6. Terrorism and Human Rights

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1 Introduction

In recent years much has been said and written on the problematic relationship between terrorism and human rights. Several commentators have maintained that human rights are being trampled under foot in the fight against terrorism.¹ In a similar vein, a considerable number of international NGOs like Amnesty International and Human Rights Watch report that the fight against terrorism is being used to legitimise extra-judicial killings, encroachments on opponents of torture, and other kinds of state terrorism.²

Likewise, several human rights monitoring bodies have expressed their profound concern at the situation. In a joint statement of June 2003, a number of UN special rapporteurs and experts expressed “alarm at the growing threats against human rights, threats that necessitate a renewed resolve to defend and promote these rights … and … profound concern at the multiplication of policies, legislation and practices increasingly being adopted by many countries in the name of the

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fight against terrorism, which affect negatively the enjoyment of virtually all human rights – civil, cultural, economic, political and social.”

During the annual session of the UN Human Rights Commission in 2004, the Commission decided to appoint a special independent rapporteur on the protection of human rights and fundamental freedoms in the fight against terrorism. The rapporteur was appointed for a one-year period, during which he identified “a broad range of human rights that have either come under increasing pressure or are being violated by states in the context of national and international counter-terrorism initiatives”, including inter alia:

– the principle of nullum crimen sine lege (broad and imprecise definitions of terrorism and terrorist-related offences);
– the right to liberty and security of persons, including the right to humane treatment (the definition of torture, possible excuses for torture, non-refoulement where there is a risk of torture, etc.);
– the rights to due process and to a fair trial (military commissions and the like);
– the right to property (compilation of lists and freezing the assets of terrorists);
– the right to privacy (information collection and sharing);
– the principle of non-discrimination (techniques to screen terrorist suspects).

The special rapporteur further recommended that “the Commission of Human Rights should consider the creation of a special procedure with a multidimensional mandate to monitor states’ counter-terrorism measures and their compatibility with international human rights.”

Upon this basis, at its sixty-first session in April 2005, the UN Human Rights Commission decided to appoint a “rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism” for a period of three years. The new special rapporteur has been given a very comprehensive and broad mandate, including among others the following duties:

– gathering information from governments, victims, organisations and others, including through country visits, on alleged violations of human rights while countering terrorism;
– identifying and promoting best practices on measures to counter terrorism that respect human rights; and

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5 Ibid.