5. Responses to Terrorism

A. INTRODUCTION

This chapter deals with terrorism and the laws of war, characteristics and definitions of terrorism, international measures to counter terrorism, victims of terrorism and States’ responses to terrorism. Of the eight cases summarized here, one was considered by the Committee against Torture and the remainder by the Working Group on Arbitrary Detention. They all arose out of States’ responses to terrorism. Some of these responses have been, and remain, unlawful in that they are very serious violations of international human rights law, the laws of war, international criminal law and the domestic laws of States. They have been, and remain, counter-productive in that they undermine the very values that are supposedly being protected, and they alienate and antagonize peoples and individuals to the extent that more are prepared to support or become terrorists.

International tribunals, courts and other bodies responsible for securing compliance with international human rights law and the laws of war have continued to insist that States respect the rule of law in all circumstances. Cases reflecting this insistence are summarized in an earlier book by the authors,¹ and yet more are summarized under this heading.

The larger number of cases summarized here, in comparison with the other chapters in this part of the book, reflects the authors’ wish to give prominence to and disseminate jurisprudence that supports the rule of law in the face of terrorism.

In the first case, *Ahmed Hussein Mustafa Kamil Agiza v. Sweden*,² the Committee against Torture recalled that the protections under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are absolute, even in the context of national security concerns. The Committee found that Sweden’s expulsion of the complainant to Egypt, having obtained diplomatic assurances from that State that he would be treated in accordance with international law, was in breach of article 3 of the Convention.

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² See part II, chap. 5, sect. B (a).
prohibits expulsion or return of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Furthermore, the Committee found that the complainant was subjected on the State party’s territory to treatment in breach of, at least, article 16 of the Convention, which prohibits cruel, inhuman or degrading treatment or punishment, by foreign agents, those of the United States of America, with the acquiescence of the State party’s police immediately preceding expulsion.

One particularly interesting aspect of this case was the investigation by one of the Swedish Parliamentary Ombudsmen into the circumstances. In the Ombudsman’s view, cited in the Committee’s decision, the investigation disclosed that the Swedish Security Police lost control of the situation at the airport and during the transport to Egypt. American security personnel took charge and were allowed to perform a security check on their own. The Ombudsman observed that such total surrender of power to exercise public authority on Swedish territory was clearly contrary to Swedish law. In addition, at least some of the coercive measures taken during the security check were not in conformity with Swedish law.

The first case summarized here from the Working Group on Arbitrary Detention, opinion No. 3/2004 (Israel),\(^3\) concerned four women subjected to administrative detention orders and the jurisdiction of military courts. The Working Group observed that if a terrorist situation within a State’s jurisdiction should be of such nature or degree as to give rise to an emergency that threatens the State’s independence or security, that State is nevertheless precluded from suspending certain fundamental aspects of the right to liberty which are considered necessary for the protection of non-derogable rights or which are non-derogable under its other international obligations. As two of the women had been released from detention, the Working Group decided to file their cases. With regard to the two women who remained in detention, the Working Group considered that their deprivation of liberty was arbitrary, being in contravention with article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights to which the State was a party. In the same case, the Working Group referred to the strong reservations it has about military jurisdiction and recalled its earlier statement that if some form of military justice is to continue to exist, it should observe four rules which it reiterated in its opinion.

The second case, opinion No. 47/2005 (Yemen),\(^4\) concerned three men detained in Yemen having previously been arrested, respectively, in Iran, Indonesia and Jordan because of alleged involvement in terrorist activities. They had all, at some stage, been held in United States custody and then transferred to Yemen. The Working Group noted with concern that the transfers the three people experienced before being detained in Yemen occurred outside the confines of any

\(^3\) See part II, chap. 5, sect. B (b).

\(^4\) See part II, chap. 5, sect. B (c).