

Human Rights and the Implementation of the UN Global Counter-Terrorism Strategy

HOPES AND CHALLENGES

BY ERIC ROSAND, ALISTAIR MILLAR, AND JASON IPE

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Center on Global
Counterterrorism
Cooperation

Authors

ERIC ROSAND is a senior fellow at the Center on Global Counterterrorism Cooperation in New York and a nonresident fellow at New York University's Center on International Cooperation. Previously, he served in the U.S. Department of State for nine years, including in the Office of the Counterterrorism Coordinator and as deputy legal counselor at the U.S. Mission to the United Nations in New York. He is the author of numerous articles, book chapters, and reports on the role for the United Nations and other multilateral bodies in the global counterterrorism campaign. He has an LL.M. from Cambridge University, a J.D. from Columbia University Law School, and a B.A. from Haverford College.

ALISTAIR MILLAR is the director of the Center on Global Counterterrorism Cooperation. He also teaches graduate-level courses on counterterrorism and U.S. foreign policy at Johns Hopkins University and The George Washington University. He has written numerous chapters, articles, and reports on international counterterrorism efforts, sanctions regimes, and nonproliferation. He is the author, with Eric Rosand, of *Allied against Terrorism: What's Needed to Strengthen Worldwide Commitment* (2006). He has an M.A. from Leeds University and is a Ph.D. candidate at the University of Bradford in the United Kingdom.

JASON IPE is a research associate for the Center on Global Counterterrorism Cooperation. He has provided research and written contributions to numerous book chapters and reports on counterterrorism, money laundering, and nonproliferation. He received his B.A. in international relations from Connecticut College in New London, Connecticut, and his M.A. in international security policy from the Elliott School of International Affairs at The George Washington University.

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Executive Summary

The “United Nations Global Counter-Terrorism Strategy” (Strategy), adopted by the UN General Assembly in September 2006, underlines the mutually reinforcing relationship between the promotion and protection of human rights and counterterrorism measures. Through the Strategy, all UN member states have committed to adopting measures to ensure respect for human rights and the rule of law as the fundamental basis of the fight against terrorism. This challenges the view that strict adherence to human rights somehow impedes the effectiveness of counterterrorism efforts and reinforces the notion that, in order to ensure their effectiveness over the longer term, efforts to combat terrorism should be structured and carried out within the human rights framework. With the focus now shifting to Strategy implementation, it remains to be seen how committed all UN member states will be to making respect for human rights and the rule of law the fundamental basis for their respective fights against terrorism and the extent to which the UN system, regional bodies, and civil society can make sustained contributions to its implementation.

The challenge is finding ways to ensure that the human rights-based approach to combating terrorism enshrined in the Strategy is mainstreamed through the relevant UN and regional bodies and programs and at the national level. Within the UN context, limited resources, narrow mandates, and the politically sensitive nature of counterterrorism issues, particularly in the context of the U.S.-led “war on terror” and the invasion and occupation of Iraq, have heightened the challenge. In addition to the need to mainstream the human rights perspective

throughout the different parts of the UN system involved in implementing the Strategy, given the number of different actors within the United Nations in fields related to protecting and promoting human rights and countering terrorism, cooperation and coordination among them need to be strengthened, both at headquarters level and in the field.

This report looks at the extent to which human rights concerns have been incorporated into the UN counterterrorism program to date and how they can be more fully integrated going forward. It then examines the role that regional bodies and civil society can play in transporting the global human rights framework outlined in the Strategy down to the national level and promoting and monitoring implementation of this framework.

This report concludes that UN member states have the primary responsibility for carrying forward the Strategy. Not only must they take the requisite policy action at the national level, but they must provide the relevant parts of the United Nations and regional bodies with the necessary resources and mandates to promote the human rights-based approach to fighting terrorism that is enshrined in the Strategy. This report highlights how mainstreaming the human rights-based approach to fighting terrorism throughout the UN system must be met with the sufficient resources so that each relevant entity has the necessary human rights expertise to carry the mandate forward. In addition, cooperation between the UN human rights and UN counterterrorism actors, while improving, has a way to go before it reaches the necessary level. This report offers a number of recommendations as to how this could be



achieved and emphasizes the need for more leadership from the Secretary-General on the issue.

This report highlights the essential role that regional bodies, with their ability to reflect the contextual nuances in their particular region, can play in helping their members place human rights and counterterrorism issues in the regional context and translate the generally broad human rights framework of the Strategy and facilitate its implementation at the state level. As noted, however, too few regions have effective human rights mechanisms that can monitor states' compliance of human rights norms as they develop and implement their national counterterrorism policies. This report further concludes that more effort is needed at the regional and subregional levels to develop and implement holistic counterterrorism programs that are grounded in the respect for human rights.

Finally, this report discusses the critical and multifaceted role that nongovernmental and

other civil society organizations need to play in promoting the human rights framework that underpins the Strategy. This report notes two prerequisites for getting these actors to engage in these issue: (1) helping them overcome the physical dangers and suspicion that many such groups face in trying to monitor national counterterrorism efforts and educate the public about the importance of safeguarding against human rights abuses in order to fight terrorism effectively, and (2) raising awareness about the Strategy among a wide range of civil society actors, while articulating why the Strategy is significant for civil society, and identifying roles they can play in promoting its implementation on the ground. The United Nations, through its Counter-Terrorism Implementation Task Force, has a particularly important role to play in spearheading this awareness-raising campaign.

Human Rights and the Implementation of the UN Global Counter-Terrorism Strategy

HOPES AND CHALLENGES

Introduction

It has almost become a truism to assert that counterterrorism measures must be conducted in conformity with human rights law. Yet, despite broad agreement on this principle, since September 2001 many countries have opportunistically used terrorism to justify repressive policies against political opponents, minorities, immigrants, asylum seekers, and refugees or have taken other actions in the name of fighting terrorism that have been documented and criticized by human rights organizations and UN bodies as being inconsistent with or even a flagrant breach of international human rights norms.¹

In December 2001, some three months after the attacks of September 11, 17 UN Special Rapporteurs and independent experts of the then-UN Commission on Human Rights had already voiced their concern over both the scope of the antiterrorism laws that

many governments were adopting and the alacrity with which some were “targeting groups such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists, and the media.”² Since then, some have commented that counterterrorism action has been more effective in undermining personal security than any terrorist attack.³

The case has compellingly been made that counterterrorism measures grounded in a state’s respect for human rights and the rule of law improve prospects for success against terrorism over the long term. UN Secretary-General Kofi Annan asserted that violating human rights in counterterrorism efforts cedes the moral high ground to terrorists and yields what they seek: a breakdown of order and improved conditions for recruitment.⁴ UN High Commissioner for Human Rights Louise Arbour has spoken regularly of the practical advantages to be gained

¹ See, e.g., UN Human Rights Council, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”: Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, Martin Scheinin, A/HRC/4/26, January 29, 2007, p. 6 (noting that “so-called terrorist profiling has become an increasingly significant component of States’ counter-terrorism efforts”); UN Commission on Human Rights, *Civil and Political Rights, Including the Question of Torture and Detention: Report of the Working Group on Arbitrary Detention*, E/CN.4/2005/6, December 1, 2004 (expressing concern at the use of administrative detention and the recourse to emergency legislation diluting the right of habeas corpus and limiting the fundamental rights of persons detained in the context of the fight against terrorism). See also Human Rights Watch (HRW), “In the Name of Counter-Terrorism: Human Rights Abuses Worldwide,” March 25, 2003, <http://hrw.org/un/chr59/counter-terrorism-bck3.htm>.

² UN Office of the High Commissioner for Human Rights (OHCHR), *Digest of Jurisprudence of the UN and Regional Organizations on the Protection of Human Rights While Countering Terrorism*, September 2003, p. 8, <http://www.unhchr.ch/html/menu6/2/digest.doc>.

³ See, e.g., Amnesty International, “Annual Report: 2006: Secretary-General’s Message,” <http://web.amnesty.org/report2006/message-eng#1>; Paul Hoffman, “Human Rights and Terrorism,” *Human Rights Quarterly* 26, no. 4 (November 2004): 933; HRW, “In the Name of Counter-Terrorism.”

⁴ International Peace Academy, “Fighting Terrorism for Humanity: A Conference on the Roots of Evil,” September 22, 2003, app. 1, http://www.ipacademy.org/pdfs/FIGHTING_TERRORISM.pdf (keynote address by UN Secretary-General Kofi Annan).

in upholding human rights in counterterrorism efforts, challenging the view that strict adherence to human rights somehow impedes the effectiveness of counterterrorism efforts and reinforcing the notion that, in order to ensure their effectiveness over the longer term, efforts to combat terrorism should be structured and carried out within the human rights framework. This notion is reflected in the “United Nations Global Counter-Terrorism Strategy” (Strategy) adopted by the General Assembly in September 2006, which underlines the mutually reinforcing relationship between the promotion and protection of human rights and counterterrorism measures. Through the Strategy, all UN member states have committed to adopting measures to ensure respect for human rights and the rule of law as the fundamental basis of the fight against terrorism. They further resolve to take measures aimed at addressing conditions conducive to the spread of terrorism, including lack of the rule of law and violations of human rights, and to ensure that any measures taken to counter terrorism comply with their obligations under international law, in particular human rights law, refugee law, and international humanitarian law.⁵

The Strategy provides a blueprint for a coordinated, consistent, and comprehensive response to terrorism, which includes not only the preventative and capacity-building measures that had been at the center of the post-September 2001, Security Council-led UN effort, but also highlights the need to address political, economic, and social conditions conducive to the spread of terrorism. One of the Strategy’s achievements is that it prioritizes “respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.” As Sweden’s counterterrorism ambassador has stated, “Human rights law is, in effect, key to all counterterrorism.... If we do not take this into account in our daily efforts to counter terrorism, we will become counter-productive.”⁶ The challenge is finding ways to ensure that this human rights-based approach, which is reflected in the Strategy, is mainstreamed throughout the various UN and regional bodies and

programs dealing with Strategy implementation, as well as at the national level.

This report looks at the extent to which human rights concerns have been incorporated into the UN counterterrorism program to date and how they can be more fully integrated going forward. It also examines the role that regional bodies and civil society can play in bringing the global human rights framework outlined in the Strategy down to the national level and in promoting and monitoring implementation of this framework. Annexed to this report is a series of policy-relevant recommendations that will be discussed in the report and that could be used by states and other relevant stakeholders at the appropriate time.

I. UN System-Wide Efforts to Integrate Human Rights and Counterterrorism

One of the hallmarks of the UN response to terrorism since September 2001 has been the difficulty it has had in integrating the work being done by the various human rights actors within the system into the program of its various counterterrorism-related bodies, in particular the Security Council’s Counter-Terrorism Committee (CTC) and its Counter-Terrorism Executive Directorate (CTED). As Human Rights Watch has pointed out, “[E]ven where the commitment [to promoting human rights concerns] is strong, UN agencies and departments have yet to find ways of making real the integration of human rights into their policies, programs, and actions.”⁷ Limited resources, narrow mandates, and the politically sensitive nature of counterterrorism issues, particularly in the context of the U.S.-led “war on terror” and the invasion and occupation of Iraq, have heightened the challenges. Given the limited resources and other pressing issues within the Office of the High Commissioner for Human Rights (OHCHR), many support the notion of “mainstreaming” the human rights-based approach through the various UN

⁵ UN General Assembly, *The United Nations Global Counter-Terrorism Strategy*, A/RES/60/288, September 20, 2006 (hereinafter UN Strategy).

⁶ Cecilia Ruthsrom-Ruin, “Keynote Address,” *Symposium on Advancing the Implementation of the United Nations Global Counter-Terrorism Strategy* (New York: UN Office on Drugs and Crime [UNODC], 2007), p. 149, http://www.unodc.org/pdf/07-85692_Ebook.pdf (on respecting human rights for all and the rule of law as the fundamental basis of the fight against terrorism).

⁷ Kenneth Roth, “Letter to Secretary-General-Designate Ban Ki-moon,” December 12, 2006, <http://hrw.org/english/docs/2006/12/12/global4832.htm>.

bodies and programs dealing with the implementation of the Strategy. Partly as a result of the above-mentioned challenges, however, progress with such mainstreaming has been slow.⁸

One of the more remarkable aspects of the lengthy and often contentious negotiations of the Strategy was how little discussion there was surrounding the fourth pillar of the document, “measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.” In order to avoid getting into a protracted debate on the politically sensitive topic of safeguarding human rights in the struggle against terrorism, the drafters of the Strategy inserted rather anodyne language from a recent General Assembly resolution on human rights and counterterrorism that was adopted by consensus.⁹ Thus, as the focus shifts to Strategy implementation on the ground, it remains to be seen how committed all UN member states will actually be to making respect for human rights and the rule of law the fundamental basis for their respective fights against terrorism.

Despite the Strategy’s message that respect for human rights and the rule of law is essential to all pillars of its implementation, there is also a risk that the structure of the UN Counter-Terrorism Implementation Task Force (Task Force), which is charged with overseeing UN system-wide implementation efforts, might reinforce the existing stovepiped approach. Rather than being treated as an integral part of all aspects of the Task Force’s work, human rights issues are almost exclusively being addressed in the human rights working group. Careful attention should be paid to ensuring that human rights issues are mainstreamed throughout the Task Force. Some caution against the mainstreaming approach, arguing that it might lead to further marginalization of the human rights perspective, as it is easy to pay lip service to human rights issues without the expertise to understand how to integrate them in practice into

everyday counterterrorism work.¹⁰ Yet, the practical reality is that unless mainstreaming occurs, with only one official assigned to its “human rights/counterterrorism” portfolio, the OHCHR may lack the resources to ensure that the human rights perspective is reflected in all UN efforts to promote implementation of the Strategy.¹¹ The Task Force’s human rights working group has requested some \$200,000 in extrabudgetary resources to sustain its work, which “aims to support efforts by Member States to ensure the promotion and protection of human rights in the context of counter-terrorism, including through the development of practical tools.”¹² It is unclear whether this small amount of funds will allow the working group to fulfill its mandate effectively over a sustained period of time or to help ensure that the human rights perspective is reflected in the other relevant Task Force working groups. In order to help ensure sustained OHCHR leadership on the Task Force and the mainstreaming of human rights issues throughout all Task Force working groups, the OHCHR should either reallocate existing resources or seek additional, regular budget funding to allow its Task Force representative to devote 100 percent of his or her time to the Task Force.

Regardless of the merits of mainstreaming, given the number of different actors within the UN system in fields related to protecting and promoting human rights and countering terrorism, meaningful cooperation and coordination among them is nevertheless essential. Improved coordination at the level of UN headquarters in New York, Geneva, and Vienna is needed, requiring the allocation of additional resources to the key parts of the UN system engaged in ensuring the protection of human rights while countering terrorism and enhanced political will of all relevant UN actors. Coordination and integration in the field, however, is of primary importance partly due to the need to transport the human rights and counterterrorism discourse that

⁸ Mainstreaming human rights is defined as integrating the application of human rights standards throughout the work of the CTC, CTED, and other UN counterterrorism programs.

⁹ For much of the human rights language in the Strategy, see UN General Assembly Resolutions 60/175 and 60/158, adopted December 16, 2005.

¹⁰ Susie Alegre, remarks at “Workshop on Human Rights and Implementation of the UN Global Counter-Terrorism Strategy,” Geneva, June 20–21, 2007 (human rights consultant and formerly Counter-Terrorism Adviser, Office of Democratic Institutions and Human Rights, Organization for Security and Co-operation in Europe).

¹¹ The OHCHR not only chairs the Task Force working group on protecting human rights while countering terrorism but is a member of a number of other working groups as well.

¹² UN Counter-Terrorism Implementation Task Force, “Funding Proposal: Protecting Human Rights While Countering Terrorism,” August 2007 (copy on file with the Center on Global Counterterrorism Cooperation).

takes place in various UN conference rooms in Geneva and New York into the field so that the national practitioners can be fully engaged in the debate.

THE UN HUMAN RIGHTS MACHINERY'S ENGAGEMENT ON TERRORISM AND COUNTERTERRORISM

The OHCHR and the Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism (Special Rapporteur) are the leading UN actors on the human rights side of the house. Unfortunately, they are constrained by limited resources in their ability to promote greater awareness and to help countries address human rights and counterterrorism concerns.¹³ The UN human rights treaty bodies have also taken up issues related to terrorism in their examinations of state-party reports and individual complaints. For example, the UN Human Rights Committee has provided guidance on a number of relevant issues, including the use of diplomatic assurances to remove an individual where a real risk of torture exists,¹⁴ and the Committee Against Torture has examined the issue of the responsibility of states for acts taking place outside their territory.¹⁵ UN special procedures mandate holders, including the Special Rapporteur, have addressed a broad range of issues related to the impact of terrorism on human rights within the context of their mandates by sending urgent appeal letters, issuing press releases, preparing thematic studies, and conducting country visits. For example, the Special Rapporteur on torture or other cruel or degrading treatment examined the issue of torture aimed at extracting confessions and gathering intelligence as part of a state's efforts to counter terrorism, in addition to the issue of "extraordinary renditions."¹⁶

Further, the Sub-Commission on the Promotion and Protection of Human Rights has addressed issues related to terrorism and human rights, including through thematic studies on issues such as the administration of justice through military tribunals, the relationship between international humanitarian law and human rights law, and the protection of human rights while countering terrorism.¹⁷ It established a working group with a mandate to continue to elaborate detailed principles and guidelines with relevant commentary concerning the promotion and protection of human rights while combating terrorism.¹⁸

THE UN SECURITY COUNCIL'S COUNTERTERRORISM BODIES' ENGAGEMENT ON HUMAN RIGHTS ISSUES

Juxtaposed against the rapid growth in the counterterrorism-related activities of the human rights parts of the UN system has been the generally cautious approach of the Security Council's counterterrorism bodies to addressing human rights concerns.

The Security Council's Al-Qaida and Taliban Sanctions Committee

The Security Council's Al-Qaida and Taliban Sanctions Committee maintains the list of individuals and entities against whom all member states are required to impose financial, travel, and arms-related sanctions. The work of the committee, particular with respect to its management of the Consolidated List, has attracted significant attention from governments and nongovernmental organizations (NGOs) concerned about the human rights implications of this sanctions regime, as well as from the Council of Europe Committee on Legal

¹³ The Special Rapporteur's work is supported by one OHCHR official in Geneva and a research assistant at Abo University in Finland, where the Special Rapporteur is a professor. Funds for this research position come from the university as well as European donors.

¹⁴ UN Human Rights Committee, "Communication No. 1416/2005," CCPR/C/88/D/1416/2005, November 10, 2006, <http://www.unhchr.ch/> (*Mohammed Alzery v. Sweden*).

¹⁵ UN Committee Against Torture, "Communication No. 281/2005," CAT/C/38/D/281/2005, May 29, 2007, <http://www.unhchr.ch/> (*Pelit v. Azerbaijan*).

¹⁶ UN Human Rights Council, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council": Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, A/HRC/4/33*, January 15, 2007.

¹⁷ UN Commission on Human Rights, *Specific Human Rights Issues: New Priorities, in Particular Terrorism and Counter-Terrorism: Report of the Sessional Working Group to Elaborate Detailed Principles and Guidelines, with Relevant Commentary, Concerning the Promotion and Protection of Human Rights When Combating Terrorism*, E/CN.4/Sub.2/2005/43, August 9, 2005.

¹⁸ *Protecting Human Rights and Fundamental Freedoms While Countering Terrorism: Report of the Secretary General*, A/61/353, September 11, 2006.

Affairs and Human Rights.¹⁹ Support for the regime seems to be eroding as a result of concerns regarding the quality of information on the list and the lack of fully transparent procedures for adding and removing names from it. The coordinator of the group of experts established to support the committee has cited a number of reasons why fewer and fewer states are putting forward names for inclusion on the list, including “misgivings about the fairness of a tool which can freeze people’s assets without telling them why.”²⁰ With respect to improving procedures for removing names from the list, the committee has been trying to strike the correct balance between its European members (and nonmembers), which generally favor greater transparency and more rights for those on the list, including possibly allowing them to approach the committee directly, and other, less forward-leaning members, such as China, Russia, and the United States, who argue, among other things, that Security Council sanctions are not punitive but rather preventative and of a temporary administrative character and that the council is a political rather than legal or judicial body. Therefore, the argument goes, the notions of legal due process, as enshrined in the International Covenant on Civil and Political Rights (ICCPR) and other relevant human rights instruments, do not apply to those on the list.²¹

This argument, however, is at odds with the views of many human rights experts, including the UN High Commissioner for Human Rights, who has stated that “while the system of targeted sanctions represents an important improvement over the former system of comprehensive sanctions, it nonetheless continues to pose a number of serious human rights

concerns related to the lack of transparency and due process in listing and delisting procedures.”²² Although uncertainty remains as to whether these sanctions are criminal, administrative, or civil in nature, there is a growing sense that “their imposition must, under the European Convention of Human Rights and the [ICCPR] ... respect certain minimum standards of procedural protection and legal certainty.”²³ There are concerns that international, regional, or national courts might find the Security Council sanctions’ regimes incompatible with due process norms, such as the rights to be informed of the charges against oneself, to be heard and defend oneself against these charges, and to an effective remedy.²⁴

Calls have been coming from all corners, including from world leaders at the 2005 World Summit, to enhance the fairness of these regimes, with a particular focus on those individuals and entities seeking to have their names removed from the Al-Qaida and Taliban Sanctions Committee’s Consolidated List. In response to these concerns, the committee established new delisting procedures in December 2006 and requested the Secretary-General to establish a “focal point” to receive delisting requests and, where appropriate, to forward them to the committee. Although the creation of a focal point²⁵ in March 2007 to receive delisting requests directly from individuals and entities and to forward them to the committee for decision is a positive step, it still leaves the ultimate decision for delisting squarely in the hands of the committee and “does not, and can not address the right of listed individuals to an effective review mechanism, which requires a certain degree of impartiality and

¹⁹ Committee on Legal Affairs and Human Rights, Council of Europe, *UN Security Council Black Lists*, AS/Jur (2007) 14, March 19, 2007, http://assembly.coe.int/CommitteeDocs/2007/20070319_ajdoc14.pdf.

²⁰ Mark Tevelyan, “UN Al Qaeda Sanctions in Need of Reform,” Reuters, July 26, 2007.

²¹ Improving the committee’s procedures for adding and removing names to its list is an essential element of enhancing the effectiveness of the council’s Al-Qaida and Taliban sanctions regime, which is a core part of the council’s counterterrorism program. Because this issue has been and continues to be ably addressed by policy and research centers such as Brown University’s Watson Institute for International Studies and in the interest of avoiding duplication and overlap, this report does not address ways to improve these procedures. See Watson Institute Targeted Sanctions Project, “Strengthening Targeted Sanctions Through Fair and Clear Procedures,” March 2006, http://watsoninstitute.org/pub/Strengthening_Targeted_Sanctions.pdf.

²² UN Human Rights Council, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council: Report of the United Nations High Commissioner for Human Rights on the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, A/HRC/4/88, March 9, 2007.

²³ Committee on Legal Affairs and Human Rights, Council of Europe, “Provision Draft Report on UN Security Council and European Union Blacklists,” November 12, 2007, para. 4, <http://assembly.coe.int/ASP/APFeaturesManager/defaultArtSiteView.asp?ID=717>.

²⁴ *Ibid.*, para. 5.1

²⁵ For information regarding the role of the Focal Point for De-Listing, see <http://www.un.org/sc/committees/dfp.shtml>; Security Council Resolution 1730, annex.





independence in the decision-making itself.”²⁶ Many critics believe that only the establishment of an independent panel of experts to consider delisting requests can ensure that individuals on the list are guaranteed their rights to effective review of their listing by a competent and independent mechanism and to effective remedy. The council’s response, the creation of the focal point, is unlikely to be the end of the story on this issue as more and more states are faced with a situation where national or international courts are seized with complaints challenging the legality of the UN sanctions and their implementation by states due to the lack of a fair and effective review system. The outcome of those various challenges to the individual listings and the procedures themselves is likely to influence the council’s further treatment of these issues.²⁷ In the meantime, Denmark, Liechtenstein, Sweden, and Switzerland continue to push for the establishment of a meaningful review system, now advocating the establishment of a review panel within the Security Council.²⁸

The Security Council’s Counter-Terrorism Committee

Much like its sister council body, the CTC’s commitment to protecting human rights has come into question as it carries out its mandate: monitoring the efforts of UN member states to implement the provisions of Resolution 1373. This resolution requires all states to adopt a series of legislative and regulatory measures to combat terrorism and established the CTC to monitor its implementation. Adopted under Chapter VII of the UN Charter, states are thus required to comply with the provisions of the resolution, and the CTC has the authority (at least theoretically) to identify and report noncompliers to the Security Council for appropriate action.

There is a considerable body of literature highlighting the absence of any mention in Resolution 1373 of the obligation of states to respect human rights in the design and implementation of their counterterrorism measures, except in the context of the granting of refugee status, and the resulting lack of attention paid to rights issues by the CTC as it monitors states’ implementation efforts.²⁹ In his first report, the Special Rapporteur documented a number of instances where the CTC was insensitive to human rights concerns in its dialogue with states. For example, it has routinely asked

questions about a long list of crime investigation techniques that manifestly constitute interferences with the right to privacy and family life. From a human rights standpoint, the crucial issue in this regard is whether such measures are necessary to achieve a legitimate aim, such as the investigation of a crime, and whether they are at the same time proportionate to the resulting interference with privacy and family. Against this background, it is problematic that the CTC seems to be recommending that the potential range of investigative techniques (such as “controlled delivery”, pseudo-offences, anonymous informants, cross-border pursuits, bugging of private and public premises, interception of confidential communications on the Internet and telephone, etc.) should be maximized. At least sometimes, safeguards required by human rights law ... that may be in place under domestic law should be relaxed. Unless the applicable human rights standards are referred to in this type of question, States may get the impression that they are requested to expand the investigative powers of their law enforcement authorities at any cost to human rights. In particular, it is a matter of concern to the Special Rapporteur that this line of questions has been addressed also to regimes whose law enforcement authorities are known to violate human rights.³⁰

²⁶ Stefan Barriga, statement at the Open Debate of the Security Council: Briefings by the Chairpersons of the Counter-Terrorism Committee, 1267 Committee, 1540 Committee, May 22, 2007, <http://www.liechtenstein.li/pdf-fl-aussenstelle-newyork-dokumente-terrorism-securitycouncil-delisting-2007-5-22.pdf>.

²⁷ See Watson Institute Targeted Sanctions Project, “Strengthening Targeted Sanctions Through Fair and Clear Procedures.” For an overview of ongoing litigation in this area, see, e.g., *Sixth Report of the Analytical Support and Sanctions Monitoring Team Appointed Pursuant to Security Council Resolutions 1526 (2004) and 1617 (2005) Concerning Al-Qaida and the Taliban and Associated Individuals and Entities*, S/2007/132, March 8, 2007, pp. 38–40.

²⁸ Michael Bothe, “Discussion Paper on Supplementary Guidelines for the Review of Sanctions Committees’ Listing Decisions: Explanatory Memorandum,” October 16, 2007, <http://www.liechtenstein.li/pdf-fl-aussenstelle-newyork-explanatory-memorandum-prof-bothe-delisting-workshop-2007-11-8.pdf>.

²⁹ See, e.g., Jessica Almqvist, “Rethinking Security and Human Rights in the Struggle Against Terrorism” (paper presented at the European Society of International Law Forum in the workshop “Human Rights Under Threat,” May 27, 2005), <http://www.esil-sedi.eu/english/pdf/Almqvist09-05.PDF>; HRW, “Hear No Evil, See No Evil: The UN Security Council’s Approach to Human Rights Violations in the Global Counter-Terrorism Effort,” *Human Rights Watch Briefing Paper*, April 10, 2004, <http://www.hrw.org/background/un/2004/un0804/un0804.pdf>.

³⁰ Martin Scheinin, *Promotion and Protection of Human Rights*, E/CN.4/2006/98, December 28, 2005, para. 60, <http://www.icj.org/IMG/pdf/scheininreport.pdf>.

The CTC's seeming indifference to promoting human rights norms was illustrated in a January 2002 briefing by the CTC's first chair, UK Permanent Representative to the United Nations Jeremy Greenstock. He stated that assessing compliance with such norms was "outside the scope" of the CTC's mandate.³¹ Rather, it was argued that monitoring should be left to human rights bodies and institutions. Thus, armed with its Chapter VII authorization, the CTC began to review states' counterterrorism efforts without measuring their impact on human rights.³² The UN independent expert on the protection of human rights and fundamental freedoms while countering terrorism, Professor Robert Goldman, commented that the omission of any real mention of human rights in Resolution 1373 and the CTC's early distancing of itself from the issue "may have given currency to the notion that the price of winning the global struggle against terrorism might require sacrificing fundamental rights and freedoms."³³

By early 2003, in response to growing pressure from UN member states from Europe and Latin America and human rights advocacy groups such as Amnesty International and Human Rights Watch, the CTC was including a paragraph in all of its letters to states providing that they "must ensure that any measure taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee, and humanitarian law."³⁴ Some two years later, in March 2005, the CTC's position once again changed. It

agreed to allow its newly expanded staff body, the CTED, to hire the first human rights expert ever to advise the CTC but limited his activities to liaising with the UN human rights bodies and NGOs. By the end of May 2006, with the CTC having adopted its first-ever, albeit anodyne "conclusions for policy guidance regarding human rights and the CTC,"³⁵ the single expert was finally allowed to provide advice to the CTC on human rights issues. The policy guidance was still ambiguous, but it represented a broad consensus; and, by virtue of its adoption, the CTC finally conferred its stamp of approval on more sustained cooperation on human rights.³⁶

Yet, the CTC's rather cautious approach has left a lingering impression that it has not been sufficiently responsive to its critics.³⁷ This caution is mainly due to the views of some of the permanent council members on the CTC, which have voiced concern about diluting its security focus.³⁸ For these states, the priority is getting all UN members to take the steps needed to adopt and implement the necessary laws and to strengthen borders in order to comply with the provisions of Resolution 1373; adding a human rights dimension to the CTC's dialogue with states may make it more difficult for states to take quick action in this area. The CTED's first executive director largely adopted this approach, believing that "protection of human rights cannot be construed as the priority of the CTC."³⁹

Nevertheless, as a result of this incremental movement by the CTC, communication between the CTC and OHCHR has intensified; and on two

³¹ UN Counter-Terrorism Committee, "Summary of the Briefing to UN Member States by the CTC Chairman on 11 January 2002," http://www.un.org/Docs/sc/committees/1373/11jan_02.html.

³² Joanne Mariner, "The UN Security Council's (Slowly) Improving Message on Counterterrorism and Human Rights," FindLaw, October 24, 2007, http://writ.news.findlaw.com/scripts/printer_friendly.pl?page=/mariner/20071024.html.

³³ UN Commission on Human Rights, *Promotion and Protection of Human Rights: Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*, E/CN.4/2005/103, February 7, 2005, pp. 6, 21 (prepared by Robert K. Goldman).

³⁴ See UN Security Council, "Threats to International Peace and Security Caused by Terrorist Acts," S/PV.4792, July 23, 2003, p. 14 (statement by Mexico's Ambassador to the United Nations Adolfo Aguilar Zinser).

³⁵ UN Counter-Terrorism Committee (CTC), *Conclusions for Policy Guidance Regarding Human Rights and the CTC*, S/AC.40/2006/PG.2, May 25, 2006, <http://www.un.org/sc/ctc/pg25may06.html>.

³⁶ For a fuller discussion of the evolution of the CTC's handling of human rights issues see, E. J. Flynn, "The Security Council's Counter-Terrorism Committee and Human Rights," *Human Rights Law Review* 7, no. 2 (Spring 2007): 371-384.

³⁷ One reason why human rights advocates have sought to have the CTC become actively involved in monitoring the implementation of human rights obligations in the fight against terrorism is that unlike the human rights bodies within the UN system, the CTC has the force of a legally binding Chapter VII Security Council resolution behind it. Thus, states might have greater incentives to cooperate with the CTC than with the human rights bodies. See Nigel Rodley, "Human Rights and Counter-Terrorism Measures" (briefing before the CTC, June 19, 2003) (copy on file with the Center on Global Counter-Terrorism Cooperation).

³⁸ Rosemary Foot, "The United Nations, Counter Terrorism and Human Rights: Institutional Adaptation and Embedded Ideas," *Human Rights Quarterly* 29, no. 2 (May 2007): 489-514.

³⁹ C. S. R. Murthy, "The UN Counter-Terrorism Committee: An Institutional Analysis," *FES Briefing Paper*, no. 15 (September 2007), p. 10, <http://library.fes.de/pdf-files/iez/04876.pdf> (citing May 30, 2007, interview with CTED Executive Director Javier Ruperez).

occasions, in October 2005 and 2006, the CTC was briefed on practical issues by the Special Rapporteur. CTED experts are now including human rights issues in their preliminary assessments of states' efforts to implement Resolution 1373, such as those based on the findings of the UN human rights mechanisms, and are raising human rights concerns on visits to those states that have agreed to discuss them.⁴⁰ Further, the CTED has started to address human rights-related issues in a number of its Preliminary Implementation Assessments of country efforts to implement Resolution 1373. For example, it has inquired into the definition of "terrorist acts" in domestic legislation, to ensure that it is not overly broad or vague, and inquired as to whether any exceptional criminal procedures are applied in prosecuting cases under such legislation and the impact, if any, on human rights. It has also inquired into whether proper procedural safeguards are in place to protect against *non-refoulement* in the context of extradition proceedings.⁴¹ Yet, the OHCHR is still not included on the CTED's directory of technical assistance providers, and any exchange of information between the CTED and the UN human rights mechanisms is still done on an ad hoc basis, despite the fact that on a number of occasions the General Assembly has unanimously

encourage[d] the Security Council and its Counter-Terrorism Committee to strengthen the links and to continue to develop cooperation with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur of the Commission on Human Rights on the promotion and protection of human rights and fundamental freedoms while countering terrorism and other relevant special procedures and mechanisms of the Commission, giving due regard to the promotion and protection of human rights in the ongoing work pursuant to relevant Security Council resolutions relating to terrorism.⁴²

Further, CTED visits to states, which include representatives from various UN agencies and regional bodies, have yet to include a representative of a human rights body or even the CTED's senior human rights adviser.⁴³ Finally, human rights continues to be noticeably absent from the CTED's directory of best practices for implementing relevant provisions on Resolution 1373, despite the fact that, according to the Special Rapporteur, "there is no best practice in counter-terrorism without at the same time respecting human rights."⁴⁴

With the adoption of the Strategy, which underlies the mutually reinforcing relationship between the promotion and protection of human rights and effective counterterrorism measures and prioritizes respect for human rights and the rule of law as essential to all its aspects, it will be difficult for the CTC, along with its CTED, to maintain its cautious approach to integrating the human rights perspective into its work. The Security Council is likely to hear increased calls for the CTED to place greater emphasis on human rights in its monitoring of the implementation of Resolutions 1373 and 1624. This could involve building on the country- or thematic-specific analysis being carried out by the UN human rights mechanisms, including the Special Rapporteur. The CTC/CTED has recently relied on some of the analysis in the Special Rapporteur's report on Turkey as it conducted its site visit to and prepared its report on Turkey, something that should become standard practice. The CTC/CTED should also exchange relevant information with the UN human rights mechanisms on a regular basis and convene workshops on thematic issues related to Resolutions 1373 and 1624, such as *non-refoulement*, addressing incitement and protecting freedom of expression. Further, all CTED experts should receive training in international human rights law, refugee law, and humanitarian law as part of an effort to mainstream the treatment of these issues throughout the CTED's work. In the interim, the senior human rights adviser

⁴⁰ CTED officials and officials of member states represented on the CTC, discussions with authors, New York, summer 2007.

⁴¹ Several CTED Preliminary Implementation Assessments include such questions. For further information, see copies on file with the Center on Global Counterterrorism Cooperation.

⁴² UN General Assembly, A/RES/60/158, February 28, 2006, para. 10 (adopted December 16, 2005).

⁴³ Although the CTED senior human rights adviser did participate in the CTED visit to Bangladesh, it was in the capacity of a "legal" rather than "human rights" expert.

⁴⁴ Department of Public Information, United Nations, "Press Conference on Human Rights in Context of Counter-Terrorism," October 29, 2007, http://www.un.org/News/briefings/docs/2007/071029_Scheinin.doc.htm (hereinafter Scheinin press conference).

should participate in all CTED country visits. The CTC/CTED should also make it a practice to engage with civil society groups during country visits to improve its understanding of the local political, social, and cultural context in which the relevant member state is implementing Resolutions 1373 and 1624. Finally, human rights should be included in the CTED's technical assistance and best practices directories.⁴⁵

A good place for the CTC/CTED to show its enhanced human rights focus might be in the context of Resolution 1624 implementation. Although dealing primarily with the issue of incitement to terrorism, this council pronouncement also stresses states' obligation to comply with their other obligations under international law, in particular international human rights law, refugee law, and humanitarian law.⁴⁶ It also calls on the CTC and its CTED to "spread best legal practice" in areas related to the resolution.⁴⁷ This might provide room for the CTED to expand its human rights role. For example, the CTED could work with the Special Rapporteur and the OHCHR in developing best practices in the field of national measures to address and prevent incitement, consistent with the freedom of expression. The Special Rapporteur has in fact proposed such a joint activity to the CTC but has yet to receive a formal response.⁴⁸

UN OFFICE ON DRUGS AND CRIME'S INTEGRATION OF HUMAN RIGHTS INTO ITS COUNTERTERRORISM ACTIVITIES

Although silent on the role of the CTC and its CTED in promoting a human rights-based approach to countering terrorism, the Strategy explicitly recognizes the contributions that the United

Nations Office on Drugs and Crime (UNODC) can make in this area by helping states in developing and maintaining "effective and rule of law-based criminal justice systems that can ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of such acts is brought to justice, with due respect for human rights and fundamental freedoms, and that such terrorist acts are established as serious criminal offences in domestic laws and regulations."⁴⁹ Although recent CTC/CTED efforts to incorporate human rights concerns into its day-to-day work are largely invisible to the public (as is much of their work), the UNODC has been more transparent in showing its commitment to promoting the rule of law and human rights concerns as it implements its counterterrorism program.⁵⁰

In fact, human rights considerations are the basis of the UNODC's "criminal justice approach" to counterterrorism, whereby it assists states to enact necessary legislation and offers other technical assistance to help states join the UN conventions and protocols related to terrorism. As evidence of its commitment on this issue, the UNODC's Terrorism Prevention Branch (TPB) has published a technical assistance tool, "Preventing Terrorist Acts: A Criminal Justice Strategy Integrating Rule of Law Standards in the Implementation of Anti-Terrorism Instruments," which is publicly available on its Web site.⁵¹ This handbook is an important element of the UNODC's work with countries around the globe and offers concrete guidance to national practitioners on how "a preventive, even aggressively proactive, anti-terrorism strategy can be based on scrupulous observance of human rights, and can simultaneously enhance both the rule of law and the protective ability of member states."⁵² As its preamble

⁴⁵ With respect to the development of human rights best practices in the context of the fight against terrorism, see Alex Conte, "Handbook on Human Rights Compliance While Countering Terrorism," Center on Global Counterterrorism Cooperation, January 2008.

⁴⁶ UN Security Council, S/RES/1624, September 14, 2005, para. 4.

⁴⁷ *Ibid.*, para. 5(b).

⁴⁸ Scheinin press conference.

⁴⁹ UN Strategy, sec. IV, para. 4.

⁵⁰ For a discussion of the CTC/CTED's lack of transparency and other shortcomings, see Eric Rosand, Alistair Millar, and Jason Ipe, "The UN Security Council's Counterterrorism Program: What Lies Ahead?" October 2007, <http://www.ipacademy.org/asset/file/207/cter.pdf>.

⁵¹ UNODC Terrorism Prevention Branch (TPB), "Preventing Terrorist Acts: A Criminal Justice Strategy Integrating Rule of Law Standards in Implementation of United Nations Anti-Terrorism Instruments," *Technical Assistance Working Paper*, 2006, p. 46, <http://www.unodc.org/pdf/terrorism/Integrating%20Rule%20of%20Law.pdf>.

⁵² *Ibid.*

states, “In order to provide credible legal advisory services, [the TPB] must be prepared ... to discuss how anti-terrorism conventions and protocols can be integrated and harmonized with domestic law and other international standards. At the same time, it is the TPB’s institutional responsibility to recognize the implications of all of these inextricably linked measures in the overall context of the rule of law.”⁵³ The handbook goes into considerable detail regarding how states can respect provisions in the ICCPR as they design and implement their antiterrorism legislation.

An important part of the UNODC TPB’s technical assistance program is the multiday training workshops it conducts in the field at the national, regional, and subregional levels.⁵⁴ These gatherings generally include national counterterrorism practitioners and often regional experts, which offer specialized national and subregional input and perspectives and facilitate effective follow-up to TPB activities.⁵⁵ Such follow-up is often as important as the initial training. This approach also helps to build up expertise on counterterrorism issues at the subregional and field levels. In general, the UNODC should continue to develop and broaden its partnerships not only with regional and subregional bodies, but with local research and other civil society organizations as well. This is essential to obtaining the buy-in from the local stakeholders to help guard against the perception that the UNODC’s programs are being designed and imposed from Vienna with insufficient input from those on the ground. In addition, engaging with civil society groups will improve the UNODC’s understanding of the local political, social, and cultural environment, including the human rights concerns, in which the states are having to draft, adopt, and implement national antiterrorism legislation. This is particularly important as it seeks to promote a human rights- and rule of law-based approach to developing and implementing a criminal justice system and to ensure a tailored, as opposed to one-size-fits-all, approach to delivering technical assistance. Further, in order

to prevent abusive application of legislation needed to implement UN instruments, the UNODC should ensure that each workshop raises awareness of human rights legal issues that may confront practitioners as they seek to implement any legislation. To ensure that this is done effectively, however, UNODC legal experts may need to receive training in human rights law to supplement their expertise in international criminal law issues or else ensure that an OHCHR expert is invited to and participates in each workshop.

ESTABLISHING AND MAINTAINING A RULE OF LAW-BASED CRIMINAL JUSTICE SYSTEM: THE TECHNICAL ASSISTANCE ROLE OF THE UN

Many states will require assistance in developing and maintaining an effective, rule of law-based criminal justice system, which lies at the heart of sustained national efforts to implement not just the Strategy’s fourth (human rights) pillar, but the Strategy as a whole. Different parts of the United Nations are already contributing in this effort. In addition to the UNODC, the OHCHR and the UN Development Programme (UNDP) are the leading UN assistance providers in this area, although the level of cooperation and coordination among them in the context of their Strategy-relevant activities could be deepened.

OHCHR

The OHCHR’s Rule of Law and Democracy Unit in Geneva, working closely with OHCHR field offices in different regions, focuses mainly on encouraging states to develop and maintain effective national human rights institutions and human rights ombudsmen; training judges, lawyers, and law enforcement in counterterrorism and human rights; and assisting practitioners by developing tools such as fact sheets and publications on human rights and counterterrorism, the relationship between international humanitarian law and human rights,

⁵³ Ibid., p. iii.

⁵⁴ Between January 2003 and December 2006, the UNODC TPB provided assistance to 123 states, of which some 100 received direct assistance through country missions and consultations and the others received indirect assistance through more than 30 regional and subregional workshops and similar activities. In total, it has trained more than 4,600 national officials. UNODC TPB, “Delivering Counter-Terrorism Assistance,” March 2007, p. 9, <http://www.unodc.org/pdf/brochuremarch2007.pdf>.

⁵⁵ Such experts are currently assigned to Southeast Asia and the Pacific, Central Asia, the Commonwealth of Independent States, eastern Europe, northern Africa, the Middle East, western and central Africa, and Latin America and the Caribbean, with the UNODC planning on retaining ones for southern Africa, eastern Africa, and the Pacific Island countries. Ibid., p. 8.

⁵⁶ Lisa Oldring, “Statement,” *Symposium on Advancing the Implementation of the United Nations Global Counter-Terrorism Strategy* (New York: UNODC, 2007), p. 172, http://www.unodc.org/pdf/07-85692_Ebook.pdf (on respecting human rights for all and the rule of law as the fundamental basis of the right against terrorism).

and the human rights impact of targeted sanctions.⁵⁶ More broadly, however, the OHCHR works to promote the development and proper functioning of regional human rights mechanisms in regions where none currently exist.⁵⁷ Such mechanisms could make an important contribution to Strategy implementation by promoting and monitoring compliance with international human rights standards, including in the context of the fight against terrorism.

As well as identifying additional human and financial resources to support Strategy implementation efforts at its headquarters in Geneva, the OHCHR should integrate Strategy implementation-related activities into the work programs in all of its regional and country offices. This should not require much more than adding references to the Strategy in the relevant strategic plans, given that the OHCHR is already working “within the interagency framework to ensure more consistent rights-based approaches to United Nations peace, security and humanitarian activities, in keeping with the requirements of integrated missions,” with a view to “provid[ing] more effective assistance to Member States in their efforts to build national capacities to protect human rights ... [and helping] to strengthen partnerships within the United Nations agencies and to incorporate a human rights dimension into all of their development, peace, security, humanitarian, and rule-of-law activities.”⁵⁸

UNDP

The UNDP has traditionally focused on promoting good governance and the rule of law through its country-specific technical assistance programs. These often include the training of judges, lawyers, prosecutors, and other law enforcement and security personnel. Through these programs, the UNDP also seeks to ensure there is improved access to justice, specifically for marginalized groups, and that the implementation of the UN terrorism-related

instruments do not infringe on human rights or limit the scope for operation of the civil society.⁵⁹

Despite the breadth of UNDP activities that are relevant to helping states develop and maintain a rule of law-based criminal justice system that respects human rights, as well as to other elements of the Strategy and its presence in 166 countries, the Strategy itself makes no mention of the UNDP. This is largely due to the fact that a number of UN member states (and many UNDP staff) remain ambivalent about connecting UNDP work too closely to the politically sensitive issue of counterterrorism. Although the UNDP is formally a member of the Task Force, its limited participation in the group’s various thematic working groups are continuing manifestations of this ambivalence.⁶⁰ In the end, regardless of whether the UNDP decides to deepen its engagement in the Task Force or embrace a counterterrorism role, it is important for its rule of law work to be viewed, including by the UNDP itself, as supporting Strategy implementation on the ground.

Given the UNDP’s work on promoting the rule of law and human rights, its extensive network of field offices, and strong relationships with local civil society actors, more coordination and cooperation among the UNDP and the Vienna-based UNODC TPB and the underresourced OHCHR and other UN human rights mechanisms and special procedures will allow the United Nations to engage more effectively and efficiently with states in developing and implementing a rule of law-based criminal justice system. Currently, such cooperation and coordination is generally taking place on an ad hoc basis in the field in different countries, but this has not been replicated at the headquarters level.

At the end of the day, members of the UNDP Executive Board need to join together to push the agency to deepen its involvement in the Task Force and, more broadly, in promoting Strategy implementation. This does not mean transforming the UNDP into a counterterrorism outfit or steering

⁵⁷ “OHCHR Regional Office for South-East Asia in Bangkok, Work Plan 2006–2007,” October 9, 2006, <http://www.un.or.th/ohchr/about/workplan.doc>.

⁵⁸ OHCHR, “High Commissioner’s Strategic Management Plan 2006–2007,” p. 31, <http://www2.ohchr.org/english/about/docs/strategic.pdf>.

⁵⁹ For information concerning the UNDP’s Strategy-related programs, see “UN Counter-Terrorism Online Handbook,” <http://www.un.org/terrorism/cthandbook/entities.html>.

⁶⁰ The UNDP has yet to become an active participant in the work of the Task Force. For example, it was one of the few Task Force members not represented at the May 2007 Vienna symposium that the UNODC and the Government of Austria organized to stimulate Strategy implementation efforts. In addition, it has been reluctant to involve itself in the various Task Force working groups, including the one focused on human rights issues.

development aid toward counterterrorism initiatives. Rather, this could simply involve having an awareness of the relevance of the UNDP's rule of law and good governance efforts to the broader UN efforts to promote Strategy implementation and a willingness to share information and expertise and coordinate more closely and consistently with the CTC/CTED and the UNODC TPB both at headquarters and in the field, while remaining mindful of how the perceived linkages between the UNDP's ongoing field activities and counterterrorism could complicate the UNDP's work if not managed carefully.

THE NEED FOR UN HIGH-LEVEL LEADERSHIP

Improved cooperation among the different parts of the UN system is important, but it needs to be complemented by high-level leadership from new UN Secretary-General Ban Ki-moon, who has yet to signal that the issue of safeguarding human rights in the fight against terrorism is a policy priority for him and the new team on the 38th floor in the UN Secretariat building in New York. This issue, as well as the entire Strategy, has so far been closely identified with his predecessor Annan, who spoke out often on the subject and devoted one of his last public speeches as Secretary-General to it.⁶¹ The issue, however, should be a priority for the office of Secretary-General, regardless of the incumbent. Strong leadership from that office is needed to ensure that the relevant parts of the UN system and other key stakeholders are working together in an integrated fashion to ensure that a human rights-based approach to fighting terrorism is mainstreamed. To show his commitment, the new Secretary-General should convene the leadership from different international, regional, and subregional bodies with a view to getting them to deepen their engagement on the issue as part of an effort to ensure that each such body adopts this same approach. In addition, he should also deliver a major speech on the issue of security and liberty, a field in which he has yet to make his mark.

⁶¹ UN Department of Public Information, "In Truman Library Speech, Annan Says UN Remains Best Tool to Achieve Key Goals of International Relations," December 11, 2006, http://www.un.org/News/ossg/sg/stories/statments_full.asp?statID=40.

⁶² Kennedy Graham and Rodrigo Tavares, "Human Rights and Counter-Terrorism: A Possible Peer Review Mechanism: Background Paper for UN Working Group on the Protection of Human Rights in the Fight Against Terrorism in Preparation for the 6th High-Level Meeting Between the United Nations and Regional and Other Inter-governmental Organizations 25–26 July 2005," June 2005.

⁶³ UN Strategy.

II. The Role of Regional Organizations in Promoting the Human Rights Framework in the Strategy

Combating terrorism and ensuring respect for human rights are both essential and complex challenges, which cannot be met successfully with a global, one-size-fits-all approach. Rather, approaches are likely to vary from region to region given the impact that local and regional histories, politics, traditions, and cultures will play in this exercise and the different threat perceptions in different regions, with terrorism not seen to be as salient to their own concerns as issues such as poverty, HIV/AIDS, underdevelopment, and crime.

Regional bodies, with their ability to reflect the contextual nuances in their particular region, are thus well placed to assume a leading role in helping their members place human rights and counterterrorism issues in the regional context. As noted above, regional perceptions "vary on what constitutes terrorism and how to perceive it, what counter-measures are accordingly appropriate and how human rights are to be respected within that context."⁶² Regional organizations can thus serve to translate the generally broad human rights framework of the Strategy and facilitate its implementation at the state level.

Specifically with regard to the Strategy, regional organizations can encourage their members to "accept the competence of the international and relevant human rights monitoring bodies," support and cooperate with the OHCHR, and support and liaise with the Special Rapporteur as well as other relevant UN special procedures mandate holders.⁶³ For example, they could consider inviting the Special Rapporteur to conduct regional visits and could cohost regional workshops with the Special Rapporteur and OHCHR, focusing on the human rights framework in the Strategy. In addition, they should work together where possible to ensure the human rights-based approach to combating terrorism that underpins the Strategy is reflected

in all counterterrorism-related declarations, statements, or other documents issued by each regional body.⁶⁴

A number of regions have adopted their own regional human rights conventions or charters, thereby placing the universal human rights obligations within the relevant regional context and helping to ensure a shared regional interpretation of those obligations. Human rights bodies have been established in some regions to oversee implementation of these conventions or charters by their members. Such bodies can offer members guidance on and a forum for the sharing of best practices among countries that may face many of the same challenges. They can work to improve the capacity of their members by propagating standards of conduct and providing training for security, law enforcement, and judicial officials engaged in combating terrorism. In particular, regional human rights commissions and courts can play an important role in interpreting human rights obligations for states and investigating and shedding light on abuses, providing for recourse above the national level. Regional organizations can serve as fora for conducting peer reviews and other monitoring mechanisms to ensure that national counterterrorism efforts comply with international and regional human rights standards, and they can apply political pressure on states in cases where they do not.

Finally, regional bodies can contribute to the development and maintenance of effective, rule of law–based criminal justice systems within their member states, which the Strategy highlights as being critical to implementing a human rights–based approach to countering terrorism. The Strategy recognizes that many states will require assistance in developing and maintaining such a system. Different parts of the United Nations, including the UNODC, UNDP, the Department of Peacekeeping Operations, and OHCHR will likely assume leading roles in providing this assistance. As in other capacity-building areas relevant to the

Strategy, however, regional and subregional bodies have a key role to play in offering the necessary expertise and other resources, providing a forum for interaction with civil society to ensure that the assistance being offered is tailored to the particular needs in the region, and ensuring its sustainability. In addition, regional bodies can facilitate cooperation among their member states and the Special Rapporteur, including by inviting him to conduct a visit to countries in the region and cohost a regional workshop focusing on helping place the human rights elements of the Strategy in the appropriate regional context.

Although regional bodies have much to offer in theory, the level of their contributions has varied widely, with most of the activity centered in Europe and the Americas and to a lesser extent in Africa. Most existing intergovernmental, regional human rights systems, however, lack mechanisms or procedures, effective or otherwise, to supervise the compliance of national counterterrorism measures with international human rights obligations and norms at the regional level.⁶⁵

Europe

Europe, with such a high degree of integration, has the most highly developed regional human rights architecture, with the Organization for Security Co-operation in Europe (OSCE), the Council of Europe, and the European Union (EU) each playing important yet sometimes overlapping roles.

The Council of Europe, particularly its Steering Committee on Human Rights, works to provide guidance to member states on upholding human rights while combating terrorism and has cooperated extensively with the Special Rapporteur as well as the OSCE. The council has issued a series of guidelines, including “Guidelines on Human Rights and the Fight against Terrorism” in 2002 and “Guidelines on the Protection of Victims of Terrorist Acts” in 2005, which could be used by states outside

⁶⁴ For example, the Office for Democratic Institutions and Human Rights (ODIHR) and OHCHR worked hard to ensure that the joint communiqué adopted at the February 14, 2007, annual meeting included appropriate references to the human rights approach enshrined in the Strategy. See UN, the Organization for Security and Co-operation in Europe (OSCE), and Council of Europe, “Annual High-Level Meeting Between the Council of Europe, the Organization for Security and Co-operation in Europe, the United Nations and Partner Organizations in the ‘Tripartite-Plus’ Format,” http://www.osce.org/atu/item_6_25997.html (“Participants underlined also the utmost importance of promoting and protecting human rights for all and the rule of law while combating terrorism and welcomed the strong focus of the Strategy on this issue.”).

⁶⁵ “Joint Declaration on the Need for an International Mechanism to Monitor Human Rights and Counter-Terrorism,” p. 3, <http://www.fidh.org/IMG/pdf/jointdeclaration1211a.pdf> (signed by Amnesty International, HRW, the International Commission of Jurists, and other nongovernmental organizations).

of the council.⁶⁶ The OSCE's Anti-Terrorism Unit (ATU) and Office for Democratic Institutions and Human Rights (ODIHR) have worked with some OSCE participating states in implementing their counterterrorism commitments through programs in the areas of legislative and judicial reform, training of counterterrorism officials and judges, and monitoring trials and places of detention. The ODIHR has cooperated with UNODC TPB workshops in the OSCE region, and the ATU has joined in CTED country visits to OSCE participating states. In addition, OSCE field missions, which often have extensive local knowledge of the conditions on the ground, could be harnessed to support Strategy implementation.

The EU's performance in this area has received mixed reviews.⁶⁷ On the one hand, the EU Presidency is generally the most outspoken proponent in the United Nations for a human right-based approach to fighting terrorism,⁶⁸ although this does depend somewhat on which member holds the presidency, which rotates every six months. In addition, the EU has had success in building international partnerships and extending capacity-building assistance on human rights and counterterrorism to other countries and regions. The EU has been slow, however, to deal with its own member states and has had difficulty integrating human rights elements into its own counterterrorism strategy. Amnesty International, Human Rights Watch, other international human rights group, and the council have condemned EU member states for their complicity in the practice of "extraordinary renditions," the use of diplomatic assurances, and other excesses in efforts to combat terrorism.⁶⁹

More broadly, the Special Rapporteur has commented that the EU has struggled to deal with its own member states and "has not effectively

integrated human rights as a major pillar in its own counterterrorism strategy."⁷⁰ The EU has a human rights committee, which focuses on external affairs, *i.e.*, non-EU members, but has yet to establish one focused on the behavior of its members. Although the EU's Committee on Civil Liberties, Justice and Home Affairs has a mandate to address both security and fundamental rights issues, it has generally emphasized the security-related aspects of its mandate. Further, the recently established EU Agency for Fundamental Rights lacks competence in the field of justice and home affairs, which, as the Special Rapporteur has recently noted, is "the very policy area where developments are rapid and many initiatives are going on."⁷¹

Given the prominent place that respect for human rights and the promotion of liberty, democracy, and the rule of law have in the Treaty on European Union,⁷² the fact that the EU is "obliged to ensure that its own measures are in accordance with fundamental rights and also to identify and act upon a serious and persistent breach of fundamental rights or a clear risk of such breach in its Member States";⁷³ and the EU's significant resources, the EU should be doing more to promote a human rights compliance by its member states in their collective fight against terrorism. This could include, for example, the appointment of a human rights expert to support the work of new EU Counter-Terrorism Coordinator Gilles De Kerchove, the appointment of a human rights and counterterrorism expert in the European Commission, and a post for a human rights and counterterrorism expert in the European Commission and the establishment of a dedicated committee in the EU Council for dealing with human rights issues within EU member states, including their relation to efforts to combat terrorism.

⁶⁶ For the full text of the guidelines, see http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/2_Adopted_Texts/.

⁶⁷ See, e.g., Amnesty International EU Office, "Human Rights Dissolving at the Borders? Counter-Terrorism and EU Criminal Law," IOR 61/013/2005, May 31, 2005, http://www.amnesty-eu.org/static/documents/2005/counterterrorism_report_final.pdf.

⁶⁸ See, e.g., "EU Presidency Statement – United Nations 6th Committee: Measures to Eliminate International Terrorism," PRES07-263EN, October 10, 2007, http://www.europa-eu-un.org/articles/en/article_7418_cn.htm (statement by João Madureira).

⁶⁹ Amnesty International, "Amnesty International Reaction to Nomination of New EU Counter-Terrorism Coordinator," IOR 61/022/2007, September 19, 2007, <http://web.amnesty.org/library/index/engIOR610222007> (press release).

⁷⁰ "Mainstreaming Human Rights and Democracy in European Union Policies," <http://www.eplo.org/documents/REPORTHRForum06.doc> (report of the 8th Annual NGO Forum on Human Rights, Helsinki, December 7–8, 2006).

⁷¹ *Ibid.*

⁷² Treaty on European Union, February 7, 1992, art. 6, <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html>.

⁷³ Amnesty International EU Office, "Human Rights Dissolving at the Borders?" p. 4.

In the Americas, the Organization of American States (OAS) has both a robust counterterrorism mechanism—the Inter-American Committee on Terrorism (CICTE)—and a well-developed human rights machinery—the Inter-American Human Rights Court and the Inter-American Commission on Human Rights (IACHR), with the commission working to promote the protection of human rights and investigate abuses.⁷⁴ The OAS General Assembly, recognizing the need to promote an integrated institutional approach on these issues, has reiterated the “importance of intensifying dialogue among CICTE, the IACHR, and other pertinent areas of the Organization, with a view to improving and strengthening their ongoing collaboration on the issue of protecting human rights and fundamental freedoms while countering terrorism.”⁷⁵ This message has trickled down to the work of the relevant OAS institutions.

The IACHR has convened meetings of government experts “to exchange best practices and national experiences, from a human rights perspective, in adopting counterterrorism measures.”⁷⁶ Secretariat officials both from the CICTE and IACHR attend the other’s annual meetings, although they do not participate in each other’s training sessions. Upon the decision of the OAS General Assembly, the commission and CICTE have also collaborated closely in the preparation and consideration of a set of recommendations for the Protection of Human Rights by OAS Member States in the Fight Against Terrorism. The 2007 OAS General Assembly directed the Permanent Council to begin consultations with the CICTE and its member states on the

above-mentioned recommendations, which were prepared by the IACHR, with a view to “compil[ing] current international standards based on applicable international law, as well as best practices, for consideration by the [OAS] General Assembly.”⁷⁷ This example of cooperation between the human rights and counterterrorism arms of a regional organization, which collaborate in developing best practices, recommendations, or guidelines for its members to follow while countering terrorism, should serve as a best practice for other regional entities.

Africa

In Africa, the continent’s counterterrorism framework, much like that of Europe and the Western Hemisphere, shows a commitment to respecting international law, including human rights and humanitarian law,⁷⁸ and all 53 African Union (AU) member states have ratified the African Charter on Human and Peoples’ Rights and its protocol. The continent, however, has had difficulties moving “beyond public declarations and commit[ing] to verifying the effectiveness of these rights.”⁷⁹ According to Ambassador Boubacar Gaoussou Diarra, the director of the AU’s African Centre for the Study and Research on Terrorism (ACSRT), “[A]n examination of the situation in various countries, through a review of their legislation and the methods and practices used to combat terrorism, indicates that public statements concerning respect for human rights are not adhered to by all countries.” Continuing, he cautions that “the grave danger posed by terrorism and the need to eradicate it have served to inhibit consciences, often leading the national counterterrorism authorities to adopt

⁷⁴ The Inter-American Commission on Human Rights promotes implementation of the 1978 American Convention on Human Rights among Organization of American States (OAS) member states.

⁷⁵ OAS General Assembly, *Protecting Human Rights and Fundamental Freedoms While Countering Terrorism*, AG/RES. 2271 (XXXVII-O/07), June 5, 2007, para. 7, <http://www.oas.org/37AG/Docs/eng/2271.doc> (hereinafter OAS General Assembly Resolution 2271).

⁷⁶ Santiago A. Canton, presentation before the International Commission of Jurists Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, Washington, D.C., September 7, 2006, <http://ejp.icj.org/IMG/IACHR.pdf>.

⁷⁷ OAS General Assembly Resolution 2271, para. 6.

⁷⁸ For example, Article 22 of the Organization of African Unity’s (OAU) *Convention on the Prevention and Combating Terrorism* states that “[n]othing in this Convention shall be interpreted as derogating from the general principles of international law, in particular the principles in international humanitarian law, as well as the African Charter on Human and Peoples Rights.” *OAU Convention on the Prevention and Combating of Terrorism*, 1999, art. 22, http://untreaty.un.org/English/Terrorism/oauc_e.pdf.

In addition, all of the African Union’s (AU) terrorism-related instruments reflect the commitment in the AU’s Constitutive Act (articles 3(h) and 4(o)) to “promote and protect human and peoples’ rights, respect the sanctity of human life, and condemn and reject impunity and political assassination, acts of terrorism and subversive activities.” Boubacar Gaoussou Diarra, statement at the Vienna Symposium, May 2007, p. 165.

⁷⁹ Diarra, statement at the Vienna Symposium, p. 164.



emergency laws and shun better methods in order to be more effective in combating terrorism.”⁸⁰

Like countries in Europe and the Western Hemisphere, African states have created both a counterterrorism mechanism—the ACSRT—and human rights mechanisms—the African Commission on Human and Peoples’ Rights and the African Court on Human and Peoples’ Rights—but each lacks the necessary mandate, resources, and political support from a wide range of AU members to assess and monitor compliance with human rights norms in implementing the continental counterterrorism framework.⁸¹

The African Commission on Human and Peoples’ Rights, a quasi-judicial body that reports to the AU Assembly, is in charge of human rights promotion/protection and interprets the African Charter and investigates individual complaints, primarily filed by NGOs, including those involving the compatibility between national counterterrorism measures and the African Charter.⁸² To date, most states have ignored the rulings of the commission, and the AU Assembly has yet to hold these states accountable. With its authority to issue binding rulings and hear cases brought by the AU Peace and Security Commission, African intergovernmental bodies, and an African state whose citizen is a victim of a human rights violation, the establishment of the court in January 2007 is a step in the right direction.

This may be a sign that, although the traditional principles of state sovereignty and noninterference in domestic affairs have limited the ability of the AU and its subsidiary bodies to prevent or respond to human rights abuses by its member states, things are starting to change. The AU chairperson and president

of Ghana, John Agyekum Kufuor, has recently maintained that “[a]s much as we all value the principle of sovereignty and integrity, Africa of today should play the vanguard role in respecting and upholding human rights within the continent generally, and much more so within the component states.”⁸³

Southeast Asia

In Southeast Asia, no regional human rights framework or body exists, owing in part to the region’s traditions of noninterference in domestic affairs and the generally lower level of regional integration. Despite the absence of any existing human rights mechanisms and the fact that only four of the 10 countries of the Association of Southeast Asian Nations (ASEAN) have established national human rights commissions, signs from the region are hopeful.⁸⁴ This includes the adoption of the ASEAN Convention on Counter-Terrorism in January 2007, which includes a commitment to protect human rights in its first article.⁸⁵ The language may only be symbolic, but it was noticeably absent from bilateral counterterrorism treaties ASEAN members had previously signed. According to Professor Rosemary Foot, the inclusion of this language provides opportunities for bodies such as the ASEAN People’s Assembly, the United Nations, the EU, and civil society organizations to highlight the importance of these issues. More significantly, ASEAN, with support from the OHCHR, is in the process of discussing the creation of a regional human rights framework. Finally, ASEAN members have signed the ASEAN Charter, which establishes ASEAN as a legal entity

⁸⁰ Ibid.

⁸¹ For a discussion of the limitations of the AU’s counterterrorism mechanisms, see, e.g., Martin Ewi and Kwesi Aning, “Assessing the Role of the African Union in Preventing and Combating Terrorism in Africa,” *African Security Review* 15, no. 3 (October 1, 2006). For a comprehensive examination of the AU’s work with special emphasis on its capacity to meet the challenges of building and sustaining governance institutions and security mechanisms, see Samuel Makinda and Wafula Okumu, *The African Union: Challenges of Globalization, Security, and Governance* (New York: Routledge, 2007).

⁸² For information on the African Commission, see <http://www.achpr.org>. The commission has rendered numerous decisions against a range of countries, including Algeria, Botswana, Cameroon, Egypt, Malawi, Nigeria, and Sudan. According to one commentator, however, although its jurisprudence has improved considerably over the years, the commission “would have to improve its decisions considerably if it expects the newly established African Court on Human and Peoples’ Rights to uphold its decisions.” Ahmed C. Motala, “Celebrating Two Decades of the African Charter on Human Rights,” Centre for the Study of Violence and Reconciliation, June 22, 2006.

⁸³ “AU Calls for Upholding of Human Rights,” *Mail & Guardian*, May 7, 2007, http://www.mg.co.za/articlePage.aspx?articleid=306912&area=/breaking_news/breaking_news__africa/.

⁸⁴ According to the Working Group for an Association of Southeast Asian Nations (ASEAN) human rights mechanism, Indonesia, Malaysia, the Philippines, and Thailand have established such commissions, with Cambodia having committed to do so. See <http://www.aseanhrmech.org/aboutus.html>.

⁸⁵ *ASEAN Convention on Counter-Terrorism*, January 13, 2007, <http://www.aseansec.org/19250.htm>.

for the first time and lists values such as promoting human rights, good governance, and the rule of law and strengthening the judiciary.⁸⁶

In general, the organizational changes brewing within ASEAN may make the conclusion of a regional human rights framework and the creation of a mechanism to monitor state compliance with the framework, including in the context of countering terrorism, more likely. Yet, there are significant hurdles still to overcome. Sharp differences among its members remain concerning how to respond to the human rights violations being committed by one of its members, Myanmar, with the president of the Philippines threatening not to ratify the instrument “if Myanmar does not institute democratic changes and release the long-detained opposition leader Aung San Suu Kyi.” Further, the charter reaffirms ASEAN’s long-standing policy of noninterference in members’ internal affairs and declares that decision-making in ASEAN “shall be based on consultation and consensus.”⁸⁷ Finally, although the document contains language resolving to establish an ASEAN human rights body, it lacks any reference to the relevant human rights standards and to enforcing compliance with any such standards.⁸⁸

In the end, apart from Europe and the Western Hemisphere, most regions lack the institutional capacity and often the political will to engage with their members on human rights issues, let alone as they relate to the fight against terrorism. As a result, in addition to having no intergovernmental mechanism to provide political and technical support to their members to help promote respect for human rights in the fight against terrorism, these regions are unable to offer the OHCHR and the other parts of the United Nations an effective human rights body with which to partner. It is therefore more difficult for the underresourced OHCHR, for example, to engage meaningfully in those regions.

In addition, some regional bodies that have a meaningful human rights program sometimes suffer from the same affliction as the United Nations, namely, the program is not well integrated with

the organization’s counterterrorism activities and the coordination and cooperation between the two pillars of the regional institutional framework is often inadequate. The Strategy therefore not only offers an opportunity to deepen the interaction between the human rights and counterterrorism activities within the United Nations, but within regional bodies as well.

III. The Role of Nongovernmental Organizations and Civil Society in Promoting the Human Rights Framework in the Strategy

The Strategy specifically encourages NGOs and civil society “to engage, as appropriate, on how to enhance efforts to implement the Strategy.”⁸⁹ They have particularly important roles to play with regard to promoting the human rights framework that underlies the entire document.

NGOs and other civil society groups can contribute in a range of ways. They can act as advisers, providing knowledge and experience, including at local levels, perhaps otherwise unavailable to states and international organizations. They are critical not only to the work of relevant UN special procedures in supplementing their limited resources but also in informing their findings. They can be instrumental in strengthening respect for human rights in international and national counterterrorism frameworks and to the establishment and effective functioning of national human rights mechanisms and institutions. As advocates, civil society groups have an important role to play in condemning attacks against civilians, disappearances, unlawful detentions and other human rights abuses that may occur under the guise of combating terrorism.

In addition to “assess[ing] the implications of national and international definitions of terrorism and build[ing] cross-sectoral coalitions,”⁹⁰ NGOs

⁸⁶ “Kuala Lumpur Declaration on the Establishment of the ASEAN Charter,” December 12, 2005, <http://www.aseansec.org/18030.htm>.

⁸⁷ Wayne Arnold, “Southeast Asian Pact Exposes Rifts,” *New York Times*, November 21, 2007, <http://www.nytimes.com/2007/11/21/world/asia/21asean.html?ex=1196226000&en=24747bafc301551c&ei=5070&emc=etal>.

⁸⁸ *Ibid.*

⁸⁹ UN Strategy, para. 3(c).

⁹⁰ OSCE ODIHR, “The Role of Civil Society in Preventing Terrorism,” ODIHR.GAL/34/07, May 16, 2007, p. 14, http://www.osce.org/documents/odihhr/2007/05/24495_en.pdf.

and other civil society groups need to become more involved in the work of the CTC/CTED and the UNODC TPB, including in the field. The UN counterterrorism actors need to include consultations with local civil society groups as an integral part of their efforts to understand the environment in which they are assessing compliance with UN norms or providing assistance to implement them. For example, these groups can often provide useful information on why national counterterrorism legislation might be stalled in parliament or on abuses being committed by the police and other government officials while implementing counterterrorism measures.

NGOs and other civil society groups can also help increase public awareness and understanding of human rights issues in the context of waging an effective campaign against terrorism, including by undertaking research and action at the local and international levels. By promoting the rule of law, engaging the media, sharing best practices, and disseminating other information, they can help to bring attention to human rights abuses, provide a voice for victims, and encourage governments to improve their own adherence to human rights norms. As acknowledged in the *Club de Madrid Series on Democracy and Terrorism*, “Human rights organizations continue to monitor the situation on the ground in most countries, and the information at their disposal can form a valuable database for analyzing the long-term repercussions of momentarily devaluing respect for human rights in favour of short-term security.”⁹¹

Nongovernmental human rights monitors who are independent and impartial can play a critical role in ensuring that counterterrorism measures respect human rights and the rule of law by monitoring the actions of military, law enforcement, and other security services, laying down guidelines, conducting investigations into alleged abuses, scrutinizing counterterrorism legislation, and generating awareness of unlawful practices and other human rights and Strategy-related issues. Their role is even more important in weak states and areas where the credibility and impartiality of formal monitoring mechanisms may be in doubt.

Human rights NGOs and civil society can also make a valuable contribution by engaging in dialogue with states and the United Nations and other intergovernmental bodies. Active engagement by the academic and research communities that possess expertise in human rights can help infuse fresh ideas into formal governmental or intergovernmental settings. At the UN level, for example, “Track II” processes could help to provide the Task Force with outside, expert perspectives on a variety of human rights issues that cut across the Strategy and help foster interaction among academic and research institutions and other human rights NGOs from different regions, as well as key UN and UN member-state officials. In addition to engaging a broad range of civil society actors in promoting the Strategy, such processes could help foster the development of partnerships and coalitions of governments, multilateral institutions, NGOs, and other parts of civil society to enable them to work together better on human rights-related issues that can otherwise remain unnecessarily divided or compartmentalized.

Challenges to the work of civil society and NGOs at the national level, however, are serious. As the *Club de Madrid Series on Democracy and Terrorism* notes, for example, “[H]uman rights groups and their allies have not been able to disseminate their point of view effectively and, in some countries, they have come under sharp attack. Yet at no other time has the monitoring function of human rights groups been so indispensable to the democratic process, as well as in ensuring accountable and transparent governance.”⁹² In some cases, human rights activists have been depicted by state authorities as enablers and defenders of terrorists. Consequently, harassment and the disruption of fundraising, particularly at the local level, has ironically placed human rights defenders in physical danger and repressed their rights to affect policies through nonviolent and democratic means. This point was reinforced at a March 2007 OSCE/ODIHR meeting on the role of civil society in countering terrorism involving representatives from some 30 civil society organizations.⁹³ International civil society groups may be less vulnerable to intimidation by governments, and participation with

⁹¹ Asma Jahangir and Fateh Azzam, “Human Rights,” in *Towards a Democratic Response: The Club de Madrid Series on Democracy and Terrorism*, vol. III (2005), p. 29, <http://www.safe-democracy.org/docs/CdM-Series-on-Terrorism-Vol-3.pdf>.

⁹² Mary Kaldor and Miguel Darcy, “Civil Society,” in *Towards a Democratic Response: The Club de Madrid Series on Democracy and Terrorism*, vol. III (2005), p. 33, <http://www.safe-democracy.org/docs/CdM-Series-on-Terrorism-Vol-3.pdf>.

⁹³ OSCE ODIHR, “Role of Civil Society in Preventing Terrorism,” p. 8. This meeting also produced a set of recommendations aimed at states, the OSCE, and civil society on how to strengthen the role of civil society and NGOs in preventing terrorism. The recommendations are annexed to the official report.

these groups may afford domestic organizations some degree of protection. All civil society actors, however, face challenges in getting access to information in matters that even in the most democratic of countries are often viewed as highly sensitive issues of national security. These challenges are exacerbated in countries where there is little political pluralism and where civil society structures are weak.⁹⁴

In many cases, given the political sensitivities surrounding many Strategy-related issues, international NGOs will be in a better and safer position to contribute to Strategy-related implementation at the national level. NGOs in many countries are under heavy scrutiny from the states in which they work, and the national government will try to close them down for administrative and technical issues instead of closing them down directly for what they are saying.⁹⁵ Unlike their national or local counterparts, however, international NGOs can continue to work on an issue even if they are shuttered in a country because they have the ability to operate outside of the country in question.

The challenges NGOs and other civil society groups face in their day-to-day work as they seek to promote a human rights–based approach to countering terrorism are significant, but perhaps the greatest challenge to deepening the involvement of NGOs and other civil society groups in promoting implementation of the human rights–based Strategy is their lack of awareness of the document itself (and the United Nations’ lack of visibility on counterterrorism-related issues outside of New York and Vienna). The development of genuine partnerships between states and civil society and the Task Force and civil society will be essential to raising the necessary awareness. As a first step, civil society groups in different regions need to learn about the Strategy and understand why it is significant and what roles they can play in promoting its implementation on the ground. To this end, the Task Force should encourage the development of a global network of civil society representatives from around the world to promote Strategy implementation. Key NGOs and civil society organizations could be identified in each region and brought together for a discussion on how the Strategy can help them further their different objectives and why they should and how they can contribute to Strategy implementation in their

respective regions. These organizations could then play a leading role at the regional and national levels in reaching out to a broader group of civil society actors.

Conclusion

Persuading all 192 UN member states to sign on to a global counterterrorism strategy based on respect for human rights and the rule of law is a significant accomplishment. Yet, in order to ensure that the political (but not legally binding) document adopted by the General Assembly has a sustained positive impact beyond UN conference rooms in New York, Geneva, and Vienna, a wide range of stakeholders will need to internalize and operationalize the balanced approach articulated in the Strategy. Stronger leadership from both the Secretary-General and the Task Force in this area is needed.

Yet, the responsibility falls first and foremost on member states not only to take the requisite policy action at the national level, but to provide the relevant parts of the United Nations and regional bodies with the necessary resources and mandates to carry forward the human rights–based approach to fighting terrorism that is enshrined in the Strategy. As this report has highlighted, too few resources within the United Nations are currently being devoted to these issues. Efforts to mainstream the human rights–based approach to fighting terrorism throughout the UN system must be met with the sufficient resources so that each relevant entity has the necessary human rights expertise to carry forward the mandate. In addition, cooperation between the UN human rights and UN counterterrorism actors, although improving, has a way to go before it reaches the necessary level. For example, given the Strategy’s call on all states to develop and implement a rule of law–based criminal justice system and the capacity needs facing many states in this area, more attention is needed to find ways to maximize the synergies among UNODC, OHCHR, and UNDP field-based technical assistance programs. Further, too few regions have effective human rights mechanisms that can monitor states’ compliance of human rights norms as they develop and implement their national counterterrorism

⁹⁴ Ibid., para. 21.

⁹⁵ The general closure of NGOs in Uzbekistan after the events in Andijan in 2005 is an example. For a discussion of the treatment of human rights defenders in Uzbekistan, see, e.g., HRW, “Under Siege and Working for Justice: Human Rights Defenders in Uzbekistan,” April 2007, http://hrw.org/campaigns/uzbekistan/portraits_0407.pdf.

policies. More effort is also needed at the regional and subregional levels to develop and implement holistic counterterrorism programs that are grounded in the respect for human rights. Finally, NGOs and other civil society organizations have an essential role to play in promoting the human rights framework that underpins the Strategy. Yet, in addition to helping such actors overcome the physical dangers and suspicion that many such groups face in trying to monitor national counterterrorism efforts and educate the public about the importance of safeguarding against human rights abuses in order to

fight terrorism effectively, the United Nations needs to spearhead an awareness-raising campaign about the Strategy among a wide range of civil society actors.

Despite the challenges that lie ahead, the Strategy offers the opportunity to rebut the notion once and for all that strict adherence to human rights somehow impedes the effectiveness of the counterterrorism effort. Although sometimes portrayed as an obstacle to an effective response to the threat of terrorism, as the Strategy reminds us, human rights are a key component of any successful counterterrorism program.

Recommendations

UN SYSTEM

1. Human rights issues should be mainstreamed throughout the UN Counter-Terrorism Implementation Task Force (Task Force) so that each Task Force working group includes a human rights perspective.
2. The Office of the High Commissioner for Human Rights (OHCHR) should deepen its engagement in the Task Force and ensure that human rights issues are mainstreamed throughout all Task Force working groups.
3. The OHCHR should either reallocate existing resources or seek additional regular budget funding to allow its Task Force representative to devote 100 percent of his or her time to the Task Force.
4. Improved coordination and cooperation, both at UN headquarters and in the field, is needed among UN human rights and counterterrorism actors, including the OHCHR, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Special Rapporteur) and other UN human rights mechanisms, and the Security Council's Counter-Terrorism Committee (CTC) and its Counter-Terrorism Executive Directorate (CTED).
5. Additional resources should be allocated to the key parts of the UN system engaged in ensuring the protection of human rights while countering terrorism.
6. The CTC/CTED should place greater emphasis on human rights in its monitoring of the implementation of Resolutions 1373 and 1624. This could involve
 - a. building on the country- or thematic-specific analysis being carried out by the UN human rights mechanisms, including the Special Rapporteur;
 - b. exchanging relevant information with the UN human rights mechanisms on a regular basis and convening workshops on thematic issues related to Resolutions 1373 and 1624, such as *non-refoulement*, addressing incitement and protecting freedom of expression;
 - c. ensuring that all CTED experts receive training in international human rights law, refugee law, and humanitarian law as part of an effort to mainstream the treatment of these issues throughout the CTED's work;
 - d. including the senior human rights adviser or another CTED expert with the relevant human rights expertise on each CTED country visit;
 - e. engaging with civil society groups during country visits to improve its understanding of the local political, social, and cultural context in which the relevant member state is implementing Resolutions 1373 and 1624;

- f. including human rights in the CTED's technical assistance and best practices directories;
 - g. working with the Special Rapporteur and the OHCHR in developing best practices in the field of national measures to address and prevent incitement, consistent with the freedom of expression.
7. The UN Office of Drugs and Crime's (UNODC) Terrorism Prevention Branch (TPB) should continue to develop and broaden its partnerships not only with regional and subregional bodies, but with local research and other civil society organizations as well.
 8. The UNODC TPB should ensure that each workshop raises awareness of human rights legal issues that may confront practitioners as they seek to implement any domestic legislation, in order to prevent abusive application of legislation needed to implement UN counterterrorism instruments.
 9. The UNODC TPB's legal experts should, where necessary, receive training in human rights law to supplement their expertise in international criminal law issues.
 10. The OHCHR, in addition to identifying additional human and financial resources to support efforts to implement the "United Nations Global Counter-Terrorism Strategy" (Strategy) at its headquarters in Geneva, should integrate Strategy implementation-related activities into the work programs in all regional and country offices.
 11. More coordination and cooperation between the UN Development Programme (UNDP) and the UNODC TPB and the underresourced OHCHR and other UN human rights mechanisms and special procedures is needed to allow the United Nations to engage more effectively and efficiently with states in developing and implementing a rule of law-based criminal justice system.
 12. Members of the UNDP Executive Board should push the agency to deepen its involvement in the Task Force and, more broadly, its involvement in promoting Strategy implementation, without transforming the UNDP into a counterterrorism outfit or steering development aid toward counterterrorism initiatives.
 13. The Secretary-General should convene the leadership from different international, regional, and subregional bodies, with a view to reinforce the human rights-based approach to combating terrorism and to urge them to deepen their engagement on the issue as part of an effort to ensure that each such body adopts this same approach.
 14. The Secretary-General should deliver a major speech on the issue of security and liberty, a field in which he has yet to make his mark.

REGIONAL BODIES

15. Each regional body should have an effective mechanism in place to supervise the compliance of national counterterrorism measures with international human rights obligations, possibly to include the appointment of a human rights and counterterrorism focal point within the relevant regional body secretariat.
16. Regional bodies with separate counterterrorism and human rights units, such as the Organization for Security Co-operation in Europe and the Organization of American States, should ensure that all counterterrorism training programs and other activities fully incorporate the human rights perspective, including by involving an expert from the human rights unit in such activities.
17. Regional bodies should encourage their members to accept the competence of the international and relevant regional human rights monitoring bodies, support and cooperate with the OHCHR, and support and liaise with the Special Rapporteur as well as other relevant UN special procedures mandate holders.
18. Regional bodies should consider inviting the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to
 - a. conduct a visit to countries in the region,
 - b. cohost a regional working group focusing on helping place the human rights elements of the Strategy in the appropriate regional context.

19. Regional bodies should work with the relevant UN actors where possible to ensure that the human rights–based approach to combating terrorism that underpins the Strategy is reflected in all counterterrorism-related declarations, statements, or other documents issued at the regional level.
20. The European Union (EU) should do more to promote human rights compliance by its member states in their collective fight against terrorism. This could include
 - a. the appointment of a human rights expert to support the work of the new EU Counter-Terrorism Coordinator,
 - b. the appointment of a human rights and counterterrorism expert in the European Commission and the establishment of a dedicated committee in the EU Council to deal with human rights issues, including as they relate to efforts to combat terrorism, within EU member states.
21. Civil society groups in different regions need to learn about the Strategy and understand why it is significant and what roles they can play in promoting its implementation on the ground.
22. Greater efforts should be made by the United Nations, in particular the Task Force, to raise awareness of the Strategy among nongovernmental organizations (NGOs) and other civil society groups. For example, the Task Force should encourage the development of a global network of civil society representatives from around the world to promote Strategy implementation. Key NGOs and other civil society actors could be identified in each region and brought together for a discussion on how the Strategy can help them further their different objectives and why they should and how they can contribute to Strategy implementation in their respective regions. These organizations could then play a leading role at the regional and national levels in reaching out to a broader group of civil society actors.
23. The Task Force should encourage the launching of a “Track II” process to provide it with outside, expert perspectives on a variety of human rights issues that cut across the Strategy and to help foster interaction among academic and research institutions and other human rights NGOs from different regions, as well as key UN and UN member-state officials. Such processes could help foster the development of partnerships and coalitions of governments, multilateral institutions, NGOs, and other parts of civil society to enable them to work together better on human rights–related issues that can otherwise remain unnecessarily divided or compartmentalized.

NONGOVERNMENTAL AND OTHER CIVIL SOCIETY ORGANIZATIONS

About the Center

THE CENTER ON GLOBAL COUNTERTERRORISM COOPERATION is a nonpartisan research and policy institute that works to improve internationally coordinated nonmilitary responses to the continually evolving threat of terrorism by providing governments and international organizations with timely, policy-relevant research and analysis.

The Center promotes a holistic approach that addresses issues of capacity building, information sharing, and law enforcement cooperation and the underlying conditions that can lead to terrorism, for example, extremism, poor governance, lack of civil rights, human rights abuse, religious and ethnic discrimination, political exclusion, and poverty. The Center aims to identify ways to bring together perspectives of the global North and South to develop a more unified international response to terrorism. It is the only research center in the world focusing on the role of multilateral institutions in the global campaign against terrorism.



**Center on Global
Counterterrorism
Cooperation**

NEW YORK OFFICE
801 Second Avenue
Suite 405
New York, NY 10017
Tel: 212-682-0998
Fax: 212-697-3316
www.globalct.org

WASHINGTON OFFICE
1875 Connecticut Avenue, NW
Suite 1012
Washington, DC 20009
Tel: 202-667-0610
Fax: 202-667-4201
www.globalct.org