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Human rights and issues related to terrorist hostage-taking

Human rights and issues related to terrorist hostage-taking

**Progress report prepared by Wolfgang Stefan Heinz, on behalf of the
drafting group of the Advisory Committee**

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I. Introduction

1. In its resolution 18/10 entitled “Human rights and issues related to terrorist hostage-taking”, the Human Rights Council requested the Advisory Committee to prepare a study on the topic, paying particular attention to the impact of terrorist hostage-taking and actions taken pursuant thereto, including ransom payments, on the human rights of hostages and of the local communities concerned, and to the role of regional and international cooperation in this field. The Council also requested the Advisory Committee to focus in particular on an assessment of the adequacy of the response contained in existing international human rights instruments to the challenges referred to in paragraph 4 of the resolution.

2. The Advisory Committee presents this progress report to its 9th session and plans to submit its final study to the twenty-first session of the Human Rights Council. This report focuses on general aspects and assesses the adequacy of the response contained in existing international human rights instruments to the challenges posed by the issue of terrorist hostage-taking and actions taken pursuant thereto, including ransom payments. In the final report, the issue of regional and international cooperation will be addressed.

3. At its 8th session the Advisory Committee set up a drafting group consisting of Wolfgang Stefan Heinz, Latif Hüseyinov, Obiora Chinedu Okafor, Shigeki Sakamoto, Ahmer Bilal Soofi and Jean Ziegler and appointed Mr Hüseyinov as Chairperson and Mr Heinz as Rapporteur of the drafting group.

4. The Advisory Committee encourages all interested stakeholders, such as States, international organizations, national human rights institutions and non-governmental organizations, to contribute to the study process.

5. Following several decades during which hostage-taking featured on the list of regularly examined issues, the Commission on Human Rights adopted numerous resolutions, including Resolution 2005/31, condemning hostage-taking and urging all thematic special procedures to continue to address, as appropriate, the consequences of hostage-taking.¹ The Human Rights Council took up addressing the issue of terrorist hostage-taking, and in March 2011, convened a panel discussion on the issue of human rights in the context of action taken to address terrorist hostage-taking which brought together parties and stakeholders from the United Nations bodies and agencies as well as participants from various regions and countries.²

¹ See para. 5. Other resolutions on hostage –taking are: Res. 2003/40 of 23 April 2003; Res. 2001/38 of 23 April 2001; Res. 2000/29 of 20 April 2000; Res. 1999/29 of 26 April 1999; Res. 1998/73 of 22 April 1998; Res. 1997/28 of 11 April 1997; Res. 1996/62 of 23 April 1996; Res. 1992/23 of 28 February 1992; Res. 1991/40 of 5 March 1991; Res. 1990/36 of 6 March 1990; Res. 1989/26 of 6 March 1989; Res. 1988/38 of 8 March 1988; Res. 1987/28 of 10 March 1987; Res. 1986/49 of 12 March 1986, Res. 27 (XXXVII) of 11 March 1981.

² For a summary of the panel discussion, see A/HRC/18/29.

II. Conceptual issues³

A. Terrorism and terrorist-hostage taking

6. The notion of hostage-taking was widely debated during the process leading to the adoption of the *International Convention against the Taking of Hostages*.⁴ The outcome of discussions on the concept was captured in article 1 of the Convention which reads:

“Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the “hostage”) in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages (“hostage-taking”) within the meaning of this Convention”.

7. It is evident from the internationally codified definition of hostage-taking that the act requires two sets of elements, namely (i) the seizure or detention of another person and (ii) a threat to kill, injure or continue to detain that person in order to compel a third party to do or abstain from something as an explicit or implicit condition for the release of the hostage. In other words, a typical hostage-taking situation involves a least three parties whereby “the hostage (a) is the means by which the hostage-taker (b) [seeks to] gain[s] something from a third party(c)”.⁵ While the first set of elements may be common to all acts of hostage-taking, the second constitutes the basis for establishing a distinction between terrorist and non-terrorist hostage-taking situations.

8. Article 1 of the Hostage-Taking Convention does not explicitly link the definition of hostage-taking to the notion of terrorism. However, the background to the adoption of the instrument indicates that the drafters were primarily concerned with terrorist hostage-taking incidents. The single mention of terrorism in the preamble of the instrument clearly states that it was adopted out of an urgent necessity “to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism”.⁶

9. Lack of express references to the terrorist nature of hostage-taking in the substantive provisions of the Convention is, arguably, rooted in the prevailing disagreement between states over the concept (and definition) of terrorism at the time when the instrument was negotiated. In fact, it has been suggested that the adoption of this particular Convention was a result of a strategy by interested states to follow a “piecemeal approach in dealing with

³ The members of the drafting group thank Mr Felix Ndahinda for his important input during the drafting of the present interim report.

⁴ For some background information on discussions over various proposals, see: V. P. Nanda (1979) ‘Progress Report on the United Nations’ Attempt to Draft an International Convention against the Taking of Hostages’, 6 *Ohio Northern University Law Review* 1, pp. 89-108; S. S. Kaye (1978), ‘The United Nations Effort to Draft a Convention on the Taking of Hostages’ 27 *American University Law Review* 2, pp. 433-487; R. Rosenstock (1980), ‘International Convention against the Taking of Hostages: Another International Community Step Against Terrorism’, 9 *Denv. J. Int’l L. & Pol’y*, pp.169-195.

⁵ R. D. Crelinsten, ‘The Study of Hostage-Taking: A System Approach’, in R. D. Crelinsten, D. Laberge-Altmejd and D.Szabo, *Report on Management Training Seminar Hostage-Taking Problems of Prevention and Control* (Montreal, September 1976), p. 4, at <https://www.ncjrs.gov/pdffiles1/Digitization/49367NCJRS.pdf>, [accessed 21 June 2012].

⁶ U.N. Doc. A/34/819 (1979); para. 5 of the preamble.

different aspects of international terrorism”;⁷ as a result of a failure of previous efforts to reach an agreement on a more comprehensive treaty on the subject-matter.

10. The definition in Article 1 of the Hostage-Taking Convention does not establish a distinction based on whether the act is committed in time of peace or during an armed conflict. However, Article 12 excludes the applicability of the Convention to situations of hostage-taking committed in the course of armed conflicts covered by the 1949 Geneva Conventions and the 1977 Additional Protocols.⁸ Furthermore, in addressing one of the most contentious issues during the negotiation of the treaty, the provision specifically excludes the applicability of the Convention to armed conflicts covered by Additional Protocol I (4) in which “peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination”.

11. Hostage-taking is indeed prohibited in all the 1949 Geneva Conventions and 1977 Additional Protocols.⁹ An authoritative commentary of International Humanitarian Law states that the prohibition of hostage-taking during both international and non-international armed conflicts is established as a norm of customary international law.¹⁰ Under Additional Protocols I and II, the prohibition of hostage-taking is recognized as a fundamental guarantee for civilians and persons *hors de combat*.¹¹ Moreover, the Rome Statute of the International Criminal Court lists hostage-taking as a war crime.¹² The *Elements of Crimes* under the jurisdiction of the International Criminal Court reproduced the definition of hostage-taking contained in the 1979 Hostage-Taking Convention; with an additional clarification that “the required behaviour of the third party could be a condition not only for the release of the hostage but also for the safety of the hostage”.¹³

12. In sum, a combined reading of the different international legal instruments mentioned above displays coalescence in considering hostage-taking as a prohibited, and thus criminal, act under international law. It is considered as a punishable offence constitutive of a war crime within the particular context of armed conflicts. Outside the context of armed conflicts, the 1979 Hostage-Taking Convention requires state parties to criminalise the offence and cooperate in arresting, prosecuting and punishing hostage-takers. But owing to the persistent disagreements over the definition of terrorism, the various instruments examined above do not necessarily tie the concept of hostage-taking to the notion of terrorism.

13. For decades, several actors, including various United Nations bodies have elusively attempted to design a generally accepted definition of terrorism. In his report, the former United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism [hereafter the Special Rapporteur] - Martin Scheinin – adhered to the understanding of terrorism proposed by Security Council Resolution 1566 (2004).¹⁴ The latter construes terrorism as “criminal acts, including against

⁷ Nanda, *supra* note 4, p. 89.

⁸ Article 12 of the Hostage-Taking Convention.

⁹ Relevant provisions are: Common Article 3 (1) (b) to the Geneva Conventions; Articles 34 and 147 of Geneva Convention IV; Article 75(2) (c) of the Additional Protocol I and Article 4(2) (c) of the Additional Protocol II.334.

¹⁰ J-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law* (International Committee of the Red Cross, Vol. I, Cambridge University Press, 2005), pp. 334-336.

¹¹ *Ibid.*

¹² Article 8 (2)(a)(viii) and (c) (iii) of the Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998,

¹³ Henckaerts and Doswald-Beck, *supra* note 10, p. 336, paraphrasing the *Elements of Crimes*, ICC-ASP/1/3(part II-B), p. 17, on Article 8 (2) (a) (viii), relating to the War crime of taking hostages.

¹⁴ Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human

civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism”.¹⁵

14. While some may argue that this definition is somewhat authoritative, it is worth noting that Alex Schmid’s *Routledge Handbook of Terrorism Research* lists some 250 definitions of terrorism elaborated throughout the last two centuries and beyond.¹⁶

B. The problem of terrorist hostage taking: Nature, scope, and major dimensions

15. Owing to differing classifications of hostage-taking – and more generally of terrorist – incidents in different studies, it is difficult to find aggregate data documenting the phenomenon for a particular period of time. According to some studies, “[f]rom 1968 through 1982, of the approximately 8,000 reported terrorist events, 540 (7 percent) were transnational...hostage-taking acts involving 3,162 hostages. Twenty percent of these acts resulted in death or personal injury to the victims. Since 1968, 188 terrorist groups have seized hostages in incidents involving kidnapping, skyjacking, and barricading”.¹⁷ Similarly, data on the longer time-period from 1968 to 2005 indicate that out of some 12,942 terrorism incidents, “1941 hostage events, made up of 1318 kidnappings, 380 skyjackings, and 243 other hostage events (i.e., barricade missions and nonaerial hijackings)” were recorded.¹⁸ Data from the Global Terrorism Database (GTD) which classifies hostage-taking incidents into hijacking, barricades and kidnappings gives the figure of 4,700 in the latter category (kidnappings) from 1970 to 2010.¹⁹

16. According to red24, an organization that specializes in global security, “the number of kidnap for ransom incidents worldwide in 2011 stood at roughly 30,000.”²⁰ Based on

rights and fundamental freedoms while countering terrorism, Martin Scheinin: Ten areas of best practices in countering terrorism, UN Doc A/HRC/16/51, 22 December 2010, para. 27.

¹⁵ J. J. Easson and A. P. Schmid, ‘250-Plus Academic, Governmental and Intergovernmental Definitions of Terrorism’, in A. P. Schmid (ed.) (2011), *The Routledge Handbook of Terrorism Research*, London/New York, Routledge, pp. 99-157.

¹⁶ J. J. Easson and A. P. Schmid, ‘250-Plus Academic, Governmental and Intergovernmental Definitions of Terrorism’, in A. P. Schmid (ed.) (2011), *The Routledge Handbook of Terrorism Research*, London/New York, Routledge, pp. 99-157.

¹⁷ S.E. Atkinson; T. Sandler and J. Tschirhart (1987), ‘Terrorism in a Bargaining Framework’, 30 *Journal of Law and Economics* (1), 1-21, pp. 1-2, using data from the U.S. Department of State, *International Terrorism: Hostage Seizures* (1983).

¹⁸ P. T. Brandt and T. Sandler (2009), ‘Hostage Taking: Understanding Terrorism Event Dynamics’, 31 *Journal of Policy Modeling*, p.762. For other figures, see: K. Bloomfield (2001), ‘Hostage taking and government response’, 146 *RUSI Journal* (4), 23-27, p. 23.

¹⁹ See: <http://www.start.umd.edu/gtd/about/>, [accessed 5 July 2012].

²⁰ red24 (February 2012), *Threat Forecast 2012*, Report, p. 24, based on data compiled by the organization on previous years, the Top Ten Threat Areas for Kidnap for Ransom Incidents in 2012 would be: (1) Afghanistan (around 950 kidnappings for ransom per year); (2) Somalia (27 vessels were seized in 2010 with over 320 hostages taken); (3) Iraq (there are no figures - complex kidnapping risk environment with criminal, terrorist and politically motivated actors all conducting kidnappings. Western nationals remain lucrative targets, both financially and for propaganda value); (4) Nigeria (more than 1,000 kidnappings for ransom a year); (5) Pakistan (15,000 kidnappings a year according to official statistics - around 10 to 20 percent of abductions are for ransom); (6) Yemen

some global estimates, about 10,000 to 15,000 kidnappings occur per year, mostly on the Latin American sub-continent.²¹ While the “traditional hotspots of Mexico, Venezuela, Brazil and Colombia continue[d] to experience very high levels of kidnapping, the crime [was] also a significant and/or growing threat in Iraq, Afghanistan, Somalia, Pakistan, the Sahel-Sahara region of Northern Africa, Kenya, Nigeria, India, China, Yemen, and the Philippines”.²² It is contended that in kidnappings, “terrorists successfully capture their hostages in 80 percent of the acts and receive their ransom demands in 70 percent of the incidents... In barricade and hostage incidents, the terrorists achieve at least a portion of demands in 75 percent of the cases”.²³

17. Relevant analyses show that since the 1960s and 1970s, the phenomenon of kidnappings for ransom or other political aims has been on the rise in some countries or regions while it has declined in others.²⁴ However, one particular study covering 764 hostage-taking incidents that occurred between November 1969 and January 2006 found that 75 percent (570 incidents) of them occurred after the year 2000: this suggests that there was a rise in such incidents over the last decade.²⁵

18. In a particular country such as the Philippines, “between 1993 and 1996, \$11 million in ransom was paid for the release of more than 600 hostages, generally seized by one of the two groups, the NPA (New Peoples’ Army) and the MNLF (Moro National Liberation Front)”.²⁶ The number of recorded cases of kidnapping for ransom “peaked at 113 in 1998, then declined to 50 in 1999 and increasing again to 99 in 2001”.²⁷

19. Similarly, according to some sources quoting Algerian officials, in North Africa, AQIM earned between 50 million and 150 Million Euros, from 2003 to 2011 mostly through payment of ransoms for kidnapped foreigners.²⁸ The report claimed that in eight

(over 200 foreign nationals but an unknown number of nationals were kidnapped over the past 20 years - threat emanates from tribal groups, separatist elements, bandits and Islamist groups such as al-Qaeda in the Arabian Peninsula); (7) Venezuela (over 1,000 traditional kidnappings for ransom in the first ten months of 2011 according to official statistics - one of the highest per capita rates of abduction in the world); (8) Mexico (official statistics for 2011 are likely to reveal over 2,000 traditional kidnappings for ransom - actual number is far higher as some estimates refer to some 17,889 kidnappings in 2011); (9) Haiti (few hundred – a decline from 2006, when some 720 incidents); (10) Colombia (a declining figure of some 258 kidnappings recorded by the authorities in 2011).

²¹ S. Merklings and E. Davis (2001), ‘Kidnap & Ransom Insurance: A Rapidly Growing Benefit’, 33 *Compensation & Benefits Review* (6), 40-45, pp.40-41. See also: W. Prochnau, ‘Adventures in the Ransom Trade’, *Vanity Fair*, May 1998, reproduced at <http://www.mmegi.bw/index.php?sid=1&aid=36&dir=2010/January/Monday18>, [accessed 9 July 2012].

²² Red24 (*February 2012*), *Threat Forecast 2012, Report*.

²³ S.E. Atkinson; T. Sandler and J. Tschirhart (1987), ‘Terrorism in a Bargaining Framework’, 30 *Journal of Law and Economics* (1), 1-21, pp. 1-2, using data from the U.S. Department of State, *International Terrorism: Hostage Seizures* (1983), p. 2

²⁴ R. Clutterbuck (1987), *Kidnap, Hijack and Extortion: The Response*, London, Macmillan Press, pp.14-46.

²⁵ M. Yun (2007), ‘Implications of Global Terrorist Hostage-taking and Kidnapping’, XIX *Korean Journal of Defense Analysis* (2), 135–165, p. 145.

²⁶ J. Griffiths (2003), *Hostage: The History, Facts & Reasoning behind Hostage Taking*, London, Carlton Publishing Group, pp.7-20, p. 22.

²⁷ UN Doc. E/CN.15/2003/7, para. 13.

²⁸ A combined reading of V. Walt, ‘Terrorist Hostage Situations: Rescue or Ransom?’, 12 October 2010, at <http://www.time.com/time/world/article/0,8599,2024420,00.html>, [accessed 9 July 2012] and R. R. Larémont (2011), ‘Al Qaeda in the Islamic Maghreb: Terrorism and Counterterrorism in the Sahel’, 4

separate kidnappings from 2008 to April 2010, “more than €18 million (\$25 million) was paid in cash to al-Qaeda intermediaries to free citizens from Spain, Canada, Italy, France, Switzerland, Austria and Germany. Only the U.S. and Britain appear to have held to their policy of nonnegotiation with terrorists; when operatives seized four European tourists in Mali last year [2009], two Swiss and one German hostages were released after a €2 million (\$2.8 million) payment, while the British hostage was killed - perhaps because no ransom was paid”.²⁹ As a consequence, the account claimed that AQIM was being financed almost entirely with money from European governments, which pay Al-Qaeda up to €5 million (\$7 million) in order to free a single citizen from captivity.³⁰

20. In Iraq, more than 250 foreigners (or 425 depending on figures) were kidnapped and 40 of them killed between March 2003 and March 2006 while some 5000 Iraqis were kidnapped between December 2003 and 2005.³¹

21. Studies suggest that in many cases, “the money raised from ransoms is ploughed back into financing a guerrilla war or terrorist type activities”.³²

III. The impact of terrorist hostage-taking on human rights

A. Human rights of hostages

22. It is widely acknowledged that victims of terrorism in general and terrorist hostage-taking in particular may be individuals, family members, a community, or a whole ethnic, religious, racial group or an entire nation.³³ The Special Rapporteur established a distinction between direct, secondary, indirect and potential victims of terrorism.³⁴ Acts of terrorist hostage taking generate multiple violations of human rights of these different categories of victims. Violations are mainly committed by the hostage-takers but in some cases, they occur during counterterrorism activities. Based on the specific circumstances of a terrorist hostage-taking situation, appropriate responses should take into account the interests and concerns of all affected members of society. Responses to hostage-taking situations should respect everyone’s right to life, liberty and security of person enshrined in numerous human rights instruments and reaffirmed in the preamble of the Hostage-Taking Convention.³⁵

23 Since a typical hostage-taking incident generally threatens the physical but also psychological well-being and integrity of the hostage both throughout and after the duration

African Security (4), 242-268; p. 253.

²⁹ Ibid.

³⁰ Ibid.

³¹ M. Yun (2007), ‘Implications of Global Terrorist Hostage-taking and Kidnapping’, XIX Korean Journal of Defense Analysis (2), 135–165, p. 141 refers to 250 foreigners while M. Clendenin (2006), “‘No Concessions’ With No Teeth: How Kidnap and Ransom Insurers and Insured’s Are Undermining U.S. Counterterrorism Policy”, 56 Emory Law Journal, 741-775, refers to 425 foreigners.

³² Ibid.; referring to the example of Abu Sayyaf group in the Philippines.

³³ See for instance: F. Bolz, Jr., K. J. Dudonis and D. P. Schulz (2002), The Counterterrorism Handbook: Tactics, Procedures, and Techniques, 2nd Ed., Boca Raton/ London/ New York /Washington, CRC Press, p.89.

³⁴ Human Rights Council, Framework principles for securing the human rights of victims of Terrorism, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN Doc. A/HRC/20/14, 4 June 2012, para.16.

³⁵ See: para. 2 of the preamble of the Hostage-Taking Convention.

of the incident,³⁶ it generates multiple infringements of their human rights. In fact, owing to the generally recognized interdependence and interrelatedness of all human rights, most hostage-taking incidents amount to violations of numerous civil, political, economic, social and cultural rights.³⁷ Depending on particular circumstances, the situation of persons taken in captivity by terrorist hostage-takers amounts to violations of virtually any right listed in the Universal Declaration of Human Rights and other relevant instruments.³⁸

24. The enjoyment of the right to life; the right to liberty and security of person; the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment; the freedom of movement and residence; the freedom of thought, conscience and religion; the freedom of opinion and expression; the freedom of assembly and association; the protection of privacy, family, and home; the right to political participation, work under favourable conditions, rest and leisure, food, clothing and housing, participation in cultural life, health care and social services, education, the special protections for children and, a social and international order needed to realize rights are either fundamentally violated or restricted.³⁹

25. It is contended that the psychological impact of being taken hostage is similar to other terrorist, and more generally traumatic, experiences.⁴⁰ Hostage-taking has severe and sustained impact on children many of whom display PTSD symptoms.⁴¹ Typically, adults taken hostages have the following reactions: “(a) *Cognitive*: impaired memory and concentration; confusion and disorientation; intrusive thoughts ... and memories; denial (i.e. that the event has happened); hypervigilance and hyperarousal (a state of feeling too aroused, with a profound fear of another incident); (b) *Emotional*: shock and numbness; fear and anxiety ...; helplessness and hopelessness; dissociation (feeling numb and ‘switched off’ emotionally); anger (at anybody – perpetrators, themselves and the authorities); anhedonia (loss of pleasure in doing that which was previously pleasurable); depression (a reaction to loss); guilt (e.g. at having survived if others died, and for being taken hostage); (c) *Social*: withdrawal; irritability; avoidance (of reminders of the event)”.⁴²

B. Impact on local communities

26. Communities living in areas chronically affected by the scourge of terrorist hostage-taking bear a constant burden of insecurity. Generally, terrorist hostage-taking groups such

³⁶ E. Giebels, S. Noelanders and G. Vervaeke (2005), ‘The Hostage Experience: Implications for Negotiation Strategies’, 12 *Clinical Psychology and Psychotherapy*, 241–253.

³⁷ This is acknowledged in: Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism, UN Doc. A/HRC/12/22, 2 September 2009, paras.6 et seq.

³⁸ International Covenant on Civil and Political Rights, 16 December 1966, G.A. Res. 2200 (XXI), UN Doc. A/6316 (1966), 999 UNTS. 171; International Covenant on Economic, Social and Cultural Rights, 16 December 1966, G.A. Res. 2200 (XXI), UN Doc. A/6316 (1966), 993 UNTS. 3; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 26 June 1987, 1465 U.N.T.S. 85; Convention on the Rights of the Child, 20 November 1989, G.A. Res. 44/25, UN Doc. A/44/49 (1989).

³⁹ For the exact formulation of these rights, see; Articles 3-28 of the Universal Declaration of Human Rights, G.A. Res. 217A, at 71, UN Doc A/810 (Dec. 12, 1948).

⁴⁰ D.A. Alexander and S. Klein (2009), ‘Kidnapping and Hostage-taking: A Review of Effects, Coping and Resilience’, 102 *Journal of the Royal Society of Medicine*, p. 17.

⁴¹ *Ibid.*, p. 18.

⁴² *Ibid.*, p. 18. See also: A. Schmid, ‘Magnitude of Terrorist Victimization’, in D. K. Das and P. C. Kratoski (eds) (2003), *Meeting the Challenges of Global Terrorism: Prevention, Control and Recovery*, Lanham, Lexington Books, pp. 38-39 (on terrorism in general).

as the *Fuerzas Armadas Revolucionarias Colombianas* (FARC) in Colombia, Abu Sayyaf in the Philippines or AQIM in the Sahara-Sahel region operate in areas that are characterized by poor law enforcement and absence of effective governmental control.⁴³ In many cases, terrorist operatives take advantage of communities living in peripheral areas characterised by problems of rampant insecurity, socio-political, economic and cultural marginality. The Rapporteur listed “ethnic, national and religious discrimination, political exclusion, socio-economic marginalization” among other conditions conducive to the spread of terrorism.⁴⁴

27. In many places where such conditions prevail, terrorists, including hostage-takers, simply fill a void in governance by establishing strong links with local communities. In a number of cases, terrorist organizations have succeeded in supplanting the state and imposed themselves as the provider of services and protectors of communities. In the absence of appropriate responses from legitimate state authorities, “the local populace sees individuals or groups that commit kidnappings as heroic figures who are defying the authorities and helping the poor and weak”.⁴⁵ However, examples from Afghanistan, Colombia, the Philippines and more recently the Sahara-Sahel region, including Northern Mali show that control of entire regions and communities by terrorists increases the burden of insecurity and marginality rather than helping to solve the developmental and other challenges faced by the local communities.

28. In North Africa, for instance, AQIM is reported to have developed “cooperative relationships with regional drug traffickers, criminal organizations, and rebel groups to augment their resources and financing”.⁴⁶ In order to succeed, it has relied on established links with local communities by casting itself as “an ally and potential protector of local communities”.⁴⁷ Integration within local communities has allowed AQIM to “gradually deepen its roots, grow its resource base, and develop its operational strength”.⁴⁸ Similarly, at one time, especially by the late 1980s “the FARC provided security to local communities in the face of an influx of foreign drug traffickers and profiteers. By providing the conditions that made a livelihood for local coca farmers possible, the FARC could legitimize itself in the eyes of the local population as a *de facto* state”.⁴⁹ However, its support from local communities has progressively diminished in urban areas while it still continues to exert control over and carry out indoctrination of populations in some remote areas of Colombia.⁵⁰

29. In the Philippines, over the years, the different rebel and terrorist groups used historical grievances of the Muslim communities in Mindanao to garner support from the Moro population.⁵¹ It is claimed that “Abu Sayyaf’s membership skyrocketed from a few

⁴³ R. P. Wright (2009), *Kidnap for Ransom: Resolving the Unthinkable*, Boca Raton, CRC Press, p. 192.

⁴⁴ UN Doc A/HRC/16/51, para. 12.

⁴⁵ Wright, *supra* note 44, p. 192.

⁴⁶ M. Goïta (February 2011), ‘West Africa’s Growing Terrorist Threat: Confronting AQIM’s Sahelian Strategy’, 11 *Africa Security Brief*, p.2.

⁴⁷ *Ibid.*, p. 3.

⁴⁸ *Ibid.*

⁴⁹ A. Wennmann (2011), ‘Economic dimensions of armed groups: Profiling the financing, costs, and agendas and their implications for mediated engagements’ 93 *International Review of the Red Cross* 882, p. 345.

⁵⁰ International Crisis Group, *Ending Colombia’s FARC Conflict: Dealing the Right Card*, Latin America Report N°30 – 26 March 2009, pp. 15-19. The report refers to “Chocó, Meta, Norte de Santander, Antioquia, Guajira and Santander departments, as well as the coffee belt region (Quindío, Caldas and Risaralda departments)”.

⁵¹ A. Tuminez (2008), ‘Rebellion, Terrorism, Peace: America’s Unfinished Business with Muslims in the Philippines’, 15 *Brown Journal of World Affairs*, pp. 211-223.

hundred to over a thousand after its first major kidnapping payoff as the prospect of money-making enticed new recruits”.⁵² As in other cases, the organisation exploited the poor economic situation of the inhabitants of Mindanao and the inability of the government to exercise control in parts of the territory in securing control or cooperation of the local population.⁵³ This has led to the suggestion that as long as legitimate Moro grievances persist, counter-terrorism efforts can hardly succeed.⁵⁴

IV. Responses to terrorist hostage-taking

A. Overview, good practices and challenges

30. Reactions and responses to terrorist hostage-taking situations vary depending on contexts and on actors involved. While during the nineteenth and early twentieth century the prevailing response to hostage incidents was the overwhelming physical use of force,⁵⁵ in recent years, armed response has generally “yielded to the techniques of negotiation and conflict resolution in recognition of the risks that an armed response creates for the hostages”.⁵⁶

31. As pointed out by the Special Rapporteur, countries directly concerned by hostage-taking situations are faced with a difficult dilemma: protect human rights of all (including hostage-takers), secure the lives of the hostages and avoid paying ransoms.⁵⁷ While mostly countries formally profess their commitment to human rights for all, a number of them hold ambivalent positions on the payment of ransoms to free their nationals taken as hostages by terrorist groups.

32. The legality of payment of ransom to terrorist hostage-takers is generally subject to unsettled debates in different countries. States such as the United States, United Kingdom, the Philippines and Colombia have generally professed a policy of no concession to terrorists, including no payment of ransom to hostage-takers.⁵⁸ However, some of them have failed to unequivocally outlaw and actively discourage the practice of payment of ransom by non-state actors, such as families of the hostages and insurance companies that cover kidnap and ransom risks.⁵⁹

33. For many other states, it remains quite intricate to determine national legislations or policies prohibit negotiation with or payment of ransom to terrorist hostage-takers. Several states appear to hold either ambiguous or contradictory positions on negotiation with terrorists and payment of ransoms to terrorist hostage-takers. Publicly professed no-

⁵² J.A. Rosenthal (2008), ‘For-Profit Terrorism: The Rise of Armed Entrepreneurs’, 31 *Studies in Conflict & Terrorism* (6), 481-498, p. 487.

⁵³ *Ibid.*

⁵⁴ Tuminez, *supra* note 52, p. 219.

⁵⁵ Alexander and Klein, *supra* note 41, p.17.

⁵⁶ *Ibid.*, p.17.

⁵⁷ UN Doc A/HRC/18/29, par. 22.

⁵⁸ M. Clendenin (2006), “‘No Concessions’ With No Teeth: How Kidnap and Ransom Insurers and Insured’s Are Undermining U.S. Counterterrorism Policy”, 56 *Emory Law Journal*, pp. 762-766. See also: H. Toros (2008), “‘We Don’t Negotiate with Terrorists!’: Legitimacy and Complexity in Terrorist Conflicts”, 39 *Dialogue* (4), pp. 407-426

⁵⁹ *Ibid.* See also: K. Bloomfield (2001), ‘Hostage taking and government response’, 146 *RUSI Journal* (4), pp. 24-27; H. H. L. Roque, Jr., ‘The Philippines: the weakest link in the fight against terrorism?’, in V.V. Ramraj, M. Hor and K. Roach (eds) (2005), *Global Anti-Terrorism Law And Policy*, Cambridge University Press, p. 309.

concession to terrorist policies do not prevent them from getting involved in the payment of ransoms to free their nationals held hostages by terrorist.⁶⁰ It remains however intricate to substantiate such involvement.

34. In 2009, the African Union (AU) leaned on existing international instruments proscribing the financing of terrorist in adopting an unequivocal *Decision to Combat the Payment of Ransom to Terrorist Groups*.⁶¹ The Decision strongly condemned “the payment of ransom to terrorist groups for hostages to be freed” and requested the international community “to consider the payment of ransom to terrorist groups a crime”.⁶²

B. International and regional instruments of relevance to hostage-taking, payment of ransom and victims’ rights

1. International instruments

35. Under the aegis of the United Nations, the global community of states has adopted fourteen legal instruments and four amendments intended to prevent terrorist acts.⁶³ Most of the early international conventions on particular dimensions of international terrorism focused on how to reinforce state cooperation in preventing acts of terrorism and in bringing offenders to justice. They hardly addressed the needs of and remedies for the victims. Yet, a number of these conventions have particular relevance for hostage-taking situations.

36. Acts committed aboard aircrafts are covered by the Convention on Offences and Certain Other Acts Committed on Board Aircraft,⁶⁴ the Convention for the Suppression of Unlawful Seizure of Aircraft,⁶⁵ the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft,⁶⁶ and the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.⁶⁷ While neither of these instruments expressly addresses the situation of terrorist hostage-taking or provides for reparation for victims, this particular dimension of terrorism certainly falls within the prohibited acts under these instruments which offer grounds for prosecution of offenders.

37. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents expressly proscribes the intentional commission of a “murder, kidnapping or other attack upon the person or liberty of an

⁶⁰ V. Walt, *supra* note 28.

⁶¹ African Union (AU), *Decision to Combat the Payment of Ransom to Terrorist Groups*, Assembly of the Heads of State and Government, 13th Ord. Sess., Sirte/Libya, 3 July 2009/Assembly/AU/Dec.256 (XIII), reiterated in AU, *Decision on the Prevention and Combating of Terrorism*, Assembly of heads of State and Government, 15th Ord. Sess., Kampala/Uganda, Assembly/AU/Dec.311(XV), 27 July 2010, paras. 6 and 8.

⁶² *Ibid.*, paras. 7 and 8.

⁶³ For an exhaustive list, see: <http://www.un.org/terrorism/instruments.shtml>, [accessed 13 July 2012].

⁶⁴ Convention on Offences and Certain Other Acts Committed on Board Aircraft, 14 September 1963, 704 UNTS 219.

⁶⁵ Convention for the Suppression of Unlawful Seizure of Aircraft [Hijacking Convention], 16 December 1970, 860 UNTS 105.

⁶⁶ Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, 10 September 2010.

⁶⁷ Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971, 974 UNTS 178. And the new Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, 10 September 2010.

internationally protected person”.⁶⁸ The use of the kidnapping in the instrument may be construed in a broad sense that encompasses certain hostage-taking acts.

38. As far as victims are concerned, the Hostage-Taking Convention imposes a duty on the State Party in the territory of which the hostage is held to “take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure”.⁶⁹ Moreover, the instrument provides for a right to restitution by a state party of “any object which the offender has obtained as a result of the taking of hostages”.⁷⁰ It does not address issues of the legality of the payment of ransoms to terrorist hostage-takers.

39. Moreover, acts of hostage-taking for ransom clearly fall within the scope of the United Nations Convention against Transnational Organized Crime.⁷¹ The instrument provides that state parties shall establish as criminal offence ‘agreeing with one or more persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit’.⁷²

40. Nonetheless, it is tenable to argue that the payment of ransom to terrorist hostage-takers for the release of hostages may fall within the proscribed financing of terrorism under the International Convention for the Suppression of the Financing of Terrorism.⁷³ The instrument criminalises the conduct of any person who “provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out... [a]n act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex”.⁷⁴ The annex lists nine International Conventions on various dimensions of terrorism, including the Hostage-Taking Convention.

41. This reading of the Terrorist Financing Convention is reinforced by the substance of UN Security Council Resolution 1373 (2001), whereby the body urged states to prevent and suppress the financing of terrorist acts, including through the criminalization of “the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts”.⁷⁵ The Terrorist Financing Convention was the first of its kind that expressly provided for the establishment of mechanisms to compensate victims of criminal acts referred to in the Convention through funds derived from the forfeitures.⁷⁶

42. In the particular case of terrorist organizations renowned for kidnapping for ransom – such as AQIM, FARC, Abu Sayyaf -, it is widely documented that funds collected

⁶⁸ Article 2 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973, 1035 UNTS. 167. Emphasis added.

⁶⁹ Article 3 (1) of the Hostage-Taking Convention.

⁷⁰ Article 3 (2) of the Hostage-Taking Convention.

⁷¹ United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, T.I.A.S. No. 13,127, 2225 U.N.T.S. 209. See also: J-P. Laborde and M. DeFeo (2006), ‘Problems and Prospects of Implementing UN Action against Terrorism’, 4 *Journal of International Criminal Justice* (5), 1087-1103, p. 1094.

⁷² Article 5 (a)(i) of the United Nations Convention against Transnational Organized Crime.

⁷³ International Convention for the Suppression of the Financing of Terrorism, 9 December 1999, GA Res. 54/109, U.N. Doc A/54/49 (Vol. I) (1999), 39 ILM 270 (2000).

⁷⁴ Article 1 (a) of the International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention).

⁷⁵ UN SC, Resolution 1373 (2001), 28 September 2001, 1 UN Doc. S/RES/1373 (2001), para. 1 (a) (b).

⁷⁶ Article 8 (4) of the Terrorist Financing Convention.

through payment of ransom are used for further terrorist activities. Accordingly, anyone paying ransom may be presumed to have at least knowledge of the fact that the funds will be used to commit terrorist acts.

43. While in the immediate years following the 9/11 events, the issue of terrorism has been addressed with an almost exclusive focus on the suspected perpetrators, the issue of victims' rights has gradually moved to the centre of the debate within UN circles. The United Nations Global Counter-terrorism Strategy stresses "the need to promote and protect the rights of victims of terrorism" and points to the dehumanization of victims of terrorism as one of the conditions conducive to the spread of terrorism. It also includes a pledge by States to "consider putting in place, on a voluntary basis, national systems of assistance that would promote the needs of victims of terrorism and their families and facilitate the normalization of their lives."⁷⁷ The strategy forms a basis for a concrete plan of action: to address the conditions conducive to the spread of terrorism; to prevent and combat terrorism; to take measures to build state capacity to fight terrorism; to strengthen the role of the United Nations in combating terrorism; and to ensure the respect of human rights while countering terrorism.⁷⁸

44. The UN 1985 Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power⁷⁹ and the 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 provide for a wide range of rights for victims, including victims of terrorist acts such as hostage-taking.⁸⁰ For instance, since victims of terrorist hostage-taking are often subjected to gross human rights violations, they are entitled to "full and effective reparation ... which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition".⁸¹ Moreover, general human rights guarantees enshrined in various international, regional and national instruments apply also to victims of terrorist hostage-taking.

2. Relevant regional instruments

45. A number of regional intergovernmental blocs have adopted their own legal instruments and set up mechanisms aimed at addressing various aspects of terrorism. The various instruments generally refer to the standards set in relevant global treaties. The Council of Europe has adopted a number of instruments aimed at preventing and combating terrorism.⁸² Similarly, the European Union adopted a Council Framework Decision on

⁷⁷ UN Counter Terrorism Strategy under I. Measures to address the conditions conducive to the spread of terrorism, para. 8, at <http://www.un.org/terrorism/strategy-counter-terrorism.shtml>, [accessed 16 July 2012].

⁷⁸ <http://www.un.org/terrorism/>, [accessed 13 July 2012]

⁷⁹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA. res. 40/34, annex, 40 UN. GAOR Supp. (No. 53) at 214, U.N. Doc. A/40/53 (1985).

⁸⁰ 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, 9 April 2005, C.H.R. res. 2005/35, UN Doc. E/CN.4/2005/L.10/Add.11, (often referred to as the van Boven/Bassiouni Principles).

⁸¹ van Boven/Bassiouni Principles, para. 18.

⁸² European Convention on the Suppression of Terrorism, 27 January 1977, CETS No. 090; Protocol amending the European Convention on the Suppression of Terrorism, 15 May 2003, CETS No. 190, Council of Europe Convention on the Prevention of Terrorism, CETS No. 196, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism CETS No. 198

Combating Terrorism⁸³ and developed a holistic counter-terrorism response – the EU Counter-Terrorism Strategy.⁸⁴ Adopted in 2005, this strategy commits the Union to combating terrorism globally, while respecting human rights and allowing its citizens to live in an area of freedom, security and justice.

46. The organisation of American States (OAS) adopted two major instruments on terrorism.⁸⁵ The organisation further established an Inter-American Committee against Terrorism (CICTE) whose mandate is “to promote and develop cooperation among Member States to prevent, combat and eliminate terrorism”⁸⁶

47. The African Union adopted two instruments aimed at ensuring state-cooperation in combating terrorism.⁸⁷ Moreover, as previously noted, ⁸⁸the regional bloc has adopted a Decision that unequivocally calls for the criminalisation of payment of ransom to terrorist hostage-takers.

48. In 2007, the Association of Southeast Asian Nations (ASEAN) adopted its own Convention on Counter Terrorism.⁸⁹ The League of Arab States adopted an Arab Convention for the Suppression of Terrorism,⁹⁰ and the Organization of the Islamic Cooperation has its own convention aimed at combating international terrorism.⁹¹

V. Conclusions and recommendations

49. Various records show that the phenomenon of terrorist hostage-taking in general and hostage-taking for ransom in particular has increased in recent years. For decades, the phenomenon of hostage-taking by armed groups, drug dealers and other criminal gangs has been a lived reality in some parts of the world, such as a number of Latin American Countries or the Philippines. The relatively recent proliferation of incidents of hostage-taking for ransom in Northern, West and East Africa shows that

⁸³ Council Framework Decision 2002/475/JHA on combating terrorism, of 13 June 2002, Official Journal n° L 164, 22/06/2002, p. 0003-0007.

⁸⁴ See: http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_terrorism/133275_en.htm, [accessed 16 July 2012].

⁸⁵ They include the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that Are of International Significance, 2 February 1971, OAS, Treaty Series, NO. 37; Inter-American Convention against Terrorism, 3 June 2002, AG/RES. 1840 (XXXII-O/02).

⁸⁶ For the overall work of the OAS on terrorism, see: http://www.oas.org/oaspage/crisis/crisis_en.htm, [accessed 16 July 2012].

⁸⁷ They are: the OAU Convention on the Prevention and Combating of Terrorism, 14 July 1999; Protocol to the OAU Convention on the Prevention and Combating of Terrorism, 2 July 2004, both at <http://www.au.int/en/treaties>, [accessed 17 July 2012].

⁸⁸ African Union (AU), Decision to Combat the Payment of Ransom to Terrorist Groups, Assembly of the Heads of State and Government, 13th Ord. Sess., Sirte/Libya, 3 July 2009 Assembly/AU/Dec.256 (XIII), reiterated in AU, Decision on the Prevention and Combating of Terrorism, Assembly of heads of State and Government, 15th Ord. Sess., Kampala/Uganda, Assembly/AU/Dec.311(XV), 27 July 2010.

⁸⁹ ASEAN Convention on Counter Terrorism, 13 January 2007, at <http://www.aseansec.org/19250.htm>, [accessed 17 July 2012].

⁹⁰ Arab Convention on the Suppression of Terrorism, 22 April 1998, available at: <http://www.unhcr.org/refworld/docid/3de5e4984.html>, [accessed 18 July 2012]

⁹¹ Convention of the Organisation of the Islamic Conference on Combating International Terrorism, 1 July 1999, Annex to Resolution No: 59/26-P, available at: <http://www.unhcr.org/refworld/docid/3de5e6646.html> [accessed 18 July 2012]

the phenomenon is proving to be a booming enterprise for terrorist groups. Moreover, hostage-taking for ransom is increasingly a *modus operandi* of groups involved in piracy across the Horn of Africa. A clear understanding of terrorist hostage-taking and differentiation between this phenomenon and related criminal acts requires a combined reading of the Hostage-Taking Convention, various international, regional and national instruments on combating terrorism and relevant academic literature.

50. The UN Hostage-Taking Convention is the only binding treaty addressing terrorist hostage-taking. Since hostage-taking is generally considered a *modus operandi* of terrorists, other instruments on (specific aspects) combating terrorism adopted by international, regional or national bodies apply to terrorist hostage-taking situations. Various global, regional or intergovernmental bodies have also adopted resolutions and decisions requesting the criminalisation of terrorist hostage-taking. However, the various instruments neither unequivocally address the legality of payment of ransom to terrorist hostage-takers nor provide for the rights and entitlements of all categories of individual and collective victims of terrorist hostage-takers.

Assessment of the existing legal framework on terrorist hostage-taking situations

51. The global community of states has adopted a wide range of instruments aimed at preventing or combating (particular aspects of) terrorism. Existing treaties, declarations, decisions or resolutions adopted by international or regional intergovernmental bodies address a wide range of terrorist acts. Some instruments, mostly those adopted by regional bodies, are dedicated to terrorism in general, while global instruments are dedicated to particular aspects and dimensions of the phenomenon. Most substantive provisions in existing global anti-terrorism legislation are dedicated to the reinforcement of state cooperation in addressing the subject-matter of the treaties. Hostage-taking is generally mentioned as one of the *modus operandi* of terrorists and expressly features in a number of proposed definitions of terrorism, including in Security Council Resolution 1566 (2004).

52. The UN Hostage-Taking Convention clearly contains an undertaking by states to criminalise hostage-taking. Since the Convention has been ratified by 168 states, it is fair to state that an overwhelming majority of state considers this to be a criminal act. However, neither this particular instrument, nor any other international or regional treaties expressly address the legality of payment of ransom to terrorist hostage-takers. International instruments against organised crime and the financing of terrorism as well as a number of UN resolutions may be interpreted as proscribing any provision of funds to terrorists in as much as such funds are used to commit further terrorist acts.

53. Global, regional or national instruments on combating terrorism hardly address the needs and entitlements of various categories of direct and indirect individual or collective victims of terrorist acts, including terrorist hostage-taking. Obviously, the adoption of a new legal instrument - in the form of for instance a protocol to the Hostage-Taking Convention or an international convention against kidnap for ransom - unequivocally outlawing the payment of ransom and providing for the rights and entitlements of individual and collective victims of terrorist hostage-taking would have an added value. However, it should be noted that responses to terrorist hostage-taking situations have to take into account the conflicting demands of various stakeholders. Relatives of hostages are generally willing to do all what it takes to gain the freedom of their beloved ones while most states would rather avoid

paying but also prevent terrorists from obtaining funds - including through ransoms - to be used in further terrorist activities.

54. Besides references to global treaties on aspects of terrorism – including references to the Hostage-Taking Convention - none of these regional treaties particularly addresses the phenomenon of terrorist hostage-taking in general or hostage-taking for ransom in particular. Moreover, these various instruments hardly address the needs of and remedies for the victims. Similarly to the global system, a number of the regional institutions have their own human rights framework that provides guaranties that remain relevant to the situation of victims of hostage-taking but also should guide counter-terrorism strategies.

55. An assessment of the existing instruments aimed at combating terrorist hostage-taking may lead to two possible conclusions. The first is that based on the existing uncertainties, loopholes and shortcomings in international treaties with regard to the conceptualisation of terrorist hostage-taking, the legality of payment of ransom to terrorists and rights of victims, the adoption of a new instrument would certainly contribute to the legal certainty over these important and topical issues. There is certainly a need to discourage terrorist groups from obtaining funds that contribute to the reinforcement of their movements and lethal activities. Conversely, the desirability of preventing in all circumstances relatives or other non-state actors from taking any action that would prevent the killing of hostages including through payment of ransom is questionable. The second is that in spite of shortcomings, the existing instruments on terrorism and victims' rights provide a sound basis states to address these issues as long as states have the political will to abide by undertakings therein.

56. Accordingly, three main recommendations can be drawn from this study:

(a) States need to abide by their commitments to increase their cooperation in tackling terrorism, including terrorist hostage-taking in particular, as contained in various instruments adopted by international and regional intergovernmental institutions.

(b) Payment of ransom to terrorist hostage-takers mostly by states, governmental entities or intergovernmental organisations should be widely discouraged and possibly criminalised.

(c) Regardless of whether they decide to adopt a new instrument criminalising the payment of ransom to terrorist hostage-takers, states need to keep in mind the necessity of addressing the phenomenon within the wider normative and institutional framework aimed at combating terrorism in general. A comprehensive strategy is necessary in addressing all causes, manifestations and consequences of terrorism.