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HUMAN RIGHTS

PRACTICAL
GUIDANCE PAPER
ON COUNTER-
TERRORISM AND
HUMAN RIGHTS

DRAFT

**Practical Guidance Paper on
Counter-terrorism and Human Rights**

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LIST OF ABBREVIATIONS AND ACRONYMS

CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
CoE	Council of Europe
CTC	UN Counter-terrorism Committee (UN Security Council)
CTED	Counter-terrorism Executive Directorate (UN Security Council)
CTITF	Counter-terrorism Implementation Task Force (UN Secretariat)
ECHR	European Court of Human Rights
ECOSOC	UN Economic and Social Council
ECJ	European Court of Justice
EU	European Union
FATF	Financial Action Task Force
HRC	UN Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
INTERPOL	International Criminal Police Organisation
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organisation for Security and Co-operation in Europe
ODIR	Office for Democratic Institutions and Human Rights, OSCE
SMR	Standard Minimum Rules for Treatment of Prisoners
TPB	Terrorism Prevention Branch (UNODC)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNCAT/CAT	The United Nations Convention against Torture
UNESCO	United Nations Economic and Social Council

INTRO

1. BACKGROUND

“Terrorism is a real threat in many parts of the world and States must address terrorism robustly and effectively”, states the foreword to the report of the Eminent Jurist Panel on Terrorism, Counter-terrorism and Human Rights.¹

Human rights form an integral part of the EU and the UN strategies to fight terrorism.^{2,3} The strategies establish firmly that development, security and human rights are interlinked and mutually reinforcing, and that grave violations of human rights can create conditions conducive to terrorism. Furthermore, it is stressed that measures taken to counter terrorism must be in full compliance with human rights obligations.

It similarly follows from a number of recent specific UN conventions on counter-terrorism⁴ as well as from several UN resolutions, that states must respect human rights when countering terrorism.⁵ Most recently it was stressed by the President of the Security Council that, “Member States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee and humanitarian law.”⁶

The Danish Government likewise asserts that human rights are instrumental for sustainable development, poverty reduction, peace and security.⁷ The Danish Government strategic approach to international human rights cooperation stresses that the Government will work towards ensuring that the fight against terrorism is conducted with full respect for human rights.⁸ The point of departure of the Danish Government is that there is no contradiction between efficient counter-terrorism and upholding human rights.

In relation to development assistance in particular, respect for freedoms, human rights and fundamental values are a core element in the Danish Development Strategy, “*Freedom from Poverty Freedom to Change.*”⁹

2. INTRODUCTION TO THE GUIDELINES

The objective of this paper is twofold:

First, in part A, to introduce an assessment tool which can be used at the national level. The assessment tool can assist in identifying and addressing possible weaknesses or shortcomings in relation to fighting terrorism and complying with human rights obligations at the domestic level.

Second in part B, to provide input to easily accessible, practical and operational human rights guidelines in regard to counter-terrorism measures. This part

is particularly aimed at police, security and military officers and any other law enforcement officials, including intelligence agents, involved in the different phases of countering terrorism. The idea behind directing the guidelines at this particular target group is that these guidelines should be a step towards ensuring that (1) law enforcement officials (and thus not just their superiors, political decision makers and other senior officers) are being provided with basic human rights knowledge in regard to the professional tasks they undertake and (2) human rights accordingly are taken into consideration at all levels, including the operational level and (3) that everyday practices respect individual human rights at all times. The guidelines can in particular be useful for officials in developing countries and in development cooperation projects.

In part B this paper identifies a number of phases of particular interest in a 'counter-terrorism timeline' and separates them into three different categories: (I) general preventive measures, carried out at a very early stage (such as, for example, steps taken towards anti-radicalisation); (II) individualised measures aimed at preventing terrorism by means other than criminal prosecution (such as, for example, freezing of a person's assets); and (III) criminal prosecution of terrorist offences (such as, for example, arrest and detention).

For each of the different phases the most pertinent human rights are outlined. It is important to note that it is indeed only the 'most pertinent' human rights that are mentioned. Under each phase numerous human rights issues could theoretically arise and be pointed out. However, in order to keep this review as simple and accessible as possible it is deliberately focused solely on 'the most pertinent rights'.

Next, for each phase, an identification of some of the fundamental human rights-versus-security dilemmas occurring in that phase follows. The dilemmas mentioned in this paper are not limited to the balancing acts that law enforcement officials may experience when carrying out their duties. Also included are dilemmas which may be particularly relevant at a legislative level where they have to be dealt with by, for example, members of parliament, government officials and other decision makers. Even if these dilemmas may not be of direct operational relevance for the on-the-ground official, it is important to highlight them and for law enforcement officials to be aware of human rights questions and dilemmas in a wider context than solely that of the situation they may be facing at any given moment.

Finally, and again for each of the phases, the paper provides checklists to use when operationalising practical human rights considerations. The paper also offers a selection of easily accessible sources (direct hyperlinks) for readers who would like to know more about a particular phase, and who may require additional input as they seek to manage the kinds of balancing acts that the dilemmas of each phase entail.

3. GENERAL APPLICATION OF HUMAN RIGHTS STANDARDS

Post World War II a number of declarations and conventions (sometimes called covenants) were adopted to express universal human rights. Declarations are not legally binding but, given that they are endorsed by the international community, they carry a considerable amount of moral weight. Conventions and/or covenants describe binding treaties, which come into force upon ratification by member states.

What is known as 'the International Bill of Human Rights' consists of:

- The Universal Declaration of Human Rights (1948)
- The International Covenant on Civil and Political Rights (1966), including two optional protocols
- The International Covenant on Economic, Social and Political Rights (1966), including an optional protocol

The international human rights instrument of most relevance for the present paper is the International Covenant on Civil and Political Rights (ICCPR). In order to understand how human rights work, it is important to recognise that although all rights and freedoms are universal and indivisible, some types of rights may be subject to reasonable limitations. If a right is not subject to such reasonable limitations, however, then any limiting measure is inadmissible. Human rights, including civil and political rights, can be categorised into the following different types:

- *Absolute rights*, which are non-derogable under applicable human rights treaties. No qualification or interference is permitted under any circumstance. Absolute rights are, among others, freedom from torture, inhuman or degrading treatment and protection from slavery.
- *Rights which can only be restricted in a state of emergency threatening the life of the nation*. ICCPR Article 4 spells out the constraints under which a number of rights can be limited. A classic example of a right which can be restricted in a state of emergency is the right to liberty or the right to a fair trial – the latter, although absolute to the extent that the trial as a whole must be fair can, however, be limited in certain aspects.

- *Rights which can be limited after a concrete assessment* or, in other words, rights that permit limitations intended to balance between the individual and the community. Any restriction on these rights has to be examined through a number of key questions in order to comply with human rights law: (a) is the limitation prescribed by law? (b) is the limitation necessary? (c) is the limitation of the right proportionate to the value of the limitation considered? Examples could be the right to freedom of expression or to freedom of association.

Each human rights convention states which rights can be restricted or limited.

PART A

4. INTRODUCTION TO PRIME

Here we describe a systematic assessment tool to assist states in identifying and addressing possible weaknesses or shortcomings in national policies, laws and practices as they seek to ensure that counter-terror measures are in line with human rights requirements. The assessment tool provides an overview of the most pertinent human rights concerns in relation to the various counter-terrorism phases described in part B, and makes it easier for states to decide where to intervene in order to most effectively promote a human rights compliant counter-terrorism practice. See section 9 for a graphic overview of the tool, which we have named the PRIME model.

This assessment tool breaks the field down into five different levels; with the idea behind this being that these five levels are all interrelated and all important in order to prevent and combat terrorism in an efficient and sustainable compliance with human rights requirements:

P stands for 'policy': it should be a clear national policy that it is the aim and intention of the parliament and/or the government to provide security to its citizens and at the same time ensure respect for human rights. Human rights compliance is an important part of UN counter-terrorism conventions and of the UN Counter-terrorism Strategy 2006, and it is thus important that states officially adopt this standpoint at their own policy level.

R stands for 'regulation': the national policy on counter-terrorism and human rights should be transformed into regulation. It should be ensured that national legislation and regulation on counter-terrorism are in compliance with human rights requirements.

I stands for 'implementation': this describes *how* the policy and the following regulation are implemented at a practical, everyday level in a given state; and *which* practical and operational principles and procedures are established by executive authorities in order to ensure that human rights requirements are taken into consideration and implemented in concrete practical counter-terrorism decisions. In this regard it should be emphasised that sometimes – not least in relation to counter-terrorism – regulations and laws cannot, for evident reasons, be formulated very precisely. In practical terms this means that, to some degree, the laws will leave open a requirement for the officials responsible for implementing them to interpret the laws themselves. This fact only highlights the importance of monitoring and supervising the practical implementation of the policy and its regulations.

M stands for 'monitoring': this step provides for a mechanism for oversight of conduct performed at the implementing level. The oversight should preferably be carried out by independent monitoring bodies and the practical tools to be used should include but not be limited to: gathering statistical data; collating documents and documentation; and conducting interviews/questionnaire surveys with the purpose of collecting concrete experiences.

E stands for 'evaluation': the aim of this measure is obviously to evaluate and assess the collected data at regular time intervals. The overall idea behind evaluating is naturally that the results and conclusions drawn from it can and should be fed back into the process and influence the preceding levels: 'P', 'R', 'I' and 'M'.

In principle the PRIME assessment tool can and should be applied for each of the counter-terrorism phases as outlined in part B.

The above model is a simple but potentially very useful assessment tool. One of its greatest virtues is that its scope and depth are very adjustable and flexible. The tool can thus be used everywhere and at all levels, including by a developing state with limited financial means and a limited number of adequately educated professional staff.

EXAMPLE: USE OF PRIME IN RELATION TO TRAVEL RESTRICTION

First there should be an assessment of what the specific policy is in relation to travel restrictions, and it should be ensured and acknowledged that national regulations governing travel restrictions comply with the state's international human rights obligations.

Secondly, addressing the regulatory level, it should be assessed whether the states' human rights obligations have been taken into account in the national legal framework on travel restrictions and in accordance with the policy.

Thirdly, how the regulation on travel restrictions is being implemented in practical terms should be assessed. Are the human rights standards integrated in the practical decision-making process when state bodies issue travel bans on any individual?

Finally it should be assessed how the area – travel restrictions in this case – is monitored and evaluated. Following this it should be decided whether or not there is a need to change anything on the policy and/or regulatory levels.

PART B

5. GENERAL PREVENTIVE COUNTER-TERRORISM MEASURES AT A VERY EARLY STAGE

In this part we identify and discuss practical operational requirements of international human rights which should be taken into consideration when states are countering terrorism. It is important that these international human rights requirements are adopted and implemented at the domestic level in national policy, laws and practice (see the PRIME model in part A).

As the PRIME model sets out, it is of utmost importance that officials involved in counter-terror operations are familiar with human rights requirements. However, in some situations certain problematic aspects of a state's counter-terrorism practice may lie beyond the reach of the individual official, for example weaknesses in a state's national counter-terrorism policy or in national legislation. In this Part B a number of phases of interest in a 'counter-terrorism timeline' are identified and separated into three different categories, the first of these being general preventive measures carried out at a very early stage.

Here, the emphasis should be put on the term 'general' because a key characteristic of this phase is that it encompasses measures aimed at preventing terrorism and addressing counter-terrorism at **a general level**, as opposed to steps addressed at particular individuals. The most commonly seen general preventive measure is government efforts at addressing radicalisation.

5.1. ANTI-RADICALISATION

Radicalisation can be defined as the growing preparedness amongst individuals or groups in a society to support or to wish to support fundamental changes that do not fit within a democratic system of law and whereby undemocratic means are used. Crucial is the political ideology and the aim that is strived for. Within a number of states radicalisation is seen as a broad social problem and a real risk that may threaten the stability of a democratic society, as it can lead to social unrest and increasing polarisation. Many states have thus taken steps aimed at rehabilitating former radicals and, ideally, preventing radicalisation through a combination of outreach, engagement, and aftercare. This has been done, among other ways, by increasing social and political confidence and knowledge, as well as by focusing on the role of religion.

Certain anti-radicalisation measures may potentially conflict with human rights. This could, for instance, be the case if a government is focusing its measures solely

on certain groups of people such as people of certain religious or political beliefs, and thus acting contrary to the principle of non-discrimination. Also, the application of profiling techniques by which the government/authorities aim at identifying, analysing and predicting state of mind and behaviour of individuals or small groups (i.e. terrorist cells) who are in a radicalisation process and who may potentially become involved in future terrorist acts is a measure which may potentially infringe the principle of non-discrimination. In this regard it should be borne in mind that some experts have cast doubt on the predictive value of profiling.

5.1.1. MOST PERTINENT RIGHTS

The most pertinent human rights concerning anti-radicalisation are the right to privacy and the right not to be discriminated against:

- ICCPR Art. 17(1): No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.
- ICCPR Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

5.1.2. FUNDAMENTAL DILEMMAS

- Anti-radicalisation measures may be effective, proportionate and necessary means for preventing and avoiding future incidents of terrorism in a society. On the other hand, the authorities' use of certain measures may be discriminatory, lead to stigmatising of certain groups in a society and thus be counter-productive in terms of inclusion and integration programmes.

5.1.3. WOULD YOU LIKE TO KNOW MORE?

International

- CTITF, *First Report of the Working Group on Radicalisation and Extremism that Lead to Terrorism: Inventory of State Programmes*
- Martin Scheinin, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development*. (A/HRC/6/17/Add. 3 (2007), Chapter VI, p. 21, "Profiling, community outreach (...)")
- Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, "Profiling in the context of countering terrorism" and "Suicide attacks as a form of terrorism" (A/HRC/4/26 (2007)), Chapters II and IV, Section A
- *Uniting against Terrorism: Recommendations for a Global Counter-terrorism Strategy* (report of the Secretary General on integrated and coordinated

implementation of and follow-up to the outcomes of UN conferences and summits in the economic, social and related fields (2006), A/60/825 (2006), Part II, Chapter B, Sections 1, 3 and 4

- *Findings and Observations by the United Nations Human Rights System Relating to the Human Rights of Migrants* (2006), Section IV, G

Regional:

- OSCE/ODIHR, *Report, Roundtable on Understanding Violent Extremism and Radicalisation Leading to Terrorism* (2009)
- *Communication from the Commission to the European Parliament and the Council concerning terrorist recruitment, addressing the factors contributing to violent radicalisation* (COM [2005] 313)

6. INDIVIDUALISED PREVENTIVE MEASURES AIMED AT PREVENTING TERRORISM BY OTHER MEANS THAN CRIMINAL PROSECUTION

All persons are protected through common human rights against unlawful and/or arbitrary interference with their personal liberty. However, as a part of their counter-terrorism efforts many states have implemented measures which have an impact on the liberty of individual persons, including a number of preventive measures such as targeted sanctions for suspected terrorists such as the freezing of assets, the imposition of travel restrictions and the gathering of personal information through intelligence measures such as various degrees of surveillance, administrative detention and the use of control orders. Also worth mentioning is the expulsion of foreigners suspected of terrorism. It is important to note that the measures outlined below do not represent an exhaustive list and that some states have taken other steps and/or can be imagined to do so in the future. Also, it should be emphasised that not all the measures highlighted below are being used in all states.

6.1. FREEZING OF ASSETS, TRAVEL RESTRICTIONS, ETC. INCLUDING THE UN AND THE EU BLACKLISTING SYSTEM

Targeted sanctions are an example of a preventive measure which has a direct impact on the liberty of individual persons. Targeted sanctions are directed at individuals, companies and organisations suspected of involvement in terrorist activity. They include freezing the financial assets of and the imposition of travel restrictions on the individuals concerned. Both the UN and the EU compile blacklists based on information received from the member states. For a person/entity to be included on the UN and/or the EU blacklists does not require that the person/entity has been convicted of, or even charged with, a terrorist offence. Of central importance in the context of the listing practices under the different sanctions regimes is thus the issue of protecting the right to due process and a fair review including the principle of contradiction i.e. the right to be heard. The imposition of targeted sanctions is not to be confused with punishment for a criminal offence and, nevertheless, the right to a fair trial stands. Moreover, targeted sanctions may have serious consequences for freedom of movement or the right to property and serious effects on the ability of the affected individuals and their families to enjoy economic and social rights, such as – for instance – their access to education and employment, which may be severely limited.

6.1.1. MOST PERTINENT RIGHTS INVOLVED

The most pertinent human rights concerning freezing of assets are the right to freedom of movement and to a fair and public hearing:

- ICCPR Art. 12(1): Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
(2) Everyone shall be free to leave any country, including his own.
(3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present covenant.
(4) No one shall be arbitrarily deprived of the right to enter his own country.

- ICCPR Art. 14(1): All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children [...]

6.1.2. FUNDAMENTAL DILEMMAS

- Targeted sanctions may be an effective, proportionate and necessary means for tracking and preventing terrorism. On the other hand they can have great impact on the individual's basic human rights, without the individual having the possibility of a proper hearing of the case, including compliance with the principle of contradiction i.e. the right to be heard.
- Targeted sanctions may be an effective means of tracking and possibly of early prevention of terrorism. However, the stage of intervention is so precipitate that it leaves no possibility for collecting proper and sufficient evidence in order to press charges and conduct trials for the involved individuals.

6.1.3. CHECKLIST FOR OPERATIONALISING HUMAN RIGHTS CONSIDERATIONS

- Ensure the listed person is informed about the principle of contradiction i.e. the right to be heard, and appeal procedures, including the national focal point for complaints.

- Restrictions on freedom of movement must in accordance with law and must deploy the least intrusive instrument amongst those which might achieve the desired result.

6.1.4. WOULD YOU LIKE TO KNOW MORE?

International:

- S/RES/1988 (2011) (Creates a new Afghanistan sanctions regime to target threats to Afghanistan's stability and establishes specific criteria for having the sanctions removed. Continues to ensure fair procedures exist for listed individuals)
- S/RES/1989 (2011) (Focuses the 1267 regime exclusively on the threat from al-Qaida and improves the fairness and transparency of how the sanctions are applied)
- United Nations Counter-terrorism Committee, *Technical guide to the implementation of Security Council Resolution 1373* (2009), Chapter I
- S/RES/1822 (2008) (review of all names on the Consolidated List by 30 June 2010 and followed by regular reviews; making accessible publicly releasable reasons for the listing of individuals and entities)
- *Uniting against terrorism: recommendations for a global counter-terrorism strategy: report of the Secretary General on integrated and coordinated implementation of and follow-up to the outcomes of UN conferences and summits in the economic, social and related fields* (2006), A/60/825 (2006), Part III, Chapters A and D
- S/RES/1566 (2004) (on creation of a working group to consider measures against individuals, groups and entities other than Al-Qaida/Taliban)
- S/RES/1373 (2001) (on international cooperation to combat threats to international peace and security caused by terrorist acts)
- S/RES/1267 (1999) (on measures against the Taliban)
- *UN Convention for the suppression of financing of terrorism and UN Security Council* (1999)
- OHCHR, Human Rights Committee, General Comment No. 27, *Freedom of movement*,
- 02-11-1999 (CCPR/C/21/Rev.1/Add.9), para. 11
- UNESCO, *Sub-commission on Prevention of Discrimination and Protection of Minorities*, "Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights" (Annex, UN Doc E/CN.4/1984/4) (1984)

Regional:

- Gavin Sullivan and Ben Hayes, ECCHR, *Blacklisted: Targeted sanctions, preemptive security and fundamental rights* (2010), in particular Chapter III
- European Commission for Democracy through Law (Venice Commission), *Report on Counter-terrorism measures and Human Rights* (2010), Chapter H

- International Commission of Jurists, Eminent Jurist Panel *Assessing Damage, Urging Action* (2008), Chapter V, Section 5
- ECJ, *Kadi and Al Barakaat* cases (2008)
- OSCE, *Countering Terrorism, Protecting Human Rights, A Manual* (2007)
- Bardo Fassbender (study conducted for the United Nations) *Targeted Sanctions and Due Process* (2006), Section D
- CoE, *Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts* (2005)
- FATF, *The FATF Forty Recommendations* (2003)
- FATF *Nine Special Recommendations on Terrorist Financing* (2001)

6.2. SURVEILLANCE AND INTELLIGENCE

With the overall purpose of collecting information about individuals and entities suspected of being involved in terrorism-related activities and thereby preventing terrorist acts, many states have, as a consequence of the 9/11 attack, provided their national intelligence services with extended powers, including sophisticated surveillance techniques. The different tools and techniques are most often used as individualised preventive measures aimed against particular individuals and include, amongst many others, wiretapping, the use of tracking devices and logging of mobile phone and web-based activity. Furthermore, many states have increased security at airports and other places of transit, for instance by taking iris scans and fingerprints from passengers, as well as photographs, passport details etc. in order to prevent terrorist acts at an early stage. Depending on the degree to which surveillance tools are being used, as well as the overall legitimacy of the operation (the operation should be 'lawful, necessary and proportionate'), surveillance may pose a serious threat to the individual's right to privacy. Also, the exchange of intelligence information between domestic authorities and/or with intelligence services from other countries may constitute a further infringement of the individuals' right to privacy. Finally, obtaining data means in practical terms that data needs to be filed or stored somewhere. The indefinite retention of personally sensitive information constitutes in itself a probable violation of the right to privacy. It is thus important that transparent policies and processes are in place with regard to individual access to the information about whether they are registered in the files or not, and also about deletion of personally sensitive information after a set amount of time.

6.2.1. MOST PERTINENT RIGHTS INVOLVED

The most pertinent human right concerning surveillance is the right to privacy:

- ICCPR Art. 17(1): No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.

6.2.2. FUNDAMENTAL DILEMMAS

- Surveillance and storage of data may be an effective, necessary and proportionate means for discovering, tracking and preventing terrorism. On the other hand, modern methods of surveillance open up for possibly quite severe interference with the right to a private life.
- The right to a private life is not absolute, but may only be limited if regarded as lawful, necessary and proportionate. This should be decided on a case-by-case basis as opposed to a general policy. However, is this assessment always made before collecting, storage and handover of information obtained through intelligence?
- Surveillance and storage of data may be effective means for discovering, tracking and perhaps even preventing terrorism. On the other hand, modern methods of surveillance mean very large amounts of data need to be stored, which requires a well-developed data storage strategy in order to keep private data confidential.
- Exchanging information obtained through intelligence with other national intelligence services may be an important step towards receiving information. However, it may conflict with the individual's right to privacy and lead to disclosure of personally sensitive information if there is no other oversight mechanism than the one being provided by the intelligence service itself.

6.2.3. CHECKLIST FOR OPERATIONALISING HUMAN RIGHTS CONSIDERATIONS

- is the identity of the suspected person to be put under surveillance correct?
- is the legal basis for the surveillance of the specific individual satisfactory?
- has a practical, concrete assessment of the least intrusive surveillance tool that can be used to conduct the surveillance task been undertaken?
- is an appropriate data storage system in place and does it fulfil conditions that gathered information is kept confidential and not disposed of casually?
- are a legal basis, as well as policies and practices, in place regarding exchange of information with other intelligence agencies? This may include fixed standards for: 1) in which situations information can be handed over; 2) what kind of information can be handed over, including a lower/higher threshold; 3) who makes the decision about handing over information and; 4) ensuring that the receiving partner has adequate procedures in place to ensure protection of the confidential material.

6.2.4. WOULD YOU LIKE TO KNOW MORE?

International:

- S/2011/240 (2011), "Report of the Security Council Committee established pursuant to resolution 1373" (2001) on the practitioners' seminar *Bringing terrorists to justice*, held at United Nations Headquarters from 1–3 December 2010, Sections C and E

- CTITF, *Basic Human Rights Reference Guide: Security Infrastructure* (2010)
- A/HRC/14/46 (2010), Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, "Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight."
- A/HRC/10/3 (2009), Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, "The role of intelligence agencies and their oversight in the fight against terrorism."
- A/HRC/13/37 (2009), Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, "The erosion of the right to privacy in the fight against terrorism."
- S/RES/1373 (2001) (on international cooperation to combat threats to international peace and security caused by terrorist acts)
- OHCHR, Human Rights Committee, *General Comment No. 16, The right to respect of privacy, family, home and correspondence, and protection of honour and reputation*, 08-04-1988
- UNESCO, *Sub-commission on Prevention of Discrimination and Protection of Minorities*, "Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights" (Annex, UN Doc E/CN.4/1984/4) (1984)

Regional:

- CoE, Commissioner for Human Rights, *Protecting the Right to Privacy in the Fight Against Terrorism* (issue paper) (2008), Parts 2 and 5
 - International Commission of Jurists, Eminent Jurist Panel, *Assessing Damage, Urging Action* (2008), Chapter IV
 - OSCE, *Countering Terrorism, Protecting Human Rights, A Manual* (2007), e.g. Chapter 13
 - *The Ottawa Principles on Human Rights and Anti-terrorism* (2006), Chapters 8–9
 - CoE, *Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts* (2005), Chapter VI, p. 21ff.
- ECHR, *Klass and Others v. Germany* (1978)

6.3. CONTROL ORDERS AND HOUSE ARREST

A control order is a governmental order imposing certain restrictions on an individual, short of detention, to prevent that person from preparing, committing, or assisting in the commission of a terrorist offence. The order can include restrictions on what the person can use or possess, their place of work and place of residence, whom they may speak to and where they can travel. Individuals

subject to a control order can also be ordered to surrender their passport, accept impromptu police visits to their home at any time and electronic tagging.

Some of the restrictions that can be included in a control order may clash disproportionately with the basic human right to enjoy recognition of inherent dignity and with the fact that all people are entitled to freedom of movement as a fundamental element of the 'liberty of man'. This may lead to a lack of public confidence in counter-terrorism legislation with simmering frustrations and anger as a result. This may be a particular risk if control orders are used in a discriminatory way, for example by being solely or primarily imposed on foreigners. The right to liberty of movement can be restricted only where necessary to protect national security, public order or health, and the rights and freedoms of others.

6.3.1. MOST PERTINENT RIGHTS INVOLVED

The most pertinent human rights concerning control orders are the right to freedom of movement and the right to a private and family life:

- ICCPR Art. 12(1): Everyone lawfully within the territory of a State shall, within that territory, have the rights to liberty of movement and freedom to choose his residence.
(3): The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.
- ICCPR Art. 17(1): No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
(2) Everyone has the right to the protection of the law against such interference or attacks.

6.3.2. FUNDAMENTAL DILEMMAS

- Control orders may be an effective, necessary and proportionate way for the authorities to keep terror suspects under control and thus observe their state responsibility to protect the population. On the other hand control orders may conflict severely with individuals' basic rights. Also, although an order might concern only one member of a household the effects, however, can have a perceptible influence on the other members of the household as well, including minors.
- The state authorities may have well-argued grounds to impose control orders on a certain group of people more often than on others. On the other hand, an overweighting of one particular group of people being subject to control orders may lead to issues of discrimination, and a rising tension amongst specific groups of persons in a society.

6.3.3. CHECKLIST FOR OPERATIONALISING HUMAN RIGHTS CONSIDERATIONS

- bearing in mind the principle of proportionality, has there been a practical assessment of the ambit of the control order imposed for each individual case in order to ensure the least intervention sufficient to handle the given situation?
- is all due respect and consideration being given to other members of the household, in particular minors, when conducting house searches, setting up electronic tracking devices, etc.?

6.3.4. WOULD YOU LIKE TO KNOW MORE?

International

- Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Study on human rights compliance while countering terrorism in Australia”, (A/HRC/4/26/Add 3, (2006)), Chapters IV and V
- OHCHR, Human Rights Committee, *General Comment No. 27, Freedom of movement*, 02-11-1999 (CCPR/C/21/Rev.1/Add.9), in particular para. 11
- UNESCO, *Sub-commission on Prevention of Discrimination and Protection of Minorities*, “Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights” (Annex, UN Doc E/CN.4/1984/4) (1984)
- Human Rights Committee, *Celepli v. Sweden*, Case No. 456/1991, views adopted on 18 July 1994, in particular para. 9.2

Regional:

- The Home Secretary, United Kingdom, *Review of counter-terrorism and security powers* (2011)
- The Home Secretary, United Kingdom, *Renewal of Control Orders Legislation* (2011)
- International Commission of Jurists, *Eminent Jurist Panel Assessing Damage, Urging Action* (2008), Chapter 5.4
- House of Lords, *Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention* (2005–2006)

6.4. EXPULSION OF FOREIGN NATIONAL TERRORIST SUSPECTS

Since 2001 it has been observed that some states have extradited, expelled, deported or otherwise transferred foreign nationals suspected of terrorism to their country of origin or to other countries, including the so-called ‘rendition’ of foreigners by certain states. States consider this to be a preventive measure to protect their territory from individuals considered a security risk to the state. According to UN reports, in most of the transfers carried out since 11 September 2001 the persons concerned have been terrorist suspects who had not been

criminally charged and instead were being transferred to third states (receiving states), apparently for interrogation purposes. Many of the receiving states are, or have formerly been, facing allegations of systematically or routinely practicing torture as part of their interrogation methods. This course of action leads to a problem as states have an obligation to respect the principle of non-refoulement as well as to conduct transfers of detainees in a transparent manner, in accordance with human rights law and rule of law principles. States have explored various avenues to expel foreigners without potentially violating the non-refoulement principle, including the use of 'Diplomatic Assurances' from receiving countries and 'Memoranda of Understanding' between exchanging parties. The value of such arrangements is unclear. The challenge is to find a way for the sending state to identify current political conditions in the receiving state and the personal circumstances of each individual and, on this basis, to decide whether these circumstances make the individual particularly vulnerable to the risk of torture and/or ill-treatment in the receiving state.

6.4.1. MOST PERTINENT RIGHTS INVOLVED

The most pertinent human rights with regard to expulsion of foreign terrorist suspects are the principle of non-refoulement and the right for detained people to be treated with human dignity:

- UNCAT Art. 3(1): No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
- ICCPR Art. 10(1): All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

6.4.2. FUNDAMENTAL DILEMMAS

- The state may have a well-reasoned wish to expel a foreigner who is suspected of preparing acts of terrorism and thus is considered a danger to the state. However, if the foreigner comes from a state of origin where they may face a threat of torture or ill treatment upon return, the sending state, due to the principle of non-refoulement, must not expel that person and must instead tolerate their stay on its territory. Some states have overcome this issue by negotiating diplomatic assurances or memoranda of understanding with the authorities of the origin state, committing to treat the suspect humanely upon return.
- Expulsion based on secret material/intelligence may limit the individual's right to contradiction i.e. the right to be heard. On the other hand it may be necessary and important for the authorities to keep this information to themselves.
- It may be a good solution for the sending state to expel the suspected terrorist from its territory. On the other hand the problem of the dangerous person is not thereby solved; rather it is exported and transferred to a new place.

6.4.3 CHECKLIST FOR OPERATIONALISING HUMAN RIGHTS CONSIDERATIONS

- are expulsions conducted with respect for the individual and with no unnecessary or disproportionate use of force?
- do the sending state and the officials involved in the actual execution of the expulsion do everything in their power to ensure that the conditions in the receiving state are such that the expelled individual does not risk of being subjected to torture or other ill-treatment upon arrival? In practical terms this can include that the individual is accompanied by duly assigned officials from the sending state throughout the journey and upon arrival.
- has the sending state initiated effective and reliable monitoring and/or have follow-up mechanisms been established with the purpose of maintaining an ongoing control over the conditions under which the individual is being treated?

6.4.4. WOULD YOU LIKE TO KNOW MORE?

International:

- United Nations Counter-terrorism Committee, *Policy Guidance on International Cooperation*, S/AC.40/2010/PG.3 (2010), Sections g–j
- UNODC, *Digest of Terrorist Cases* (report) (2010), Chapter VII (C)
- UNODC, *Handbook on Criminal Justice Responses to Terrorism* (2009), Part One, pp. 23–26
- Commission on Human Rights, Note by the United Nations High Commissioner for Human Rights, *Protection of human rights and fundamental freedoms while countering terrorism* (E/CN.4/2005/103), in particular paras. 52–61
- *Human rights questions: implementation of human rights instruments – Torture and other cruel, inhuman or degrading treatment or punishment*, Note by the Secretary-General, A/59/324 (2004)
- OHCHR, Human Rights Committee, *General Comment No. 20, Prohibition of torture and cruel treatment or punishment*, 10-03-1992 (replaces *General Comment 7*, 1982)
- OHCHR, Human Rights Committee, *General Comment No. 01, Implementation of Article 3 of the Convention in the context of Article 22*, 21-11-1997. A/53/44, annex IX, CAT General Comment No. 01.

Regional:

- European Commission for Democracy through Law (Venice Commission), *Report on Counter-terrorism measures and Human Rights* (2010), Chapter I
- Columbia Law School Human Rights Institute, *Promises to Keep Diplomatic Assurances Against Torture in US Terrorism Transfers* (2010), Part II, Chapter 2
- ECtHR, *Daoudi v. France* (2009) (available in French only)
- ECtHR, *Saadi v. Italy* (2008)
- OSCE, *Countering Terrorism, Protecting Human Rights, A Manual* (2007), Chapter X, p. 137ff.
- Human Rights Watch, *'Diplomatic Assurances' against Torture* (2006)

7. CRIMINAL PROSECUTION OF TERRORIST OFFENCES

An efficient and prevention-focused response to terrorism includes a strong criminal justice element. Individuals perpetrating terrorist acts as defined in the various legal instruments are criminals violating law(s), and their acts should be dealt with by the criminal justice system, including by criminal prosecution. There is an obligation in international law to prosecute terrorism. Criminal prosecution is made up of a number of steps which include: investigation; interrogation and evidence collection; arrest and detention; and prosecution and trial. This list is not exhaustive. Similar to the issues and dilemmas outlined in the preceding section 6 (preventive measures aimed at individuals) each of the phases in a criminal prosecution procedure opens up for a number of human rights considerations including, among others, the individual's right to liberty and personal security, the right not to be subjected to torture or other ill-treatment and the right to a fair trial and due process.

7.1. INVESTIGATION, INTERROGATION METHODS AND EVIDENCE COLLECTION

A typical first step of a criminal prosecution procedure is for the authorities to investigate the case in order to determine whether there are solid grounds for indictment or not. Part of the investigation consists of evidence collection in general and interrogation of the suspect. In the fight against terror there is a particular risk that the use of interrogation methods will overstep the universal human rights threshold of treating human beings with human dignity. Some intelligence agencies have been accused of operating as a 'state within the state', and it has been claimed that incidents have occurred in which the authorities have exceeded a reasonable use of force, and that these actions have sometimes been protected and/or hidden behind a shield of secrecy and a lack of proper state accountability mechanisms. It is important to emphasise that even in the context of fighting terrorism, authorities may only use investigative methods that are in line with human rights standards. Moreover, evidence obtained through torture or inhuman treatment is deemed notoriously unreliable and is inadmissible at a court trial.

7.1.1 MOST PERTINENT RIGHTS INVOLVED

The most pertinent human rights concerning investigation (including interrogation methods and evidence collection) are the right not to be subjected to torture or cruel treatment; the right for detained people to be treated with dignity; and the prohibition against arbitrary or unlawful interference with individuals' privacy, including home and family:

- ICCPR Art. 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.
- ICCPR Art. 10(1): All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- ICCPR Art. 17(1): 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

7.1.2. FUNDAMENTAL DILEMMAS

- The question of interrogation methods illustrates the dilemma between the possible harm done to the rights of the suspected terrorist through the torture and ill-treatment of the suspect, versus the possibility of obtaining very important information that could potentially allow a state's security forces to prevent an act of terrorism and, most likely, save many human lives.

7.1.3. CHECKLIST FOR OPERATIONALISING HUMAN RIGHTS CONSIDERATIONS

Are the officials aware of international human rights laws and standards in regard to interrogation techniques? This includes the absolute protection against torture, inhuman and degrading treatment and that the following – non-exhaustive – list of different prohibited interrogation techniques is applied:

- blindfolding
- coercion into signing false confessions
- deliberate destruction of homes and communities
- deprivation of food and water
- deprivation of the natural senses such as sight or hearing, or of awareness of place and the passing of time
- electric shocks
- hooding
- humiliation
- immersion in blood, urine, vomit or excrement
- medical experimentation
- methods of interrogation that impair decision-making capacity or judgment
- mock executions and the threat thereof
- overcrowded and cold conditions
- rape
- sleep deprivation
- suspending someone by their arms
- threats to family
- thumb presses
- unduly lengthy interrogations
- use of noise
- wall standing

Officials could use the following practical checklist to ensure that the conduct of the interrogation complies with international human rights standards:¹⁰

- at the outset of each interrogation, the detainee should be informed of the identity (name and/or number) of all persons present.
- the identity of all persons present should be noted in a permanent record that should detail the time at which interrogations start and end, and any request made by the detainee during the interrogation.
- the detainee should be informed of the permissible length of an interrogation; the procedure for rest periods between interviews and breaks during an interrogation, places in which interrogations may take place and whether the detainee may be required to stand while being questioned.
- blindfolding or hooding should be forbidden during interrogation as these practices often make the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their interrogators.
- the detainee should have the right to have a lawyer present during any interrogation.
- all interrogation sessions should be recorded and the detainee or, when provided by law, their counsel should have access to these records.
- the position of particularly vulnerable persons (for example, the young, those who are mentally disabled or mentally ill) should be the subject of special safeguards.

7.1.4. WOULD YOU LIKE TO KNOW MORE?

International:

- Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight” (A/HRC/14/46 [2010]), Chapter II
- UNODC, *Digest of Terrorist Cases* (report) (2010), Chapter V, Section B and Chapter VI
- Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “The role of intelligence agencies and their oversight in the fight against terrorism” (A/HRC/10/3 [2009])
- UNODC, *Handbook on Criminal Justice Responses to Terrorism* (2009), Part II, Chapter 3
- *The Ottawa Principles on Human Rights and Anti-Terrorism* (2006), Chapter 4 *Human rights questions: implementation of human rights instruments – Torture and other cruel, inhuman or degrading treatment or punishment*, Note by the Secretary-General, A/59/324 (2004)

- *The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (A/RES/43/173) (1988) (note: especially Arts. 21 and 23)
- OHCHR, Human Rights Committee, *General Comment No. 20, Prohibition of torture and cruel treatment or punishment*, 10-03-1992 (replaces *General Comment No. 7*, 1982)
- Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights* (OEA/Ser.L/V/II.116) (2002), Chapter C

Regional:

- OSCE/ODIHR, *Preventing Torture: a Handbook for OSCE Field Staff* (1999), in particular pp. 55–56
- International Commission of Jurists, Eminent Jurist Panel, *Assessing Damage, Urging Action* (2008), Chapter IV

7.2. ARREST AND DETENTION

International human rights law, as earlier mentioned, recognises that all persons should be protected from unlawful interference with the right to liberty. From a counter-terrorism perspective it is particularly important to highlight the right to liberty, as it has been observed that some states' initial reaction to the problem of suspected terrorists has been to detain them for preventive reasons. In this regard, it should be emphasised that neither arrest nor detention may be conducted arbitrarily and only can be justified on specified grounds. All arrested and/or detained persons, furthermore, enjoy basic protection through a number of universally recognised human rights principles, such as the right to be treated in accordance with the principle of innocence; to be informed about the reasons for the arrest; to private access to independent legal counsel and to contact the outside world as well as the right to a court review (*habeas corpus*). It is similarly important to be aware that international law prohibits any form of secret detention.

7.2.1. MOST PERTINENT RIGHTS INVOLVED

The most pertinent human right concerning arrest and detention is the right to liberty and security of person:

- ICCPR Art. 9(1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.
 - (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
 - (3) Anyone arrested or detained on a criminal charge shall be brought promptly

before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time, or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

(5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

7.2.2. FUNDAMENTAL DILEMMAS

- Arrest and detention can be effective and necessary precautionary measures in order to secure the whereabouts of a suspect, as well as to ensure that no further laws are violated by the suspect. Pre-trial detention can in itself be of the utmost necessity and importance in order to investigate a case undisturbed. On the other hand, every individual has a fundamental right to liberty unless there are solid grounds for detention. This condition can possibly infringe on the fact that the authorities usually have to investigate a case thoroughly before deciding on whether to prosecute or not.

7.2.3. CHECKLIST FOR OPERATIONALISING HUMAN RIGHTS CONSIDERATIONS

- has the arrested person been informed about the reasons for the arrest?
- has the arrested/detained individual been informed about their right to access to legal counsel, and has the detainee been assisted in getting in contact with such?
- has the detainee been informed about the right to have an effective, impartial and independent court review of the detention?
- is the detainee's right to keep in contact with the outside world, including keeping relatives informed of their detention and the location thereof being fulfilled? This includes assistance in contacting, among others, family members or relatives as appropriate and necessary.
- has the prohibition on the use of secret detention been made known to all involved officials?

7.2.4. WOULD YOU LIKE TO KNOW MORE?

International:

- Martin Scheinin, *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism* (A/HRC/13/42 [201]), Chapters III, IV and V, Section D–E

- UNODC, *Handbook on Criminal Justice Responses to Terrorism* (2009), Part One, Chapter III, Section B and Chapter VII
- *Report of the United Nations Working Group on Arbitrary Detention*, (A/HRC/10/21 (2009), Chapter III, Section B
- OHCHR, Human Rights Committee, *General Comment No. 21, Humane Treatment of Persons Deprived of Their Liberty* 10-04-1992
- *The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (A/RES/43/173) (1988) (note: especially Arts. 21 and 23)
- OHCHR, Human Rights Committee, *General Comment No. 08, Article 9 (Right to liberty and security of persons)*, 30-06-1982
- UNESCO, *Standard Minimum Rules for the Treatment of Prisoners*, resolutions 663 C/1957 and 2076/1977

Regional:

- European Commission for Democracy through Law (Venice Commission), *Report on Counter-terrorism measures and Human Rights* (2010), Chapter D–E
- OSCE, *Countering Terrorism, Protecting Human Rights, A Manual* (2007), Chapter 10
- CoE, *Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts* (2005), Chapters VII and XI
- International Commission of Jurists, Eminent Jurist Panel, *Assessing Damage, Urging Action* (2008), Chapter 4, Section 2.2
- *The Ottawa Principles on Human Rights and Anti-terrorism* (2006), Chapter 5

7.3. TRIAL

It is fundamental that individuals suspected of terror-related activities enjoy the right to due process and effective remedy, just as any other individual who is charged with any kind of criminal behaviour. There are a number of universal human rights standards which protect the principle of due process and fair trial in relation to both criminal and civil proceedings including, among others, the right to be presumed innocent; the right to an independent, public, legal hearing within reasonable time; equality before the courts; and the right to have any conviction reviewed by a higher court. Observation of procedural due process, including independent and impartial judges, is not in itself sufficient to protect against human rights abuses of the individual, but it is a fundamental safeguard against misuse of state power, and it is of indispensable value to the protection of – to mention a couple of examples – the right to freedom from torture and the right to freedom of expression.

It is important that the trial, from an overall assessment, is fair and respects the equality of arms between the prosecution and the defence.

Some states have been seen to use military courts or tribunals, including military judges, for trials concerning terrorist acts. The key issue in this regard is the clash between having a civilian person on trial and a military officer as judging authority. The presence of serving military personnel in a courtroom or on a tribunal may compromise the independence of the court and if the judging authority is appointed by, and belongs to the military (including being subject to military discipline) they thus could be unduly influenced by considerations that have nothing to do with the nature of a case involving a civilian. Military courts must – like ordinary civil courts – comply with universal human rights standards.

7.3.1. MOST PERTINENT RIGHTS INVOLVED

The most pertinent human right here is the right to a fair trial:

- ICCPR Art. 14(1): All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
- (2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
- (3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt.
- (4) In the case of juvenile persons, the procedure shall be such as will take

account of their age and the desirability of promoting their rehabilitation.

(5) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

(6) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

(7) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

7.3.2. FUNDAMENTAL DILEMMAS

- It may be necessary to protect sensitive information by keeping evidence material secret from the accused person in order to protect the security and safety of the state. On the other hand the equality of arms between prosecution and defence, the principle of contradiction, i.e. the right to be heard, and equal access to case documents are foundation stones in the right to a fair trial.

7.3.3. CHECKLIST FOR OPERATIONALISING HUMAN RIGHTS CONSIDERATIONS

- is the principle of presumption of innocence being respected and, correspondingly, is the accused person being treated as convicted before the court may have decided its verdict?
- is access to a lawyer/legal counsel facilitated, from the first stage of police questioning and throughout criminal proceedings?
- is it the case that adequate confidential and private meetings can be held between the suspect and their lawyer in order to effectively exercise their defence rights and that there is awareness of this right amongst the involved officials?
- is the lawyer allowed to play an active role during interrogations and to check detention conditions?
- is the suspect able to communicate with at least one family member or employer informing them of the arrest and custody?
- do suspects from abroad have access to contact their country's embassy or consulate and receive visits?

7.3.4. WOULD YOU LIKE TO KNOW MORE?

International:

- UNODC, *Digest of Terrorist Cases* (report) (2010), Chapter V, Section A
- UNODC, *Handbook on Criminal Justice Responses to Terrorism* (2009), Chapters IV–VI

- *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, "Right to a fair trial in the context of prosecuting terrorist suspects" (A/63/223 [2008]), Chapters III–VII*
- Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights* (OEA/Ser.L/V/II.116) (2002), Chapter C
- OHCHR, Human Rights Committee, *General Comment No. 13, Equality before the courts and the right to a fair and public hearing by an independent court established by law (Article 14)*, 13-04-1984

Regional:

- European Commission for Democracy through Law (Venice Commission), *Report on Counter-terrorism measures and Human Rights* (2010), Chapter F
- International Commission of Jurists, Eminent Jurist Panel, *Assessing Damage, Urging Action* (2008) Chapter III, Section 5.2 and Chapter 6, Section 3.1
- OSCE, *Countering Terrorism, Protecting Human Rights, A Manual* (2007), Chapter 12
- CoE, *Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts* (2005), Chapter IX
- ECtHR, *Heaney and McGuinness v. Ireland* (2001)
- ECtHR, *Incal v. Turkey* (1998)
- Gerald L. Neuman, "Comment, Counter-terrorist Operations and the Rule of Law, Section II (Military trials)", *The European Journal of International Law* Vol. 15 No. 5, 2004,

7.4. THE RIGHTS OF THE VICTIMS OF TERRORIST OFFENCES

Under international human rights law, states have a responsibility to protect the human rights and the security of individuals under their jurisdiction. This includes protecting the rights of the victims of terrorism, such as their right to healthcare, legal assistance and justice as well as their access to effective and prompt remedy. A state may do so both by implementing procedures to adjust police tactics and criminal procedural law that aim at bringing perpetrators of terrorist acts to justice and also by condemning the suffering caused by terrorism to the victims and their families, expressing its profound solidarity with them, and providing them with practical assistance in the form of appropriate emergency assistance; herein included medical, psychological, social and material assistance.

7.4.1. MOST PERTINENT RIGHTS INVOLVED

The most pertinent human rights in regard to victims of terrorism are the right to life and to physical integrity of the victims:

- ICCPR Art. 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind,

such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the present Covenant.

(3) Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

- ICCPR Art. 6(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

7.4.2. WOULD YOU LIKE TO KNOW MORE?

International:

- Panel on the human rights of victims of terrorism, A/HRC/DEC/16/116 (2011)
- Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Ten areas of best practices in countering terrorism” (A/HRC/16/51 [2010]), Section E
- *General Assembly resolution on protection of human rights and fundamental freedoms while countering terrorism*, A/RES/64/168 (2010), in particular para. 6
- UNODC, *Handbook on Criminal Justice Responses to Terrorism* (2009), Chapter VIII
- *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147 (2006), Annex, Sections III and VII–X
- *The United Nations Global Counter-terrorism Strategy* (2006 version), A/RES/60/288 (2006), Annex, Section I, para. 8 and Section IV
- UNODC, *Handbook on Justice for Victims* (1999), Chapters II and III

Regional:

- International Council on Human Rights, *Talking about Terrorism, Risks and Choices for Human Rights Organisations* (2008). Chapter IV
- OSCE, *Countering Terrorism, Protecting Human Rights, A Manual* (2007), Chapter II

- OSCE/ODIHR, *Final report, High-level Meeting Victims of Terrorism*, Vienna (2007), p. 28 and pp. 78–91
- CoE, *Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts* (2005), Part II, pp. 41–45

8. SUMMARY AND CONCLUSION

Within the last decade the international community and individual states have taken a number of measures with a view to effectively countering terrorism. In the present guidelines these measures have been divided into three different overall phases: general preventive counter-terrorism measures at a very early stage; individualised preventive counter-terrorism measures other than criminal prosecution; and criminal prosecution of terrorist offences.

Under each of these overall phases a number of concrete measures have been identified and addressed in a human rights context. For each of these measures the most important human rights-versus-security of the state dilemmas have been identified.

The overall dilemma is in principle the same throughout the different phases: that on the one hand there is the state's responsibility to protect its citizens against acts of terrorism with all possible, useful and necessary means available but that on the other hand, the state cannot use all tools available as not all of them are compliant with human rights law. Although the dilemma may in principle be the same, it does, however, vary and take different forms at various professional levels. Politicians and the legislative authorities will need to address the dilemma from a policy level and subsequently reflect it in the laws and regulation. Law enforcement level officials will be faced with the fact that counter-terrorism laws cannot always be formulated very precisely and the official on the ground will have to flesh out and interpret the law.

The threat of terrorism is continually considered and described as 'a real threat' by numerous practitioners as well as academics. However, as real as the threat of terrorist acts may be, just as real is the threat that the fundamental rights of human beings are being undermined when states are fighting terrorism.

It is vital that every official who is part of the counter-terrorism process understands that they have an important function in securing a human rights compliant counter-terrorism policy and practice. A very strict and harsh counter-terrorism policy not only conflicts with human rights obligations, it can also be counterproductive by creating conditions conducive to terrorism.

It is crucial that all involved officials keep in mind – as underscored in *The United Nations Global Counter-terrorism Strategy* of 2006 – that "effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing."

NOTES

- 1 ICJ, Assessing Damage, Urging Action, 2009, <http://www.icj.org/dwn/database/EJP-Report.pdf>
- 2 Council of the European Union, The European Union Counter-terrorism Strategy, Justice and Home Affairs Council meeting, Brussels 1 December 2005. http://ue.eu.int/uedocs/cms_Data/docs/pressdata/en/jha/87257.pdf
- 3 UN General Assembly, The United Nations Global Counter-terrorism Strategy, 8 September 2006, <http://www.un.org/terrorism/strategy-counter-terrorism.shtml>
- 4 See, among others, the UN nuclear terrorism convention of 2005 and the UN terrorist financing convention of 1999.
- 5 In resolutions of the UN General Assembly, the Human Rights Council and the Security Council. For further information see the UN Security Council Counter-terrorism Committee, <http://www.un.org/en/sc/ctc/>
- 6 See statement on terrorism by President of the Security Council of 27 September 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/551/58/PDF/N1055158.pdf?OpenElement>
- 7 See Danish Ministry of Foreign Affairs, Democratisation and Human Rights for the benefit of the People. Strategic Priorities for Danish Support for Good Governance, 2009. <http://www.um.dk/NR/rdonlyres/D04B984F-41A2-4E7E-81C1-A35C09F95964/0/DraftDHRstrategyFINALVERSION030309.pdf>
- 8 The strategy, released in 2009, can be found at, <http://www.danidadevforum.um.dk/NR/rdonlyres/27E5A93A-0738-49CF-94D3-D7532CB6627E/0/MRstrategiUKsamlet.pdf>
- 9 The development strategy can be found here: <http://amg.um.dk/NR/rdonlyres/DB9C5B4A-C3C9-48F4-81B8-5A3DB10C08D8/0/FreedomfromPovertyeng.pdf>
- 10 The elements contained within this checklist of good practice concerning interrogations are based on recommendations made by the UN Special Rapporteur on Torture (para. 39)

PART C

9. GRAPHIC OVERVIEW OF COUNTER-TERRORISM PHASES

PRIME: P: Policy
R: Regulation
I: Implementation
M: Monitoring
E: Evaluation

10. OVERVIEW OF BACKGROUND MATERIALS REFERRED TO IN THE GUIDELINES

INTERNATIONAL

United Nations:

Treaties

- *The Universal Declaration of Human Rights* (1948)
- *The International Covenant on Civil and Political Rights* (1966) , including an optional protocol
- *The International Covenant on Economic, Social and Political Rights* (1966) , including an optional protocol
- *International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention)* (2005)
- *International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention)* (1999)
- *International Convention for the Suppression of Terrorist Bombings (Terrorist Bombing Convention)* (1997)
- *Convention on the Marking of Plastic Explosives for the Purpose of Detection (Plastic Explosives Convention)* (1991)
- *Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Fixed Platform Protocol)* (1988) and Protocol (2005)
- *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Maritime Convention)* (1988) and Protocol (2005)
- *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (extends and supplements the Montreal Convention on Air Safety) (Airport Protocol) (1988)
- *Convention on the Physical Protection of Nuclear Material (Nuclear Materials Convention)* (1980)
- *International Convention against the Taking of Hostages (Hostages Convention)* (1979)
- *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (Diplomatic Agents Convention)* (1973)
- *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Civil Aviation Convention)* (1971)
- *Convention for the Suppression of Unlawful Seizure of Aircraft (Unlawful Seizure Convention)* (1970)
- *Convention on Offences and Certain Other Acts Committed On Board Aircraft (Aircraft Convention)* (1963)

Security Council

- S/2011/240 (2011), *Report of the Security Council Committee established pursuant to resolution 1373 (2001) on the practitioners' seminar on "Bringing terrorists to justice"*, held at United Nations Headquarters from 1–3 December 2010
- S/RES/1988 (2011) (creates a new Afghanistan sanctions regime to target threats to Afghanistan's stability and establishes specific criteria for having the sanctions removed. Continues to ensure fair procedures exist for listed individuals)
- S/RES/1989 (2011) (focuses the 1267 regime exclusively on the threat from al-Qaida and improves the fairness and transparency of how the sanctions are applied)
- S/RES/1822 (2008) (review of all names on the Consolidated List by 30 June 2010 and to be followed by regular reviews; making accessible publicly releasable reasons for the listing of individuals and entities)
- S/RES/1566 (2004) (on creation of working group to consider measures against individuals, groups and entities other than Al-Qaida/Taliban)
- S/RES/1373 (2001) (on international cooperation to combat threats to international peace and security caused by terrorist acts)
- S/RES/1267 (1999) (on measures against the Taliban)

General Assembly

- *Panel on the human rights of victims of terrorism*, A/HRC/DEC/16/116 (2011)
- *Protection of human rights and fundamental freedoms while countering terrorism*, A/RES/65/221 (2011) ; A/RES/64/168 (2010) ; A/RES/63/185 (2009) ; A/RES/62/159 (2008) ; A/RES/61/171 (2007) ; A/RES/60/158 (2006) ; A/RES/59/195 (2005) ; A/RES/58/191 (2005)
- *The United Nations Global Counter-terrorism Strategy*, A/RES/64/297 (2010) ; A/RES/62/272 (2008) ; A/RES/60/288 (2006)
- *Uniting against terrorism: recommendations for a global counter-terrorism strategy* (report of the Secretary General on integrated and coordinated implementation of and follow-up to the outcomes of UN conferences and summits in the economic, social and related fields (2006), A/60/825 (2006)
- *Human rights questions: implementation of human rights instruments – Torture and other cruel, inhuman or degrading treatment or punishment*, Note by the Secretary-General, A/59/324 (2004)
- *Human rights questions, implementation of human rights instruments – Torture and other cruel, inhuman or degrading treatment or punishment*, Note by the Secretary-General, A/56/156 (2001)
- *Resolutions of the Commission on Human Rights, protection of human rights and fundamental freedoms while countering terrorism*, E/CN.4/RES/2005/80 (2005) ; E/CN.4/RES/2004/87 (2004)
- *The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (A/RES/43/173) (1988) (note: especially Arts. 21 and 23)

- *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147 (2006)
- *Code of Conduct for Law Enforcement Officials*, (A/RES/34/169) (1979)

General Comments

- OHCHR, Human Rights Committee, *General Comment No. 01, Implementation of Article 3 of the Convention in the Context of Article 22*, 21-11-1997. A/53/44, annex IX, CAT General Comment No. 01
- OHCHR, Human Rights Committee, *General Comment No. 08, Right to Liberty and Security of Persons (Article 9)*, 30-06-1982
- OHCHR, Human Rights Committee, *General Comment No. 13, Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law (Article 14)*, 13-04-1984
- OHCHR, Human Rights Committee, *General Comment No. 20, Prohibition of Torture and Cruel Treatment or Punishment*, 10-03-1992 (replaces *General Comment 7*, 1982)
- OHCHR, Human Rights Committee, *General Comment No. 21, Humane Treatment of Persons Deprived of Their Liberty* 10-04-1992
- OHCHR, Human Rights Committee, *General Comment No. 27, Freedom of movement*, 02-11-1999 (CCPR/C/21/Rev.1/Add.9),

Economic and Social Council:

- *Standard Minimum Rules for the Treatment of Prisoners*, resolutions 663 C/1957 and 2076/1977

Special Rapporteur on Counter-terrorism and Human Rights – Thematic and Annual Reports:

- A/HRC/16/51 (2010), Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Ten areas of best practices in countering terrorism”
- A/HRC/14/46 (2010), Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight”
- A/HRC/14/46/Add.1 (2010) *Addendum: Written submissions by Governments to the OHCHR questionnaire related to the study on good practices on intelligence oversight mechanisms*
- A/HRC/13/42 (2010) Martin Scheinin, “Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism”
- A/HRC/10/3 (2009), Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while*

countering terrorism, “The role of intelligence agencies and their oversight in the fight against terrorism”

- A/HRC/13/37 (2009), Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “The erosion of the right to privacy in the fight against terrorism”
- A/HRC/6/17 (2007), Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Economic, social and cultural rights in the context of countering terrorism”
- A/HRC/6/17/Add.3 (2007), Martin Scheinin, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development*, p. 21, Chapter VI, “Profiling, Community Outreach (...)”
- A/HRC/4/26 (2007), *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Profiling in the context of countering terrorism” and “Suicide attacks as a form of terrorism”
- A/HRC/4/26/Add 3, (2006), *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Study on human rights compliance while countering terrorism in Australia”, Chapters IV and V
- A/65/258 (2010), *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Compliance by the United Nations with international human rights law while countering terrorism”
- A/64/211 (2009), *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “A gender perspective on countering terrorism”
- A/63/223 (2008), *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Right to a fair trial in the context of prosecuting terrorist suspects”
- A/62/263 (2007), *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Challenges to refugee protection caused by global measures to counter terrorism”
- A/61/267 (2006), *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, “Freedom of association and peaceful assembly and counter-terrorism”.

Miscellaneous

- United Nations Counter-terrorism Committee, *Policy Guidance on International Cooperation*, S/AC.40/2010/PG.3 (2010)
- CTITF, *Basic Human Rights Reference Guide: Security Infrastructure* (2010)
- UNODC, *Digest of Terrorist Cases* (report) (2010)

- United Nations Counter-terrorism Committee, *Technical Guide to the Implementation of Security Council Resolution 1373* (2009)
- A/HRC/10/21 (2009), (annual) *Report of the United Nations Working Group on Arbitrary Detention*
- UNODC, *Handbook on Justice for Victims* (1999), Chapters II and III
- CTITF, *First Report of the Working Group on Radicalisation and Extremism that Lead to Terrorism: Inventory of State Programmes*
- OHCHR, *Compilation of UNODC, Handbook on Criminal Justice Responses to Terrorism* (2009)
- OHCHR, *Human Rights, Terrorism and Counter-terrorism*, Fact Sheet No. 32 (2008)
- *Findings and Observations by the United Nations Human Rights System Relating to the Human Rights of Migrants* (2006)
- OHCHR/UN, *Digest of Jurisprudence of the United Nations and regional organisations* (2003)
- Human Rights Committee, *Celepli v. Sweden*, Case No. 456/1991, views adopted on 18 July 1994 (para. 9.2)
- UNESCO, *Sub-commission on Prevention of Discrimination and Protection of Minorities*, "Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights" (Annex, UN Doc E/CN.4/1984/4) (1984)
- Commission on Human Rights, Note by the United Nations High Commissioner for Human Rights, *Protection of human rights and fundamental freedoms while countering terrorism* (E/CN.4/2005/103) (2005)

REGIONAL MATERIAL

Inter-American Commission

Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights* (OEA/Ser.L/V/II.116) (2002)

EU:

- European Commission for Democracy through Law (Venice Commission), *Report on Counter-terrorism measures and Human Rights* (2010)
- CoE, Commissioner for Human Rights, *Protecting the Right to Privacy in the Fight Against Terrorism* (issue paper) (2008)
- *Communication from the Commission to the European Parliament and the Council concerning terrorist recruitment: addressing the factors contributing to violent radicalisation* (COM [2005] 313)
- CoE, *Guidelines of the Committee of Ministers of the Council of Europe on the protection of victims of terrorist acts* (2005)

OSCE:

- OSCE/ODIHR, Report, *Roundtable on Understanding Violent Extremism and Radicalisation Leading to Terrorism* (2009)
- OSCE/ODIHR, *Final Report, High-Level Meeting on Victims of Terrorism*, Vienna (2007)
- OSCE, *Countering Terrorism, Protecting Human Rights, A Manual* (2007)
- OSCE/ODIHR, *Preventing Torture: a handbook for OSCE field staff* (1999)

Judgments - European Court of Human Rights and European Court of Justice:

- ECtHR, *Daoudi v. France* (2009) (*available in French only*)
- ECtHR, *Saadi v. Italy* case (2008)
- ECtHR, *Heaney and McGuinness v. Ireland* (2001)
- ECtHR, *Incal v. Turkey* (1998)
- ECtHR, *Klass and Others v. Germany* (1978)
- ECJ, *Kadi and Al Barakaat* cases (2008)

Miscellaneous:

- The Home Secretary, United Kingdom, *Review of counter-terrorism and security powers* (2011)
- The Home Secretary, United Kingdom, *Renewal of Control Orders Legislation* (2011)
- Gavin Sullivan and Ben Hayes, ECCHR, *Blacklisted: Targeted sanctions, preemptive security and fundamental rights* (2010)
- The Sanctions and Security Research Program *Human Rights Standards for Targeted Sanctions* (2010)
- Center on Global Counterterrorism Cooperation, *Implementing the UN Global Counter-terrorism Strategy in North Africa* (2010)
- Columbia Law School Human Rights Institute, *Promises to Keep Diplomatic Assurances Against Torture in US Terrorism Transfers* (2010)
- Center on Global Counterterrorism Cooperation, *An Opportunity for Renewal: Revitalising the United Nations Counter-terrorism program* (2010)
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- Center on Global Counterterrorism Cooperation, *Handbook on Human Rights Compliance While Countering Terrorism* (2008)
- International Council on Human Rights, *Talking about Terrorism, Risks and Choices for Human Rights Organisations* (2008)
- *The Ottawa Principles on Human Rights and Anti-terrorism* (2006)
- Human Rights Watch, *'Diplomatic Assurances' against Torture* (2006)
- Bardo Fassbender (study conducted for the United Nations) *Targeted Sanctions and Due Process* (2006)
- House of Lords, *Counter-terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention* (2005–2006)

- Gerald L. Neuman, "Comment, Counter-terrorist Operations and the Rule of Law, Section II (Military trials)", *The European Journal of International Law*, Vol. 15, No. 5, 2004
- FATF, *The FATF Forty Recommendations* (2003)
- International Peace Academy/OHCHR, *Human Rights, the United Nations and the Struggle against Terrorism* (2003)
- FATF *Nine Special Recommendations on Terrorist Financing* (2001)

11. LINKS TO RELEVANT WEBSITES

- UN High Commissioner of Human Rights
- UN Counter-terrorism Committee
- UN Counter-terrorism Implementation Task Force
- The International Bill of Human Rights – Fact Sheet 2
- European Court of Human Rights – updated factsheet on latest judgments within the field
- UN Special Rapporteur on Counter-terrorism and Human Rights

