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**SPECIFIC HUMAN RIGHTS ISSUES:
NEW PRIORITIES, IN PARTICULAR TERRORISM**

**Additional progress report prepared by Ms. Kalliopi K. Koufa,
Special Rapporteur on terrorism and human rights***

* In view of its late submission and length which exceeds the established page limits, the document is issued as received in the language of submission only.

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Introduction

1. In its resolution 1996/20 of 29 August 1996, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to entrust Ms. Kalliopi K. Koufa with the task of preparing a working paper on the question of terrorism and human rights, to be considered at its forty-ninth session. In response to this request, Ms. Koufa submitted her working paper (E/CN.4/Sub.2/1997/28), identifying the many diverse, complex and contentious issues involved in the discussion of this question, and proposed a number of ways to study further this topic.
2. The Sub-Commission, in its resolution 1997/39 of 28 August 1997, commenting on the very comprehensive and well documented working paper, and endorsing the basic approach set out by Ms. Koufa, recommended that the Commission on Human Rights approve her appointment as Special Rapporteur to carry out a comprehensive study on terrorism and human rights. The Commission on Human Rights, in its decision 1998/107 of 17 April 1998, approved the appointment of Ms. Koufa as Special Rapporteur. The Economic and Social Council, in its decision 1998/278 of 30 July 1998, endorsed the above decision of the Commission.
3. At the fifty-first session of the Sub-Commission, the Special Rapporteur submitted her preliminary report (E/CN.4/Sub.2/1999/27), containing an historical overview of the evolution of the question of terrorism within the United Nations system and analysis of the major areas in which terrorism affects, directly and indirectly, the full enjoyment of human rights. She further identified and discussed other basic priority areas that would next deserve to be examined also, such as the question of definition, the interrelated questions of the scope of application of human rights law and of the accountability of the non-State actors, as well as recent trends in contemporary terrorism.
4. In its resolution 1999/26 of 26 August 1999, the Sub-Commission expressed its deep appreciation to the Special Rapporteur for her excellent and comprehensive preliminary report and requested the Secretary-General to transmit it to Governments, specialized agencies and concerned inter-governmental and non-governmental organizations with the request that they submit to her pertinent comments, information and other data. It also requested the Secretary-General to provide for visits of the Special Rapporteur to Geneva, New York and the United Nations Office for Drug Control and Crime Prevention in Vienna, in order to hold consultations and complement her research.
5. In its resolution 2000/30 of 20 April 2000, the Commission on Human Rights, taking note of Sub-Commission resolution 1999/26, requested the Secretary-General to continue to collect information on the topic, and to make it available to the concerned special rapporteurs, including this Special Rapporteur. The Commission also endorsed the Sub-Commission's request for consultations. The Economic and Social Council, in its decision 2000/260 of 28 July 2000, approved that request.
6. At the fifty-third session of the Sub-Commission, the Special Rapporteur presented her progress report (E/CN.4/Sub.2/2001/31), in which she provided up-dated information on the development of international anti-terrorist action and addressed several controversial issues, such

as the problem of definition, the concept of terrorism by reference to the potential State and non-State actors involved in it, but exploring more fully the manifestations of State terrorism, the issue of new forms of terrorism and of the potential use of weapons of mass destruction by terrorist groups. In this context, she discussed the potentially grave implications that both the terrorist use of weapons of mass destruction and States' counter-terrorism policies hold for human rights, and warned against the disturbing tendency to categorize ordinary criminal activity as terrorism, as well as against those alarmist analyses that can lead to counter-terrorism measures easily falling into the infringement of human rights. The Special Rapporteur also discussed the distinction between armed conflict and terrorism, stressing their points of divergence as well as their convergence when terrorist acts are committed in an ongoing armed conflict, the issue of self-determination forming part of this discussion. She further followed her analysis with an extensive consideration of the impact of terrorism on human rights, with emphasis on the issues raised by the Commission in its resolutions 1999/27 of 26 April 1999, 2000/30 of 20 April 2000 and 2001/37 of 23 April 2001.

7. The Sub-Commission, in its resolution 2001/18 of 16 August 2001, expressed its deep appreciation for the excellent progress report and requested that the Special Rapporteur continue her direct contacts with the competent services and bodies of the United Nations in New York and Vienna. It also requested the Secretary-General to transmit the progress report to Governments, specialized agencies and concerned intergovernmental and non-governmental organizations to enable them to submit comments to the Special Rapporteur. Finally, the Sub-Commission requested the Special Rapporteur to prepare a second progress report. The Commission, in its resolution 2002/35 of 22 April 2002, endorsed the requests of the Sub-Commission for a second progress report and for continuing consultations.

8. The Special Rapporteur submitted to the Sub-Commission, at its fifty-fourth session, her second progress report (E/CN.4/Sub.2/2002/35), written in the wake of 11 September 2001, under the enormous emotional and psychological stress and shock prevailing all around the world, due to the well known terrorist events in the United States of America and their catastrophic consequences. Sensing the shifting international environment, the surfacing new trends and developments as a result of the accelerated fight against terrorism, and the worldwide "close-to-panic" reaction in much of the political and legal activity relating to terrorism, with their obviously serious implications for international and human rights law as well as humanitarian law, the Special Rapporteur pondered over the need to rethink and re-evaluate the future course of her work. In particular, she thought that it would be detrimental to her study to continue working on it as if 11 September 2001 had not happened. The 11 September 2001 catalyst of events and developments, disparate views of opinion and serial debate over human rights, terrorism, and the "new" international law was adding to the original momentum of her mandate, making it gain in both importance and hardship. The significant unintended consequences of the global fight against terrorism and the risk of damage to the cause of justice and the rule of law justified, in her opinion, some diversion from her basically conceptual approach of the study on terrorism and human rights towards one that is more human rights specific.

9. Therefore, seizing the opportunity given to her for the presentation to the Sub-Commission of a second progress report, the Special Rapporteur devoted most of that report to a review of the relevant international anti-terrorist activities and initiatives undertaken since 11 September 2001, and the relevant reactions by various international human rights bodies and mechanisms, both at

the global and the regional levels. In this light, she addressed inter alia the main action undertaken by the Security Council; commented on the Counter-terrorism Committee that was created under its authority; discussed initiatives at the General Assembly and the effort to finalize the draft international convention on international terrorism; drew attention to the UNESCO resolution of 20 October 2001 which rejected the notion of associating terrorism with any particular religion or nationality and pointed out that social injustice is a fertile ground for terrorism; and reviewed initiatives undertaken at the regional level (i.e., within the European Union, the Council of Europe, the Organization for Security and Co-operation in Europe, the Organization of American States, the League of Arab States, the Organization of African Unity and the Organization of the Islamic Conference).

10. Turning specifically to the reactions of the human rights bodies and mechanisms, the Special Rapporteur dealt with the work of the Human Rights Committee regarding, in particular, that Committee's newest general comment on Article 4 of the International Convention on Civil and Political Rights (CCPR/C/21/Rev.1/Add.11) and its subsequent review of certain cases relating to post-11 September 2001 anti-terrorism legislation or actions undertaken by State parties. The Special Rapporteur also drew attention to important statements on terrorism and human rights by the Committee on the Elimination of Racial Discrimination, by independent experts of the Commission on Human Rights, and by the United Nations High Commissioner for Human Rights. In her concluding observations, the Special Rapporteur recalled, furthermore, the often expressed consternation by the highest officials of the United Nations, including the Secretary-General, the High Commissioner for Human Rights and the High Commissioner for Refugees, with regard to some actions undertaken in response to terrorism, and noted the array of topics that still needed the attention of the Sub-Commission, as well as some other main post-11 September 2001 issues that generated new interest in the topic and fed this interest more than ever before.

11. By its resolution 2002/24 of 14 August 2002, the Sub-Commission, expressed its deep appreciation and thanks to the Special Rapporteur for her excellent report and requested her to continue her work taking into consideration, inter alia, the replies submitted by governments, competent organs and bodies of the United Nations system and intergovernmental and non-governmental organizations, and to continue direct contacts and consultations with the competent services and bodies of the United Nations, in particular those in New York and Vienna, in order to expand her research, update the study and expedite her work. It also requested the Special Rapporteur, in view of the complexity of the phenomenon of terrorism and the extraordinary range and quantity of developments at the international, regional and national levels since the events of 11 September 2001, to submit an additional progress report to the Sub-Commission at its fifty-fifth session which would include a discussion of national, regional and international measures adopted and/or applied after 11 September 2001, and of the conceptual debate arising therefrom.

12. At its fifty-ninth session, the Commission on Human Rights, in its resolution 2003/37 of 23 April 2003, endorsed the Sub-Commission's request that the Secretary-General give the Special Rapporteur all the assistance necessary to carry on her consultations with the competent services and bodies of the United Nations system to complement and expand her research and data for the preparation of an additional progress report, and requested the Special Rapporteur to give attention in her next report to the questions raised in that resolution.

13. This additional progress report, submitted to the Sub-Commission at its fifty-fifth session in accordance with resolution 2002/ 24, consists of three sections. The first section contains preliminary comments relating to the scope of the study. The second section returns to the conceptual level of analysis, by resuming the discussion of non-State terrorism from the very point where it was left off in the first progress report (E/CN.4/Sub.2/2001/31), and by giving further thought to this, as well as other component parts of the study. The third section consists of concluding observations. Further, the report is also supplemented by two Addenda. Addendum I reviews and up-dates on international anti-terrorist activities and initiatives undertaken at the global and regional levels, since the submission of last year's report. Addendum II contains a summary of the replies and comments received by the Special Rapporteur from governments, intergovernmental and non-governmental organizations, as well as United Nations special procedures, in the period from May 2002 to May 2003.

I. PRELIMINARY COMMENTS RELATING TO THE SCOPE OF THE STUDY

14. Since the submission to the Sub-Commission of the last report (E/CN.4/Sub.2/2002/35), there have been many new developments that both directly and indirectly heavily affect the study of the Special Rapporteur on terrorism and human rights. Events before the war in Iraq, the war itself, and now its tragic aftermath have further seriously undermined many of the fundamental principles of international law, human rights and humanitarian law in their entirety, and not only relating to terrorism. At the time of writing of this additional progress report, the Special Rapporteur finds herself functioning under a situation of unique international tension, which not only burdens the issue of terrorism and human rights, but in which the acceleration of world events and turning-point initiatives is overtaking much of her work. Just one year ago, commenting on the escalation of crisis situations and "hot spots" throughout the world, the dramatic - and, sometimes, "close-to-panic" - reactions in the international community and their far-reaching implications for human rights, which justified, in the opinion of the Special Rapporteur, some shift in the original focus of her study, she could nonetheless express a hope that in the course of the coming year "the dust would settle", allowing her to study and reflect upon the catastrophic events from some distance.¹ Sadly, this has not been the case, of course.

15. Time and distance from the catastrophe of 11 September 2001, instead of bringing a rehabilitation of the much needed normalcy in the international relations of the dawning 21st millennium, have truly opened a new era of global insecurity, uncertainty and erosion of established international law. While "the dust has not settled" yet, the very viability, relevance, even legitimacy, of the international system built up within the past fifty plus years has been put to question and to further severe testing, over the past few months.² At this time, the Special Rapporteur sees no clear roadmap to reinstatement of the rule of law necessary to protect human rights and humanitarian law in the global struggle against terrorism, and shares the skepticism of most people around the world about the over-zealous use of counter-terrorist measures to facilitate enforcement activities in criminal and other matters unrelated to terrorist activities.

16. On a more positive note, the Special Rapporteur notes, however, that in spite of many serious setbacks, there has also been a kind of regrouping in the international community, especially in regard to challenging and reacting to anti-terrorist legislation passed since 11 September 2001. Much of the credit for this goes to the international and national human rights groups and mechanisms that roused public opinion, by repeatedly making the case that

repressive new laws, detention practices, harsh treatment of immigrants, refugees and minorities, as well as other policies and practices introduced in a significant number of countries, and broadly justified by the new international war on terrorism, lower the accepted standards of human rights. Thus, after initially leaning heavily towards national security measures at the expense of international human rights and humanitarian law norms, the international community may have begun to generate a more reasoned balancing of security and rights in relation to anti-terrorist legislation.

17. In fact, there are two notable indications that much of the attention that was focused on acts of terrorism in the previous year was refocused this past year on counter-terrorism measures. For the first time, during its last 57th session, the General Assembly adopted, without a vote, a resolution on “Protecting human rights and fundamental freedoms while countering terrorism” (A/RES/57/219 of 18 December 2002), which emphasizes the need of both combating terrorism and respecting the rule of law, and encourages an active profile of the United Nations High Commissioner for Human Rights on the issue of human rights and counter-terrorism measures. Furthermore, the Commission on Human Rights, which in the course of its 58th session had chosen not to take specific action or undertake any new initiatives to monitor the impact of anti-terrorism measures on human rights, chose this year to follow suite to this important initiative by the General Assembly by adopting, also without a vote, resolution 2003/68 of 25 April 2003, entitled “Protection of human rights and fundamental freedoms while countering terrorism”. The Special Rapporteur thinks that these particular actions will eventually provide a useful point of departure to assess where counter-terrorism measures most negatively impact on human rights. As is well known, there is currently no international institution with a clear mandate to assess whether measures taken and justified by a State as necessary to combat terrorism are in violation of human rights standards which it has accepted, or which would require that a derogation be made. And it is, indeed, unfortunate that the Counter-terrorism Committee established by the Security Council does not believe this to be part of its mandate.

18. This additional progress report is submitted at a time when the heated debate over terrorism and human rights is still in the ascendant. Also, at a time when the feeling of increasing urgency regarding the adequacy or appropriateness of the responses to terrorism and the conformity of national and international measures adopted and/or applied after 11 September 2001 with international human rights and humanitarian law norms is far from being abated. The deliberations at the 54th Sub-Commission session, as well as those at the Commission’s 58th and 59th sessions, and at the General Assembly’s 57th session, demonstrate clearly that there is a general concern with these issues, and a need to approach constructively both the trade-offs between security and civil liberties and the dilemmas posed thereof, in today’s growing climate of uncertainty triggered by the events of 11 September 2001. It is in this particular context that the Special Rapporteur envisages paragraph 6 of Sub-Commission resolution 2002/24 of 14 August 2002, requesting her to submit an additional progress report which will include a discussion of national, regional and international measures adopted and /or applied after 11 September 2001, and of the conceptual debate arising therefrom.

19. The Special Rapporteur has followed as closely as was possible the adoption and implementation of various national and international anti-terrorist laws and policies, not only for their negative impact on human rights, but also for their lack of impact in actually minimizing the threat of terrorism. While she views that fully addressing and discussing national and international anti-terrorism measures could be extremely valuable also for her conceptual study,

at least in as much as it would enable her to draw together and point out certain trends indicating areas of concern related to national anti-terrorism legislation, the Special Rapporteur cannot help thinking that responding adequately to the above mentioned request of the Sub-Commission would require a full study in itself.

20. In particular, she now believes that she is already facing a dual task. On the one hand, the task of completing and finishing the study on terrorism and human rights, which was basically conceptual in its inception and approach - the exception being, of course, her second progress report, responding of necessity to the events and situations generated by 11 September 2001. On the other hand, the task of reviewing and discussing national, regional and international counter-terrorism measures and legislation adopted and/or applied after the milestone of 11 September 2001. While the Special Rapporteur thinks that it is not possible to address both of these tasks in one and the same study, for primarily systematic and methodological reasons, part of her hesitance is, admittedly, relating also to the sheer quantity of legislation and other material that would inevitably make her report far longer than the limits imposed for such reports.

21. As a consequence, the Special Rapporteur considers that the most appropriate way of responding to the above mentioned tasks is, in the first place, to continue with her conceptual approach of terrorism and human rights with a view to completing the Sub-Commission study the soonest possible and, then, should the Sub-Commission so decide, turn to the review and discussion of national, regional and international counter-terrorism measures with a view to indicating areas of concern related to anti-terrorist legislation and threats to rights hammered out years ago relative to criminal and other procedures.

II. A FOLLOW-UP ON THE ISSUE OF DEFINITION

A. Introductory remarks

22. The Special Rapporteur has already addressed some of the issues regarding the difficulty of defining terrorism, underscoring in particular as one of the major difficulties standing in the way of consensus in the United Nations the controversy about wars of national liberation and the motives advanced to justify violence.³ She has also presented the views and varying positions of the Sub-Commission members as to whether the study should undertake a definition of terrorism,⁴ and indicated her own leaning towards the view that the study need not shy away from scrutinizing the essential elements and manifestations of terrorism, with a view to obtaining or drawing together basic definitional components and criteria that might eventually guide the Sub-Commission towards the advancement or articulation of a definition for the purposes of the study.⁵

23. Although, admittedly, finding an all-encompassing and generally acceptable definition of terrorism is too ambitious an aim, the Special Rapporteur has throughout her work considered valuable the idea of elaborating with some precision on the definitional elements of "terrorism" and of what can be considered as "acts of terrorism", for the purposes of this study, and in particular with a view to identifying the major aspects of the phenomenon of terrorism and its possible relationship to the question of accountability. In this context, she was bound to give attention also to the controversial issue of the actors or potential perpetrators of terrorism.⁶

24. In her view, the almost entire concentration on behavioral description (i.e., on certain conduct or behavior and its effects) and failure to spell out clearly who can use terrorism, has been one of the major reasons for not achieving a definition likely to command general approval. Despite the horrors associated with it, terrorism in its most widely accepted usage has, to be sure, an inherently moral and political context as well. This is well evidenced by the very practice within the United Nations, where among the main stumbling blocks in the effort to define terrorism has been the question of who can be identified and labeled as “terrorist”.⁷

25. As a consequence, in discussing the problem of definition in her first progress report, the Special Rapporteur introduced the question of the actors or potential instigators of terrorism, in an attempt to prune away and reduce at least part of the definitional wrangle, by spelling it out clearly and trying to explain it.⁸ In this connection, she approached analytically the dual conceptual distinction that is generally made between State and sub-State (or non-State or individual) terrorism - a distinction which usually corresponds to the two different basic dimensions of the terrorist phenomenon (i.e. State and anti-State), and which is now a generally acceptable component of the debate on terrorism, in both the world of the academia and ordinary parlance, including in the United Nations - and delineated the different manifestations and effects of State terrorism from the point of view of international law, international human rights and humanitarian law.⁹ Next, she introduced the much more disparate and diversified manifestations of non-State (or sub-State) terrorism, but deferred discussion of the complex problems raised by this unwieldy to uniform typology and categorization dimension of the terrorist phenomenon, in particular as regards international and human rights law, in order to present it later in a more integrated form, and after having also reviewed the relevant submissions to her from governments and non-governmental organizations.¹⁰ Finally, she attempted to initiate debate on the ever-present international controversy - and, thereby, the recurring request of a number of Member States - regarding the need to clearly differentiate between terrorism and the struggle for self-determination, by analyzing legally, in light of the 1949 Geneva Conventions and the 1977 Protocols Additional thereto, various cases or situations of armed conflict or war, with a view to distinguishing and separating them from terrorism.¹¹

26. In the present section of this additional progress report, the Special Rapporteur continues and concludes the discussion of sub-State (or non-State or individual terrorism) initiated in her first progress report, and follows on her conceptual analysis with some basic legal delimitations of terrorism and terrorist acts relevant from the human rights perspective. This section is not to be considered as a thorough overview by the Special Rapporteur of the subject matter. More work has to be done, in particular with regard to the legal delimitations of terrorism, and especially the human rights delimitation of terrorism. It should further be understood that this additional progress does not supersede the previous reports of the Special Rapporteur but that it should be read in conjunction with them.

B. Sub-State¹² (or non-State or individual) terrorism

27. The diverse manifestations of sub-State terrorism (i.e. terrorism committed by non-State groups or individuals, usually as a form of subversion) having been already portrayed in the first progress report (E/CN.4/Sub.2/2001/31), it is presently the purpose of the Special Rapporteur to comment on and try to give some order to the jumble of private agents and organizations lumped together as “sub-State” or “non-State” or, even, “individual” terrorism. As is well known, the focus of world literature on terrorism remains riveted on this type of terrorism, while the

increasing danger emanating from the sophisticated tactics and operations mounted or likely to be mounted by terrorist actors of the kind has become - particularly after the terrorist attacks of 11 September 2001 - the cause of much more international consternation and international solidarity than ever before.

28. In considering sub-State (or non-State) terrorism, two points should be made from the very outset. First, because of its diversity and manifold manifestations, it is difficult to generalize on this brand of terrorism - confined to individuals and groups of private actors - without sacrificing accuracy.¹³ In its long history, this aspect of terrorism has undergone all kinds of mutations, societal and technological changes having wrought their own direct effects on terrorists, as individuals and as groups. Moreover, the possibility of State involvement in (or sponsorship of) this type of terrorism - a possibility that is now generally recognized, despite existing disagreement as to its extent or the ways and forms it may take - blurs sometimes the line of its distinction from State terrorism. In any event, the variety and complexity of this aspect of the terrorist phenomenon is further witnessed by the fact that terrorists vary from country to country, as a result of cultural traditions, social structures, political relationships and affiliations, as well as other factors that make generalizations and taxonomies very difficult.

29. Second, even the briefest review of the juridical and political literature and doctrine of terrorism reveals not only that most of the writers focus their analyses on this type of terrorism, but also that there is a different understanding of and disagreement about any similarities existing between this brand of terrorism and the brand of State terrorism, beyond the fact, of course, that both attempt to induce a state of fear.¹⁴ Building on the different manifestations and functions of these two basic categories of terrorism, many writers argue against mixing or viewing them together,¹⁵ particularly since there is adequate (even if insufficiently enforced) international law to regulate and restrain State violence.¹⁶ On the contrary, it is quite obvious that much remains to be done in the direction of regulating and suppressing terrorism pertaining to individuals and groups of private actors.

1. Typologies and categories of sub-State terrorism

30. It has already been noted that terrorism pertaining to individuals and groups of private actors (i.e., "non-State" or "sub-State" terrorism) may take several forms.¹⁷ Thus, within this category have been placed, with varying degrees of accuracy and legitimacy, by various commentators, such persons, groups and organizations as the "sicarii" and the "assassins",¹⁸ nineteenth- and early twentieth-century anarchists, Marxist and Maoist revolutionaries, nationalists and separatists, ultra leftist and ultra rightist groups, rural and urban guerrillas, liberation fighters, mercenaries, paramilitaries, religious and other fanatics, ecological activists, anti-globalization protestors and trade unionists, "new generation" terrorist groups and terrorist "entities",¹⁹ as well as "lone terrorists".²⁰ This terse catalogue, breathtaking as it may be in its variety and scope - since it is covering the long history of the non-State terrorist enterprise throughout recorded history, and for at least two thousand years - cannot certainly depict the enormously varied range of qualities, differences and similarities across the decades, the shifts in character, the changes due to distance and the surrounding political circumstances, or the mixtures of types and borderline conditions included in the constellation of non-State terrorist agents and organizations.

31. To systematize thinking, in light of the varied and complicated nature of all these terrorist phenomena, researchers and scholars in the area of political and social sciences have devised and charted various typologies, and ventured into not only the explanation of the historical and political background but also the examination and analysis of the sociology and the personality of the non-State or sub-State terrorist actors.²¹

32. To begin with, analysts have attempted to divide and classify terrorism and terrorists by their historical origins (for example: revolutionary, anarchist, guerrilla, anti-colonialist, etc.); by ideological type, (for example: nationalist, left-winger and right-winger, religious fundamentalist, etc.); by the nature of their goals (for example: separatist, national liberationist, “self-determinist”, racist, etc.); and in terms of the setting in which they operate, especially the type of terrorist targeting (for example: kidnapping, xenofighting,²² indiscriminate victims, etc.), or the terrain in which they operate (for example: rural, urban, transnational, etc.).²³ The tangles caused by such attempts to categorize non-State terrorist individuals, groups, and organizations are pretty obvious in view of the overlap and coexistence of properties or qualities within or among the different types, and the inconsistencies resulting from the combinations of different criteria and numerous variables.

33. Clearly, for instance, ideology can be political but it can also be religious. Revolutionaries can be left-wingers (i.e., Marxist-Leninist, Maoist, etc.),²⁴ or right-wingers (i.e., various racist and other militant movements in several parts of the world, including Europe, the USA and the Middle East);²⁵ they can be nationalists and/ or separatists (i.e., the indigenous nationalist/anti-colonialist groups that emerged in Asia, Africa and the Middle East during the late 1940s and 1950s to oppose continued European rule²⁶ or, during the late 1960s and 1970s, the diverse nationalist and ethnic separatist groups outside the colonial framework, as well as radical, entirely ideologically motivated organizations, and disenfranchised or exiled nationalist minorities adopting terrorist tactics as a means to draw attention to their causes, and thereby attract international sympathy and support);²⁷ and they can also be guerrillas - rural or urban - and at the same time kidnappers, and so on (i.e., partisans, insurgents using irregular military operations against the government or its army forces and assigning a role - more or less important - to terrorist tactics, and other groups of resistance);²⁸ but they can be religious fanatics or religious radicals and extremist groups as well (i.e., starting from such early classic cases of sacred terror groups and sects as the “assassins”, the “sicarii” and the “thugs”,²⁹ and moving through contemporary examples of militant religious fundamentalism - Christian, Jewish, Islamic and other groups³⁰ - to the recent cases of “millenarian” groups or “cults” disposed to go as far as using chemical, biological and nuclear weapons).³¹

34. Equally, the criterion of the historical origins does not prove ideal and can also be misleading and complicated as an analytical tool. It can also be misleading in distinguishing between contemporary terrorist groups, or coexisting terrorist groups with different political or ideological orientations. For example, both the Red Army Faction and the Weathermen emerged during the 1960s’ student unrest;³² and there were different religious and secular terror groups coexisting, often uneasily, in the Middle Eastern and North African contexts.³³ Further, there are also drawbacks in categorizing by the nature of the goals pursued by the terrorists (i.e., overthrow of the established order, or separatism and irredentism),³⁴ and by the targets or the types of victims chosen by the terrorists (i.e., carefully selected persons or indiscriminate and random victims);³⁵ whereas even categorizing in terms of the setting or the terrain in which

terrorists operate (i.e., urban or rural, domestic or transnational and international) is not unambiguous outright.³⁶

35. There exist, of course, several other ways and instances of categorizing and classifying terrorism and terrorists in the literature of the social sciences, because there are several different approaches to conceptualizing the phenomena of terrorism and terrorists. Depending on one's own particular concerns and the framework chosen, different categories and typologies will obviously turn up.³⁷ In the pertinent words of one commentator "there are almost as many typologies of terrorism as there are analysts."³⁸ Reference to them here, however, must be kept to a minimum, since they are not as central as other points to the purposes of this study, and are far from contributing to the solution of the problem of definition. On the contrary, in the opinion of the Special Rapporteur, the existing plethora of classifications and typologies in the field, rather than contributing to the exegesis and rationalization of the terrorist phenomena add to the polysemy and divergence prevailing in this area.

36. That said, classifications and typologies may be useful as basic tools for mapping the different types of terrorism and terrorist groups and, by so doing, for breaking up the tremendously broad concepts into more analytical frameworks for discussion, and into categories more manageable for research and study. However, dividing into categories and classifying in the field is also a very complicated task and can be highly misleading, as already evinced by the examples given above. Other examples could easily be drawn from even the briefest review of the abundant contemporary professional literature of terrorism, evincing further a number of serious - and potentially dangerous - consequences and misperceptions, as a result of the development of even more sophisticated and analytical typologies and divisions, which aim at defining more precisely subgroups of terrorism but rest on ill-fitting or flawed assumptions, on dubious or overlapping distinctions, and on omissions or exclusions of other important instances of terrorism.

37. For instance, the inordinate amount of attention currently garnered upon terrorist groups with an ethno-nationalist or religious orientation has led contemporary typologies of terrorist organizations to focus closely on socio-cultural criteria, primarily the putative ethnic, national, or religious identities or ideological beliefs of group members.³⁹ These typologies usually differentiate terrorist actors according to their identity or ideology. While this can be helpful from a sociological or even psychological perspective, the Special Rapporteur is wary of the culturalist bias of some of these typologies, since this bias - often combined with the meager evidence provided by national statistics and data banks that are sometimes based on unspecified criteria or questionable and inaccurate figures⁴⁰ - may lead to lumping together disparate types and aspects of the political phenomena, eventually occluding those socio-political differences which could assist in illuminating the existence of a group's legal legitimacy or lack thereof.

38. One such especially problematic paradigm is the so-called "religious terrorism". Often part of the "superterrorism" discourse,⁴¹ a number of authoritative analyses cite the religious, often Islamic, identities of some contemporary terrorist organizations as proof of transcendent, otherworldly justifications for their actions, and so of their potential willingness to use extreme, catastrophic means, such as WMD, to reach their goals.⁴² While recognizing that "fundamentalist" terrorists, originating from mainstream religious traditions, differ from the so-called "millenarian" terrorist sects and cults, some of these specific analyses put nonetheless the emphasis on the dichotomy between religious terrorists - who are driven by hate and fanaticism

and, supposedly, are unchecked by political, moral or practical restraints - and political terrorists - who, supposedly, are more flexible, subject in principle to negotiation and to circumstances pushing them towards some rational assessments of their activity.⁴³ Thus, however, a group's identity can be used to discount its political claims or to label it as extremist and incapable of compromise or being reasoned with. A group's actual tactics and goals can be replaced by hypotheses about how it could or might act based upon its attributed religion.⁴⁴ As a matter of fact, this type of conceptual problem runs through many analyses of terrorism that employ identity-based typologies, so it maybe that less cultural, more organizational typologies could be less prejudicial in either their presumptions or their results, at least from the legal and human rights point of view.

39. In any event, while broad or general categorizations can hardly reach precision and do full justice to the variety and complexity of the terrorist phenomena, attempts to devise analytical and more sophisticated subdivisions and distinctions providing more precise delimitations of, or information on, subgroups of terrorism - such as their organizational structure, size, potential relationships with States and degrees of such relationships, their identity, characteristics, social, political, cultural and psychological motivations, and so forth - are too complicated and diverse and, above all, they only serve the needs of the particular user. As useful as they are for illuminating particular aspects of the phenomena of terrorism and of terrorists, and for contributing to our understanding of the wide-ranging nature of the *problematique* surrounding them, they are of little utility in identifying exactly what constitutes terrorism and who the terrorists are.

40. The Special Rapporteur's training and mentality as a jurist naturally influence her understanding of and approach to the terrorist phenomena. Nevertheless, deeply conscious of the political-science background of most of the professional literature dealing with the subject matter, she obviously could not, and in fact did not, neglect to take into consideration whatever political, social, and other important specialist input is contributing to the better understanding of the manifold aspects of these phenomena. That is how she was led into examining also the question of typologies and categorizations in the framework of sub-State or non-State terrorism in her effort to conceptualize this extremely vast and disparate area at best.

41. The result of her examination is that there is no common or uniform methodology for an all-inclusive identification, classification and appraisal of sub-State terrorism. Furthermore, actor-based distinctions, which can be found in many current classifications of terrorism, have their own shortcomings. The more general they are, the more they cut across the many existing categories of sub-State terrorism. The more narrow and specified they are, the less they contribute to the issue of definition and the much-needed delimitation of the complex phenomenon of terrorism. In view of the fact that there is no common methodology for the categorization of sub-State terrorism, and the fact that categories and distinctions, to be useful or functional, must serve the approach of their users, the Special Rapporteur considers that it would best serve her approach to retain, from among the many categories and distinctions in circulation, only those which differentiate between domestic (or internal) and international terrorism and between individual terrorists and terrorist groups.

42. These very general distinctions that can be found in most current classifications of terrorism are also not devoid of the difficulties and ambiguities resulting from any attempt to further define or specify them more precisely. Thus, for instance, allusion has already been made to the

ambiguity regarding the term “international terrorism”.⁴⁵ As is well known, there are several definitions of the term “international terrorism”, some of which are quite confusing.⁴⁶ It will be further noted that, frequently, even the term “transnational terrorism” is distinguished from the term “international terrorism”, and also defined in different ways.⁴⁷ In addition, in considering the very distinction between individual terrorists and terrorist groups that act nationally or internationally, several questions arise regarding the context and the situations in which they function or occur, including whether the individual or group non-State terrorist actors are effectively acting on their own, or as part of another group or another organization or entity which may direct and control them from another country.⁴⁸

43. However, in the opinion of the Special Rapporteur, there is a principal virtue in these distinctions, namely their relevance for useful and meaningful legal discussion. It is necessary to distinguish national from international terrorism, and individual terrorists from terrorist groups and/or terrorist organizations, because of the different legal content, regulation and implications or effects attending these distinctions or categories. These distinctions are, moreover, relevant to any legal approach of the issue of definition and to any attempt to legally delimit the phenomenon of terrorism. In her prior work, the Special Rapporteur, has already sought to conceptualize on different aspects of this complex phenomenon and demarcate areas whose exploration necessitated her venturing into ways departing from her usual legal analysis.⁴⁹ It is of central importance to her now to return to the legal approach. So, after briefly explaining next the terms “internal” (or “domestic”) and “international” terrorism, and presenting the different formulations and connotations that are most frequently contained in the use of the term “international terrorism”, in both international law and international relations, she will proceed by developing a legal framework of analysis allowing for the containment and confinement of the definitional issue within limits that are most relevant to the ongoing human rights discussion of terrorism, particularly since the 11 September 2001 terrorist events.

2. Internal (or domestic) and international terrorism

44. As the name implies, internal (or domestic) terrorism is confined within the borders of one specific State, whereas international terrorism involves an “internationalizing” element or feature engaging the interests of more than one State. Internal (or domestic) terrorism is generally viewed by States as a violation of domestic criminal laws. Even the most casual survey of legal literature and doctrine indicates that perpetrators of internal terrorism involving the territory and the citizens of only one State fall within the categories of criminals and are punished as a rule everywhere by penal codes.

45. On the other hand, there are various definitions and criteria offered concerning the “international” component or the “international” nature of terrorism. To put it also in other words, there are different views with regard to the element or feature and the circumstances, which “internationalize” terrorism, and as to how States obtain jurisdiction over international and /or transnational terrorists.⁵⁰

46. It has been maintained, for instance, that terrorism is international when the perpetrator of the crime or its victim is an alien in the State where the terrorist crime was committed or its effects materialized;⁵¹ or when one of the following elements are present: the terrorist activity takes place in more than one State, or where no State has exclusive national jurisdiction, or when it affects the citizens of more than one State, internationally protected persons or internationally

protected objects.⁵² In another much more detailed formulation, terrorism is deemed to be international in terms of acts that contain international elements (e.g. conduct performed in whole or in part in more than one State), in terms of internationally protected targets (e.g. civilians protected by international instruments or not, diplomats and personnel of international organizations), in terms of power-oriented outcome (e.g. aiming at changes of the political, social or economic structures, or the policies, conduct or practices of a given State), and in terms of internationally proscribed conduct (e.g. violation of international norms).⁵³ In yet another formulation, for terrorism to be “transnational”, there needs to be some extra-territorial element, either with regard to the perpetrators, the victim-State, the nationality of the victims or even the very nature of the offence; and while there is an extra-territorial element in cases where the perpetrator flees abroad and seeks refuge in a foreign country against extradition proceedings, it is unclear whether there are “transnational” elements in the cases of terrorist groups perceiving themselves not to be part of the victim- State and trying to secede.⁵⁴ It has also been suggested, somewhat vaguely, that terrorism is international when the interests of more than one State are involved;⁵⁵ and that international terrorism is any terrorist activity containing an international jurisdictional element.⁵⁶

47. These different formulations, emanating from various attempts to define international terrorism from the legal perspective, do not necessarily contradict each other, yet their overall effect is the creation of a certain ambiguity and confusion in the area.⁵⁷ The same is true with other notable attempts to conceptualize and define the international nature of terrorism from the political and sociological perspective. Thus, for instance, it has been maintained that international terrorism comprises terrorist incidents that have clear international consequences, such as incidents in which terrorists go abroad to strike their targets, stay at home but select victims because of their connection to a foreign State (e.g. foreign executives) or attack international lines of commerce (e.g. airliners).⁵⁸ The same expert opinion on terrorism has, further, maintained that international terrorism may also be defined as acts or campaigns of violence waged outside the accepted rules and procedures of international diplomacy and war,⁵⁹ thereby excluding from the concept of international terrorism the local activities against a local government of citizens or dissident groups in their own country if no foreign connection is involved, and eventually including in the concept of international terrorism the breaking of the rules and exporting violence by various means to States that normally would not, under the traditional rules, be considered participants in the local conflict.⁶⁰ In the opinion of another expert commentator, however, terrorism is international when it is directed at foreigners or foreign targets, when it is concerted by factions of more than one State, or when it is aimed at influencing the policies of a foreign government.⁶¹ Moreover, it should be mentioned that the ambiguity and confusion resulting from the introduction and different uses of the term “transnational terrorism” in international relations also is equally noticeable.⁶²

48. While the suppression of domestic or internal terrorism is basically pertaining to the competence of the single State, the suppression of international terrorism, cutting across the interests of other States as well, pertains to the competence of more than one State. Because the ramifications of international terrorism are liable to be global, they are generally regarded as the most troubling and imperiling the entire social fabric of the international community.

C. Delimitations of terrorism: a legal approach

1. The quest for a definition of terrorism

49. It is all too apparent that a major stake in the fight against terrorism is the lack of a precise legal definition of the crime of terrorism. Since there is no international definition of terrorism, the initial characterization of an activity as “terrorist” is made by the domestic legal system.⁶³ In this context, it will be recalled that Security Council resolution 1373 (2001), adopted on 28 September 2001, under Chapter VII of the United Nations Charter, establishes a long list of legal obligations with a view to fighting terrorism but does not contribute to the legal definition of the crime of terrorism. As appropriately stated by Jean-François Gayraud, and David Sénat, this resolution “decrees the universal hunt of terrorism without defining it”.⁶⁴ Thus, to fulfill their obligations under resolution 1373 (2001) States have resorted to definitions of terrorism established under their own national legislations. This obviously creates problems since national legislations may criminalize as “terrorist acts” certain activities that could not be accepted as “terroristic”, while others may criminalize activities that are lawful under international law. Moreover, there are several national laws, which define the terrorist offences and crimes in vague, nebulous and imprecise terms. As a result of this situation, certain forms of political and/or social opposition, the exercise of certain freedoms and legitimate activity under international humanitarian law, are regrettably - all too often - criminalized. This deeply disturbing state of affairs, curtails the principle of legality in the context of criminal law, imperils the lawful and/or legitimate exercise of human rights and fundamental freedoms, and erodes confidence in international institutions.

50. The international community, in its struggle over the years to condemn and combat international terrorism, has approached the definitional issue from two different perspectives. The first is holistic in its approach of terrorism, as it seeks to establish a general and comprehensive definition of the crime of terrorism. The second is segmented and object-oriented in its approach, as it is oriented toward the more modest goal of elaborating, in a piecemeal fashion, international instruments criminalizing specific behavior or acts favored by the terrorists. Although some regional intergovernmental systems have managed to establish comprehensive and general definitions of the crime of terrorism, this has not been the case at the global level of the United Nations. Obviously, the fundamental divisions in the world community on the issue of definition have halted, at the international level, the holistic and comprehensive approach. In contrast to the inability to reach consensus on a general definition of international terrorism, particularly within the United Nations, the segmented and object-oriented approach, commonly qualified as “sectoral” or “sectorial” approach by specialists in the area,⁶⁵ has yielded a significant number of international instruments to prevent and suppress common terrorist crimes. To date, this sectoral method of dealing with the problem, by reference to the notion of “terrorist acts” and the so-called “multiform offence character” of terrorism,⁶⁶ enjoys the wider consensus within the international community, as proven already by the number of existing international “sectoral” conventions at both the global and the regional level.

2. The comprehensive approach

51. With regard to the holistic approach, which seeks to establish a general and comprehensive definition of terrorism, allusion has already been made to the necessity to distinguish between the initiatives and efforts undertaken in the framework of the United Nations and those undertaken in the frameworks of the various regional intergovernmental systems. The efforts and initiatives taken in the framework of the United Nations indicate very clearly the almost unsurmountable difficulties that, to this very day, stand in the way of formulating a single,

universally acceptable general definition of the crime of “terrorism”. For long decades, States, experts and the legal community have been striving without success to work out a comprehensive generally acceptable definition, which would be feasible and satisfactory from the legal point of view, in line with the techniques of incrimination in criminal law. At the regional level, even though in recent years some intergovernmental systems have been successful in formulating general definitions of the crime of terrorism, these definitions do not coincide, in at least so far as all the elements of the crime are concerned. Furthermore, some of these definitions create problems with regard to basic principles of criminal law and of human rights.

52. The first attempt to establish and codify at the international intergovernmental level a general definition of terrorism, undertaken under the auspices of the League of Nations, resulted in the abortive Convention for the Prevention and Punishment of Terrorism, adopted in Geneva in 1937.⁶⁷ This Convention formulated a general definition of the crime of terrorism and established also a list of acts specified as acts of terrorism. Both its general definition and the specific incrimination of the acts of terrorism enumerated therein were the object of severe criticisms.⁶⁸ Thus, for instance, while some authors considered that the definitions of the specific terrorist acts were insufficient and too vague, others maintained that the specific criminal intent to create terror - required by Article 1, paragraph 2 of the Convention containing the general definition of the crime of terrorism - was not an end in itself but only the means of perpetrating acts with political, ideological or criminal goals.⁶⁹

53. In the aftermath of World War II, the United Nations made no attempt to revive the abortive 1937 Terrorism Convention. Nonetheless, the United Nations International Law Commission addressed the definitional issue in 1954, during its work on the Draft Code of Offences against the Peace and Security of Mankind. The International Law Commission studied the question of both a general definition of terrorism and of the criminalization of specific acts of terrorism.⁷⁰ In 1990, it examined the issue of a crime of “international terrorism”, covering both State and non-State terrorism,⁷¹ and included a definition of the crime of “international terrorism” in article 24 of that version of its draft Code of Crimes against the Peace and Security of Mankind.⁷² However, in 1995, no consensus could be reached among the members of the International Law Commission.⁷³ Several Commission members emphasized in particular the difficulties of elaborating a definition of the crime of terrorism that would satisfy the exigency of precision required by criminal law.⁷⁴ At the end, the International Law Commission decided not to include “international terrorism” as a specific or autonomous crime in the draft Code of Crimes against the Peace and Security of Mankind of 1996. However, it decided to include the “terrorist acts” in the acts constitutive of war crimes committed in violation of international humanitarian law and in armed conflicts.⁷⁵

54. The Statute of the Ad Hoc International Criminal Tribunal for the Former-Yugoslavia has not included terrorism nor terrorist acts within the list of crimes falling under its jurisdiction. But the Statute of the Ad Hoc International Criminal Tribunal for Rwanda, in its article 4 on “Violations of common article 3 of the Conventions of Geneva and Additional Protocol II”, has included the “acts of terrorism” in the list of crimes submitted to its jurisdiction, without providing, however, any definition. The Rome Statute of the International Criminal Court does not contain a specific criminalization of terrorism, although the issue of terrorism was taken up in the course of its preparatory works. Some proposals were made to include in the jurisdiction of the International Criminal Court acts of terrorism already criminalized in international treaties

through reference to an annex,⁷⁶ and also to establish a universal definition of the “crime of terrorism”.⁷⁷ However, none of these proposals was retained in the Rome Statute.

55. The drafting of a general convention on international terrorism started at the United Nations in 2000, within the Ad Hoc Committee created by General Assembly resolution 51/210 in 1996, and is continuing its work within a Working Group of the Sixth Committee of the General Assembly. The yearly reports of the Ad Hoc Committee and of the Working Group on Terrorism, clearly bring out the difficulties encountered by the States in their attempt to reach consensus on a general definition of the crime of terrorism that will be acceptable at the global level. For instance, in its last meetings on 15 and 16 October 2002, several delegations made it clear that in order to agree on the issue of definition it was necessary first to reach consensus on the issue of the scope of application of the draft general convention.⁷⁸

56. Apparently, the situation is different at the regional intergovernmental level, since some regional systems have already succeeded in reaching agreement on a comprehensive and general definition of the crime of terrorism. In this regard, mention should be made to the “Council Framework Decision on Combating Terrorism”, adopted by the European Union on 13 June 2002,⁷⁹ and containing a mutually acceptable definition of the terrorist act. Actually, the Council Framework Decision establishes two types of terrorist offences, i.e. the terrorist offence and the offence relating to a terrorist group, on the one hand, and “offences related to terrorist activities”, on the other hand. The definition of the terrorist offence is markedly inspired from the draft general convention on international terrorism that is actually being elaborated in the United Nations. Further, mention should be made to the Convention of the Organization of African Unity on the Prevention and the Combating of Terrorism (or Algiers Convention), that was adopted in July 1999,⁸⁰ the Arab Convention for the Suppression of Terrorism, adopted in Cairo in 1998, and the Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted in 1999. It is worth noting that besides the formulation of a definition of terrorism⁸¹ as well as of the terrorist offence,⁸² the Arab Convention for the Suppression of Terrorism, makes also reference to offences established by other treaties.⁸³ In any event, despite their having certain elements in common, the different definitions adopted by these three conventions and by the Council Framework Decision on Combating Terrorism of the European Union diverge in significant aspects.

2. The segmented or “sectoral” approach

57. In the absence of a common, universally acceptable, general definition of international terrorism, the segmented or “sectoral” approach has been widely used in the practice of States. In fact, of the 24 existing international instruments, 21 criminalize specific terrorist activities.⁸⁴ For lack of space and in order to be respectful of the regulations concerning the length of Sub-Commission reports, the Special Rapporteur does not plan to review and comment on them except for their relationship to and /or impact on basic human rights and fundamental freedoms.

58. In any event, in the opinion of the Special Rapporteur, it is in this context of object-oriented and segmented or sectoral approach, that should be included all three regional instruments adopted after 11 September 2001, namely the Inter-American Convention Against Terrorism, adopted on 3 June 2002, the Convention of the Council of Europe on Cyber-Crime and its additional Protocol, and the Protocol amending the European Convention for the Suppression of Terrorism.⁸⁵ Indeed, the Inter-American Convention against Terrorism does not advance any

new definition of the terrorist offence. Using the technique of indirect incrimination, this convention defines terrorist offences by simply referring to the incriminations embodied in ten international anti-terrorism conventions.⁸⁶

59. International humanitarian law adopts the same approach. For instance, article 33 of the Fourth Geneva Convention of 1949, article 51, paragraph 2, of the First Additional Protocol to the Geneva Conventions, as well as articles 4, paragraph 2, d), and 13 of the Second Additional Protocol to the Geneva Conventions criminalize specific acts of terrorism. However, strictly speaking, these norms of international humanitarian law establish prohibitions of certain practices, rather than provide for the legal definitions of “terrorist acts” as criminal offences. Thus, in its commentary on article 13 of the Second Additional Protocol to the Geneva Conventions, the International Committee of the Red Cross underscores that these prohibitions stem from the general principle of protection of civilian population against the dangers of hostilities, which is a principle already recognized by customary international law and the laws of war as a whole. This principle is specified by “the absolute prohibition of direct attacks, acts or threats aiming at violence committed with a view to spreading terror.”⁸⁷

60. In a certain sense, the prohibition of the use of terror and terrorist acts is neither general nor abstract. It is closely related to the persons or objects targeted by these acts. The concepts of civilian population and protected persons are essential and so is also the nature of the objects. Moreover, the prohibition is also closely related to the means that are used, particularly their unlawful character or their indiscriminate effects.⁸⁸ In the words of Michel Veuthey “it is in a general principle, applicable to all and in all circumstances, that it is necessary to seek a limitation if not a prohibition of such acts: the respect of civilian persons and their essential possessions as well as the necessity, in an armed struggle, to avoid superfluous sufferings”.⁸⁹ Furthermore, as specified by the Committee in its commentary on article 51 of the First Protocol Additional to the Geneva Conventions, there is no doubt that acts of violence related to a state of war almost always give rise to some degree of terror among the population and sometimes also among the armed forces. It also happens that the attacks on armed forces are purposely conducted brutally in order to intimidate the enemy soldiers and to persuade them to surrender. Nevertheless, this provision has nothing to do with this kind of terror, for it is intended to prohibit “acts of violence the primary purpose of which is to spread terror among the civilian population without offering substantial military advantage.”⁹⁰

4. A human rights delimitation of terrorism

61. There can be no doubt, from an international law point of view, that every State has not only the right but also the duty to prevent and suppress crime, especially crime which by its nature, objectives, or the means employed for its commission, is considered or qualified as terrorist. Additionally, the international community should also equip itself with all the appropriate legal instruments and means that are necessary to fight this scourge. Having said this, the Special Rapporteur is nonetheless convinced that States and the international community have an obligation to perform their rights and duties within the limits of the rule of law, respecting in particular the principles of international and criminal law, including international human rights and humanitarian law. In this context, it should be recalled that the United Nations Commission on Human Rights has repeatedly affirmed “that all measures to counter terrorism must be in strict conformity with international law, including international human rights standards.”⁹¹

(a) Relevant principles of criminal law

62. Any legal definition of a crime, not only at the national (or domestic) but also at the international level, must be in conformity with established principles of criminal law and of international human rights law. With regard to criminal law, there are two basic principles that should always be kept in mind: the principle of legality of the offence - *nullum crimen sine lege* - and the principle of subjective responsibility. As regards international human rights law, it is necessary to reinforce that the qualification of a behavior as an offence should not criminalize any legitimate form of exercise of fundamental freedoms. As stated by Professor George Levasseur, the law must only prohibit those behaviors that are harmful to society.⁹² Any legal definition of the crime of terrorism, be it a general definition or a definition relating to a specific act, cannot deviate from these principles. In this light, the report on “Terrorism and Human Rights”, which the Inter-American Commission on Human Rights has recently published, draws our attention to the importance of ensuring that crimes relating to terrorism are “classified and described in precise and unambiguous language that narrowly defines the punishable offence, by providing a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offences or are punishable by other penalties.”⁹³

63. The principle of legality of the offence - *nullum crimen sine lege* - is, undoubtedly, one of the cornerstones of the whole edifice of modern criminal law. The United Nations International Law Commission has repeatedly underscored that this principle “is a fundamental principle of criminal law”.⁹⁴ Professor Paul Guggenheim asserted as early as 1954 that this principle “is recognized by all civilized States”.⁹⁵ “*Nullum crimen sine lege*”, which applies in domestic law as well as in the framework of international criminal treaties, is also reaffirmed as a general principle of criminal law in the Rome Statute of the International Criminal Court. It is, moreover, incorporated in international human rights law. Thus, for example, article 15 of the International Covenant on Civil and Political Rights, article 7 of the European Convention of Human Rights, article 7 of the African Charter on Human and Peoples’ Rights, article 6 of the Arab Charter of Human Rights and article 9 of the American Convention on Human Rights, are all dealing with this principle of legality. It should, further, be recalled that this principle is referred to as a non-derogable right in several human rights treaties.⁹⁶ Also the Human Rights Committee, in its General Comment N° 29, has pointed out that the principle of legality in criminal matters cannot be subjected to derogation.⁹⁷ For its part, the above-mentioned report on “Terrorism and Human Rights” of the Inter-American Commission on Human Rights, is also underlining that the principle *nullum crimen sine lege* is one of the “fundamental principles of criminal law”.⁹⁸

64. In any event, the principle *nullum crimen sine lege* is closely linked to the right of any individual to life, liberty and security of the person, protected by article 3 of the Universal Declaration of Human Rights. As pointed out by the International Law Commission, “criminal law sets out standards of behavior that individuals must respect”.⁹⁹ On many occasions, the Human Rights Committee has considered that, as far as the International Covenant on Civil and Political Rights is concerned, the right of any individual to the security of the person, spelled out by the Universal Declaration of Human Rights, is by no means limited to cases of formal deprivation of liberty. For instance, the Committee has pointed out that States parties have the duty to undertake all reasonable and appropriate measures of protection, and that the guarantees provided by the Covenant would be entirely ineffective if one could interpret article 9 as

authorizing a State party to dismiss threats to the safety of an individual under the pretext that he is not held in detention.¹⁰⁰ The Inter-American Commission on Human Rights has also considered that the purpose of the principle of legality, inherent in criminal law, is to guarantee the safety of the individual, by allowing him or her to know the acts for which he or she might be held criminally responsible.¹⁰¹

65. The meaning of the principle *nullum crimen sine lege* is that in order to be qualified as an offence, an act or omission should be criminalized under applicable law at the time of its commitment and, further, that the definitions of criminal offences must be precise, unequivocal and unambiguous. Thus, in its General Comment N° 29, the Human Rights Committee has specified that the principle of legality in the field of criminal law signifies that criminal responsibility, as well as punishment, must be defined within “clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty.”¹⁰² The European Court of Human Rights agrees, further pointing out that the principle *nullum crimen sine lege* implies that definitions of criminal offences, or criminal incriminations, must be precise and unambiguous.¹⁰³ And the Inter-American Court of Human Rights concurs that crimes must be “classified and described in precise and unambiguous language that narrowly defines the punishable offense, thus giving full meaning to the principle of *nullum crimen nulla poena sine lege praevia* in criminal law”, specifying further, that ambiguity in describing crimes creates doubts and the opportunity for abuse of power “particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.”¹⁰⁴

66. That said, many national antiterrorist laws continue to resort to vague, ambiguous or imprecise definitions allowing for the criminalization of legitimate exercise of fundamental freedoms, peaceful political and/or social opposition and other lawful acts, as already noted by the Special Rapporteur. Thus, the Human Rights Committee was compelled to examine and formulate observations and comments to which the Special Rapporteur has already referred in this and in her previous report.¹⁰⁵ In the same vein, the Inter-American Commission on Human Rights has been equally concerned about certain domestic anti-terrorism laws that violate the principle of legality because these laws “have attempted to prescribe a comprehensive definition of terrorism that is inexorably overbroad and imprecise”, or have legislated “variations on the crime of ‘treason’ that denaturalize the meaning of that offence and create imprecision and ambiguities in distinguishing between these various offences.”¹⁰⁶ It has, moreover, underscored that the observance of the principle of legality, as well as of the principles *non bis in idem* and of the presumption of innocence are particularly significant in the context of domestic laws that prescribe crimes relating to terrorism.¹⁰⁷

67. The principle *nullum crimen sine lege* has two corollaries: the restrictive interpretation of criminal law and the prohibition of analogy, on the one hand, and the prohibition of a retroactive application of criminal law, on the other hand. Thus, for example, paragraph 2 of article 22 of the Rome Statute stipulates that “the definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favor of the person being investigated, prosecuted or convicted”. It hardly need be said that it is this principle of legality that was at the basis of the development of the elements of crimes envisaged by the Rome Statute. In this context, vague and ambiguous or imprecise incriminations could not be admitted. It may as well be of interest to recall that the Special Rapporteur on the Independence

of Judges and Lawyers also emphasized that legal definitions that are vague, nebulous or imprecise are contrary to international human rights law and to “general conditions prescribed by international law”.¹⁰⁸ When these definitions allow for the criminalization of legitimate behavior under international human rights law, or acts that are lawful acts under international humanitarian law, they overstep the principle of legality.

68. The principle of individual criminal responsibility is also a fundamental element of contemporary criminal law. Professor Pierre-Marie Dupuy maintains that subjective responsibility in criminal matters as well as individuality of the penalty are principles of international criminal law and peremptory norms.¹⁰⁹ The above-mentioned report on “Terrorism and Human Rights”, of the Inter-American Commission on Human Rights, contains some pertinent observations on this matter also. It states, for instance, that among the most fundamental principles governing criminal prosecutions that are afforded international protection under human rights law is the precept that no one should be convicted of an offence except on the basis of individual penal responsibility. It notes that criminal prosecutions must comply with the fundamental requirement that no one should be convicted of an offence except on the basis of individual penal responsibility, the corollary to this principle being that there can be no collective criminal responsibility. This requirement has received particular emphasis in the context of post-World War II criminal prosecutions, owing in large part to international public opposition to convicting persons based solely upon their membership in a group or organization. However, this restriction does not preclude the prosecution of persons on such established grounds of individual criminal responsibility as complicity, incitement, or participation in a common criminal enterprise, nor does it prevent individual accountability on the basis of the well-established superior responsibility doctrines.¹¹⁰

69. In this respect, it is important to recall that articles 9 and 10 of the Nuremberg Statute raised the question of objective criminal responsibility for membership in a criminal group. These provisions were targeting, of course, members and Heads of the leading Nazi Party (National Sozialistische Partei), the Gestapo (Geheime Staatspolizei), the S.D. (Sicherheitsdienst des Reichsfuehrers) and the S.S. (Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei). The Nuremberg Tribunal declared these three organizations criminal. Nevertheless, as pointed out by Professor Eric David, all the members of these groups were not recognized as criminals on the simple fact of their membership in the above-mentioned groups.¹¹¹ As a matter of fact, the Nuremberg Tribunal dismissed any application of objective individual criminal responsibility. For a member of these groups to have been declared criminal, it was necessary to have been involved voluntarily and in full knowledge of the criminal purposes of the group, or to have actually participated in the commission of war crimes, crimes against peace or crimes against humanity.

70. The principle of individual criminal responsibility is expressly recognized by several international instruments, in particular the Fourth Geneva Convention in its article 33, the First Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts in its article 75, paragraph 4 b), the Second Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts in its article 6, paragraph 2 b), the Second Protocol for the Protection of Cultural Property in the Event of Armed Conflict in its articles 15 and 16, the Statute of the International Criminal Tribunal for the Former Yugoslavia in its article 7, the Statute of the International Criminal Tribunal for Rwanda in its Article 6, the Rome Statute for

the International Criminal Court in its article 25 and the Statute of the Special Court for Sierra Leone in its article 6. The International Committee of the Red Cross, in its commentary on article 33 of the Fourth Geneva Convention, has affirmed that this provision embodies in international law “one of the general principles of domestic law, i.e. that penal liability is personal in character”.¹¹² In addition, in its commentary on article 75, paragraph 4 b), of the First Additional Protocol to the Geneva Conventions, the Committee has specified that after World War II, and ever since, “international public opinion has condemned convictions of persons on account of their membership in a group or organization” and that objections were also raised against collective punishment inflicted indiscriminately on families or on the population of a district or building. It, further, underscored the decision taken to outlaw any conviction or punishment that would not be based on individual responsibility “in accordance with the now universally accepted principle that no one may be punished for an act he has not personally committed.”¹¹³ It is also important to note, in this context, that in his Report on the Establishment of the International Criminal Tribunal for the former Yugoslavia, the Secretary General declined to retain, for the purposes of the jurisdiction of the Tribunal, the criminal liability of individuals by reason of their membership in an association or organization considered to be criminal.¹¹⁴

71. International human rights instruments acknowledge implicitly the principle of individual criminal responsibility. It is noteworthy, however, that the American Convention on Human Rights reinforces this principle with the prohibition of sanctions that would target other persons than the offender, such as family or close relatives.¹¹⁵ Recently, the Inter-American Commission on Human Rights pointed out that a person could be condemned only for an offence and on the basis of individual criminal responsibility.¹¹⁶

72. Admittedly, in recent years, a new “technique of incrimination” in antiterrorist matters has surfaced. In line with this “technique” international bodies and States draw up official lists of groups qualified as terrorist groups. Membership or collaboration with these groups is in itself an offence. This “technique of incrimination”, however, is not devoid of problems with regard to the principle of individual criminal responsibility. The Special Rapporteur, in her first progress report, submitted to the Sub-Commission before even the horrendous terrorist attacks of 11 September 2001, drew attention to these problems in the following terms: “[s]ome of this [anti-terrorism] legislation contains no definition of terrorism, while some contains lists of certain acts. Some of it includes provisions in which groups are put on an official terrorist list, frequently with no analysis of the particulars of the situation or the nature of the group. Those groups and others espousing similar views but uninvolved with the groups concerned may face severe consequences...[J]udicial proceedings to challenge this false labelling or to defend a person charged with an offence under such anti-terrorism legislation may leave room for serious negation of a wide range of procedural rights.”¹¹⁷ On the same topic, it is important to mention also that the European Court of Human Rights has specified that Article 5 of the European Convention of Human Rights does not legitimize the arrest of a person who is suspected of planning to commit an offence on the sole ground that the person belongs to a group of individuals recognized as dangerous and known for its continuing propensity to crime.¹¹⁸

(b) Definitions of terrorism and human rights

73. It has already been noted that one of the most disturbing aspects is, indeed, the establishment of legal definitions of the crime of terrorism or of terrorist acts which can lead to the criminalization of legitimate and/or lawful behaviour under international law, especially as

regards the exercise of fundamental rights and freedoms. More specifically, there are certain domestic laws which actually or potentially conflict with the exercise of the right to take part in the conduct of public affairs, the right to strike, as well as freedom of expression, association and information. There are definitions of terrorism which directly criminalize legitimate forms of political, ideological and social opposition, and other definitions which disregard the principle *nullum crimen sine lege*, as explained already at some length - i.e. they are so wide and/or of such an ambiguous and imprecise nature that they leave space for the eventual criminalization of activities falling within the legitimate exercise of trade-unionism and other fundamental rights and freedoms.

74. It is true, of course, that according to international law the exercise of certain rights and fundamental freedoms can be limited. However, there can be no doubt that these limitations or restrictions cannot be imposed in an arbitrary way, for it is international law itself that sets out the precise framework. In this context, the Human Rights Committee, in its General Comment N° 10 on the Liberty of Expression, has specified that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted. These restrictions may relate either to the interests of other persons or to those of the community as a whole. Nevertheless, when a State party to the International Covenant on Civil and Political Rights imposes certain restrictions on the exercise of freedom of expression, these may not in any case put in jeopardy the right itself. Article 19, paragraph 3, sets out conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be “provided by law”; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of that paragraph; and they must be justified as being “necessary” for that State party for one of those purposes.¹¹⁹ Beyond this, the Committee has pointed out on several occasions that according to the Covenant freedom of expression can only be limited if its exercise undermines the rights or the reputation of others or compromises national security or public order.¹²⁰

75. The European Court of Human Rights has, on several occasions, dealt with the issue of the relationship between freedom of expression and terrorism. The clear incitation to the use of violence, hostility or hatred between citizens is one of the criteria retained by the Court to distinguish between the exercise of freedom of expression and terrorism.¹²¹ The Inter-American Commission on Human Rights concurs that in the fight against terrorism some limitations on freedom of expression might be justified as measures that are necessary to protect the public order or national security. In its “Report on Human Rights and Terrorism”,¹²² it considered, in particular, that “the requirement that any subsequent penalties must be established by law means that it must be foreseeable to the communicator that a particular expression may give rise to legal liability”, and added that an overly broad or vague provision may not fulfill the requirement of foreseeability and therefore may violate the terms of Article 13, paragraph 2 of the American Convention on Human Rights.¹²³ The Inter-American Commission has also recommended to the States to impose subsequent penalties for the dissemination of opinion or information only through laws that have “legitimate aims”, are “clear and foreseeable”, not “overly broad or vague”, and “ensure that any penalties are proportionate to the type of harm they are designed to prevent”. It also recommended to the States to refrain from promulgating laws that broadly criminalize, without an “additional requirement of a showing of an intent to incite lawless violence or any other similar action and a likelihood of success, the public defense (apologia) of terrorism or of persons who might have committed terrorist acts”.¹²⁴

76. Concerning the rights to freedom of assembly and association, the Inter-American Commission on Human Rights also affirms that limitations on such rights must be established “by or in conformity with laws that are enacted by democratically elected and constitutionally legitimate bodies and are tied to the general welfare”, and underscores that such rights cannot be restricted “at the sole discretion of governmental authorities”. It specifies, moreover, that any such restriction must be in the interest of national security, public order, or to protect public health or morals or the rights or freedoms of others, and “must be enacted only for reasons of general interest and in accordance with the purpose for which such restrictions have been established”. Additionally, the restrictions must be considered necessary in a “democratic society”, of which “the rights and freedoms inherent in the human person, the guarantees applicable to them and the rule of law are fundamental components”. Similarly, in the words of the Inter-American Commission, “while the rights to freedom of assembly and of association are not designated to be non-derogable”, any measures taken by States to suspend these rights “must comply strictly with the rules and principles governing derogation including the principles of necessity and proportionality”.¹²⁵

77. It is equally significant to note that the right to strike is also susceptible to limitations and restrictions.¹²⁶ The International Labour Organization’s Union Freedom Committee has considered that a general restriction of the right to strike is permissible only in the case of those services that are classified as essential, which the International Labour Organization defines as those whose suspension could jeopardize the safety or life of all or part of the public.

78. After 11 September 2001, in the name of the fight against terrorism, the exercise of the above rights and freedoms has been criminalized in several countries. This tendency is even more worrying when intergovernmental systems adopt counter- terrorism legal instruments, which allow for the criminalization of some of the modalities of the exercise of the above-mentioned rights. The OAU Convention on the Prevention and Combating of Terrorism, for instance, leaves open space for an eventual criminalization of certain of the modalities of the exercise of the right to strike, by having adopted a fairly wide definition of “terrorist act”.¹²⁷

79. However, it is important to remember that this phenomenon is not all that new. Thus, for example, as early as 1995, the Working Group on arbitrary detention reiterated its concern about the lack of precision in the legislation of several countries with regard to certain criminalized conduct described by the governments as “acts of treason”, “acts hostile to a foreign State”, “enemy propaganda”, “terrorism”, etc. In 1994, the Working Group, observing that there were criminal classifications under which it was not even clear whether the perpetrator of an “attack on State security” used violence or merely manifested an opinion, considered the possibility of suggesting that the competent body (which was the forthcoming Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders) should make recommendations to ensure that criminal classifications established by national law are in conformity with the general principles guaranteeing that the right to the principle of restrictiveness or lawfulness is not arbitrarily disregarded.¹²⁸ And, of course, the Human Rights Committee has also formulated observations with regard to existing very broad or vague definitions of terrorism in the legislation of several States, and under which legitimate forms of exercise of fundamental rights could be criminalized.¹²⁹

(c) Terrorism and political offence

80. A major aspect of the problem of legally defining terrorism is the potential relationship of terrorism with the concept of political offence. Admittedly, the delimitation of the concept of political offence and of its potential relationship with terrorism is of particular relevance to the human rights discussion of the definitional problem of terrorism. In this context, it is important to note that there is no international definition of the political offence. The concept is commonly referred to in domestic legislations and in the doctrine of criminal law. There are some domestic legislations that are unfamiliar with the criminalization of political offences. However, the acts that are criminalized by the penal law are equivalent to the definitions of the political offence established by the legislations of other States. For the rest, criminal doctrines envisage several cases of political offences, i.e., the political offence *stricto sensu*, the “complex” political offence, and the common law offence committed for political reasons or purposes. Nonetheless, the various schools of thought in criminal law have diverging views on these different aspects. Some emphasize the objective character of the criminal behavior while others focus on the intent or the political motivation of the perpetrator.¹³⁰ Some differentiate between the non-antisocial behavior of the perpetrator and require an antigovernment intent,¹³¹ while others find the specifics of the political offence in the goods legally injured by the behavior.

81. It is clear, however, that the concept of political offence is well recognized under international law, in particular as regards extradition, asylum, amnesties and infliction of criminal penalties. In a sense, the concept of political offence derives from the right to resistance or the right to rebellion set out in the Preamble of the Universal Declaration of Human Rights.¹³² Although no definition of the political offence is embodied in international instruments, the case law of the human rights intergovernmental bodies frequently refers to this concept.¹³³ Thus, for instance, the Inter-American Commission on Human Rights considers as political offences acts presenting certain elements that are characteristic of a political offence, in spite of how national criminal legislations considers the facts.¹³⁴ It is worth noting also that in his study on “Amnesty Laws and Their Role in the Safeguard and Promotion of Human Rights”, the expert of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. Louis Joinet, spelled out the generally accepted criteria to distinguish between political offences and common law offences.¹³⁵

82. With regard to extradition, the generally accepted rule is that there is no extradition for political offences. Many international conventions embody this rule. Nevertheless, international instruments do not include a definition of the political offence. Consequently, it pertains to the State from which extradition is required to determine whether the offence for which extradition is needed is a political offence or is connected to a political offence. The concept of political offence is further linked to the principle of *non-refoulement*, spelled out in several treaties of extradition. Most of these treaties reproduce the Irish clause of the European Convention on Extradition, according to which a State is not compelled to extradite if the required State has “substantial grounds” for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person’s position may be prejudiced for any of these reasons.¹³⁶

83. However, as underlined by Mikaël Poutiers, the rule of non extradition for political offences “is not absolute [as] it is indeed admitted that the political purpose put forward could not justify the commission of particularly serious criminal acts”.¹³⁷ Thus, some crimes, even if motivated by political reasons, are not regarded for the purpose of extradition as political offences or committed for political aims. Consequently, the rule *aut dedere aut judicare* is applicable.

Terrorist acts¹³⁸ such as attacks against Heads of States,¹³⁹ crimes against humanity,¹⁴⁰ war crimes,¹⁴¹ genocide,¹⁴² apartheid, mercenarism, torture and forced disappearance,¹⁴³ inter alia, belong to this category of offences. One of the consequences of such a differentiated legal treatment between political offences and terrorist offences lies in the possible extradition of the perpetrator of the offence.

84. The concept of political offence is also closely related with the concept of refuge and the right to asylum. Historically, the concepts of political offence and persecution for political reasons were at the heart of the recognition of the right to asylum. Asylum has long been recognized in Latin American countries. Asylum was initially limited to cases of political offences as shown by many regional instruments.¹⁴⁴ Although they do not explicitly refer to the words “political offence”, the Universal Declaration of Human Rights¹⁴⁵ and the United Nations Declaration on Territorial Asylum implicitly recognize the right to asylum for the perpetrators of acts considered as political crimes. Article 22, paragraph 7, of the American Convention on Human Rights provides that “[e]very person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offences or related common crimes.” As is well known, the Convention relating to the Status of Refugees extended the reasons for which asylum can be granted.

85. However, various international instruments and in particular refugee law¹⁴⁶ exclude from the right to asylum and the protection stemming from it, perpetrators of certain acts such as, inter alia, crimes against peace, war crimes, crimes against humanity, serious non-political crimes and acts contrary to the purposes and principles of the United Nations. Although such crimes can be justified by political reasons, given the seriousness of these offences and the values and legal interests at stake, such crimes are not considered as “political offences” and do not entitle their perpetrators to invoke the right to asylum.¹⁴⁷ The perpetrators are also excluded from the international protection stemming from the status of refugee. As regards terrorist acts, these also fall in this category of acts depriving their perpetrators of the right to asylum. In this context, particular attention should be drawn to Security Council Resolution 1373 (2001) imposing to all States, inter alia, to “[d]eny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens”, and calling upon them to take appropriate measures, “before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts”, and ensure “that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists”.¹⁴⁸

86. In this context, there are two situations challenging the right to asylum. The first, highlighted by the United Nations High Commissioner for Human Rights, in his annual Note on international protection addressed to the executive Committee of the Office of the High Commissioner for Refugees (UNHCR), on 11 September 2002,¹⁴⁹ involves the vague and imprecise definitions of terrorism offences in the regional legal instruments. In this respect the High Commissioner recommended “the inclusion of precise definitions in such instruments and avoidance of any unwarranted linkages between asylum-seekers/refugees and terrorists”.¹⁵⁰ He also pointed out that “if definitions are too broad and vague, as has sometimes been the case, there is a risk that the “terrorist” label might be abused for political ends, for example to criminalize legitimate activities of political opponents, in a manner amounting to persecution”.¹⁵¹ The second involves the legal classification of political offences *per se* as

The second involves the legal classification of political offences *per se* as terrorist crimes. As is well known, several countries removed from their national criminal legislation the category of political offence and criminalized these same behaviors as terrorist offences.

87. The concept of political offence is also included in some international instruments as to the imposition of penalties. For example, the American Convention on Human Rights prohibits the death penalty for political offences or related common crimes. The Inter-American Court and the Inter-American Commission on Human Rights have touched upon this issue on several occasions. It is also interesting to recall, in this context, the provision of Article 1 of International Labour Organization Convention No. 105, Concerning the Abolition of Forced Labour, which stipulates that ratifying members undertake to suppress and not to make use of any form of forced or compulsory labor “[a]s a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system”.

88. The concept of political offence is also linked to the issue of amnesties. As is well known, “terrorist” campaigns fought for political ends or purposes can sometimes end in compromise. In this kind of campaign or conflict, human rights are violated in practice, either as a result of a vigorous counter terrorism policy ignoring the constraints of international and human rights law, or by those “terrorists” who have been defeated and captured, or even those that have lost power. In the event of political settlement and compromise, while amnesty laws for human rights violators can play an important role in the process of reconciliation within the State, they also raise the serious issue of impunity.

89. In his study on “Amnesty Laws and Their Role in the Safeguard and Promotion of Human Rights”, Sub-Commission expert Mr. Louis Joinet, had stated that the granting of amnesty for political offences was a frequent practice that favored the resolution of armed conflicts and the return to democracy.¹⁵² Some schools of thought in criminal law justify eligibility for amnesty for political offences on the argument that those engaging in this kind of behavior are not antisocial. A number of constitutions and national laws recognize therefore, the possibility of granting amnesty to the perpetrators of political offences. It is notable, that many resolutions of the General Assembly¹⁵³ and of the Commission on Human Rights¹⁵⁴ have recommended the release of the perpetrators of political offences, in particular by the granting of amnesty or measures of clemency, and that the Human Rights Committee has also considered as a positive measure for the implementation of the International Covenant on Civil and Political Rights the granting of amnesty to perpetrators of political offences or their release.¹⁵⁵ In the same line, the Inter-American Commission on Human Rights has also recommended the granting of amnesty to perpetrators of political offences.¹⁵⁶ It is equally important to note that international humanitarian law also envisions amnesty for those who fight against the government in an internal armed conflict, as set out in Article 6, paragraph 5 of the Second Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts, allowing for a broad amnesty to be granted to “persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.”

90. In any event, international human rights law and international humanitarian law impose certain limits to the possibility of granting amnesties. Accordingly, perpetrators of war crimes, genocide, crimes against humanity and other gross violations of human rights cannot benefit

from amnesties and other similar measures. Even though the perpetrators of the above mentioned criminal activities may have acted for political ends or purposes, the extreme seriousness of their acts and the values at stake exclude any consideration of their conduct as political offences, or common crimes committed for political reasons, and they are, therefore, excluded from the benefit of amnesties or similar measures. The Human Rights Committee,¹⁵⁷ the Inter-American Court of Human Rights¹⁵⁸ and the Inter-American Commission on Human Rights¹⁵⁹ concur that amnesty and other similar measures which prevent the perpetrators of gross human rights violations from being brought before the courts, tried and sentenced are incompatible with State obligations under international human rights law. It is further notable, that the incompatibility of amnesty laws with the obligation to investigate, bring to trial and punish those responsible for gross human rights violations has implicitly been recognized in the Vienna Declaration and Programme of Action, adopted by the 1993 World Conference on Human Rights.¹⁶⁰ Finally, attention should be drawn to an official interpretation given by the International Committee of the Red Cross, as to the scope of Article 6, paragraph 5, of the Second Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts, which states that “[t]he *travaux préparatoires* of 6(5) indicate that this provision aims at encouraging amnesty, i.e., a sort of release at the end of hostilities. It does not aim at an amnesty for those having violated international humanitarian law.”¹⁶¹

91. It follows, that perpetrators of international terrorism, as delineated and/or defined under binding international conventions and other binding international law norms, should not benefit from amnesties and other similar measures, at least to the extent that their international criminal activity grossly violates human rights and is contrary to the purposes and principles of the United Nations Charter. And yet, the habitually vague and imprecise delineations and/or definitions of the “terrorist” offences - in national as well as international law norms - often blurs the landscape, as repeatedly noted by the Special Rapporteur, and allows for the criminalization of the lawful and/or legitimate exercise of human rights and freedoms, or even for the legal assimilation of the terrorist with the political offences, compromising eventually the possibility of amnesties.

92. Terrorist acts and political crimes have, of course, certain common features, in particular as regards the political motive of the perpetrators. In the words of Colin Warbrick, “[i]f there be an identifiable concept of terrorism, a necessary, if not always sufficient, condition appears to be that there is conduct done with some political motive.”¹⁶² Nevertheless, terrorist acts and political crimes are two different criminal categories, subject to distinct rules, especially as regards extradition, asylum and amnesty. It is likely that, during an insurrection, terrorist acts are committed and their authors must be tried for those acts. This is a problem of cumulative incriminations. International law does not prohibit insurrection. What is forbidden, and illicit, is the perpetration of certain acts.¹⁶³ Under international humanitarian law, the prohibition of the recourse to acts not considered legal military operations is neither general nor abstract, and is in strict relationship with the notions of civilian population and protected persons.

93. In conclusion, it cannot be overemphasized that any State has the right to defend itself and to take the necessary measures to guarantee its own security and integrity. In order to do so, States have the right to criminalize behaviors that endanger their security and integrity. But, in so doing, States are also bound by, in particular, international and criminal law principles. The legal determination of behaviors which constitute other offences, such as the political offence, as

terrorist, but which are quite distinct from terrorism, denaturalizes and undermines the meaning of “terrorist offence,” creating ambiguities in distinguishing between these various offences. That is particularly true when any form of political offence - with or without use of violence, be it a terrorist act or not - is put into the legal category of terrorist offences. The blurring of legal categories has serious consequence as to the legal status of the political offence, in particular as regards extradition, asylum, penalty and amnesties. The recommendation of the Inter-American Commission on Human Rights, according to which States must “ensure that crimes relating to terrorism are classified and described in precise and unambiguous language that narrowly defines the punishable offence, by providing a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offences or are punishable by other penalties” is particularly compelling.¹⁶⁴

III. CONCLUDING REMARKS

94. The Special Rapporteur began her work by first exploring possible avenues for conceptual development of the topic and then elaborating on several aspects or themes. She intended her second progress report to develop several other aspects or themes as part of her conceptual evolution of the topic. She envisioned, at the time, that she would then work on the final report in which she would draw together the many conceptual strands to arrive at a working and workable definition of terrorism, a practical set of guidelines incorporating human rights and humanitarian law issues, and a variety of conclusions and recommendations. The events of 11 September 2001, however, somewhat derailed that aim, with the result that the Special Rapporteur deviated somewhat from her original intentions regarding the second progress report to accommodate and document the international upheaval, as well as international and regional action in the post 11 September 2001 context.

95. As in previous reports, the Special Rapporteur continues to document international and regional action in an addendum to this report, in order to be respectful of the new limitations imposed on Sub-Commission reports. However, it is clear that to discuss international, regional and national measures is a Herculean task, considering the huge amount and diversity of the measures adopted and/or implemented at national, regional and international levels after 11 September 2001 to combat terrorism. As already noted by the Special Rapporteur in her preliminary observations, discussion of these is a new job of an entirely new scale and scope from her original mandate, which already included a vast array of conceptual issues. Furthermore, the follow-up of measures adopted to combat terrorism is a long-term task that requires the examination of the conformity of such measures to a significant number of international human rights instruments and largely exceeds the inherent object and the “raison d’être” of studies of the Sub-Commission, as well as the material capacities of the Special Rapporteur.

96. And yet, the Special Rapporteur thinks that it is essential to follow-up and permanently examine the conformity of these measures with international human rights law. To a certain extent, the treaty bodies and the special procedures of the Commission on Human Rights carry out, at least partially and in a fragmented way, this follow-up. Indeed, the Special Rapporteur is encouraged by the fact that the treaty bodies are developing methods to address compliance of national legislation on terrorism, including the inclusion of specific questions on these issues in their directives to States for the preparation of their reports.

97. At this stage of her work, the Special Rapporteur considers it appropriate to press for the Sub-Commission and all other human rights bodies to continue to urge the Security Council Counter Terrorism Committee of its obligation to review national anti-terrorism legislation also from the point of view of human rights and humanitarian law.¹⁶⁵ It is apparent that to date the “liaison” relationship with the Office of the High Commissioner for Human Rights and the Human Rights Committee has yet to yield a specific undertaking from the CTC regarding human rights. It is certainly not premature to recommend that the CTC should incorporate human rights and humanitarian norms into its advisory programmes assisting States to draft or amend counter-terrorist legislation. The regional inter-governmental organizations are already playing an important role in this regard and the Special Rapporteur welcomes these efforts.

98. The Special Rapporteur also considers that it would be appropriate and effective for the Commission on Human Rights to establish within the Commission a procedure of follow-up and supervision of the measures adopted and/or implemented after 11 September 2001 at national, regional and international levels. Some encouraging steps have been accomplished by the General Assembly resolution 57/219 of 18 December 2002 and the Human Rights Commission resolution 2003/68 of 25 April 2003.

99. Another alternative for the Commission could be to consider for the Sub-Commission a more active role in monitoring counter-terrorism legislation when the Special Rapporteur completes her study. Even though the Commission itself usually assumes efforts to monitor States’ and even non-States actors’ compliance with human rights norms, there is precedence for such action by the Sub-Commission. In this regard the Special Rapporteur points out the “Khalifa” reports (beginning in 1981) monitoring trade with the apartheid regime in South Africa and the “Despouy” reports (beginning in 1985) monitoring States’ use of “state of emergency” derogations of human rights. Further, several of the Sub-Commission’s working groups also monitor States’ compliance with aspects of human rights law under their mandates.

100. Finally, the Special Rapporteur continues to welcome and reflect on the valuable comments and suggestions made to her by her colleagues in the Sub-Commission, States, intergovernmental and non-governmental organizations, as well as United Nations special procedures. She looks forward to completing her study on the conceptual aspects of terrorism and human rights and to submitting her final report to the Sub-Commission at its fifty-sixth session in 2004.

¹ See E/CN.4/Sub.2/2002/35, para. 68.

² In this vein see, generally, M. Robinson, “Shaping Globalization: The Role of Human Rights”, Fifth Annual Grotius Lecture, American Society of International Law 97th Annual Meeting, Washington, DC, 2 April 2003.

³ See E/CN.4/Sub.2/1997/28, para. 11.

⁴ See E/CN.4/Sub.2/2001/31, paras. 27-31.

⁵ Ibid., paras. 26 and 30.

⁶ See E/CN.4/Sub.2/1999/27, paras. 42-43.

⁷ See E/CN.4/Sub.2/2001/31, paras. 32-33.

⁸ Ibid., paras. 31 and 34.

⁹ Ibid., paras. 35-67.

¹⁰ Ibid., paras. 68-70. See summaries of the relevant submissions in Addendum 2 to this report.

¹¹ Ibid., paras. 71-81.

¹² Despite the reservations expressed during the discussion of her first progress report in the Sub-Commission by her expert colleague Fissea Yimer and the observer government of Turkey, about her using the term “sub-State” terrorism (in contrast to “State” terrorism), the Special Rapporteur is of the opinion that she should abide by the terminology that she has already used, since it is both scientifically correct and familiar in the framework of the UN also - see, for example, the Manual on Human Rights Training for the Police of the UNHCHR, Professional Training Series No. 5, under the title “Human Rights and Law Enforcement” (1997), at p. 101. Nonetheless, although she believes that she has already defined “sub-State” terrorism so as to avoid possible confusion, in the present report she is going to use the term “sub-State” terrorism interchangeably with the terms “non-State” or “individual” terrorism, in order to give all due attention to the two reservations mentioned above. Still, there is one more point that the Special Rapporteur wishes to make in the context of terminology. Given the present construct of international law and the central position that the State still retains in it, she considers the terms “sub-State terrorism” or “individual terrorism” (as opposed to the term “State terrorism”) to convey even more accurately the concept of “terrorism from below”, than the term “non-State terrorism” does, especially in today’s international practice of terrorism. In the same vein, see, for instance, G. Wardlaw, Political Terrorism: Theory, tactics, and counter-measures, Cambridge, Cambridge University Press, 1982, p. 69, referring also to F.J. Hacker, Crusaders, Criminals, Crazies: Terror and Terrorism in Our Time, New York, W.W. Norton and Co., 1976, and the Special Rapporteur’s analysis in E/CN.4/Sub.2/2001/31, para.36 ff.

¹³ See also J.J. Lambert, Terrorism and Hostages in International Law, Cambridge, Grotius Publications Ltd., 1990, pp. 14-15.

¹⁴ Ibid., p.16.

¹⁵ See, for instance, E. Konstantinov, “International Terrorism and International Law”, German Yearbook of International Law, vol. 31, 1988, pp. 289-306, at p. 292; W. Reich, “Understanding terrorist behavior: The limits and opportunities of psychological inquiry”, in W. Reich, ed., Origins of terrorism, Cambridge, Woodrow Wilson International Center for Scholars and Cambridge University Press, 1990, pp. 261-279, at p. 276; and Lambert, note 13, supra, at pp. 16-17. See also K. Skubiszewski, “Definition of Terrorism”, Israel Yearbook of Human Rights, vol. 19, 1989, pp.39-53.

¹⁶ R. Mushkat, “‘Technical’ Impediments on the Way to a Universal Definition of International Terrorism”, Indian Journal of International Law, vol. 20, 1980, pp. 448-471, notes at pp. 449-450 that in discussing the definitional problem in the UN Ad Hoc Committee of Thirty-Five on international terrorism, Western States opposed the inclusion of governmental acts within the category of State terrorism by maintaining that the law relating to State action was being dealt with in other contexts such as the United Nations Charter, the 1949 Geneva Conventions, the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the UN Charter, and so on; see also T.M. Franck and B.B. Lockwood, Jr., “Preliminary Thoughts Towards an International Convention on Terrorism”, American Journal of International Law, vol. 68, 1974, pp. 68-90, at p. 74, as well as J.J. Paust, “Some Thoughts on ‘Preliminary Thoughts’ on Terrorism”, in the same volume of the same Journal, at p. 502.

¹⁷ See E/CN.4/Sub.2/2001/31, paras., 68-70.

¹⁸ W. Laqueur, Terrorism, Boston-Toronto, Little, Brown and Co., 1977, pp. 7-9. See also R.A. Friedlander, Terrorism: Documents of International and Local Control, vol.1, New York, Oceana Publications, Inc., 1979, pp. 7-8.

¹⁹ B. Hoffman, “Terrorism and WMD: Some Preliminary Hypotheses”, The Nonproliferation Review, Spring-Summer 1997, pp. 45-53, at p. 47.

²⁰ W. Laqueur, “Postmodern Terrorism”, Foreign Affairs, vol.75, No. 5, pp. 24-36, at p. 34.

²¹ For a good selection and review of the many different kinds of typologies in circulation, see A.P. Schmid and A.J. Jongman, Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories and Literature, Amsterdam, Oxford, New York, North-Holland Publishing Co., 1988, pp. 39-59; see also D. Duez, “De la définition à la labellisation: le terrorisme comme construction sociale”, in Le droit international face au terrorisme – Après le 11 septembre 2001, CEDIN-Paris I (Cahiers internationaux No. 17), Paris, Pédone, 2002, pp. 105-118, at pp. 106-109, Wardlaw, note 12 supra, at pp. 10-15, P. Wilkinson, Terrorism and the Liberal State, London, Macmillan, 1986, p. 50 ff., as well as, I. Sharif, The success of political terrorist events: an analysis of terrorist tactics and victim characteristics, 1968 to 1977, Lanham, Maryland, University Press of America, Inc., 1995, pp. 22-24.

²² I.e., when foreigners are the targets.

²³ See generally, M. Crenshaw and J. Pimlott, eds., Encyclopedia of World Terrorism, vol. 1, Armonk, New York, M.E. Sharpe, Inc., 1997 p. 185 ff.

²⁴ For example, the Red Army Faction (or Baader-Meinhof Gang) in Germany, the United Red Army in Japan, the Red Brigades in Italy and, even, the Weather organization (or Weathermen) in the United States. See, for instance, R. Kupperman and D. Trent, eds., Terrorism: Threat, Reality, Response, Stanford, California, Hoover Institution Press, 1979, p. 22 ff. and E. Sprinzak, “The psychopolitical formation of extreme left terrorism in a democracy: The case of the Weathermen”, in Reich, note 15 supra, pp. 65-85, and, generally, Laqueur, note 18, supra, pp. 206 ff.

²⁵ Ibid., p.71 ff.; R.E. Rubenstein, Alchemists of Revolution: Terrorism in the Modern World, New York, Basic Books, Inc., 1987, p. 126 ff.; T. Bjørge, “Right-wing and racist terrorism”, unedited paper contributed to the International Conference on “Countering Terrorism Through Enhanced International Cooperation” (Courmayeur, Mont Blanc, 22-24 September 2000), organized by the International Scientific and Professional Advisory Council of the United Nations, in cooperation with the United Nations Terrorism Prevention Branch of the UN Office for Drug Control and Crime Prevention; and see, generally, International Encyclopedia of

Terrorism, Chicago & London, Fitzroy Dearborn Publishers, 1997, pp. 206-208, 543-545, 561-566.

²⁶ B. Hoffman, Inside Terrorism, London, Indigo, 1999, pp. 25-26, who also recalls that it was during this period that the ‘politically correct’ appellation ‘freedom fighters’ came into fashion as a result of the political legitimacy that the international community accorded to struggles for national liberation and self-determination.

²⁷ *Ibid.*, at p. 26.

²⁸ See, generally, the section on “Guerrillas and Terror” of the International Encyclopedia of Terrorism, note 25 *supra*, pp. 149-158, as well as W. Laqueur, Guerrilla: A Historical and Critical Study, Boston-Toronto, Little, Brown and Co., 1976, and R.D. Ramirez, “On the Kidnapping Industry in Colombia”, unedited paper contributed to the International Conference on “Countering Terrorism Through Enhanced International Cooperation”, note 25 *supra*; and see also Wardlaw, note 12 *supra*, pp. 43-49, as well as Rubenstein, note 25 *supra*, pp. 206-227, for a penetrating discussion of the more recent theoretical framework.

²⁹ A historical overview of these early classical cases of religious extremism may be most conveniently found in Laqueur, note 18 *supra*, pp. 7-10, and the International Encyclopedia of Terrorism, note 25 *supra*, pp. 40-41 and 219-220.

³⁰ See, for instance, Laqueur, note 18 *supra*, pp.127-155, as well as Hoffman, note 19 *supra*, at p. 48.

³¹ *Ibid.* p. 49 ff. But see also D.C. Rapoport, “Perceptions and Misperceptions of Religious Terror”, unedited paper contributed to the International Conference on “Countering Terrorism Through Enhanced International Cooperation”, note 25 *supra*.

³² See the International Encyclopedia of Terrorism, note 25 *supra*, at p. 199.

³³ *Ibid.*, at p.197 as well as Rapoport, note 31 *supra*.

³⁴ See, for instance, C. Hewitt, “Separatism, Irredentism, and Terrorism”, unedited paper contributed to the International Conference on “Countering Terrorism Through Enhanced International Cooperation”, note 25 *supra*, and International Encyclopedia of Terrorism, note 25 *supra*, at p. 198.

³⁵ *Ibid.*, pp. 198-199, and see also A. Schmid, “Magnitudes of Terrorist Victimization”, paper prepared for the Ancillary Meeting on “Terrorist Victimization: Prevention, Control, and Recovery”, on the occasion of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on ‘Crime and Justice: Meeting the Challenges of the 21st Century’, held in Vienna, 12 April 2000, pp. 5-6. The author of the paper, an expert authority on terrorism and Officer-in-Charge of the UN Terrorism Prevention Branch, makes further distinctions between “instrumental targets”, “target audiences”, “targets of attention”, “targets of demands” or “targets of terror”, at pp. 3-4.

³⁶ See, for instance, Sharif, note 21 *supra*, pp. 25-27, Schmid and Jongman, note 21 *supra*, pp. 41-43, Lambert, note 13 *supra*, pp. 22-23, and G. Levasseur, “Les aspects répressifs du terrorisme international”, in G. Guillaume et G. Levasseur, eds., Terrorisme international, Paris, Pédone, 1976/1977, pp. 59-131, at p. 66 ff., and M.C. Bassiouni, “International Terrorism”, in M.C. Bassiouni, ed., International Criminal Law, 2d ed., vol. I, Ardsley, N.Y., Transnational Publishers Inc., 1999, p. 771, who notes that to define “international terrorism” unambiguously and all-inclusively is very difficult, if not impossible.

³⁷ See Schmid and Jongman, note 21 *supra*. See also C.J.M. Drake, Terrorists’ Target Selection, New York, St. Martin’s Press, 1998, an impressive attempt to construct a holistic categorization, and E.A. Fattah, “Terrorist Activities and Terrorist Targets: A Tentative Typology”, in Y.

Alexander and J.M. Gleason, eds., Behavioral and Quantitative Perspectives on Terrorism, New York, Pergamon Press, 1981, pp. 11-30.

³⁸ C. Johnson, "Perspectives on Terrorism", reprinted in W. Laqueur, ed., The Terrorism Reader, New York, American Library, 1978, p. 276, cited in Schmid and Jongman, note 21 supra, at p. 40.

³⁹ Many such socio-cultural typologies exist; see, for instance, W. Laqueur, The New Terrorism: Fanaticism and the Arms of Mass Destruction, Oxford, Oxford University Press, 1999, p. 79 ff. and that provided by P. Wilkinson, in Terrorism Versus Democracy: The Liberal State Response, London, Frank Cass, 2001, pp. 19-21 and pp. 45-62.

⁴⁰ See David Rapoport's (note 31 supra) poignant criticism of the statistics (from the RAND - St. Andrews University data base on international terrorism, 1995) cited by the well-known authority on terrorism and Director of the Rand Corporation, Washington Branch, Bruce Hoffman in Inside Terrorism, note 26 supra, p. 93, and in earlier work of the same author. See also Wardlaw, note 12 supra, at p. 52.

⁴¹ See E/CN.4/Sub.2/2001/31, paras. 82 and 96.

⁴² For instance, see generally Hoffman, note 19 supra, pp. 45-53, and see also W. Laqueur, "The New Face of Terrorism", The Washington Quarterly, Autumn 1998, pp.169-178, at pp. 173-174, and the same author in The New Terrorism: Fanaticism and the Arms of Mass Destruction, note 39 supra, at pp. 81-82.

⁴³ See Rapoport, note 31 supra.

⁴⁴ M. Mamdani, "Good Muslim, Bad Muslim: A Political Perspective on Culture and Terrorism", in E. Hershberg and K. W. Moore, eds., Critical Views of September 11: Analyses from Around the World, New York, The New Press, 2002.

⁴⁵ See note 36 supra and accompanying text.

⁴⁶ Schmid and Jongman, note 21 supra, p. 41 ff., as well as Bassiouni, note 36 supra, who defines "international terrorism" in two different ways in the same chapter, namely as conduct which is prohibited by an international convention (at p. 771), and as acts which must contain an international element, be directed against an internationally protected target, or violate an international norm (at p. 778). For further elaboration on this, see infra, paras. 45-47.

⁴⁷ See, for instance, D.L. Milbank, Research Study: International and Transnational Terrorism: Diagnosis and Prognosis, Washington D.C., CIA Political Research Department, April 1976, p.1, as cited by Schmid and Jongman, note 21 supra, pp. 41-42, and Sharif, note 21 supra, pp.26-27.

⁴⁸ Cf. also Bassiouni, note 36 supra, pp. 778-779.

⁴⁹ Thus, for instance, in examining contemporary forms of terrorism in E/CN.4/Sub.2/2001/31, para. 82 ff., or typologies of sub-State terrorism in para. 30 ff. of the present report.

⁵⁰ While some use interchangeably the terms "transnational" and "international", others prefer to define them differently, the distinguishing characteristics between these terms generally including, but not limited to, acts of violence across State boundaries, type of target or victim, violence carried out by autonomous non-State actors, or State supported non-State actors, see Sharif, note 21 supra, pp. 26-27. See also note 54 infra.

⁵¹ K. Skubiszewski, "Definition of Terrorism", Israel Yearbook on Human Rights, vol. 19 (1989), pp. 39-53, at p. 49, as well as Levasseur, note 36 supra, at pp. 67.

⁵² Mushkat, note 16 supra, at p. 468.

⁵³ Bassiouni, note 36 supra, at p. 778. See also his working definition of international terrorism in C. Bassiouni, "An International Control Scheme for the Prosecution of International Terrorism: An Introduction", in A.E. Evans and J.F. Murphy, eds., Legal Aspects of

International Terrorism, Lexington, Massachusetts, Lexington Books, 1978, pp. 485-491, at p. 485.

⁵⁴ G. Gilbert, “The ‘Law’ and ‘Transnational Terrorism’ ”, Netherlands Yearbook of International Law, vol. XXVI (1995), pp. 3-32, at p. 10, citing also C. Bassiouni, “The Penal Characteristics of Conventional International Criminal Law”, 15 Case W Res. JIL. 27 (1983), p. 29, n.16: “Similarly, the undefined ‘transnational’ element could encompass a multitude of activities which may affect the interests of more than one State, involve transborder activities or involve nationals of more than one State. This is potentially a very elastic concept”.

⁵⁵ C.J. Mann, “Personnel and Property of Transnational Business Operations”, in Legal Aspects of International Terrorism, note 53 supra, pp. 399-481, at p. 399.

⁵⁶ J.N. Saxena, “Relationship between International Terrorism, State Terror and Human Rights in the World Order”, Indian Journal of International Law, vol. 27 (Special Issue on Terrorism), April-Sept. 1987, pp. 194-202, at p. 196.

⁵⁷ But see Lambert, note 13 supra, pp. 22, noting also the International Law Association’s formulation in its Report of the Sixty-First Conference 6-7 (1984), as follows: “terrorism is international, despite its having been committed ‘within the jurisdiction of one country’, when it is committed ‘against any foreign government or international organization or any representation thereof’, or ‘against any national of a foreign country because he is a national of a foreign country’, or ‘by a person who crosses an international frontier into another country from which his extradition is requested’ ”.

⁵⁸ B.M. Jenkins, “International Terrorism: A New Challenge for the United Nations”, in United Nations Institute for Training and Research, ed., The United Nations and the Maintenance of International Peace and Security, Dordrecht, M.Nijhoff Publishers, 1987, pp. 407-421, at p. 409.

⁵⁹ B.M. Jenkins, “International Terrorism: A New Mode of Conflict”, in D. Carlton and C. Schaarf, eds., International Terrorism and World Security, London, Croom Helm, 1975, pp. 20-21.

⁶⁰ See, in this sense, Mushkat, note 16 supra, at pp. 468-469.

⁶¹ Wilkinson, note 21 supra, at p. 182.

⁶² *Ibid.*

⁶³ Cf. C. Warbrick, “Terrorism and Human Rights”, in J. Symonides, ed., Human Rights: New Dimensions and Challenges, (UNESCO manual on human rights), Ashgate/Dartmouth Publishing, Aldershot (England), 1998, p. 225.

⁶⁴ J.-F. Gayraud, and D. Sénat, Le terrorisme, Collection “Que sais-je?”, N° 1768, Presses universitaires de France, 3rd edition, Paris, 2002, p. 29. Translation by the Special Rapporteur.

⁶⁵ See, for instance, Lambert, note 13 supra, p. 49.

⁶⁶ See C. Bourges-Habif, “Le terrorisme international”, in H. Ascencio, E. Decaux and A. Pellet, Droit international pénal, Paris, Pedone, 2000. Translation by the Special Rapporteur.

⁶⁷ LN Doc. C.546 (I).M.383(I).1937.V

⁶⁸ See, Yearbook of the International Law Commission, 1985, Volume II, First part, UN doc. A/CN.4/SER.A/1985/Add.1 (Part.1), paras. 138-148.

⁶⁹ According to Article 1, paragraph 2, of the 1937 Terrorism Convention, “ ‘acts of terrorism’ means criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, a group of persons or the general public.”

⁷⁰ See, Yearbook of the International Law Commission, 1985, Volume II, First part, UN Doc. A/CN.4/SER.A/1985/Add.1 (Part.1), para. 124 ff.

⁷¹ See, Yearbook of the International Law Commission, 1990, Volume II, Second part, pp. 28-29.

⁷² See, Report of the International Law Commission on the work of its forty-third session, 29 April to 19 July 1991, UN Doc. A/46/10, Supplement N° 10, article 24.

⁷³ See Report of the International Law Commission on the work of its forty-seventh session, 2 May to 21 July 1995, UN Doc. A/50/10, Supplement N° 10, commentary to article 24, para. 105 and ff.

⁷⁴ See, for instance, the Third Report of the Special Rapporteur, Mr. Doudou Thiam, on the Draft Code of Crimes Against the Peace and Security of Mankind, Yearbook of the International Law Commission, 1985, Volume II, First Part, paras. 124-154.

⁷⁵ See, “Acts committed in violation of international humanitarian law applicable in armed conflict not of an international character », article 20, f, iv of the 1996 Draft.

⁷⁶ Article 20, para. c of the Draft. See Report of the Preparatory Committee for the Establishment of an International Criminal Court – Volume II – (Compilation of proposals), UN doc. A/51/22, Supplement No. 22A, pp. 56 and 301-302.

⁷⁷ See Report of the Preparatory Committee for the Establishment of an International Criminal Court, UN doc. A/CONF.183/2/Add.1 (1998), p. 28.

⁷⁸ See UN doc. A/C.6/57/L.9 of 16 October 2002, paras. 1 and 2; and see also article 18 of the draft Convention.

⁷⁹ See Official Journal n° L 164, 22/06/2002, p. 0003-0007.

⁸⁰ See OUA Doc. AHG/Decl. 132 (XXXV).

⁸¹ See Article 1, paragraph 2: “Terrorism: Any Act or threat of violence, whatever its motives or purposes, that occurs for the advancement of an individual or collective criminal agenda, causing terror among people, causing fear by harming them, or placing their lives, liberty or security in danger, or aiming to cause damage to the environment or to public or private installations or property or to occupy or seize them, or aiming to jeopardize a national resource.”

⁸² See Article 1, paragraph 3: “Terrorist Offence: Any offence or attempted offence committed in furtherance of a terrorist objective in any of the Contracting States, or against their nationals, property or interests, that is punishable by their domestic law.”

⁸³ Ibid : “[...] The offences stipulated in the following conventions, except where conventions have not been ratified by Contracting States or where offences have been excluded by their legislation, shall also be regarded as terrorist offences: a) The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1964; b) The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970; c) The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971, and the Protocol thereto of 10 May 1984; d) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973; e) The International Convention against the Taking of Hostages, of 17 December 1979; f) The Provisions of the United Nations Convention on the Law of the Sea, of 1982, relating to piracy on the high seas.

⁸⁴ These are the following: (A) At the global level: Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963 and entered into force 4 December 1969; Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970 and entered into force on 14 October 1971; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971 and entered into force on 26 January 1973; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973, and entered into force on 20 February 1977; International Convention against the Taking of Hostages, adopted by

the General Assembly of the United Nations on 17 December 1979 and entered into force on 3 June 1983; Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980 and entered into force on 8 February 1987; Protocol on 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, signed at Montreal on 24 February 1988 and entered into force on 6 August 1989; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991 and entered into force 21 June 1998; International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997 and entered into force on 23 May 2001; International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999 and entered into force on 10 April 2002. (B) At the regional level: Convention of the Council of Europe on Cyber-crime; Additional Protocol to the Convention of the Council of Europe on Cyber-crime; European Convention on the Suppression of Terrorism, concluded in Strasbourg on 27 January 1977; Protocol amending the European Convention on the Suppression of terrorism, concluded in Strasbourg on 15 May 2003; OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, concluded in Washington, D.C. on 2 February 1971; Inter-American Convention against Terrorism, adopted by the General Assembly of the OAS on 3 June 2002; SAARC Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987; Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, done at Minsk on 4 June 1999.

⁸⁵ See note 84 supra.

⁸⁶ See Article 2 of the Inter-American Convention Against Terrorism listing the following international conventions: Convention for the Suppression of Unlawful seizure of Aircraft, signed in The Hague on 16 December 1970; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973; International Convention against the Taking of Hostages, adopted by the UN General Assembly on 17 December 1979; Convention on the Physical Protection of Nuclear Material, signed in Vienna on 3 March 1980; 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, signed at Montreal on 24 February 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, signed in Rome on 10 March 1988; International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997; and International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

⁸⁷ Y. Sandoz, C. Swinarski and B. Zimmerman, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Geneva, International Committee of the Red Cross, Martinus Nijhoff, 1987, paragraph 4761, p. 1470.

- ⁸⁸ M. Veuthey, *Guérilla et Droit Humanitaire*, Genève, Edition CICR, 1983 p.134 ff.
- ⁸⁹ Ibid. p. 160. Translated by the Special Rapporteur.
- ⁹⁰ Commentary of article 51 of the First Additional Protocol to the Geneva Conventions, in Y. Sandoz, C. Swinarski and B. Zimmermann, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, note 87 *supra*, paragraph 1940, p. 632.
- ⁹¹ See, for instance, the preamble of its resolution 2001/37 of 23 April 2001, entitled “Human rights and terrorism”, as well as its previous resolutions 2000/30, 1999/27 and 1998/47.
- ⁹² See G. Levasseur, « Justice et sûreté de l’Etat », Revue de la Commission internationale de juristes, winter 1964, vol. 5, p. 264.
- ⁹³ See Report on Terrorism and Human Rights, OEA/ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, “Recommendations”, No. 10 (a).
- ⁹⁴ See, for instance, the Reports of the International Law Commission to the UN General Assembly of 1993 (UN doc. A/48/10, Supplement N° 10, p. 81) and 1994 (UN doc. A/49/10, Supplement N° 10, p. 321).
- ⁹⁵ See P. Guggenheim, Traité de droit international public, vol. II, Genève, Georg & Cie S.A., 1954, p. 32.
- ⁹⁶ See Article 4, paragraph 2, of the International Covenant on Civil and Political Rights, article 15 of the European Convention of Human Rights, and article 27 of the American Convention on Human Rights.
- ⁹⁷ Human Rights Committee, General Comment N° 29, “States of emergency (article 4)”, para. 7, UN Doc. CCPR/C/21/Rev.1/Add.11 of 31 August 2001.
- ⁹⁸ See Report on Terrorism and Human Rights, note 93 *supra*, para. 218.
- ⁹⁹ See Report of the International Law Commission to the General Assembly of 1996, UN Doc. A/51/10, Supplement N° 10, p. 90.
- ¹⁰⁰ Decision of 12 July 1990, Communication No. 195/1985 William Eduardo Delgado Páez c. Colombia, UN Doc. CCPR/C/39/D/195/1985 of 23 August 1990. See also Communication N° 314/1988, Bwalya c. Zambia, of 20 October 1993, Communication N° 468/1991 (Oló Bahamonde c. Equatorial Guinea).
- ¹⁰¹ Inter-American Commission on Human Rights, Second Report on the human rights situation in Peru, paragraph 80.
- ¹⁰² Human Rights Committee, note 97 *supra*, para. 7.
- ¹⁰³ European Court of Human Rights, *Kokkinakis v. Greece*, Decision of 25 May 1993, Series A, No. 260-A, p.22, para. 52.
- ¹⁰⁴ Judgement of 30 May 1999, *Castillo Petruzzi et al Case*, para. 121.
- ¹⁰⁵ See Addendum I to this report, updating on international anti-terrorist action, and see also UN. Doc. E/CN.4/Sub.2/ 2002/35 of 17 July 2002, paras. 51-55.
- ¹⁰⁶ See Report on Terrorism and Human Rights, note 93 *supra*, para. 226.
- ¹⁰⁷ Ibid.
- ¹⁰⁸ See UN Doc. E/CN.4/1998/39/Add.1, paragraph 129.
- ¹⁰⁹ Pierre-Marie Dupuy, “Normes internationales pénales et droit impératif (*jus cogens*)”, in Droit international pénal, note 66 *supra*, p. 74. Translation by the Special Rapporteur.
- ¹¹⁰ See Report on Terrorism and Human Rights, note 93 *supra*, para. 227.
- ¹¹¹ E. David, *Éléments de droit pénal international - Deuxième partie: La répression des infractions de droit international*, Bruxelles, Presses universitaires, 8th Edition, 1999, p. 362.
- ¹¹² J. Pictet, “Commentary of Article 33”, in Commentary of the IV Geneva Convention Relative to the protection of Civilian Persons in Time of War, International Committee of the Red Cross, Geneva, 1958, p. 225.

¹¹³ Y. Sandoz, C. Swinarski and B. Zimmerman, “Commentary of Article 75” in Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, note 87 supra, paragraph 3098, pp. 880-881.

¹¹⁴ See Report of the Secretary-General pursuant to Paragraph 2 of Security Council resolution 808 (1993), presented 3 May 1993, UN Doc. S/25704, para. 51.

¹¹⁵ See article 5, paragraph 3, of the Convention stipulating that “Punishment shall not be extended to any person other than the criminal”.

¹¹⁶ See Press Release No. 12/03 of 16 April 2003, “Cuba: Inter-American Commission on Human Rights Condemns the Execution of Three Persons”, available at <http://Www.Cidh.Oas.Org/Comunicados/English/2003/12.03.Htm>.

¹¹⁷ E/CN.4/Sub.2/2001/31 of 27 June 2001, para. 111.

¹¹⁸ European Court of Human Rights, *Guzzardi v. Italy*, Judgment of 8 July 1980, Serie A N° 39, paragraph 102.

¹¹⁹ Human Rights Committee, General comment N° 10, “Freedom of expression (Art. 19)”, 29/06/83, paragraph 4.

¹²⁰ See, for instance, Decision of 12 July 1996, Communications 422/1990, 423/1990 and 424/1990, in the cases Adimayo M. Aduayom, Sofianou T. Diasso, and Yawo S. Dobou v. Togo, CCPR/C/57/D/424/1990 of 19 August 1996, paragraph 7.4.

¹²¹ See, for instance, *Zana v. Turkey*, Judgment of 25 November 1997, and *Incal v. Turkey*, Judgment of 9 June 1998.

¹²² See note 93 supra.

¹²³ *Ibid.* para. 316.

¹²⁴ *Ibid.*, “Recommendations” N° 11 (b) and (c).

¹²⁵ *Ibid.*, para. 360.

¹²⁶ See, in particular, International Covenant on Economic, Social and cultural Rights (Article 8); ILO Convention N° 87 concerning Freedom of Association and Protection of the Right to Organize; ILO Convention N° 151 concerning Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service.

¹²⁷ Article 1, paragraph 3, defines a “terrorist act” as “any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

(i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or

(ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or

(iii) create general insurrection in a State.”

¹²⁸ Report of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/1995/31 of 21 December 1994, para. 51.

¹²⁹ See, for example, “Concluding Observations of the Human Rights Committee - Algeria”, CCPR/C/79/Add.95 of 18 August 1998, paragraph 11; “Concluding Observations of the Human Rights Committee - Peru”, CCPR/C/79/Add.72 of 18 November 1996, paragraph 12 and “Concluding Observations of the Human Rights Committee - Egypt”, CCPR/C/79/Add.23 of 09 August 1993.

¹³⁰ See, for example, the study conducted by the International Commission of Jurists, Aplicación de las declaraciones y convenciones internacionales referendums al asilo en América latina, Geneva, September 1975, pp. 16 to 19.

¹³¹ See, for instance, Levasseur, note 92 supra, p. 280 ff.

¹³² The relevant paragraph reads as follows: “Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human right should be protected by the rule of law”.

¹³³ See, for example, “Concluding Observations of the Human Rights Committee - Syrian Arab Republic”, CCPR/CO/71/SYR of 24 April 2001; Committee against Torture, “Concluding Observations of the Committee against Torture – China”, A/48/44, paras.387-429, of 26 June 1993; Inter-American Commission on Human Rights, Informe sobre la situación de los derechos humanos en la República de Cuba, OEA/ser.L/V/II.4 doc. 2 of 20 March 1962 (in Spanish); Annual report of the Inter-American Commission on Human Rights 1997, OEA/SER.L/V/II.98, doc. 6 of 17 February 1998; Annual report of the Inter-American Commission on Human Rights 2000, OEA/Ser.L/V/II.111 doc. 20 rev. of 16 April 2001, Report N° 49/01 cases 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique), 11.847 (Dalton Daley) v. Jamaica of 4 April 2001, available at

<http://www.cidh.org/annualrep/2000eng/ChapterIII/Merits/Jamaica.11.826.htm>

¹³⁴ See Report on the Human Rights Situation in the Republic of Cuba, OAS document OEA/Ser.L/V/II.4, doc. 2, 20 March 1962 ; Annual Report of the Inter-American Commission on Human Rights – 1997, OAS document OEA/Ser.L/V/II.98, doc. 6, 17 February 1998; Decision N° 49/01 of 4 April 2001, cases Nos. 11826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) v. Jamaica, paragraphs 131 and 137.

¹³⁵ See UN Doc. E/CN.4/Sub.2/1985/16 of 21 June 1985, paras. 47-48.

¹³⁶ See Article 5 of the European Convention. See also P. Weis, “Asylum and terrorism”, The Review, International Commission of Jurists, vol. 19, 1977, p. 37 and ff.

¹³⁷ See M. Poutiers, “L’extradition des auterus d’infractions internationales”, in Droit international pénal, note 66 supra.

¹³⁸ See, for instance, the International Convention Against the Taking of Hostages of 1979; Article 1 of the European Convention for the Suppression of Terrorism; Article 11 of the Inter-American Convention against Terrorism.

¹³⁹ Article 3, paragraph 3, of the European Convention on Extradition; Article 3 of the Montevideo Convention on extradition of 1933.

¹⁴⁰ Article 1 of the Additional Protocol to the European Convention on Extradition.

¹⁴¹ Article of the Additional Protocol to the European Convention on Extradition.

¹⁴² Article VII of the Convention on the Prevention and Punishment of the Crime of Genocide. See also Article 1 of the Additional Protocol to the European Convention on Extradition.

¹⁴³ Article 5 of the Inter-American Convention on Forced Disappearance of Persons.

¹⁴⁴ See, for instance, Article 16 of the Treaty of International Penal Law of Montevideo of 1889; The Havana Convention on Asylum of 1928; the Montevideo Convention on Political Asylum of 1933; and the Caracas Convention on Territorial Asylum of 1954.

¹⁴⁵ See Article 14, paragraph 1 stipulating that “everyone has the right to seek and enjoy in other countries asylum from persecution”, and in paragraph 2 that “this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.”

¹⁴⁶ See in particular Article 1 (F) of the Convention relating to the Status of Refugees and Article 1, paragraph 2 of the Declaration on Territorial Asylum.

¹⁴⁷ See also Recommendation of Asylum and International Crimes, approved by the Inter-American Commission on Human Rights at its 108th regular session on 20 October 2000, in which the Inter-American Commission on Human Rights, clearly makes the point that States have accepted that “there are limits to asylum, based on several of the sources international law, including that asylum cannot be granted to persons with respect to whom there are serious indicia that they may have committed international crimes, such as crimes against humanity (which include the forced disappearance of persons, torture, and summary executions), war crimes, and crimes against peace.”

¹⁴⁸ See Security Council resolution 1373 (2001) of 28 September 2001, paras. 2(c) and 3(f),(g), respectively.

¹⁴⁹ See Executive Committee of the High Commissioner’s Programme, fifty-third session, “Note on International Protection”, UN doc. A/AC.96/965 of 11 September 2002.

¹⁵⁰ Ibid., para.39.

¹⁵¹ Ibid.

¹⁵² See UN doc. E/CN.4/Sub.2/1985/16 of 21 June 1985.

¹⁵³ See, for instance, resolutions 32/121 of 16 December 1977, entitled “Protection of the Human Rights of Certain Category of Prisoners”, 32/116 of 16 December 1977, entitled “Question of Southern Rhodesia”, and 32/65 of 8 December 1977 entitled “Torture of Political Prisoners and Detainees in Southern Africa”.

¹⁵⁴ See, for example, resolution 1993/69 of 10 March 1993 on “Situation in Equatorial Guinea”.

¹⁵⁵ See “Concluding Observations of the Human Rights committee - Morocco”, CCPR/C/79/Add.44 23 November 1994, para. 6; “Concluding Observations of the human Rights committee - Syrian Arab Republic”, CCPR/CO/71/SYR of 24 April 2001, para. 3; “Concluding Observations of the Human Rights Committee - Armenia”, CCPR/C/79/Add.100 of 19 November 1998, para. 6; “Concluding Observations of the Human Rights Committee - Libyan Arab Jamahiriya”, CCPR/C/79/Add.45 of 23 November 1994, para. 7.

¹⁵⁶ See Report on the Situation of Human Rights in the Republic of Nicaragua,

OEA/Ser.L/V/II.53, doc. 25, 30 June 1981, Recommendations 3 to 5.

¹⁵⁷ “General Comment No. 20 (44) on Article 7, 44th session of the Human Rights Committee (1992) in Official Documents of the General Assembly, Forty-Seventh Session, Supplement N° 40 (A/47/40), appendix VI.A; Report of the Human Rights Committee, Supplement N° 40 (A/34/40), 1979, para. 81; “Concluding Observations of the Human Rights Committee - Chile”, CCPR/C/79/Add.104, para. 7; “Concluding Observations of the Human Rights Committee - France”, CCPR/C/79/Add.80, para. 13; “Concluding Observations of the Human Rights Committee - Lebanon”, CCPR/C/79/Add.78, para. 12; “Concluding Observations of the Human Rights Committee - Republic of Croatia”, CCPR/CO/71/HRV of 4 April 2001, para. 11; “Concluding Observations of the Human Rights Committee - El Salvador”, CCPR/C/79/Add.34, para. 7; “Concluding Observations of the Human Rights Committee - Haiti”, A/50/40, paras. 224-241; “Concluding Observations of the Human Rights Committee - Peru”, CCPR/C/79/Add.67, paras. 9 and 10; “Concluding Observations of the Human Rights Committee - Peru”, CCPR/CO/70/PER of 15 November 2000, para. 9; “Concluding Observations of the Human Rights Committee - Uruguay”, CCPR/C/79/Add.19, paras. 7 and 11; and “Concluding Observations of the Human Rights Committee - Yemen”, A/50/40, paras. 242-265.

¹⁵⁸ Inter-American Court of Human Rights, Judgment of 14 March 2001, *Case of Barrios Altos (Chumbipuma Aguirre and others v. Peru)*.

¹⁵⁹ Inter-American Commission on Human Rights, Report N° 36/96, Case 10,843 (Chile), 15 October 1996; Report N° 34/96, Cases 11,228, 11,229, 11,231 and 11,282 (Chile), 15 October 1996,

paragraph 50; Report N° 25/98, Cases 11,505, 11,532, 11,541, 11,546, 11,549, 11,569, 11,572, 11,573, 11,583, 11,585, 11,595, 11,652, 11,657, 11,675 and 11,705 (Chile), 7 April 1998, paragraph 42; Report N° 136/99, Case 10,488 *Ignacio Ellacuría S.J. and others* (El Salvador), 22 December 1999, paragraph 200; Report N° 1/99, Case 10,480 *Lucio Parada Cea and others* (El Salvador), 27 January 1999, paragraph 107; Report N° 26/92, Case 10,287 *Las Hojas Massacre* (El Salvador), 24 September 1992, paragraph 6; Report N° 28/92, Cases 10,147, 10,181, 10,240, 10,262, 10,309 and 10,311 (Argentina), 2 October 1992; and Report N° 29 (Uruguay), 1992.

¹⁶⁰ See UN doc. A/CONF.157/23 of 25 June 1993, : “States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law.”

¹⁶¹ See letter dated 1995 from the International Committee of the Red Cross to the Prosecutor of the Criminal Court for the Former Yugoslavia. This interpretation was repeated in another communication from the International Committee of the Red Cross dated 15 April 1997.

¹⁶² See note 63 supra, at p. 219, as well as his note 4 at p. 236 where he pertinently explains that it is for this reason that attempts to deal with terrorism by isolating only the objective factors of the conduct itself are too wide. Thus, for example, hijacking may be undertaken also for reasons of personal gain, or hostage taking also for reasons of private revenge: both would be caught by “terrorist” treaties but neither would be properly or usefully described as terrorism.

¹⁶³ See the various treaties on combating terrorism, as well as common Article 3 to the 1949 Geneva Conventions and the Additional Protocols to the Geneva Conventions of 12 August 1949 relating to the protection of victims of non international conflicts (Articles 4 and 13).

¹⁶⁴ Report on Terrorism and Human Rights, note 93 supra, “Recommendations” No. 10 (a).

¹⁶⁵ The Sub-Commission has, of course, already requested this of the Commission on Human Rights. See Sub-Commission resolution 2002/2, of para. 11. In para of this resolution the Sub-Commission also called upon the High Commissioner for Human Rights to “attach high priority to examining international and national measures” for compatibility with international human rights law.