United Nations
Human Rights Council

Topic area B: “Terrorism and human rights: Weighing comprehensive response with full compliance to fundamental freedoms”.

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Topic Area B: Terrorism and human rights: Weighing comprehensive response with full compliance to fundamental freedoms

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1. Welcoming Letter

Dear Delegates,

It is our utmost pleasure and privilege to welcome you in this year’s edition of the Human Rights Council. We really hope and wish that this experience will shape your way of thinking and your perception for the structure of the world we live in. Relatively, we also ask for your enthusiasm and good will, since as your Chairpersons, we want to join you in this mesmerizing and unforgettable adventure. Try to enjoy Thessaloniki as much as you can, be participative in the sessions and grab the opportunity to bring your Thesis to the world!

Now, it is due time to summarize what is going to be discussed in our committee this year. The 1st Topic Area of our committee: The right to development: Achieving good governance, economic empowerment social equality and inclusion will try to provide answers to the challenges of our modern times, namely, corruption, poverty and societal marginalization, using the dynamic of the Right to Development. The 2nd Topic Area: Terrorism and human rights: Weighing comprehensive response with full compliance to fundamental freedoms, will introduce you to new challenges that have emerged the last 15 years, having as a starting point the dreadful attack of 9/11 in the United States of America. Since, both topics cover a wide scope of our mandate, we kindly ask you to prepare thoroughly and dare to participate actively, despite previous experience, if existed.

It is our responsibility to provide you with the appropriate means to facilitate your research, prior and during the conference. To that end, we will be here to assist you in every part of your research, so shall you do have any questions do not hesitate to contact us. Whereas, we expect from you to read carefully both Study Guides, since they constitute the primary source of the necessary information you will need and then cautiously reflect your country’s policy on well-drafted position papers that will aid you to take part in the debates. Let it be noted, that without you and your passion, success is not guaranteed.

Enclosing, we would like to ensure you, that taking the decision to participate in the Human Rights Council this year, will be an experience of a lifetime for all of us, as you will surely not regret it!

We cannot wait to meet all of you in Thessaloniki!

With Regard,

Georgios Christos Kostaras
Georgia Giannakidou
Inesa Kaso
2. Introduction to the Committee

After the end of the Second World War in 1945, the international status quo was called upon to confront multi-faceted historical defies. One main consequence of the Second World War was the creation of the United Nations which is one of the greatest humanity’s endeavors. In 1948, the General Assembly adopted the Universal Declaration of Human Rights which serves as “a common standard of achievements for all peoples and all nations”¹ in purpose of respect of human rights and freedoms and their recognition by progressive national and international measures among the Member States and the whole world.

The United Nations Human Rights Council was created to monitor the state of human rights in the world and to ensure that all are well protected. As it has to ensure that everyone lives free of suffering, discrimination and violence, it brings hope for a better future and promotes the perception that the world is a global village not just in theory but in reality, too.

The Human Rights Council is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them.² The fundamental aim of the UNHRC is to introduce an “open dialogue” between countries, peoples and individuals concerning all human right issues and situations all over the world. The UN General Assembly originated the UNHRC on 15 March 2006 by the UN Resolution 60/251³. The composition of the Council of 47 United Nations Member States is elected by the UN General Assembly for three years terms and it huddles at the UN Office at Geneva.


3. Introduction to the Topic

Undeniably, the second topic of our committee can be considered more topical than ever, as major shifts on the treatment of terrorists have been observed in the international scenery, especially after 2001. It is a common belief that terrorism is condemned universally, as a threat that poses various challenges to the protection, and enjoyment of human rights. The topic in this year’s edition, can be interpreted in diverse ways, however, its main aim is to conduct an open discussion among the member-states of the Human Rights Council on how terrorism has altered the international and national policies, that violate basic human rights norms and fundamental freedoms. **What is to be clear,** is that the main concern of our Committee should be based, upon the content of the reaction of the states against terrorism that hinders their own democratic hypostasis. To be more precise, nowadays states have enhanced their monitoring measures towards their territories during their effort to prevent terrorist attacks, even subjecting their own citizens to close surveillance. On the other hand, despite progress on the management of suspected detainees by some states, detention camps, like the Guantanamo, have started to actively function again, as well as the questionable practices that take place in those black sites.

The result of numerous attacks in the Euro-Atlantic region the last decade, has led to the implementation of domestic anti-terrorism regulations and policies that contravene with the basic principles of human rights. To a certain extent these changes entail the emergence of derogations that harness the idea of legitimization of human rights violations, rendering them as legitimate, despite their eventual condemnation as predicaments to the enjoyment of human rights. Such actions create a longstanding division on the public opinion, on whether prioritization should be given to the utmost protection on human rights, or should human rights have to be sacrificed to an extent, for the efficient and accurate implementation of anti-terrorism practices, that can eliminate the imminent threat of terrorism today.

Such practices have direct impact to basic rights, like the privacy of the citizens, as surveillance has proven to be one of the most commonly used detection methods used by states, attempting to control and anticipate potential threats, such as but not limited to suicide bombings, fully organized terrorist activities in public places and etc.

Notwithstanding, violations do not only take place against citizens, but also against persons suspected for terrorism or even identified individuals as terrorists. There is

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endless argumentation on the moral legitimization of commonly used practices like torture, interrogation, detention and extrajudicial killings. A shocking turn of events shows that some countries are accused by human rights organizations of facilitating the illegal detention and transport of terrorist suspects to prisons in third countries.

Consequently, these actions not only question the character of modern democracies, signifying the prevalence of corruption, due to the lack of good governance and solid institutions, but also designate the importance of human rights in the modern era.

4. Definitions

4.1 Terrorism: There is no consensual opinion within the international community on the definition of terrorism. The reason behind this, emanates from the national interpretation of the term, which brought the discussions of the term to a deadlock.

Despite the existence of legal obstacles, the UNSC Resolution 1566 that was adopted in 2004 describes terrorism as: “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature”.

Also, the following year the High-Level Panel on Threats, Challenges and Change convened and invited states to set up a commonly-accepted political definition of terrorism. Therefore, it defined terrorism as: “any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a

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Government or an international organization to do or to abstain from doing any act\(^9\)

The United Nations Secretary General at that time, Kofi Annan, endorsed a commonly-accepted definition of terrorism by voicing his concerns. More precisely he stated: “I endorse fully the High-level Panel's call for a definition of terrorism, which would make it clear that, in addition to actions already proscribed by existing conventions, any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from doing any act. I believe this proposal has clear moral force, and I strongly urge world leaders to unite behind it and to conclude a comprehensive convention on terrorism before the end of the sixtieth session of the General Assembly\(^10\)”.

However, despite his efforts, it is still up to each member state to advocate its own definition of terrorism and to decide upon, whether an organization can be characterized as terrorist one or not.

### 4.2 International Humanitarian Law:

According to the International Committee of the Red Cross (ICRC): “International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International law is contained in agreements between States treaties or conventions –, in customary rules, which consist of State practice considered by them as legally binding, and in general principles\(^11\)”.

### 4.3 Human Rights:

According to the United Nations: “They are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and

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education, and many more. Everyone is entitled to these rights, without discrimination\textsuperscript{12}.

\textbf{4.4 Good Governance:} According to the Office of the High Commissioner for Human Rights there is no single and exhaustive definition of good governance, nor is there a delimitation of its scope, that commands universal acceptance, however an indicative definition of good governance refers to: \textit{“The process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law”}\textsuperscript{13}.

\textbf{5. Historical Background}

It is widely confirmed that terrorism has undermined the efforts to protect human rights, as well as their normative importance for states as well. However, it is crystal clear that terrorism was not invented\textsuperscript{14} within the unprecedented dreadful 9/11 terrorist attacks on the United States. The incident of 9/11 had deeper long-term consequences as it established a new approach for state protection against the threat of terrorism. The counter-terrorism measures adopted since 2001 have focused mainly on halting the advance of terrorism but, in the process, also created enormous challenges for domestic and international principles relating to democracy, the lack of law enforcement and the protection of a wide range of human rights, that onwards to that event started to be under increasing strain.

Some acknowledged that the best response to mass-terrorism was to reaffirm the human values as the most effective way to respect human rights and implement the rule of law. Despite of this perception, states fell into practices\textsuperscript{15} which can be compared with blatant violations of human rights, namely water-boarding and ill-interrogation techniques, torture and solitary confinement. This failure to uphold the rule of law risks transforming torture and other serious human rights violations from gross criminal offenses to permissible policy\textsuperscript{16} options.


\textsuperscript{16}Ibid.
The potential causes behind these developments, derive from the legal ambiguity that surrounds the status of international campaigns against terrorism and the utilization of a Manichean format on the public, which includes the battle of good (the state) against evil (the terrorists). This environment, cultivates the proper context for political authorities to evade legal accountability. In a tactical manner numerous states have reinforced, reinterpreted or suspended regulations to strengthen protective measures against terrorism. The aftermath of the insensitive 9/11 events, gradually lead to states challenging freedoms principles such as the right to life, the right to privacy, the freedom of expression and the principal of non-refoulement of detainees, as counter-terrorist operations especially in the United States acted mainly on the margins of the rule of law. What is more, countries like the United States, Russian Federation, the People’s Republic of China and many more, exploited the war on terror to provide legitimacy to violations of human rights deriving from state-mechanisms. Correspondingly, the increased reliance on intelligence services by states in counter-terrorism operations, not only restricts the capacity of the criminal justice system as an institution but also, its potential involvement in this sector. This situation has created legal vacuums with considerable consequences for many legal systems in some EU Member States, inter alia with the creation of special legal regimes, and lower procedural standards for suspected terrorists. However, this development has patently violated the principle of isonomy under the law.

Subsequently, as Political activist Noam Chomsky stated: “Counter-terrorism is terrorism by another name”. These developments progressively introduced a whole new approach the last few years, mainly voiced by citizens concerning the appropriate practices to combat terrorism, without violating fundamental human rights. This approach focuses on the collective formulation and implementation of domestic policies that will properly safeguard the dignity and integrity of the citizens.

23 Ibid.
Meanwhile the launch of global human rights campaigns can contribute to the establishment of a sound and comprehensive strategy focused on defending human rights as a response against the impact of terrorism in our lives, that will transcend the need for military tactics and excessive intelligence utilization. Taking into consideration these events from now on, there will follow an in-depth analysis to certain violations of the privacy of the citizens, whilst references will be extended to the ongoing challenges on the treatment of terrorists or suspected individuals by states.

6. From the War on Terror to the War on Privacy

One of the main consequences that the impact of terrorism transmitted to the international community was the robust enhancement of the surveillance practices. Following the 9/11 events on the United States of America the outreach of the law enforcement and the intelligence agencies expanded largely, with the acquisition of new powers in their mandate. The legislative product of those developments was the Patriot Act\(^\text{24}\) which granted the Bush administration power to track, arrest and prosecute suspected terrorists\(^\text{25}\) by allowing the government to use wiretaps, mine Internet and e-mail communication, conducting secret investigations, and facilitating the exchange of informational modalities between law enforcement, intelligence and national security personnel. Despite the implementation of the Patriot Act, the United States of America further adopted The Homeland Security Act\(^\text{26}\) on 2002, a legislative package which introduced measures to strengthen the national security of the country.

These actions jeopardized the existence of a variety of human rights, more precisely the right to privacy. Privacy is considered as a crucial human right\(^\text{27}\) as it upholds the essence of human dignity, and fundamental freedoms such as the freedom of association and the freedom of speech. Relatively, it is recognized as a human right in the UN Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICPRC), the UN Convention on Migrant Workers and the UN Convention on Protection of the Child.


The rise of mass-surveillance\(^{28}\) in the modern era created a huge disparity between the national security and the personal liberties of each citizen. Apparently, mass-surveillance can be defined as a practice of spying on an entire or a significant part of a population, carried out either by a state or private corporations acting on the behalf of a state. It can include monitoring via cameras or Unmanned Aerial Vehicles (UAVs) and email interceptions, to computer hacking. According to the report\(^{29}\) of Ben Emmerson, former UN Special Rapporteur for Counter-Terrorism: “Mass surveillance of digital content and communications data is a serious challenge to an established norm of international law. The very existence of mass surveillance programmes constitutes a potentially disproportionate interference with the right to privacy”. Undoubtedly, these trends have proven to be detrimental for the lives of the citizens, as their infringement without proper judicial controls, jeopardizes\(^{30}\) the rule of law and the foundation of modern democracies.

In 2013, international turmoil erupted after the disclose of the Snowden leaks\(^{31}\), namely information about secret NSA spying programs, that displayed the broad extent of the government data collection of citizens. This circumstance, lead to acute criticism by civil liberties groups and citizens. The Snowden leaks, brought into light secret legal interpretations in the enacted Patriot Act, that authorized the interception of phone calls between citizens under the infamously known Section 215\(^{32}\), while concerns were raised over Section 702\(^{33}\) of the Foreign Intelligence Surveillance Act, which allowed eavesdropping on Information and Communication (ICT) Technologies used by non-American citizens.

Nonetheless, as Snowden gave a direct hit to the corruptive methods used by governments, the support of human rights defenders was apparent. The former UN High Commissioner for Human Rights Navi Pillay stated\(^{34}\): “The right to privacy, the

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right to access to information and freedom of expression are closely linked. Thus, surveillance without adequate safeguards to protect the right to privacy risk impacting negatively on the enjoyment of human rights and fundamental freedoms. Those who disclose human rights violations should be protected”.

Having made a thought-provoking outset on this substantive issue, we will succinctly examine some surveillance methods that are being constantly used by states, namely the Unmanned Aerial Vehicles, the Surveillance Cameras and the Interception of ICT Technologies.

6.1 Unmanned Aerial Vehicles (UAVs)

Also known as drones, constitute an aircraft that is being control by a pilot or it is pre-programmed to execute a mission. As a credible tool of states, drones can either surveil an area extensively or even shot and shell buildings, objects and individuals. Regrettably, nations such as Pakistan, Afghanistan, Yemen, and Somalia have been particularly affected by the use of drones in local communities, where countless victims have been reported. In 2014, the aggravated situation led to the adoption of decision of the Human Rights Council which ‘called upon States to ensure transparency in their records on the use of remotely piloted aircraft or armed drones and to conduct prompt, independent and impartial investigations whenever there are indications of a violation to international law caused by their use’.

During the Bush Administration, drones were used in Pakistan and other target countries to assassinate alleged terrorist leaders. According to Article 6(1) of the ICCPR International Covenant on Civil and Political Rights which is a part of the International Bill of Human Rights, “every human being has the inherent right to life. No one shall be arbitrarily deprived of his life”. Thus, it enables the use of lethal forces, in case they will contribute to the saving of a human life. However, despite their use drones have been flagrantly violating inherent rights as the right to life and


the right to privacy. The United States of America is considered as the champion of drone-using in a worldwide level, especially after the election of Donald Trump who announced\textsuperscript{39} an expansion of the utilization of drones, which surely raises concerns over the lives of civilians.

The correlation between the use of drones and the loss of human lives is greatly based upon datasets\textsuperscript{40} collected by the Bureau of Investigative Journalism which showed that only in 2017, in Somalia almost 41, above them possibly 6 children, while civilians were killed and an estimated number of 41 injured, in Afghanistan, numbers show that nearly 300 civilians were killed and throughout them, more than 50 children, in Pakistan the reported kills are estimated between 424 and 969 with more than 150 of deaths being children. Finally, Yemen has relatively suffered as the number of civilian deaths reaches above 150, with almost 50 children among them\textsuperscript{41}. Those numbers are critically increasing the last few years, on a year-to-year basis and designates the seriousness of the issue, towards the violation of principal human rights.

6.2 Surveillance Cameras

If the use of drones has severe consequences for the assurance of the right to life, then the mass-usage of surveillance cameras, clearly jeopardizes the protection of citizens privacy. The Closed-Circuit Television systems known also as CCTV, has impacted the public life to a great extent, as they set a permanent control of human movement and of the citizen conduct. What should be noted upon, is that with the fast pace of technological development, the cameras can use facial recognition and even reveal each and every citizen’s identity. Therefore, within this context they are starting to become even more disruptive and intrusive in the daily lives of the citizens. Relevant research\textsuperscript{42} conducted in 2015, disclosed that there were 4.9 million CCTV cameras in the UK, which is recognized as a leading user of CCTV in the public on virtually every high street.


Many European countries, nowadays continue to deploy public video surveillance as a predominant early-warning tool for counter-terrorism. The idea behind the use of surveillance cameras, is that they contribute to the accountability and identification of culprits that act against the national norms. According to some investigators, the video surveillance systems in the UK discourage criminals and thus preventing crime. So, in the same context CCTV display a replacement of the physical appearance of the police on the streets.

Nevertheless, despite the way of thinking behind their mass-deployment there are several legal-barriers raised by the provisions of treaties and legal bodies. According to Article 8 of the European Convention for Human Rights:

1. “Everyone has the right to respect for his private and family life, his home and his correspondence”.

2. “There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals”.

Moreover, the European Commission for Democracy through Law, also known as the Venice Commission examined the extent to which video surveillance is compatible with basic human rights principles, and provided its opinion on the matter. Among the basic arguments that it raised, were that people should be notified if they are being watched in public places, or else the surveillance system should be visible, that personal data resulting from surveillance should be obtained and processed fairly and lawfully, while no preservation of these data should occur, if they have fulfilled their purpose. Additionally, video surveillance measures should be authorized and supervised by an independent authority, whilst the people are entitled to some privacy even in public places. However, despite sound resistance by legal provisions states continue to lessen the regulation for surveillance, within the scope of enhancing the utilization of these methods.

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6.3 Internet Surveillance

During the modern era, the digitalization of our lives continues to develop relentlessly, rendering the internet as the main cyberspace where, literally everything can be found. On their attempt to pinpoint terrorist locations, or even prosecute people suspected for cooperating with them, states have fallen on the tactics of encryption, wiretapping of Information and Communication Technologies (ICT) and gaining access to personal information for enhancing their counter-terrorist operation-planning. On the other hand, since internet consists the biggest database in the digital era, violations of human rights and precisely of the right to privacy, constantly take place, especially when states access personal data.

Knowingly, privacy is necessary to protect such delicate matters like banking information, medical history, personal relationships, from government snooping. However, today the cross-point between the law enforcement and the right to privacy is the encryption of data. Since, many terrorists and criminal networks are using encryption to hide their activities, subsequently states try to further access these data, as a way to gain more intelligence on the operations of terrorist groups. Recently, ongoing developments have revealed massive changes especially in the United Kingdom and the United States. In October 4, U.S lawmakers introduced new legislative packages that sets the goal to decrease the government’s access to personal data, by seeking to reform Section 702 of the Foreign Intelligence Surveillance Act. Meanwhile on the United Kingdom and especially after the Manchester Attack, the government passed the Investigatory Power Act, which enables the enhancement of surveillance, allowing even hacking of civilians by state security services.

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Notwithstanding, the collection of a vast amount of data by UK’s Government Communication Headquarters (GCHQ) faced acute criticism\(^{53}\) the past November by human rights groups, due to its usage of wiretapping methods of telephonic communications and interception of a bulk of information from emails to private messages. The resistance against GCHQ started after the diffusion of the Snowden leaks which revealed the broad extent of personal information that the government was controlling. That led to internationally-known NGOs such as Amnesty International and Privacy International, challenging the mass-surveillance practices of both U.S and UK to the European Court of Human Rights\(^{54}\).

7. Typical State Violations: Torture, inhumane treatment and illegal detention

Having analyzed selective violations to privacy, this Study Guide will proceed with the same format towards violations that endanger the freedom of expression and civil liberties of people, who are prosecuted or convicted for terrorist behavior. Meanwhile, terrorism has resulted into the restriction of freedoms and liberties by states, as a way to foster the prevention of terrorist acts. However, human rights defenders and experts argue that ill-human tactics do not comply with international legal framework, especially when they violate principles that incarnate the democratic values that are enacted in our modern times.

7.1 Torture

According to Article 1 of the United Nations Convention\(^{55}\) against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, torture is defined as: “any act that is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind”.


Despite the condemnation of such practices by international legal bodies, namely Treaties and Conventions, states continue to undertake them in order to extract necessary information or to set a juxtaposition against the aspect of terrorism. To substantially understand torture, it is important to firstly deepen into the incentives that cause it to take place in sanctuaries or secret national bases. There are some factors that have traditionally enacted torture as an efficient practice by police and military personnel against human beings. Primarily, the stimulus behind this practice has the goal to mainly gather information, especially in front of a mentally broken-down person. It is also assessed that the efficiency of the practice derives from the fact, that torture is considered a quick method to extract intelligence from someone. However, especially on the case of terrorists, officials tend to ethically justify this practice as a duty for the maintenance of national security, taking into consideration that the public opinion will firmly applaud such maneuvers. To exemplify the previous notion, the last two years terrorist attacks may have led more people view torture as justifiable means, to avenge the loss of innocent civilians. So, in brief torture can also be perceived as a sound response to the atrocities of terrorism. Another ethical issue that arises also is the possibility of inaccurate and invalid extracted information, that cannot be confirmed as true, despite the fact that people have experienced inhumane treatment such as sleep deprivation, forced feeding, and waterboarding.

Whilst it is an imperative for these practices to be prohibited, these heinous acts continue to function in secret places. Alarmingly, Nils Melzer, the UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, observed that the Guantanamo Base is still active containing 41 people, 5 of which, have been cleared to be released. In his statement addressing the issue Mr. Melzer said that the ban on torture and ill-treatment consisted of the most

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fundamental norms of international law and in no case, could be justified under any circumstances, calling for prosecution of U.S. officials who had carried out torture.

Finally, protection against torture, inhuman or degrading treatment or punishment is an essential element of human rights standards. As set out in international bodies, subjecting someone to torture or inhuman or degrading treatment or punishment is not something justifiable even in war or armed conflict. Additionally, the use in legal proceedings of evidence obtained by torture, violate the principle of non-admissibility of evidence extracted by torture, contained in article 15 of the Convention against Torture.

7.2 Inhuman treatment with focus on Solitary Confinement

First of all, it should be noted that cruel, inhuman or degrading treatment cannot be compared to the practices of torture, unless it reaches an extraordinary and severe infliction of pain to the victim. However, this doesn’t justify mild techniques such as physical and mental suffering and is firmly condemned by the international community. Such treatment includes both psychologically exhausting conditions and psychological violence. Throughout the process of evaluation of these practices, experts recommend the consideration of personal circumstances and the degree of harm and vulnerability of the person who is detained.

However, among this ill-treatment there is specific practice that has physical and mental repercussions for the person that is subjected to it. Solitary confinement, can be described as isolation of people in closed cells for almost a day, where there is no human contact. The essence behind this action is to restrict social contact for a significant period of time, and usually functions as a punishment or a disciplinary method. This practice is widely known in states such as the United States of America and the People’s Republic of China where the number of people that are being held in solitary is difficult to determine.

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In spite of this evidence, which clearly demonstrates that the extensive use of solitary confinement is unjustly affecting people of color, states are not required to provide modalities about the number of prisoners, their nationality and the length of confinement they have endured. Especially in the case of mentally-ill people or people with disabilities and juveniles, the use of solitary confinement has resorted to the firm criticism from human rights stakeholders such as the Amnesty International, or the United Nations Special Rapporteur on Torture, who ask for the limitation of such violent practices by states, while enhancing the importance for more transparent and illuminative procedures.

Correspondingly, European states in light of the mass-radicalization and incitement of prisoners to terrorism and violent extremism, have also used this practice to avoid the aforementioned consequences. While this method consists of disciplinary and de-radicalization aims, the politicization of solitary confinement as a method to restrict the activities of potential terrorist suspects can gradually increase its use. However, European organs like the Council of Europe’s European Committee for the Prevention of Torture, clarified that solitary confinement can qualify to the level of inhuman treatment and should be not used, unless there is medical certification that the prisoner can sustain it. While, the main international body, namely the Committee Against Torture, which exercises its mandate from the Convention Against Torture, recommended that solitary confinement should be restricted only for disciplinary reasons and for a limited time because of its potentially harmful effects on prisoners’ mental and physical health.

7.3 Procedural Vacuums: Detention and the Right to Fair Trial.

This unit attempts to create a linkage between the process of detention and the judiciary process that entails from it, with the violations that occur when states

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undertake efforts to transcend through legal procedures as means of fastening their prosecution efforts. The Detention Guidelines published by the United Nations High Commissioner for Refugees, describe detention as \(^{70}\) “the deprivation of liberty or confinement in a closed place which an asylum-seeker is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centers or facilities”.

It is clear, that detention deprives a person from the right to liberty, however it can be deemed as lawful, under five provisions that are encompassed in the Article 5(1) of the European Convention of Human Rights \(^{71}\). Concisely, detention is lawful

- Following conviction of the suspect
- In the enforcement of court orders or to fulfil an obligation prescribed by law
- Following an arrest to bring the individual before the competent legal authorities
- In the case of alcoholics, drug addicts, vagrants and persons of unsound mind
- Pending deportation or extradition.

In contrary, there are occasions when detention takes place outside the rule of law as described by the UN Guidelines \(^{72}\) on human rights, terrorism and counter-terrorism. The beforementioned document foresees “that no person shall be arrested based on evidence obtained by means of a search that violates international standards and that forcible transfers of persons on the pretext of securing evidence without compelling grounds permitted under international law constitute crimes against humanity”.

However, to holistically analyze the essence of detention, it should be noted that the current violations by states occur in two different timelines. The first, is taking place when states proceed to the detention of individuals, without providing to them the rights that they are entitled. Thus, the detainees should be informed about the reasons of their detention and the charges against them, while they enjoy the access to a legal counsel or a lawyer. Especially the involvement of legal professionals in the protection of human rights, is mainly why access to a lawyer represents such a vital safeguard for detainees. The second, is related with the principle of non-refoulement \(^{73}\). This principle, prohibits the expulsion of detainees to states where they would be at risk of torture or other serious human rights violations.


\(^{71}\)Ibid, 15


Particularly, since the 9/11 attacks and the recent outbreak of the unprecedented refugee crisis, there is a rising number of States to have extradited and deported foreign nationals, mainly for unauthorized entry in their national grounds or people suspected for terrorism to their country of origin or to other countries, as a counter-terrorist measure, ignoring the fact that they may face a risk of torture or ill-treatment. Subsequently, there exist international legal obligations, which enforce States to conduct the relocation of detainees in transparency and respect to human rights and share information of their actions with the international legal bodies.

However, unlawful detention is directly linked with the infringement of another crucial human right, the right to a fair trial. The latter, does not solely consist a safeguard to ensure that individuals are not unjustly punished under criminal law, it is also necessary for the protection of other human rights, namely the right to freedom from torture and the right to life, as well as the right to freedom of expression and freedom of association. The implementation of the right to a fair trial therefore plays a crucial role in the maintenance of order, in law-enforcement, and the confidence in state authorities.

In the Global Counter-Terrorism Strategy, States committed to an engagement towards the implementation of human rights. The focal point of their commitment was the development of an effective and law-enforcement-based criminal justice system that can ensure, in accordance with obligations under international law, that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of terrorist acts is brought to justice, with due respect for human rights and fundamental freedoms.

Despite the existence of normative guidelines, in the case of suspected terrorists, the enhancement of counter-terrorism regulations taken by states, has hindered the functioning of the judiciary system and its involvement in the conviction of suspected individuals. Among the current violations of the procedure, include the introduction of evidence in court, obtained through physical or psychological pressure, torture or ill-treatment, the use of anonymous witnesses to undermine the status of the suspect, and the limited assistance by a legal counsel or a lawyer, while the extensive use of trials by military courts, contributes in the deterioration of the safeguard of human rights of the people detained, as these courts are often characterized by partiality and bias especially against suspected terrorists.

75 Ibid.
8. Legal Framework

8.1 International Covenant on Civil and Political Rights (1966)

The International Covenant on Civil and Political Rights or ICCPR, was adopted in 1966 and firstly entered into force in 1976. Along with the Universal Declaration of Human Rights (1948) and the International Covenant on Economic Social and Cultural Rights (1966), it makes up the International Bill of Human Rights a landmark document of paramount international importance. This Covenant, can be described as one of the cornerstones of human rights in the modern era, for the simple reason that it enshrines a broad variety of principal rights and fundamental freedoms. More precisely\(^77\), it ensures the right of self-determination in Article 1, the inherent right to life in Article 6, whilst condemning any deprivation of it. Additionally, it prohibits the implementation of torture or cruel, inhuman or degrading treatment or punishment on human beings, as it is pointed out in Article 7 of the Covenant. Furthermore, it provides a thorough framework for the rights of detainees in Article 9, setting guidelines and delimiting the actions taken by States. Last but not least, it designates the importance of the right to privacy, rendering arbitrary or unlawful interference as illegal in Article 17 of the Covenant.

8.2 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973)

The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons is considered as an anti-terrorist treaty, and was introduced as an international legal response against criminal acts and murders of politicians and diplomatic agents. It was adopted in 1973 and entered officially into force four years later. Throughout its content, there are some specific parts that should be underscored, the first being the definition of internationally protected persons and the second, the principle of aut dedere, aut judicare. According to the Convention\(^78\), Article 1 speculates that an internationally protected person is a “Head of State, a Head of Government or a Minister for Foreign Affairs, or any representative or official of a State or any official or other agent of an international organization of an intergovernmental character, as well as members of their families”. The most central provision lies in Articles 7 and 8, which dictate that in case of a crime against the


before mentioned internationally protected persons, a member of the treaty either
prosecutes the person who committed a crime against internationally protected
persons or proceed to the person’s extradition to the State that requests his extradition
or prosecution for the same crime.

8.3 Convention against Torture and Other Cruel, Inhuman or Degrading
Treatment (1984)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or
briefly Convention Against Torture (UNCAT), is a landmark document that maps the
legal basis upon the condemnation of the use of practices such as but not limited to
torture, cruel, inhuman or degrading treatment and punishment. The Convention was
adopted in 10 December 1984, although it officially entered into force in 26 June
1987. Among its focal points, the Convention79 adopts a common definition of torture
and call states to take all appropriate measures to prevent such acts in their territory,
as dictated in Article 2. Respectively, Article 3 anticipates that “no State Party shall
expel, return (refouler) or extradite a person to another State where there are
substantial grounds for believing that he would be in danger of being subjected to
torture”. Whilst Article 10, requests the training and education regarding the
prohibition of torture of medical personnel and public officials, while Article 11
speculates that States should systematically revise the methods and practices that
concern the treatment of imprisoned person. Except this constructive basis, the
Convention also created the Committee Against Torture80 (CAT), a leading body of
human rights experts that monitors implementation of the Convention by its State
parties. The Committee obliges the State-Parties to submit regular reports on the
implementation of the rights prescribed by the Convention. Also, States must report
one year after acceding to the Convention and then every four years. Upon
examination of the reports by States the Committee makes its recommendations to
each state for the amelioration of its regulatory mechanisms regarding torture.

8.4 Council of Europe’s Convention for the Prevention of Terrorism (2005)

The Council of Europe’s Convention for the Prevention of Terrorism or namely the
CECPT, consists a treaty of regional importance, with the scope to shrink the space of
terrorism in societies and protect fundamental rights and freedoms. It was adopted in

79 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
[Accessed 24 December 2017]. Available from:
http://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf
[Accessed 24 December 2017]. Available from:
http://www.ohchr.org/EN/HRBodies/CAT/Pages/CATIntro.aspx
16 May in Warsaw and entered into force in the 1st of June in 2007. Relevantly, the Convention is the first to present a definition of incitement to terrorism and declare possible ways of that aspect occurring. According to the Convention, a terrorism offence “means any of the offences within the scope of and as defined in the international conventions on terrorism”. Apart from the definition the Convention perceives as terrorist offence:

➢ Article 5(1): The public provocation to commit a terrorist offence, which describes the distribution, of a message to the public, with the intent to incite the commission of a terrorist offence.

➢ Article 6(1): The recruitment for terrorism, which means to solicit another person to commit or participate in the commission of a terrorist offence, or to join an association or group, for the purpose of contributing to one or more terrorist offences by the association or the group.

➢ Article 7(1): The training for terrorism, which conceives the provision of instructions in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, for the purpose of carrying out or contributing to the commission of a terrorist offence.

The Convention also recommends the implementation of some preventive measures inter alia, the exchange of information between states, the enhancement of the physical protection of persons and facilities and the launch of training and coordination action plans for the possibility of a civil emergency. Finally, in the case of victims of terrorism, Article 13 of the Convention anticipates the support of States via financial assistance and moral compensation to the victims of terrorism as well as their family members.

**8.5 UN Global Counter-Terrorism Strategy**

The massive impact of terrorism into the lives of people, exposed the weaknesses of the international community and indicated that a much-needed response is imperative for the address of this phenomenon. In this connection, the product of the international consultations was the United Nations Global Counter-Terrorism Strategy (UNGCTG), which was unanimously adopted in 2006 by the United Nations General Assembly. What is more, its adoption marked the first time when all Member States have agreed to a common operational framework to fight terrorism.

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82 Ibid.

The effectiveness of the United Nations Global Counter-Terrorism Strategy lies in its ability to adjust into new challenges. On this connection, it is reviewed in a biennial basis by the United Nations General Assembly, marking the integration of new priorities and policies to intensify the efforts of the elimination of terrorism.

The UN Global Counter-Terrorism Strategy consists of four pillars that map out the orientation of its mandate:

- **Pillar (I):** Address of the conditions conducive to the spread of terrorism
- **Pillar (II):** Prevention and combat terrorism
- **Pillar (III):** Building capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard;
- **Pillar (IV):** Assurance for the respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.

Since 2006, the UN Global Counter Terrorism Strategy has been reviewed over five times, pending its sixth revision in 2018. The need to implement the strategy in a more intense and feverish way, after the various terrorist attacks in Europe and abroad led to the establishment of the United Nations Office of Counter-Terrorism, following the adoption of United Nations General Assembly Resolution 71/291. Besides strengthening the international efforts towards counter-terrorism the Office acquires five functions:

- To provide leadership on the General Assembly counter-terrorism mandates entrusted to the Secretary-General from across the United Nations system
- To enhance coordination and coherence across the Counter-Terrorism Implementation Task Force entities to ensure the balanced implementation of the four pillars of the United Nations Global Counter-Terrorism Strategy
- To strengthen the attribution of United Nations Counter-Terrorism capacity-building assistance to Member States
- To improve visibility, advocacy and resource mobilization for United Nations Counter-Terrorism efforts

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85 Ibid.


➢ To ensure that due priority is given to counterterrorism across the United Nations system and that the important work on preventing violent extremism is strongly rooted in the Strategy.

9. The involvement of the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe on human rights and terrorism.

9.1 Organization for Security and Cooperation in Europe (OSCE)

The Organization for Security and Co-operation in Europe is the biggest regional inter-governmental organization and is directly linked with the aspect of collective security in the OSCE area. The participating states of the OSCE have made politically binding commitments in relation to countering terrorism, in the effort to create a comprehensive framework for security, peace and stability throughout the region. Respectively, the OSCE commitments in relation to counter-terrorism call OSCE states to sign and ratify all relevant UN conventions and protocols relating to terrorism, however the OSCE strategy\(^{88}\) is based on the Bucharest Plan of Action for Combating Terrorism\(^{89}\) which was consensually adopted in 2001.

This action plan transformed into a landmark document for the OSCE Participating States, as it promotes the protection of human rights, tolerance and coexistence between ethnic, religious, and linguistic groups. Moreover, it designates the importance of early-warning mechanisms for the prevention of violence, intolerance, extremism and discrimination against sensitive groups. The action plan contained also preventive guidelines such as the prevention of violent conflicts and promotion of peaceful settlements on disputes, the enhancement of the national anti-terrorism legislation and potential steps for the suppression of financing terrorism.

The role of the OSCE as a credible partner of the United Nations efforts against terrorism, includes the combating of terrorism as well as the various social, economic, political and other factors, which set fertile ground for the incitement and recruitment of radicalized people into terrorist groups. The Organization fosters a co-operative and approach to countering terrorism at all levels, including consultations among national authorities, cooperation among states and with relevant international and regional organizations and where appropriate, the establishment of partnerships between state authorities and civil society as anticipated in the OSCE Consolidated


Framework for the fight against terrorism⁹⁰. Subsequently, among the strategic focal points⁹¹ on the field of counter-terrorism, the Organization promotes the implementation of international legal framework against terrorism, makes intensive efforts on combating violent extremism and radicalization that lead to terrorism (VERLT) and counters the use of the Internet for purposes that serve the prevalence of terrorism, following a multi-dimensional approach, which prescribes that the protection of human rights is the only warrant for the consolidation of security, peace and stability in the OSCE area.

9.2 Council of Europe (CoE)

The Council of Europe consists a major stakeholder in the universal protection of human rights. Despite its regional caliber, the Organization is situated in the frontline against terrorism and the atrocities that derive from it. As such, it has adopted numerous important documents, like the European Convention on the Suppression of Terrorism (1977), the European Convention on the Prevention of Terrorism (2005), while the Committee of Ministers of the Council of Europe has also produced a set of Guidelines on Human Rights and the Fight against Terrorism⁹² (2002). The set of guidelines on human rights poses a basis for transparency and modernization of penal procedures against terrorists or people accused for terrorist incidents, as it prohibits the use of torture and the death penalty and regulates in a restrictive manner the use of surveillance.

Another example of the Council of Europe’s work on the field of counter-terrorism and human rights, is the European Committee⁹³ for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), a monitoring mechanism which also regularly addresses human rights abuses in the fight against terrorism in its reports and recommendations. In light of the uncountable terrorist attacks the last three years in Europe, the Council of Europe has prioritized⁹⁴ the fight against terrorism in the top of the Organization’s agenda.

Regarding terrorism the Council of Europe implements a multipronged approach, consisting of three fields of actions inter alia, the strengthening of the legal framework, pinpointing and addressing the causes of terrorism, whilst protection human rights and fundamental values. In addition, the Organization’s involvement in the process deradicalization, is apparent from the establishment of an action plan responsible to tackle this phenomenon and setting the basis, where the rehabilitation of radicalized people can occur.

10. Conclusion

Having disclosed and analyzed in a detailed manner, a wide range of human rights violations, it is due time to provide much-needed answers. Nowadays, it is profound that terrorism has brought immense changes into our lives. The necessity to combat and address this imminent threat, led to States restricting or depriving freedoms and rights that are inherent to every person, even in the case of a suspected terrorist. The first example given was, the continuous and ongoing violation of the right to privacy by States, as a preventive measure towards terrorism. The second thorough example, consisted of selective aspects the use of which results to flagrant deviations from the prescriptions of the international legal framework. Some of them are, the exercise of torture and inhuman treatment techniques, as well as the illegal detention of people.

These violations clearly show that there is space of improvement in modernizing procedures, methods and practices, while making them more transparent. On this note, the further exchange of information between states and independent international organs could contribute in their full compliance of fundamental freedoms, despite the shrinking space that counter-terrorism operations leave for human rights. It is also crystal clear that policies and legislation cannot be barred, however more suitable regulations could help on controlling and measuring the impact of these violations. Finally, what should be clarified is that this topic contains ambiguities and uncertainties due to its common nature. Focus should be given on how to enhance the compliance of States to human rights, when facing the threat of terrorism and increase their protection, not to provide solutions on how to address terrorism.

11. Points to be addressed

✓ What role can the Human Rights Council play in combating Terrorism and fostering human rights?
✓ Is the contribution of Regional Organizations, such as but not limited to OSCE and CoE, significant for the promotion of human rights while countering terrorism?
✓ What role can the International Human Rights Groups play in the minimization of terrorism and the promotion of human rights?
✓ What actions should the States follow in order to comprehensively implement their laws, while achieving transparency in their actions?
✓ Considering the fact that terrorist attacks occur abundantly nowadays, should States implement stronger measures for surveillance and monitoring, even though they violate the right to privacy?
✓ Can internet be used as a tool against terrorism or does it have the opposite effect if being used inappropriately?
✓ What is the role of education and good governance against the aspect of terrorism?
✓ What should the international community proceed to, to minimize the incitement of people to terrorism?
✓ In the case of torture and inhuman treatment there is a clear distinction between the norms of international law and national law. Which one should prevail?
✓ What measures should States adopt to fairly prosecute and detain people in light of sudden terrorist incidents?
✓ Are States exercising a discriminatory treatment of the detainees who are suspected as terrorists?
✓ Should States provide the detainees, especially people who are suspected of terrorism with the rights that are entitled to them?
✓ Why is the right to fair trial for convicts, so crucial, that it has to be flawlessly implemented in courts?
✓ Should States review their national policies and legislation in case they violate human rights and freedoms?
12. Bibliography


Office of the United Nations High Commissioner for Human Rights. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.


The Security Council: composition and mandate

The Security Council (SC) constitutes one of the six main organs of the United Nations, as established under the UN Charter. The latter gives primary responsibility for maintaining international peace and security to the SC, which may meet whenever peace is threatened. According to the Charter, the United Nations has four purposes:

- to maintain international peace and security;
- to develop friendly relations among nations;
- to cooperate in solving international problems and in promoting respect for human rights;
- and to be a centre for harmonizing the actions of nations.

The presidency of the SC is held by each of the members in turn for one month. The SC is composed of 15 members: 5 permanent (USA, UK, France, China and Russia), which have special voting rights to be explained further on, and 10 non-permanent members elected for two-year terms by the General Assembly. Out of these non-permanent seats, five are allocated to Afro-Asian states, one to Eastern Europe, two to Latin America, and two to Western European and other powers.

The current non-permanent members of the Council are: Angola, Egypt, Japan, Malaysia, New Zealand, Senegal, Spain, Ukraine, Uruguay and the Bolivarian Republic of Venezuela.

Under Article 27 of the UN Charter all decisions of the SC have to be made by an affirmative vote of nine members, including the “concurring votes of the permanent members” – with the exception of decisions on procedural issues.

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96 General Assembly Resolution 1991 (XVIII).
More than 60 UN Member States have never been Members of the SC. Further, a State which is a member of the United Nations but not of the Security Council may participate, without a vote, in its discussions when the Council considers that that country's interests are affected.

Finally, both members and non-members of the United Nations, if they are parties to a dispute being considered by the Council, may be invited to take part, without a vote, in the Council's discussions; the Council sets the conditions for participation by a non-member State.  