possible to say that different groups have conducted terrorist acts: from leftists to rightists, anti-nationalists, anarchists and people moved by religious reasons. Some of these groups are pointed as terrorists even if their objectives are considered positive by a great amount of people – confirming the importance of the methods for their classification as terrorists. Consequently, under the word “terrorist” various groups have been defined, such as the French Resistance, the Zionists in Palestine, the Mau Mau (Kenyan movement for independence), the African National Congress (ANC) from South Africa -, the Irish Nationalists, some Palestinian parties - using terrorist methods against Israel -, the Al-Qaida, the ETA.

Also, what becomes clear is that terrorism is not a new experience, and neither are the threats to counter it. In sum, some authors argue that “it is not a phenomenon demanding a radically new strategy response” (SHAPIRO; DARKEN, 2007).

On the other hand, it is unquestionable that after September 11th the attention to terrorism has increased significantly. The images of the attacks to the Twin Towers and the Pentagon

have began a massive media's coverage and, at the same time, a sense of emergency that resulted in the claim for immediate anti-terror policies.

Along with the conflict arising from the attack to the United States, the past few years saw the spread of the terrorist threat, especially with small scale terrorist attacks (with the events of March 11 2004, in Madrid, and July 7 2005, in London). These kinds of attacks – whose injuries and fatalities are not as significant as mass terrorism - may damage, in fact, the public confidence on potential targets (for example, mass transit systems), on security services, and on the government in general, resulting in stronger responses from States.

Regardless of the dimensions of these smaller terrorist attacks, they reach international repercussion: from domestic matters, terrorism became, definitively, an international concern. Fiori (2007) attributes the importance gained by the phenomenon to the increasing effect of the idea of global war on terror adopted by some countries.

Three circumstances are pointed as typical of terrorism nowadays – and may be used to justify some changes in laws and international agreements concerning counter measures: “the extreme violence of the new terrorism; its use of the newest technology for communication and organizational purposes; and the threat's transnational character” (DAALGARD, 2004).

2.2 The impact of terrorism on civil society and the claim for counterterrorism measures.

Terrorism, by acting directly over civil society and its sensation of security, can determine changes in governmental control measures, recognizing the duty of States to protect their societies and contribute to the maintenance of international peace and security. At the same time, the sensation of insecurity generated by terrorism creates an environment that may encourage States to impose different kinds of controlling measures in order to avoid terrorist actions.

Governmental responses to terrorism are usually focused on obtaining information about the functioning of terrorist groups. These pieces of information refer to a broad scope of areas, such as transportation and trade of items that are potentially dangerous (fire weapons, explosives, chemical products, radioactive products, hazardous substances and others). Through the observance of such key points, States intend to have control over the terrorist groups' operational conditions, allowing them to counter hazardous actions. Strategic points, then, tend to be more controlled, due to the nature of potential targets, which usually include borders (especially when it comes to the air space), consulates and other government

buildings, but, in general, the control increases to a point where it reaches private relations and life.

In the following months after 9/11, anti-terrorist laws spread throughout the world: the Patriotic Act, in the United States; the Anti-terrorism, Crime and Security Act, by the United Kingdom and the Anti-terrorism Act, in Canada are examples of the reaction to terrorism. However, it is important to bear in mind the difficulties faced by policy-makers and legislators when adopting certain actions, in order to find a proportional boundary between countering terrorism and maintaining human rights, since both objectives are constantly observed and suffer, concomitantly, influence of public demands.

2.3 Counterterrorism Measures and the Protection of Human Rights: conflicting or complementary goals?

Firstly, it is important to bear in mind that terrorism results both in law enforcement – as a result of the expansion of the police power - and intelligence efforts. After September 11, especially as a result of the new legislations created in several countries, a series of steps was taken to reinforce government investigations of individuals, gathering all information that might turn out to be useful. The main justification was that intelligence operation is designed to prevent further attacks.

In what regards to intelligence, terrorism poses a difficult standard for investigation: how to keep the investigation of its organization respectful to individual rights. Expanding intelligence authorities in some ways may have serious effects on promoting the rule of law or respect for human rights. These responses, then, at the same time that act on preventing terror, can cause significant impacts on human rights, particularly on human life, liberty, and physical integrity (MARTIN, 2008).

Exactly due to the importance of obtaining information for the fight against terrorism, the right to privacy is very often derogated by States concerned with the terrorist threat. In this context, the unauthorized collection of information on individuals, through wiretapping, tracking devices, photographs and other methods of surveillance, has been authorized to the security services of some States (OHCHR, 2008). The way the collected data is protected by those who obtain it is also an issue that deserves attention, since human rights law not only limits the derogation of a person's privacy, but also seeks to ensure that the information obtained does not fall on the hands of those unauthorized by law to receive it.

The information acquired during investigations is sometimes used to draw up official blacklists of people and groups deemed to be terrorists, in order to freeze the assets and restrict the movements of terrorists and their organizations. Belonging to or collaborating with a group deemed terrorist becomes a crime, and so numerous human rights are flouted, starting with the principle of the presumption of innocence and the right to defense.

According to Dick Marty, the Council of Europe's *rapporteur* on the topic, once “a person is included in the United Nations and EU terror lists, there is no possible procedure for taking him or her off that list, since the country in question is bound to follow the instructions of the EU Council, without knowing the detailed reasons for it”, and there is also no provision for compensation in the event of mistakes (MARTY, 2008).

Another of the main affected liberties is the right of expression and information, the fundamental base of any plural society – considered within the context of minimum limits that are imposed to avoid the propagation of xenophobic ideas or incitation of violence. Due to the fight against terrorism, the government interference with the media, in some countries, tends to be increased – and the freedom of speech may be radically diminished.

This governmental interference happens in two different perspectives: on one hand, by restricting the journalists' access to prisons, trials and war zones, in order to avert them from divulging critics to policies against terror; on the other, controlling media coverage with the purpose of feeding the population with some positive propaganda about the government measures. The detention of journalists is also a result of such restriction (CEUPPENS; HARVEN, 2008).

Other serious implication of counterterrorism measures is the disrespect of the principle of non-discrimination. In sum, minorities can be discriminated because of their causes, as is the case of “a number of Muslim charity organizations, which might be subjected to a too-pervasive and even indiscriminate scrutiny of their activities” (DALGAARD, 2004). As a result of these measures, there is not only “the danger of alienating minority groups whose cooperation is crucial in the domestic counterterrorism effort”, but also the risk to “hinder governments' ability to create broad international anti-terror coalitions” (DALGAARD, 2004).

The difference between those engaged in criminal terrorist activity and those who may share the religious or political beliefs or the ethnic backgrounds of the terrorists - but do not engage in any criminal activity – must be highlighted.

Another right that may suffer greatly in the fight against terrorism is the right of association. A central value to a democratic society, the right to freedom of association is may be derogated, according to human rights law, in some specific cases of threat to the national security. However, the line between the derogation of this right for the sake of national security and to suppress any opposition against the government is indeed thin. In that sense, it is not admissible that States use the national security claim to suppress political parties, trade unions or even human rights groups (OHCHR, 2008).

On the context of the war on terror, even the most important human rights become somehow derogable, as the right to life. When fighting terrorism, the act of killing suspects that could be normally arrested and brought to justice becomes justifiable by some States as a matter of national security. According to international human rights law, the right to life is non-derogable, “even in a state of emergency threatening the life of the nation” (OHCHR, 2008, pg. 31), and is considered lawful only when in self-defense or imminent threat to another human life. What has actually been happening is that States have adopted “shoot-to-kill” practices of law enforcement, as means of eliminating the perceived threats, with no regards to regular codes of conduct. The use of methods of interrogation that can be deemed as torture, as well as arbitrary detention, unlawful transfer and fair trial of suspects of terrorism are other serious issues to the appliance of human rights and humanitarian law in the fight against terrorism. On the context of the war on terror, for the reasons already mentioned, the quest for information leads to questionable policies in what regards to the treatment of the suspected terrorists, which often includes arbitrary detentions and the use of torture. The questions related specifically to the treatment of detainees in the context of terrorism are deeply analyzed on the topic B of this study guide.

As one can see, it is evident that certain national laws, in the name of counterterrorism measures, criminalize legal forms of the exercise of fundamental freedoms (such as the rights previously mentioned), peaceful political and social opposition and lawful acts. As pointed by Sérgio Vieira de Mello, the anti-terrorism legislation can be too broad in scope, allowing the suppression of activities that are, in fact, legitimate (MELLO, 2002).

It can be assumed, then, that these measures may have serious implications for the assurance of human rights: some of the measures are “a cause for concern to the international bodies and mechanisms for protecting human rights both globally and at regional and national level” (CEUPPENS; HARVEN, 2008).

3. PREVIOUS INTERNATIONAL ACTION

Ever since 9/11, the increase of States' concerns with combating terrorism was followed by the international community's unceasing consternation about preventing human rights abuses in that process. As a result, numerous and diversified approaches were carried out in that regard, both in universal and in regional scale.

3.1. U.N. Security Council

In the wake of the 2001 attacks, the United Nations prompted to respond: making use of its special powers under Chapter VII of the Charter, the Security Council approved the Resolution 1373, a counter-terrorism instrument binding upon every member State.

Failing to recall as reservation any international obligation under human rights or humanitarian law whatsoever, it imposes a set of repressive measures, such as to “[p]revent and suppress the financing of terrorist acts”; to “[f]reeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts” and to “[p]rohibit [...] any funds, financial assets or economic resources or financial or other related services” thereto connected (UNSC Resolution 1373 (1)).

Aside from that, the document encourages States to cooperate by exchanging information and signing agreements to prevent terrorist attacks (UNSC Resolution 1373 (3)).

Moreover, it creates a special committee of the Security Council, the Counter Terrorism Committee (CTC), with the main task of ensuring observance to the provisions of Resolution 1373 (UNSC Resolution 1373 (6)).

After Resolution 1373 was extensively criticized for supposedly instituting a breach under international law for offences against fundamental freedoms, the Security Council modulated its previous instruction by means of Resolution 1456, determining for instance that “[s]tates must ensure that any measure taken to combat terrorism comply with all their obligations under international law, [...] in particular international human rights, refugee, and humanitarian law” (Resolution 1456 (6)).

It also restates the urgent need of universal cooperation, recommending that “[i]nternational organizations should evaluate ways in which they can enhance the effectiveness of their action against terrorism, including by establishing dialogue and exchanges of information with each other and with other relevant international actors” (Resolution 1456 (7)) and that “[r]egional and subregional organizations should work with the

CTC and other international organizations to facilitate sharing of best practice in the fight against terrorism” (Resolution 1456 (8)).

3.2. U.N. General Assembly

In several occasions, the U.N. General Assembly has also expressed great concern about States on the edge of abuse while responding to the terrorist threat.

The breakthrough action took place with Resolution 57/219, titled “Protecting human rights and fundamental freedoms while countering terrorism”. It expressly affirmed “that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law” (G.A. Resolution 57/219 (1)), and evoked the International Covenant on Civil and Political Rights to recall the non-derogable nature of a number of fundamental freedoms, meaning they must be fully complied with in any event (G.A. Resolution 57/219 (Preamble)).

The matter of human rights and terrorism has been in the G.A. Agenda in every session ever since, and the provisions of Resolution 57/219 were consistently reaffirmed, as one remarks on Resolutions 58/174, 58/187, 59/191, 59/195, 60/158, 61/171 and 62/159.

3.3. U.N. Commission on Human Rights

After stressing in Resolution 2003/68 that “States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law” (U.N.C.H.R. Resolution 2003/68 (3)), the Commission on Human Rights took one step further in Resolution 2005/80: it decided to “appoint, for a period of three years, a special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism” (U.N.C.H.R. Resolution 2003/68 (14)).

Such special rapporteur would have the mandate, inter alia, “[t]o make concrete recommendations”, “[t]o gather, request, receive and exchange information and communications [...] on alleged violations of human rights and fundamental freedoms while countering terrorism”, “[t]o identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms” and “[t]o develop a regular dialogue and discuss possible areas of cooperation with all relevant actors”. (U.N.C.H.R. Resolution 2003/68 (14)).

3.4 Council of Europe

The Council of Europe has, since its foundation in 1949, based its work in the assurance of three fundamental values: human rights, the rule of law and pluralist democracy. These values should be enhanced, then, also as guidelines to counterterrorism measures. The Committee of Experts on Terrorism has prepared instruments, documents and relevant publications in order to orient States responses to terrorism.

Right after the attacks of 2001, the Committee of Ministers of the Council intended to contribute to the efforts of the international community against terrorism and, through the identification of gaps in international law, drew up the new Convention on the Prevention of Terrorism, which was opened to signatures in 2005. This convention, while enhancing States' efforts to prevent terrorism, claimed for the protection of human rights and fundamental freedoms, including grounds for refusal of extradition and mutual assistance and a provision on the protection of the victims of terrorism.

At the Recommendation Rec (2005)10 of the Committee of Ministers, the Council adopted all normative measures considered necessary for assisting States “to prevent, detect, prosecute and punish acts of terrorism”, especially when dealing with investigation. The obligation of member states to maintain a fair balance between ensuring public safety through law enforcement measures and securing the rights of individuals was exposed at the Chapter II, where “an evaluation in the light of the seriousness of the offence and taking account of the intrusive nature of the specific special investigation technique used should be made” was reinforced. Moreover, the recommendation stated that competent authorities should apply “less intrusive investigation methods than special investigation techniques if such methods enable the offence to be detected, prevented or prosecuted with adequate effectiveness” (RECOMMENDATION REC (2005)10, 2005).

In 2007, through the adoption the “Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis”, the Council declared that “freedom of expression and information and freedom of the media were crucial for the functioning of a truly democratic society”. Therefore, working conditions of media professionals in crisis situations were defined: freedom of movement, access to information, protection of journalists' sources of information and journalistic material, guarantees against misuse of defamation legislation, guarantees against undue limitations on freedom of expression and information and manipulation of public opinion were the topics developed at this document (GUIDELINES OF..., 2007).

4. BLOC POSITIONS

The countries of the **European Union** continue to improve their capabilities to counter the terrorist threat: there has been institutional cooperation against terrorism within the EU for several years, through the adoption of the Plan of Action against terrorism by the European Council, in 2001. This plan contains a wide range of measures referred to several sectors of the fight against terrorism: judicial and police cooperation, transport safety, border controls and document security, blocking financing, political dialogue and external relations, defense against biological-chemical-radiological-nuclear attack. Another instrument of the EU are the community level lists aimed at freezing the assets of individuals and terrorist groups. In addition to those responses, illegal immigration is strongly combated by the implementation of security measures through the use of techniques as biometrics in identity checks at the borders and in European Union territory (ITALIAN MFA, 2008). Moreover, it is important to point out that some European nations work in close partnership with the United States, sharing intelligence, arresting members of terrorist cells, and interdicting terrorist financing and logistics.

France has been the target of international terrorism and, for this reason, has introduced legislation and operational systems over time and to work for greater international cooperation against terror. The French government, when fighting international terrorism, bases its actions on the respect for human rights and public freedoms. France aims at a greater cooperation within various multilateral organizations and within the United Nations (FRENCH MINISTRY OF FOREIGN AFFAIRS, 2008).

The **Spanish** government is committed to the absolute guarantee of fundamental liberties while countering terrorism: the “zero tolerance” principle applies to acts undertaken by the public authorities that violate these liberties (MINISTERIO DE ASSUNTOS EXTERIORES Y COOPERACIÓN, 2008).

Italian responses to the terrorist threat, especially after 9/11, were taken in accordance with the resolutions adopted by the United Nations and with the regulatory instruments adopted by the EU. The awareness that the violation of human rights is one of the main causes of conflict and instability in the world is one of the main directions of the Italian foreign policy, which acts both to prevent conflicts and to re-establish the respect for human rights in those countries where the most serious and systematic violations take place (ITALIAN MFA, 2008).

The respect for international law and human rights standards is an integral part of the efforts of the **United Kingdom** to counter terrorism. The combat of terrorism and extremism must be, therefore, guided for the promotion of good governance and human rights. To combat the threat of terrorism, the UK government has developed a long-term counterterrorism strategy that, since 2003, is based on four main actions: prevent, pursue, protect and prepare. The British government is aware of the risks that these measures create tensions between different cultures, religions and races, making clear that the extremism of a tiny minority must not be allowed to damage the name of Islam or the Muslim peoples worldwide (COUNTERING INTERNATIONAL..., 2006).

Concerned with the terrorist threat on the region of the Caucasus, and as a member to the G8, the **Russian Federation** has reaffirmed its commitment to fight terrorism ensuring the respect for international law and human rights (G8 SUMMIT DECLARATION..., 2006). Furthermore, the country has ratified, in 1998, the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, making a commitment to respect human rights.

In the **Americas**, the Inter-American Commission on Human Rights recommends that States, when confronting the threat of terrorism, ensure that the measures taken preserve democratic values and human rights. This Commission affirms that the sacrifice of fundamental rights in the name of the fight against terrorism affects the rule of law and democratic freedoms. It is also pointed out that various countries of this region have suffered disproportionate state responses to terrorism (IACHR, 2002).

The **United States** government is officially at war with a transnational terrorist movement, what has been recognized since the publication of National Strategy for Combating Terrorism (2003). Furthermore, the protection of the homeland and the American people livelihood is considered an obligation, and all elements of American national power and influence are employed with that purpose: military power, diplomatic, financial, intelligence, and law enforcement activities. The American strategy involves the destruction of the Al-Qaida network and the confrontation with all those groups who use violence in the name of religion (US DEPARTMENT OF STATE, 2008).

Canada considers that the fight against terrorism “must include diplomacy, intelligence, security and law enforcement, customs and immigration, transportation, justice and finance expertise” (FOREIGN AFFAIRS CANADA, 2008), branches which must be implemented together. The domestic and international efforts should be based on good governance and on

the rule of law. The respect for international law, in particular human rights, humanitarian and refugee law is also fully defended by the country. In the year of 2004, Canada started a review of the Canadian Anti-Terrorism Act, in order to evaluate the impact of the measures that have resulted from legislation on civil liberties – as the Act contained extensive powers for police to investigate acts believed to be related to terrorism, affecting individual human rights and freedoms (FOREIGN AFFAIRS CANADA, 2008).

In **Colombia**, the national Constitutional Court declared the Legislative Act n.º 2 of 2003 unconstitutional, as it granted the power to detain individuals, carry out searches and intercept private communications without previous judicial order.

When discussing the security agenda, ministers of defense of **Argentina, Brazil, Paraguay, Uruguay, Chile** and **Bolivia** considered that the threats faced in the region are different to those from northern countries, concluding that, although no country is immune from terrorist threats, it must be prevented with better intelligence and policing and not with the armed forces and violation of human rights (INTERNATIONAL COMMISSION..., 2004).

According to the Asia Pacific Forum, in recent years, concerns about the threat of terrorism have resulted in the proliferation of many national counterterrorism laws in **Asia**, being the great challenge to maintain the rule of law and the commitment of the international community to human rights. Asian countries, when implementing anti-terrorist legislation, are strongly recommended to do so in consistence with human rights instruments and standards (APF, 2002).

China is extremely concerned with the terrorist and extremist threats, especially in Central Asia, but condemns the linkage of terrorism to any specific ethnic or religious group, believing that the fight against terrorism must be based on international law and the UN principles

Japan strengthened its own security by contributing to counterterrorism capacity-building among Asian countries. However, Japan's policy on human rights is that they have universal value and must be brought to every individual in the world, including in the context of the fight against terrorism (JAPANESE MFA, 2008).

Indonesia affirms the great importance of respecting human rights and the rule of law in the context of counterterrorism, denouncing measures based on race-based terrorist profiling - be it on ethnicity, national origin or religion (UNHRC, 2007).

Numerous countries in the **Sub-Saharan Africa**, in the fight against terrorism, have adopted provisions that derogate from international human rights instruments, acting outside of legal context and without judicial control. The most worrying violations “include arbitrary detentions, torture, violations of the right to life, of the right to a fair trial by an impartial and independent tribunal, violations of the right to freedom of expression, to private life and property, or refoulement of asylum seekers and expulsion of migrants suspected of taking part in terrorist activities to countries where they may face torture or cruel, inhumane or degrading treatment” (FIDH, 2007).

South Africa believes that certain basic human rights should be observed while countering terrorism. This government is strongly concerned that, in the context of the war on terror, certain racial and religious groups could be targeted and, furthermore, their human rights can be violated (UNHRC, 2007).

5. QUESTIONS TO PONDER

Taking into account the issues assessed on this guide, as well as the previous international actions thereto related, the Social, Humanitarian and Cultural Committee is called upon to debate how should governments avoid human rights abuses in the name of counterterrorism measures, addressing the following questions:

- 1) In what way should the transnational character of contemporary terrorism impose new approaches to counter it?
- 2) How can States protect their nationals and contribute to the maintenance of international security without affecting civil liberties?
- 3) What actions should be taken to control the expansion of intelligence efforts (especially when it comes to the collection of information on individuals) beyond the limits of people's privacy?
- 4) When fighting terrorism, should governments' interference with the media increase - even if it possibly diminishes the freedom of speech?
- 5) Can the national security claim determine the restriction of the right of association based on religious, political or ethnic backgrounds deemed more prone of associating with terrorism?

6. REFERENCES

Books and Articles

BROSSEL, Vincent. **Journalism in the service of a totalitarian dictatorship**. Available at <http://www.rsf.org/IMG/pdf/Report-North-Korea.pdf> Last access in July 2008.

BULUR, Latife. Chechnya: Human Rights Issues. In: Review Digest: Human Rights & The War On Terror-2007 Supplement. Available at: http://www.du.edu/korbel/hrhw/digest/terror/chechnya_2007.pdf Last access in July 2008.

CHOMSKY, Noam. **Power and Terror**. New York: Seven Stories Press, 2003.

CEUPPENS, Frédéric; HARVEN, Antoine Gouzée de. **Counter-Terrorism versus Human Rights: the key to compatibility**. Available at <http://www.fidh.org/spip.php?article2784> Last access in July 2008.

DALGAARD-Nielsen, Anja. Civil Liberties and Counter-Terrorism: A European Point of View In: **Center for Transatlantic Relations Report**, 2004. Available at <http://transatlantic.sais-jhu.edu/PDF/articles/Anja.pdf> Last access in July 2008.

DARKEN, R; SHAPIRO, J. Homeland Security: a new strategic paradigm. In: BAYLIS, J (org). **Strategy in the Contemporary World**. New York: Oxford University Press, 2007, p. 295-311.

GEARTY, Conor. 11 September 2001, Counter-terrorism, and the Human Rights Act. In: *Journal of Law and Society*. Volume 32, Number 1, March 2005, pp. 18/33.

HOBBSAWM, Eric. **Globalization, Democracy and Terrorism**. London: Little, Brown, 2007.

JINKS, Derek. The Applicability of the Geneva Conventions to the Global War on Terrorism. In: **Virginia Journal of International Law**, Vol. 46, 2006. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=897591 Last access in July 2008.

MARTIN, Kate. Intelligence, Terrorism and Civil Liberties. In: **Human Rights Magazine**, Winter 20. Available at <http://www.abanet.org/irr/hr/winter02/martin.html> Last access in July 2008.

MARTY, Dick. Tristes listes noires. In: **L'Atlas du Terrorism**, Courrier International, March-April-May 2008.

_____. **Does the terrorist blacklisting system fail the fundamental rights test?**

Available at http://www.europarl.europa.eu/news/expert/infopress_page/019-21530-049-02-08-902-20080218IPR21527-18-02-2008-2008-false/default_en.htm Last access in July 2008.

MELLO, Sérgio Vieira de. **To the Counter-Terrorism Committee of the Security Council**. 21 out 2002. Available at <http://www.un.org/sc/ctc/HC.htm> Last access in July 2008.

MENDEL, Toby. Consequences for Freedom of Expression of the Terrorist Attacks of 11 September - A Paper for the UNESCO Conference on Terrorism and Media. Available at http://portal.unesco.org/ci/en/ev.php-URL_ID=4684&URL_DO=DO_TOPIC&URL_SECTION=201.html Last access in July 2008.

MILLER, Judith. The Other Terrorism. In: **City Journal**. Vol. 18. N. 2. Spring 2008. Available at http://www.city-journal.org/2008/18_2_basque_terrorists.html Last access in July 2008.

O'CONNOR, Colm. Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat. Available at http://epress.anu.edu.au/war_terror/mobile_devices/ch15.html Last access in July 2008.

PARRY, John. Terrorism and the New Criminal Processes. In: **William & Mary Bill of Rights Journal**, Vol. 15, p. 765, 2007. Available at <http://ssrn.com/abstract=938179> Last access in July 2008.

TILLY, Charles. **The Politics of Collective Violence**. New York: Cambridge University Press, 2006.

WALSH, Jonh. Egypt's Muslim Brotherhood: Understanding Centrist Islam. In: **Perspectives on the United States**, Vol. 24 (4) - Winter 2003.

Documents:

Communiqué of the Third Ministerial Meeting of The China-Arab Cooperation Forum. May 23, 2008. Available at: <http://www.fmprc.gov.cn/eng/zxxx/t446472.htm> Last access in September 2008.

G8 Summit Declaration on Counter-Terrorism. St. Petersburg, July 16, 2006. Available at: <http://en.g8russia.ru/docs/17.html> Last access in September 2008.

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR). **Human Rights, terrorism and counter-terrorism**. Fact Sheet n° 32. Geneva: United Nations, 2008.

UNITED STATES, Resolution 1373 (2001). Available at <http://daccessdds.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement> Last access in September 2008.

Websites:

Amnesty International: www.amnesty.com

Council of Europe: www.coe.int

International Committee of the Red Cross: www.icrc.org

The Human Rights Watch www.hrw.org

United Nations: www.un.org

TOPIC AREA B: DETAINEES IN THE CONTEXT OF TERRORISM: VIOLATIONS OF THE LEGAL FRAMEWORK.

By Raquel Almeida Chamis, Felipe Rocha dos Santos, João Rodrigues Chiarelli and Virgínia Francesca Alves De Freitas

1. HISTORICAL BACKGROUND

Arbitrary detention, coercive interrogations, mistreatment and denial of basic judicial rights have been a recurrent theme in the last few years whenever counterterrorism measures are discussed. Recent reports of international organizations – as the Amnesty International, the Council of Europe, the Red Cross and the Human Rights Watch – raised inflamed controversies by describing the conditions under which suspected terrorists are being held by some countries in secretive military facilities.

One of these facilities is located in Guantánamo Bay, area over which, under a perpetual lease agreement signed with Cuba, the United States exercises complete jurisdiction and control. This area is nowadays the main destination of those captured by U.S. troops in the scope of their campaign in Afghanistan, initiated promptly after the 9/11 attacks (JOHNS, 2008). It is alleged that some prisoners on these facilities are held under legally questionable circumstances, with little access to proper defense or trial, and the use of some aggressive interrogation techniques has been reported to happen there with the purpose of obtaining information relevant to national security (UNESCO, 2006).

In response to that, after the U.S. Supreme Court decision *Rasul v. Bush* (June 2004), the detainees were granted access to Federal Courts in order to challenge their status as prisoners, but the jurisdiction over terrorist acts, according to the *Military Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism*, still belongs to the military commissions (UNESCO, 2006). However, it is alleged that the procedure held before such commissions falls short of several judicial guarantees, for it limits the rights of the accused to be tried in his presence, to have legal assistance of his own choosing, to examine every evidence and witness presented against him, and so on (UNESCO, 2006).

Notwithstanding, the counterterrorism practices carried out by the United States government are not unprecedented: on the contrary, they are well-known strategies which several States have adopted in fighting political enemies over the past decades.

Already in the 1950's, during the French war against the armed nationalist movement fighting for Algerian independence (from 1954 to 1962), France has supposedly made extensive use of torture, describing it as the only effective measure to counter the terrorism employed by the National Liberation Front. According to Raphaëlle Branche, the Algerian War may have served as a model for the fight against "subversion", "enemy insurgents" and "terrorism" (BRANCHE, 2007). In the 1970's, numerous governments deemed rebel or resistance groups as "terrorists" and began employing torture with the aims of combating their violent dissidence (ZALMAN, 2008). As the Cold War evolved, Latin America was influenced in such a way that the States' struggle against the "communist threat" led to outrageous human rights abuses for the sake of national security. During the "Condor Years", those who withstood the military dictatorships in the region were labeled "terrorists" and "subversives" and individually pursued: the governments of Chile, Argentina, Uruguay, Bolivia, Paraguay and Brazil joined efforts in an official alliance to kidnap, detain in secret prisons, torture and make "disappear" their political opponents. At one point, those nations even started hunting resistance leaders in exile and executing them in other countries (MIGUEL, 2005).

Meanwhile, terrorism, as it is today popularly understood, acquired an international character and, increasingly, these emblematic acts of violence perpetrated by organized groups as a means of expressing political objections started to transgress borders. The turning point to international terrorism happened during the 1972 Olympic Games in Munich, at which Israeli athletes were kidnapped and killed by *Black September*, a Palestinian organization (ZALMAN, 2008).

Not long afterwards, Israel became a pioneer in legalizing the use of "moderate physical pressure" against political prisoners qualified as terrorists, especially Palestinian detainees who pursued resistance activities against Israel. In the 1980's, this sort of practice against detainees was legitimated by the Israeli courts. In the 1990's stands out the Chechnya war, in the scope of which the Russian counterterrorism operations have allegedly included not only the practice of torture in order to obtain information, but also the incommunicado detention of Chechen combatants in secret prisons (HRW/CAT, 2008)

In parallel, it has been declared that Egypt recurred to similar tactics while fighting *Al Jihad Al Islami* and *Al Jama'a Islamiyya*, Islamist terrorist groups acting inside its territory against the Christian population. The suspects were supposedly abused in official facilities, the targets being preferably women related to activists (ZALMAN, 2008).

In the 21st century, the matter acquired a whole new proportion and scale after 9/11/2001: the international impact of the attacks put terrorism in the spotlight and made constant news out of it in every country over the following years. Along with it, the States' response has also obtained much more mediatic attention, and the press coverage on counterterrorism measures intensified.

Nonetheless, as demonstrated, long have some States violated basic rights of detainees within counterterrorism policies by relying upon national security. Even though the international media did not up until recently turn its eyes to the problem with the due watchfulness, it is neither a new phenomenon, nor the policy of one specific country: it is an old humanitarian issue which affects the generality of States and must be accordingly dealt with.

2. STATEMENT OF THE ISSUE

2. 1. International Human Rights Law and International Humanitarian Law: the differences between the law at peace and the law at war.

Both international humanitarian law and international human rights law aim to protect human life, prohibit torture or cruel treatment, prescribe basic rights for persons subject to a criminal justice process, prohibit discrimination, comprise provisions for the protection of women and children, and regulate aspects of the right to food and health. However, although they do are very similar in essence, their formulations are different and, consequently, so are the effects of the application of one or another.

International human rights law codifies “law enforcement rules”, which are considered adequate in peacetime. In sum, it refers to a strict control of the use of force by the police: lethal force can only be used “if necessary to meet an imminent threat of death or serious bodily injury” (ROTH, 2004). Moreover, after a suspect is detained, a fair trial is imperative (ROTH, 2004), because this guarantee is considered a fundamental principle of all regional and international human rights instruments: the recognition of the right of any human being to a fair trial in public by an independent and impartial court, previously established by the law, within a reasonable timeframe. International human rights law also deals with aspects of life in peacetime, such as freedom of the press, the right to assembly, to vote and to strike (CEUPPENS; HARVEN, 2008).

On the other side, international humanitarian law is the set of rules that conducts times of war, whether international or non-international armed conflicts, striking a balance between

state security and individual rights. Its purposes are certainly humanitarian, but it assumes that killing, detention without judicial review and trials with reduced menus of rights are permitted in situations of armed conflict. It could be said, then, that the subjection of a particular situation to the humanitarian law can have “unhumanitarian” consequences (RONA, 2004): for instance, an enemy combatant - unlike during peacetime -, can be shot without warning (unless he or she is incapacitated, under custody, or trying to surrender), regardless of any imminent threat. If a combatant is captured, he or she can be held in custody until the end of the conflict, without any trial.

International humanitarian law deals with many issues that are outside the purview of international human rights law, such as the conduct of hostilities, combatant and prisoner of war status. The power of humanitarian law is to protect and assist victims through the application of a certain framework to the armed conflicts (RONA, 2004).

International human rights law is applicable both in peacetime and in situations of armed conflict, but, especially when national security is at stake, the derogation of some human rights can be allowed by governments. Nonetheless, even in such emergency situations, certain human rights are never derogable: the right to life, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, the prohibition of slavery and servitude and the prohibition of retroactive criminal laws.

International humanitarian law and human rights law, then, are certainly distinct bodies of law, although they are complementary. Their application provides a framework for the comprehensive protection of persons in situations of violence (KELLEMBERGER, 2004).

The main codification of war rules are the four Geneva Conventions of 1949 and their Additional Protocol I of 1977. When it comes to terrorism, the main treaty sources applicable in non-international armed conflicts and the most controversial point is the article 3 of the Geneva Conventions, which deals with the treatment of the wounded and sick in the armed forces in the field (Convention I), wounded, sick and shipwrecked members of the armed forces at sea (Convention II), prisoners of war (Convention III) and civilian persons (Convention IV). The primary worry in Geneva law is the under-application of humanitarian rules, which tends to push the threshold for application lower. In sum, the Conventions are designed to condition or prohibit the exercise of powers routinely associated with the conduct of war, by protecting the prisoners of war.

2.2 Are the Geneva Conventions applicable to the Global War on Terror?

The term Global War on Terror (GWOT) has been used since President Bush declared, after September 11, the beginning of a “war against terrorism of global reach” (BUSH, 2001). Firstly stated to be a response to the attacks, it represents the synthesis of various military, political and legal actions initiated by the United States and followed by the governments of other countries, with aims to counter terrorist threats, prevent terrorist acts and curb the influence of terrorist organizations.

Both the term and the policies it denotes have been a source of ongoing controversy, as critics argue it has been used to justify unilateral preemptive war, human rights abuses and other violations of international law. The main reason for such controversies is that the nature and parameters of the GWOT remains unclear, as governments have “postulated a multiplicity of enemies, including rogue states, weapons of mass destruction proliferators, terrorist organizations, and terrorism itself” (RECORD, 2003).

The GWOT contains elements of war, however, its enemy is still undefined, since a great number of entities (alleged terrorist organizations and states), from different types (nonstate entities, states, and failed states) and geographical locations (due to the organization of terrorist groups, having cells in many countries) can be characterized as being terrorists or supporters of it.

It could be said, after all, that the GWOT “is not only a war against practitioners of terrorism but also against the phenomenon of terrorism itself” (RECORD, 2008): it searches the elimination of both terrorists and the method of violence they employ. Finally, the goals of the GWOT also encompass regime change and the democratization of countries (RECORD, 2003).

Based on this brief explanation, it is fundamental to define the proper role of international humanitarian law (the law of armed conflict) at the GWOT – and, more specifically, if the Conventions are applicable to it.

International and non-international armed conflicts are both recognized by humanitarian law: the first one applies when a State resorts to force against another State; the second may be applicable when there is the use of force within a State, between that State and a rebel group or between rebel groups within the State (RONA, 2004). In order to affirm when humanitarian law is applicable, according to Rona, the following characteristics must be observed: “a) if hostilities rise to a certain level and/or are protracted beyond what is known as mere internal disturbances or sporadic riots, b) if parties can be defined and identified, c) if

the territorial bounds of the conflict can be identified and defined, and d) if the beginning and end of the conflict can be defined and identified” (2004).

Even if the distinctions between international humanitarian law and international human rights law are clear, the occasions in which each of them should apply are not. For this reason, the most controversial question, in this point, is whether or not GWOT constitutes an armed conflict. The laws of war contained in the Geneva Conventions govern all “armed conflicts” - irrespective of whether the states involved formally recognize a state of war -; and they apply to non-international as well as international armed conflict. However, the Geneva Conventions themselves do not define “armed conflicts”, making it hard to technically determine when the international humanitarian law is the adequate rule.

The International Committee of the Red Cross suggests that, when classifying a conflict as a war or not, some aspects should be considered: the intensity of the hostilities, the regularity of armed clashes and the degree to which opposing forces are organized, as well as the motivation of the conflict (ICRC, 1949). Roth exemplifies that whereas the conflicts are sufficiently organized and violent they are seen as wars, in opposition to those that fall under law-enforcement rules, like organized crime or drug trafficking. However, these guidelines are straightly addressed to political conflicts rather than global terrorism – it is certainly more difficult to analyze when an organization as the Al Qaeda should be considered an organized criminal operation (which would not trigger the application of war rules) or a rebellion (which would). Terrorism also imposes another implication: due to the nature of terror operations – “where roles and activities are clandestine and a person's relationship to specific violent acts is often” (2004) -, it is hard to decide the treatment that should be applied to a suspect.

According to Jinks, the Geneva Conventions have a simple conceptual structure, entitling some categories of individuals to certain rights: the rules apply only in certain situations; the rules protect specific categories of persons; and they guarantee each category of persons a certain bundle of rights. Nevertheless, when separately analyzing these issues in the context of fight against terrorism, situations, persons and rights may be confused: first of all, because it is not consensual, according to legal parameters, whether the Global War on Terror can be classified as a “war”; moreover, terrorist organizations are not states, what generates a conflict that is totally different from inter-state wars and civil wars; and finally, because terrorist organizations do not accept or observe these rules of war themselves (JINKS, 2005). Despite all these objections, Jinks concludes that the Geneva Conventions govern substantial aspects

of the GWOT, as both Common Articles 2 and 3 of the Conventions provide some basis to apply several aspects of the rules.

Mainly, the problem in the GWOT is that some governments suggested that this campaign against terrorism would go beyond traditional warfare. Furthermore, as the rules that bind governments are much looser during wartime than in times of peace, this war rhetoric could be seen as a way to give extraordinary powers to detain or even kill suspects without trial. The fight against terrorism, so, led to a reexamination of the balance between state security and individual protections - in many cases to the detriment of the latter. The acceptance of treatments that can be described by some as torture was certainly one of the most damaging results of this arrangement of priorities: after decades of improvements in international standards governing the treatment of people deprived of liberty, questionable methods were again allowed in some circumstances (KELLEMBERGER, 2004).

Although the 9/11 2001 attacks did not drive any democracy to make torture legal, it has made the referred questionable methods of handling prisoners and suspects justifiable to some governments, since they have the objective of saving innocent lives (ECONOMIST, 2007).

The balance between legitimate security requirements and the respect of human dignity is particularly fragile with respect to methods of interrogation. The key issue is not whether a detainee can be interrogated, but what means may be used in the process. Neither a prisoner of war, nor any other person protected by humanitarian law can be subjected to any form of violence, torture, inhumane treatment or outrages upon personal dignity. Under the laws of war it is the detaining authority that bears full responsibility for ensuring that no interrogation method crosses the line (KELLEMBERGER, 2004).

In the United States, for instance, in the year of 2006, the Supreme Court, judging the case *Hamdan* (related to trials held by military commissions), forced the North American administration to accept that all detainees, wherever held, were protected by Common Article 3 of the Geneva Conventions, which bans all forms of cruel, inhuman or degrading treatment as well as torture. Before that, in 2005, the Detainee Treatment Act already prohibited such treatment by American soldiers anywhere in the world. But there are still some serious problems, especially about the use of a “moderate pressure”, not considered by many governments as torture. That would be a dangerous gray area.

The application of international humanitarian law and human rights law, then, should not constitute an obstacle to counter terrorism: international humanitarian law must be applied

when the violence has reached armed conflict level, in addition to human rights law, and human rights law when it has not.

2.3 Detention and the purposes of punishing convicted terrorists

In order to properly assess the role of prosecution and punishment as an enforcement mechanism of the Geneva Conventions, the purposes of punishment, in the context of terrorism, must be identified. According to Drumbl (2007), some are the possibilities: deterrence – in other words, dissuading others from launching terrorist attacks against civilians; retribution - to give the convicted terrorist sanctions that are proportionate to the harms he/she inflicted; reintegration of the convicted terrorist into society and expressivism – “to augment the moral value of law, stigmatize those who break it, and establish an authoritative public, and transnational, narrative regarding the heinousness of terrorist violence (DRUMBL, 2007)”.

Michael Ignatieff (2003) attributes part of the reasons of the use of torture to the desire to extract vital information, but also to something baser, that would be an urge to inflict pain, exact revenge, or even just for fun. Independently of the reasons, the provisions of some national anti-terrorism laws do not offer the necessary legal guarantees on the prevention of torture and other forms of ill treatment recognized by international human rights law.

On one hand there seems to be a tendency towards a denial of the absolute need for prohibition or punishment of cruel, inhuman or degrading treatment and, on the other hand, a view which justifies the re-emergence of the utilitarian point of view that justifies the use of torture as part of the fight against terrorism. A certain strand of opinion has now emerged, saying that torture could be used in certain exceptional circumstances, once some of the methods of interrogation, such as depriving a person of sleep, submission to noise and forced posture would not be acts of torture, but “only” some form of cruel, inhuman or degrading treatment.

2.4 Conditions of Detainees

The Human Rights Watch report concerning the detention conditions in Guantánamo (2008) describes its camps and the situation of detainees and their attorneys. The report has stated that detainees spend “22 hours a day alone in small cells with little or no natural light or fresh air”, exercising only during two hours a day “in small outdoor pens”. Occasional visits by representatives of the International Committee of the Red Cross were, most of the times,

“the only human interaction with anyone other than interrogators and prison staff” – once visits from family are not allowed. Detainees were also deprived from educational or any rehabilitative programming. One of the possible consequences is that such conditions cause the deterioration of mental health. (HRW, 2008).

It is possible to point out several other abuses inflicted upon men and women held in the context of terrorism: “interrogation techniques including hooding, stripping detainees naked, subjecting them to extremes of heat, cold, noise and light, and deprivation of sleep” while incarcerated, configuring a routine that exposes people to pain and humiliation and eventually results in deaths under questionable circumstances (HRW, 2008).

Depriving someone of the necessary amount of sleep has been used in the interrogation of terrorist suspects “to make them more amenable to providing information or confessions”, especially due to the fact that sleep deprivation causes “irritability, confusion, a decreased ability to concentrate and the loss of consciousness resulting from the failure of red blood cells to transport oxygen to the brain”. Many are the techniques used to deprive suspects of sleep: “flashing lights, loud music or extremely cold temperatures” (ZALMAN, 2008). According to Zalman, sleep deprivation has been used by the Soviet KGB during the Cold War, the Japanese during the World War II, and the British Army (on IRA suspects), demonstrating that this is not a peculiarity of the GWOT (2008). Hooding, in turn, is the practice of fully covering someone’s head, preventing people from seeing and freely breath - therefore, disorienting them. Finally, waterboarding² is supposedly another common tactic currently used on interrogations at the GWOT (ZALMAN, 2008).

3. PREVIOUS INTERNATIONAL ACTION

The treatment of prisoners has been object of several major international instruments, both on humanitarian and on human rights law, as a reflection of the worldwide concern with assuring that detainees’ basic rights are respected in any event, regardless of their status or of the nature of their crimes.

For the purposes of this Study Guide, important universal treaties earn a special remark– the *Geneva Conventions and Additional Protocols*, the *International Covenant on Civil and Political Rights* and the *Convention against Torture and Other Cruel, Inhuman or*

² During waterboarding, the person is immobilized on the back and has the head inclined down while water is poured over the face, forcing suffocation and simulating a situation of drowning.

Degrading Treatment or Punishment – as well as a UN-Economic and Social Council Report referring specifically to the treatment of suspected terrorists in Guantánamo Bay.

3.1. International Humanitarian Law: The Third and Fourth Geneva Conventions (1949) and Additional Protocols I and II (1977)

The Geneva Conventions are a set of four international treaties signed between 1864 and 1949, which establish the legal framework of warfare and humanitarian law. The Third and Fourth Conventions, as well as the Additional Protocols I and II, provide crucial rules of human treatment of prisoners – both civil and combatants – in times of armed conflict.

The broadest provision is certainly Article 75 of Protocol I, which is considered international customary law as it lays down a group of minimum guarantees that any prisoner is entitled to. Such fundamental safeguards not only touch the physical and psychological integrity of the detainees, but also translate basic judicial rights.

That article explicitly condemns any “outrages upon personal dignity, in particular humiliating and degrading treatment” and stresses that every judicial procedure must be conducted by “an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure”, among which could be highlighted that “no one shall be compelled to testify against himself or to confess guilt” (see ICRC Commentaries to Protocol I, Article 75).

3.2. International Human Rights Law

3.2.1. The International Covenant on Civil and Political Rights (1966)

Based on the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights sets numerous provisions which ensure the dignity and the compliance with the human rights of every prisoner.

Article 7 determines, generally, that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (see HRC General Comment n°20). More specifically, Article 10 regards to the treatment of detainees, asserting that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person” (see HRC General Comment n°21).

Article 9 prohibits any form of “arbitrary arrest or detention” and determines that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take

proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention” (see HRC General Comment n°8).

Finally, Article 14 contemplates judicial rights, announcing that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law” and recognizing as minimum guarantees, among others, to have “counsel of his own choosing” and “to be tried without undue delay” (see HRC General Comment n°32).

3.2.2. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

This Convention defines “torture” in its Article 1 as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person (...) when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. As previously demonstrated, that is the description of the treatment which many suspected terrorists have been historically facing.

The treaty is categorical when it outlaws such sort of practice: its Article 2 emphasizes that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”.

As to what concerns judicial protection, the Convention safeguards in its Article 15 that “any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings”.

Article 16 extends the protection, prohibiting “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture (...) when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official”.

3.3. UN-Economic and Social Council Report on the Situation of Detainees at Guantanamo Bay (2006)

In February 2006, five members of the Commission on Human Rights of the UN-Economic and Social Council delivered a joint report on the situation of detainees held at the

U.S. Base at Guantánamo Bay, in which they analyzed the compliance with human rights rules concerning: arbitrary detention; independence of judges and lawyers; torture and other cruel, inhuman or degrading treatment or punishment; freedom of religion or belief; and physical and mental health.

Considering that an on-site visit was not possible, the report is described by its authors merely as “a preliminary survey of international human rights law relating to the detainees in Guantánamo Bay”.

Notwithstanding, it has provided a rich case-based study of international law which transcends the particular reality of those specific prisoners to reflect the legal framework applicable to the global war on terrorism as a whole. The conclusions and recommendations thereby achieved constitute an opportune guideline to the discussions of Topic Area B in this Committee.

4. BLOC POSITIONS

The **United States**, adopting several policies based on the premise that the GWOT is a war, delimited the rights of detainees based on the assumption that they are enemy combatants. The Department of Defense maintains that the Guantánamo Bay detention facilities are to the greatest extent consistent with the provisions of the Geneva Conventions and the Convention Against Torture, and aligned with the United States’ overall position on the treatment of prisoners captured in the scope of the war on terrorism. The American position is to condemn the indefinite detention of suspects and to treat detainees humanely, respecting national and international obligations under both human rights and humanitarian law.

In order to update those guidelines, the U.S. Congress has passed several bills with respect to the subject over the last years, such as the National Defense Authorization Act (“NDA”, 2004), the Detainee Treatment Act of 2005 (2005), the Detention of Enemy Combatants Act (2005), the Guantanamo Detainees Procedures Act of 2005 (2005) and the Targeting Terrorists More Effectively Act (2005).

Although strongly connected to the United States in this area, the **European Union** has different approaches to counterterrorism. These differences became more evident when the United States broadened the war against terrorism beyond Al Qaeda and Afghanistan. Even if the European Union has always expressed great concern on the matter of respect for human rights on the context of counterterrorism actions, the peak of disagreement happened

when the Council of Europe, in June 2007, reported the existence of secret prisons for terrorist suspects (COUNCIL OF EUROPE, 2008), controlled by the CIA, in some eastern European member States – called “black sites” (ARCHICK, 2006). The Council of Europe, criticizing such uncooperative attitude, singled out **Poland** and **Romania** as the sites of those prisons. Subsequently, as a contention measure, the European Union's top justice official warned that any EU country found to have operated secret CIA prisons could lose its EU voting rights (HARDING, 2005).

The **United Kingdom** government, in November 2001, considered the situation of terrorism as a state of emergency in the country, assuring the conditions for detaining the maximum number of terrorist suspects without charge in Belmarsh Prison - what lasted until April 2005. The UK has ratified in 2006 the Optional Protocol of the UN Convention Against Torture and, on the International Day Against Torture, in June 2008, the fundamental opposition to torture was reiterated by the government (FOREIGN AND COMMONWEALTH OFFICE, 2008).

France firmly opposes to torture and to cruel, inhuman or degrading punishment or treatment, condemning them in every circumstances, including when it comes to prisoners suspected of terrorism. This country calls on all states to ratify the conventions against torture (such as the Convention for the Protection of All Persons from Enforced Disappearance, which bans secret places of detention). Another French commitment is the ratification of the Optional Protocol to the Convention Against Torture, to be concluded by the end of 2008 (FRENCH MINISTRY OF FOREIGN AFFAIRS, 2008).

Spain, at the same time that considers the fight against terrorism one of its priorities, affirms its strict observance to human rights when implementing security measures. The Spanish government is strongly against any kind of ill treatment, being one of the states that have ratified the Optional Protocol to the Convention Against Torture (MINISTERIO DE ASSUNTOS EXTERIORES Y COOPERACIÓN, 2008).

Respect for human rights is a key priority for **Germany**, and the country's government considers the protection of individuals from violations of their rights and basic freedoms mandatory. There are no possible derogations to the use of torture, as this State is party to all major human rights conventions of the United Nations and their supplementary protocols. Germany has also signed the supplementary protocol to the Convention Against Torture and the Convention on the Rights of Persons with Disabilities (FEDERAL FOREIGN OFFICE, 2008).

Human rights are, in **Latin America**, as well, a core component of political systems and democratic identity. With few exceptions, Latin American countries embrace the international standards set down in universal and regional human rights agreements, in a way that torture is strongly denied.

In **Argentina**, democracy and human rights are seen as priority in the work of the police and judicial officials. Torture and the treatment of detainees is a cause of concern, especially after the cases committed under the former military dictatorship. “The unlawfulness of torture and other cruel, inhuman and degrading treatment or punishment is expressly covered in the general rules or instructions concerning the duties and functions of those serving in the police forces”, involving measures to dignify people deprived of their liberty by improving their conditions of accommodation and treatment (UNITED NATIONS, 2008).

Brazil considers that any Government has the duty to protect people against terrorist acts, but human rights law plays a significant role to provide “a framework to counter terrorism without infringing on fundamental freedoms” (UNHCHR, 2007). Concerning torture and cruel, inhuman or degrading treatment, Brazil has set up a comprehensive Plan of Action and a National Committee on the Prevention of Torture, cooperating with non-governmental organizations to reinforce such principles. Also, capacity building and training in the police and prison administration sectors are seen as important measures in the prevention of torture in Brazilian prisons (UNHCHR, 2007). **Mexico** expresses concern with the maintenance of human rights standards regarding detainees in the context of terrorism. This country is committed to national mechanisms in the pursuit of the Optional Protocol on Torture (UNHCHR, 2007).

The **Asian** Human Rights Commission (AHRC) calls attention to the cases of torture in Asia, affirming that for over a decade the practice of torture in many Asian countries has been documented and that in many countries torture is routinely practiced as a method of investigating crimes (FERNANDO, 2008).

Terrorism remained a serious problem in the region, especially because of terrorist networks expanding their operations in **Central** and **Southern** Asia. In many cases, the U.S. cooperates with regional partners on efforts of counterterrorism (COUNTRY REPORTS ON TERRORISM, 2008).

In **India**, the ill treatment and abuse of prisoners suspected of terrorism is considered abhorrent, and the Government has expressed its concern with countries that could take

corrective and punitive steps through their military, administrative and legal system. Moreover, officials have been specifically appointed to look into the criminal cases including torture filed against Indian citizens (MINISTRY OF EXTERNAL AFFAIRS, 2008). **China** outlawed torture in 1996, although many methods of interrogation that contravene UN standards are allegedly still used due to the narrow definition of illegal acts. However, an apparent decline in the incidence of torture, as well as improved police training, can be observed (WATTS, 2005).

Most of Sub-Saharan **Africa** countries are members of international and regional – i.e. African and Arab – instruments on counterterrorism, among which stand out the OAU/AU Convention on the Prevention and Combating of Terrorism and its Protocol, which explicitly outlaws torture and arbitrary arrests and detentions (FIDH, 2007).

Not every country in the region, however, has incorporated such provisions into its national legal framework. Although States like the **Democratic Republic of Congo, Eritrea, Ethiopia, Liberia, Mozambique, Namibia, Nigeria** and **Rwanda** feature domestic rules ensuring compliance with human rights even in the face of terrorism, many openly adopt a policy of favoring national security over individual rights by maintaining statutes contrary to international law (FIDH, 2007).

Mauritius, Tanzania and **Zambia**, for instance, all grant the Executive branch special powers to determine the detention of terrorist suspects, depriving them of basic judicial rights. In **Sudan**, the President of the Supreme Court is authorized to set up special courts and proceedings to try suspected terrorists, and in **South Africa** and **Zimbabwe** they are presumed guilty until proven innocent, as their legal systems establish the reversal of the burden of proof (FIDH, 2007).

5. QUESTIONS TO PONDER

Taking into account the above stated issues, as well as the previous international actions thereto related, the Social, Humanitarian and Cultural Committee is called upon to debate over the situation of detainees in the context of terrorism, specially addressing the following questions:

- 1) Should the “Global War on Terrorism”, or the terrorist threat in general, be considered an exceptional situation as to allow States to derogate even from basic human rights obligations?

- 2) Are suspected terrorists to be granted a specific or peculiar judicial management?
- 3) How could States dissociate lawful interrogation practices from torture or cruel or inhuman treatment and thereby prevent human rights abuses from legally taking place under technical justifications?
- 4) What actions could be taken towards enforcing respect to international human rights and humanitarian law instruments within counterterrorism measures, particularly pondering the detention and treatment of suspects?

6. REFERENCES

ARCHICK, Krirstin. *U.S.-EU Cooperation Against Terrorism*. October, 2006. Available at <http://www.fas.org/crs/terror/RS22030.pdf> Last access in July 2008.

BRANCHE, Raphaëlle. Torture of terrorists? Use of torture in a “war against terrorism”: justifications, methods and effects: the case of France in Algeria, 1954–1962. In: *International Review of the Red Cross*. Volume 89 Number 67 September 2007. Available at <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/review-867-p543> Last access in July 2008.

CEUPPENS, Frédéric; HARVEN, Antoine Gouzée de. *Couter-Terrorism versus Human Rights: the key to compatibility*. Available at <http://www.fidh.org/spip.php?article2784> Last access in July 2008.

DINGES, John. *The underground story*. Available at: <http://www.johndinges.com/condor/revelations.htm> Last access in July 2008.

DRUMBL, Mark. The Expressive Value of Prosecuting and Punishing Terrorists: Hamdan, the Geneva Conventions, and International Criminal Law. In: *George Washington Law Review*, Vol. 75, 2007. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=954942 Last access in July 2008..

EUROPEAN COURT OF HUMAN RIGHTS. *Rules on absolute prohibition of torture and ill-treatment remain unchanged*. Available at <http://www.amnesty.org/en/for-media/press-releases/european-court-human-rights-rules-absolute-prohibition-torture-and-ill-t> Last access in July 2008.

FIDH – Fédération Internationale des Ligues des Droits de l’Homme. Human rights violations in Sub-Saharan African Countries in the name of counter-terrorism: A high risks situation. 2007. Available at <http://www.fidh.org/IMG/pdf/afriqueantiterr483eng2007.pdf>. Last access in July 2008.

FERNANDO, Basil. *Torture still widespread in Asia*. Available at: http://www.upiasiaonline.com/Human_Rights/2008/06/06/torture_still_widespread_in_asia/5601/ Last access in July 2008.

HERSH, Seymour. *Chain of Comand*. Allen Lane, 2004.

HUMAN RIGHTS WATCH (HRW). *Locked up alone: Detention Conditions and Mental Health at Guantanamo*. New York: Human Rights Watch, 2008.

IGNATIEFF, Michael. Is Torture Ever Justifiable? In: *The Economist*. Jan 9th 2003.

JOHNS, Fleur E., Guantanamo Bay and the Annihilation of the Exception. In: *European Journal of International Law*, Vol. 16, No. 4, 2005 Available at SSRN: <http://ssrn.com/abstract=847285> . Last access in July 2008.

KELLEMBERGER, Jakob. *The relevance of international humanitarian law in contemporary armed conflicts*. Committee of legal advisers on public international law (CADHI), 28th meeting Lausanne, 13-14 September 2004.

KLEIN, Naomi. *The Shock Doctrine: the rise of disaster capitalism*. London: Metropolitan Books, 2007.

MIGUEL, Silvia. *Os vôos do Condor revelados*. In: *Jornal da USP*. Available at: <http://www.usp.br/jorusp/arquivo/2005/jusp728/pag0405.htm> Last access in July 2008.

RECORD, Jeffrey. *Bounding the Global War on Terrorism*. Available at http://www.globalsecurity.org/military/library/report/2003/record_bounding.pdf Last access in July 2008.

SADAT, Leila. *Extraordinary Rendition, Torture and Other Nightmares from the War on Terror*. In: *Washington University School of Law Faculty Working Papers*. Paper N. 07-08-01, ago, 2007. Available at <http://law.wustl.edu/Faculty/index.asp?ID=655> Last access in July 2008.

UN Economic and Social Council Report – Situation of Detainees at Guantánamo Bay. (E/CN.4/2006/120). Available at: <http://www.universalhumanrightsindex.org/hrsearch/displayDocumentVersions.do?lang=en&docId=815> Last access in July 2008.

ZALMAN, Amy. *History of Torture and Terrorism*. Available at <http://terrorism.about.com/od/humanrights/p/Torture.htm> Last access in July 2008.

_____. *History of Terrorism: From the First to the Twenty-First Century*. Available at <http://terrorism.about.com/od/whatisterroris1/p/Terrorism.htm> Last access in July 2008.

_____. *Israel Terrorism and Torture History*. Available at <http://terrorism.about.com/od/humanrights/a/Israeltorture.htm> Last access in July 2008.

WATTS, Jonathan. *Torture still widespread in China*. In: *The Guardian*. Available at <http://www.guardian.co.uk/world/2005/dec/03/china.jonathanwatts> Last access in July 2008.

WEISSBRODT, David. *Fair Trials and Terrorism*. Available at http://www.amnestyusa.org/The_Right_to_a_Fair_Trial/David_Weissbrodt/page.do?id=1104761&n1=3&n2=35&n3=835 Last access in July 2008.

Documents:

Committee on Legal Affairs and Human Rights. *Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report*. Available at http://assembly.coe.int/CommitteeDocs/2007/EMarty_20070608_NoEmbargo.pdf Last access in August 2008.

Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949. <http://www.icrc.org/ihl.nsf/FULL/375?OpenDocument> Last access in August 2008.

Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949. <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument> Last access in August 2008.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984. Available at http://www.unhchr.ch/html/menu3/b/h_cat39.htm Last access in August 2008.

Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992). Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument) Last access in August 2008.

Human Rights Committee, General Comment 21, Article 10 (Forty-fourth session, 1992). Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3327552b9511fb98c12563ed004cbe59?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3327552b9511fb98c12563ed004cbe59?Opendocument) Last access in August 2008.

Human Rights Committee, General Comment 8, Article 9 (Sixteenth session, 1982). [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/f4253f9572cd4700c12563ed00483bec?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f4253f9572cd4700c12563ed00483bec?Opendocument) Last access in August 2008.

Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007). Available at: <http://www1.umn.edu/humanrts/gencomm/hrcom32.htm> Last access in August 2008.

International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. http://www.unhchr.ch/html/menu3/b/a_ccpr.htm Last access in August 2008.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument> Last access in August 2008.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. <http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument> Last access in August 2008.

Situation of Detainees at Guantánamo Bay. U.N. Doc. E/CN.4/2006/120. 15 February 2006. Available at: http://www.globalsecurity.org/security/library/report/2006/guantanamo-detainees-report_un_060216.htm Last access in August 2008.

The International Committee of the Red Cross Commentaries to Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Article 75. <http://www.icrc.org/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/e46340b132ac1b86c12563cd004367bf!OpenDocument> Last access in August 2008.

USA Congressional Research Service, Treatment of “Battlefield Detainees” in the War on Terrorism, 2006. Available at: <http://fpc.state.gov/documents/organization/66440.pdf> Last access in August 2008.

Widespread Torture in the Chechen Republic: Human Rights Watch Briefing Paper for the 37th Session. UN Committee against Torture. Available at: <http://hrw.org/backgrounder/eca/chechnya1106/chechnya1106web.pdf>, Last access in August 2008.