



Addressing Security Concerns without Undermining Refugee Protection

- UNHCR's perspective -

A. Introduction

1. In the aftermath of the attacks of 11 September 2001, security considerations are permeating policy responses on a wide range of issues. UNHCR endorses all efforts, multilateral or national, directed at eliminating and effectively combating international terrorism. UNHCR shares the legitimate concern of States to ensure that there should be no avenue for those supporting or committing terrorists acts to secure access to territory, whether to find a safe haven, avoid prosecution, or to carry out further attacks. The Office recognizes that appropriate mechanisms need to be put in place in the field of asylum as in other areas. At the same time care should be taken to ensure a proper balance with the refugee protection principles at stake. The observations and suggestions that follow are offered against this background and in response to the request, contained in SCR 1377 of 12 November 2001, for the newly established Counter-Terrorism Committee to explore with international organizations the promotion of best practice in the areas covered by this resolution.

B. General

2. UNHCR's main concern is twofold: that bona fide asylum-seekers may be victimized as a result of public prejudice and unduly restrictive legislative or administrative measures, and that carefully built refugee protection standards may be eroded. Current anxieties about international terrorism risk fueling a growing trend towards the criminalisation of asylum-seekers and refugees. Asylum-seekers increasingly have a difficult time in a number of States, either accessing procedures or overcoming presumptions about the validity of their claims, which stem from their ethnicity, or their mode of arrival. The fact that asylum-seekers have arrived illegally does not vitiate the basis of their claim. Because they have a certain ethnic or religious background, which may be shared by those who have committed grave crimes, does not mean they, themselves, are also to be excluded.

3. Any discussion on security safeguards should start from the assumption that refugees are themselves escaping persecution and violence, including terrorist acts, and are not the perpetrators of such acts. Another starting point is that the international refugee instruments do not provide a safe haven to terrorists and do not protect them from criminal prosecution. On the contrary, they render the identification of persons engaged in terrorist activities possible and necessary, foresee their exclusion from refugee status and do not shield them against either criminal prosecution or expulsion.

4. UNHCR's overall conclusion is that dealing with the terrorist threat in the context of asylum does not require amendment of the principles on which refugee protection is based, but should benefit from a review and tightening of procedural security measures where necessary.

C. Admission/Access to refugee status determination

5. UNHCR appreciates that States may wish to strengthen border controls as one way of identifying security threats at the point of entry. Enhanced cooperation between border guards, intelligence services and immigration and asylum authorities of the State concerned, as well as with such organizations as Interpol, Europol and Eurodac could assist in the early identification of terrorist suspects. Increased security checks, including through the use of fingerprints, are understandable measures but there may be a risk of over-burdening procedures. Profiling and screening solely on the basis of religious or racial characteristics would, in UNHCR's view, be discriminatory and inappropriate.

6. The summary rejection of asylum-seekers at borders or points of entry may amount to *refoulement*. All persons have the right to seek asylum and to undergo individual refugee status determination. Each claim, even where there is a suspicion of involvement in grave criminal acts, must be determined on its own merits, and not against negative and discriminatory presumptions deriving from the nationality, ethnic origin or religious faith of the claimant. The refugee definition, properly applied, should lead to the exclusion of those responsible for serious criminal, including terrorist, acts. Since issues of exclusion can be complicated, UNHCR continues to advocate that they should continue to be dealt with in the regular asylum procedure, which allows for a full factual and legal assessment in the individual case by qualified personnel. Non-admission at borders and barring access to the asylum procedure not only endangers bona fide asylum-seekers but could serve, ironically, as an incentive to terrorism by encouraging those involved to seek entry through illegal means, thereby removing the possibility of identification through the interview process accompanying asylum adjudications.

7. Where there is a reasonable possibility that exclusion issues may arise in the case of an individual pursuing an asylum claim, States have an evident interest in expedient decision making processes. In such cases UNHCR continues to support a proper factual and legal assessment, but believes this could be accomplished through prioritized and expedited consideration of the claim by a specialized "exclusion unit" within the refugee status determination process. Such unit would have expertise in relevant areas of refugee law and criminal law, specialist knowledge of terrorist organizations, and clear communication links with intelligence services and criminal enforcement agencies. Specialist expertise and clearly focused resources would enable prompt and quality decision making. UNHCR promotes the redesign of the regular asylum procedure in States to accommodate the setting up and operating of such a unit.

8. If the asylum-seeker is wanted by national courts or for extradition purposes, the examination of the claim could be deferred pending the completion of criminal law enforcement procedures.

9. In the case of individuals with regard to whom there are serious reasons to believe that they are seeking entry to prepare or commit terrorist offences, evidently there would be no obligation on the State in question to admit the person. This being said, there is an obligation of States to bring terrorists to justice as asserted most recently in SCR 1373 of 28 September 2001, which should presumably also be a factor in deciding whether to admit the person and how to respond to an asylum claim. As regards any asylum request lodged, its expedited examination would still be warranted.

D. Restrictions on the movement of asylum-seekers

10. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as human rights law do not preclude restrictions on the movement of asylum-seekers, including detention as the exception, not the rule, if necessary in circumstances prescribed by law and subject to due process safeguards. Detention would justifiably be deemed necessary, where there are solid reasons for suspecting links with terrorism in the individual case. Proposals to introduce automatic detention of all asylum-seekers entering illegally or coming from particular countries, as are being considered in a number of States in response to the resurgence of fears about terrorism, are not supported by UNHCR. They would, in UNHCR's view, contradict long established guidelines on detention agreed by States, and could be seen as an arbitrary, even discriminatory response which could then come into conflict with international legal norms.

E. Sharing of data on asylum-seekers

11. UNHCR recognizes that the sharing of data between States is crucial to combating terrorism. States should, though, also take into account the well-established principle that information on asylum-seekers should not be shared with the country of origin. This could endanger the safety of the bona fide asylum-seeker and/or family members remaining in the country of origin. Best State practice indeed incorporates a strict confidentiality policy. Should it exceptionally be deemed necessary to contact the authorities in the country of origin, in case there is suspicion of terrorist involvement and the required information may only be obtained from these authorities, there should be no disclosure of the fact that the individual has applied for asylum.

F. Exclusion from refugee status

12. Those responsible for serious crimes are legally excluded from refugee status by virtue of the terms of the international refugee instruments. UNHCR encourages States to use the exclusion clauses rigorously, albeit appropriately. It also encourages States, which have not already done so, to incorporate the exclusion clauses of the 1951 Refugee Convention into national legislation. This is consistent not only with the dictates of refugee law, but also with Security Council resolutions which call on States not to provide refuge to terrorists, in particular SCR 1373 (2001) which calls for appropriate measures with regard to asylum-seekers. This being said, according to the latter resolution, such measures need to conform to international law, including international standards of human rights.

13. The crimes to which article 1F(a) of the 1951 Refugee Convention refer – crimes against peace, war crimes or crimes against humanity – are those so defined in international instruments and are to be interpreted in the light of a number of rapidly evolving sources of international criminal law. UNHCR concurs with the view that the 11 September attacks constituted a crime against humanity.

14. Article 1F(c) concerns acts contrary to the purposes and principles of the United Nations. This provision has always been understood as applying to persons acting on behalf of States or quasi-States because the United Nations' purposes and principles are intended to be a guide for States in their relations with each other. It remains to be seen how the assertion in SCR 1377 (2001) that acts of international terrorism are contrary to the purposes and principles of the Charter of the United Nations, may promote the application of article 1F(c) to a broader circle of persons, in the specific context of acts of international terrorism which may be qualified as serious threats to international peace and security.

15. A central exclusion clause, from the perspective of international terrorism and fugitives from justice, is article 1F(b). It refers to "serious non-political crimes" (committed outside the country of refuge), but this would generally encompass acts of terrorism as defined in relevant international conventions, notwithstanding any political motives behind such acts. This follows logically from the fact that the extradition clauses of these conventions have abolished the political offence exemption. Moreover, especially violent acts of terrorism are likely to fail the predominance and proportionality tests used in many jurisdictions to define political offences.

16. In view of the seriousness of the issues and the consequences of an incorrect decision, the application of any exclusion clause should continue to be individually assessed, based on available evidence, and conform to basic standards of fairness and justice. As mentioned earlier, this assessment should be located within the refugee status determination process, albeit taking place in specially tailored procedures for exclusion.

17. The assessment should also, in UNHCR's view, be sensitive to certain additional considerations. Firstly, crimes may not be of the same level of gravity as terrorist violence sufficient to warrant exclusion, in which case one has to take into account the consequences upon return of the person to his or her country of origin. Secondly, even though exclusion proceedings do not equate with a full criminal trial, the standard of proof ("serious reasons") has to be a higher threshold than a mere "reasonable suspicion". In the case of an indictment by an international criminal tribunal, this standard would automatically be met and moreover no further individual assessment would be necessary. Thirdly, exclusion requires individual liability, that is, the personal and knowing involvement of the individual in acts of terrorism.

18. Where, however, there is sufficient proof that an asylum-seeker belongs to an extremist international terrorist group, such as those involved in the 11 September attacks, voluntary membership could be presumed to amount to personal and knowing participation, or at least acquiescence amounting to complicity in the crimes in question. In asylum procedures, a rebuttable presumption of individual liability could be introduced to handle such cases. Drawing up lists of international terrorist organizations at the international level would facilitate the application of this

procedural device since such certification at the international level would carry considerable weight in contrast to lists established by one country alone. The position of the individual in the organization concerned, including the voluntariness of his or her membership, as well as the fragmentation of certain groups would, however, need to be taken into account.

19. UNHCR fully appreciates the wish of States to tackle the financing and other forms of support of terrorist groups. This would best be done through domestic legislation. As such legislation may influence the interpretation of the exclusion clauses, it would have to be carefully drafted to be explicit as to the ramifications of such activities. In UNHCR's view it would go too far if, for instance, individuals demonstrating or collecting private contributions for groups that are engaged in armed conflicts, as defined in international humanitarian law, were to be automatically excluded from refugee protection, solely for this reason.

G. Cancellation of refugee status

20. Generalized suspicions based solely on religious, ethnic or national origin or political affiliation do not justify a general review process. Cancellation of refugee status normally only follows evidence of fraud or misrepresentation as regarding facts central to the refugee decision. This does mean that refugee status may be cancelled, if it emerges that one of the exclusion clauses would have applied to the individual, had all the relevant facts been known. Terrorist activity after arrival would normally lead to prosecution locally and/or expulsion, rather than cancellation of status.

H. Expulsion, including to the country of origin

21. UNHCR is concerned that States may be inclined to expel groups or individuals based on religious, ethnic or national origin or political affiliation, on the mere assumption that they may be involved in terrorism. International law, in particular article 33(2) of the 1951 Refugee Convention, does not prohibit the expulsion of recognized refugees, provided however that it is established in the individual case that the person constitutes a danger to the security or the community of the country of refuge. As this danger should outweigh the danger of return to persecution, UNHCR wishes to emphasize that such expulsion decisions must be reached in accordance with due process of law which substantiates the security threat and allows the individual to provide any evidence which might counter the allegations.

22. Expulsion and exclusion are two different processes. Exclusion from refugee status is motivated by the severity of crimes committed in the past. It prevents fugitives from escaping justice for such crimes, just as, simultaneously, it protects the institution of asylum from abuse. Persons excluded do not deserve international refugee protection. Expulsion aims to protect the country of refuge and hinges on the appreciation of a present or future threat. The threshold for returning refugees to their country of origin – as an exception to the *non-refoulement* principle – has to be particularly stringent.

I. Extradition

23. International refugee law does not preclude the extradition for prosecution purposes of recognized refugees, much less of asylum-seekers. Extradition should, however, be granted only after the corresponding legal proceedings have been completed, and where it has been shown that the extradition is not being requested solely or principally as a means to return a person to a country for purposes which in fact amount to persecution. Although extradition clauses in recent international conventions no longer contain the political offence exemption for terrorist offences, they retain the non-persecution safeguard. UNHCR would recommend that the retention of this safeguard be mandatory rather than optional.

24. In case of a pending asylum procedure, it is conceivable that further consideration of the asylum claim be deferred until the proceedings in the extradition process enable informed decision making on whether or not exclusion from refugee status is justified. If the asylum-seeker is found excludable following consideration of his or her fear of persecution, the extradition could be decided upon without re-assessing the persecution element. If the asylum-seeker is not excluded and it is assessed that extradition would indeed amount to return to persecution, prosecution in the country of asylum is, in UNHCR's view, the appropriate response, based on the principle *aut dedere aut iudicare*.

J. Increasing criminal law enforcement

25. UNHCR would welcome the development and the swift adoption of a comprehensive Convention on International Terrorism and of other international or regional instruments, to serve also as an agreed framework for national legislation. UNHCR has already provided comments on the draft Convention and several pieces of national legislation. The closure of jurisdictional loopholes and clarity about the definition of terrorist offences would seem to be essential for combating terrorism effectively.

26. UNHCR appeals to governments, however, to ensure that the terms of international instruments and of domestic legislation do not imply any unwarranted linkages between asylum-seekers/refugees and terrorists. In addition, definitions need to be quite precise. If definitions are too broad and vague, there is a risk that the "terrorist" label could be abused by some for political ends, for example to criminalize activities of political opponents. This is a matter of concern to UNHCR. It could well lead to recriminations amounting to persecution. The definition of terrorist offences is moreover likely to influence the interpretation and application of the exclusion clauses of the 1951 Refugee Convention in the future.

K. The continuing importance of refugee resettlement

27. There are signs that several refugee resettlement countries are disinclined to maintain their programmes at the promised levels, particularly for certain ethnic groups. Resettlement remains imperative, and continued support for resettlement is of vital importance. UNHCR is maintaining its efforts to diversify the number of resettlement countries and to strengthen its programmes, from emergency processing through to more systematic and elaborate use of resettlement to address durable

solutions needs of refugees. UNHCR has no difficulty with an intensification of security screening, including finger-printing, of candidates for resettlement.

L. Combating racism and xenophobia

28. Equating asylum with a safe haven for terrorists is not only legally wrong and thus far unsupported by facts, but it serves to vilify refugees in the public mind and promotes the singling out of persons of particular races or religions for discrimination and hate-based harassment.

29. Since 11 September, a number of immigrant and refugee communities have suffered attacks and harassment based on perceived ethnicity or religion, heightening social tensions. While there are some asylum-seekers and refugees who have been, or will be, associated with serious crime, this does not mean that the majority should be damned by association with the few. Rather, the full application of the 1951 Refugee Convention and indeed of immigration policies generally is a key aspect of measures to combat xenophobia and reduce prejudice, which could otherwise provide the very conditions in which anger and extremism can flourish. As the UN Secretary-General stated on 24 September 2001: “no people, no region and no religion should be condemned because of the unspeakable acts of a few individuals.”

30. Resolute leadership is called for at this particularly difficult time to de-dramatise and de-politicise the essentially humanitarian challenge of protecting refugees and to provide better understanding of refugees and of their right to seek asylum.

UNHCR
Geneva, November 2001

Annex I
INTERNATIONAL LAW STANDARDS ON INTERNATIONAL TERRORISM

A. The lack of an accepted definition of international terrorism

States have for years sought to agree upon a definition of what constitutes terrorism, but it has proved very difficult until now to find a definition which is objective, clear and universally acceptable.

The 1996 Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism provides no definition of terrorism, but holds that the methods and practices of terrorism are contrary to the purposes and principles of the United Nations.¹ Two more recent UN documents have attempted to define terrorism. The General Assembly's 1999 Resolution on Measures to Eliminate International Terrorism declares that

criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstances unjustifiable, whatever the considerations of political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.²

Thus, terrorism can be seen as crimes intended to inculcate terror in the population for political purposes.

The International Convention for the Suppression of the Financing of Terrorism defines terrorism in part by reference to other UN anti-terrorist conventions and additionally as:

Article 2(1)(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or international organization to do or abstain from doing any act.

This is a more specific definition than that of the 1999 resolution, but in practice both will cover the same sort of crimes. Thus, although there has been some movement towards defining terrorism more specifically, there is as yet no internationally agreed definition.

The August 2000 Draft Comprehensive Convention on International Terrorism defines those covered by the Convention in Article 2 as:

1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, does an act intended to cause:

- (a) Death or serious bodily injury to any person; or
- (b) Serious damage to a State or government facility, a public transportation system, communication system or infrastructure facility with the intent to cause extensive destruction of such a place, facility or system, or where such destruction results or is likely to result in major economic loss;

¹ General Assembly, Declaration on Measures to Eliminate International Terrorism 49/60 of 9 December 1994, para. 2.

² UN General Assembly, Res. 53/108, 26 January 1999, para. 2.

when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.

2. Any person also commits an offence if that person attempts to commit an offence or participates as an accomplice in an offence as set forth in paragraph 1.

3. Any person also commits an offence if that person:

(a) Organizes, directs or instigates others to commit an offence as set forth in paragraph 1 or 2; or

(b) Aids, abets, facilitates or counsels the commission of such an offence; or

(c) In any other way contributes to the commission of one or more offences referred to in paragraphs 1, 2 or 3 (a) by a group of persons acting with a common purpose; such contribution shall be intentional and either be made with the aim of furthering the general criminal activity or purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

In the European context, the Council of Europe Parliamentary Assembly has defined an act of terrorism as:

any offence committed by individuals or groups resorting to violence or threatening to use violence against a country, its institutions, its population in general or specific individuals which, being motivated by separatist aspirations, extremist ideological conceptions, fanaticism or irrational and subjective factors, is intended to create a climate of terror among official authorities, certain individuals or groups in society, or the general public.³

The Proposal for a Council Framework Decision on combating terrorism published on 19 September 2001 defines terrorist offences in Article 3 as follows:

1. Each Member State shall take the necessary measures to ensure that the following offences, defined according to its national law, which are intentionally committed by an individual or a group against one or more countries, their institutions or people with the aim of intimidating them and seriously altering or destroying the political, economic, or social structures of a country, will be punishable as terrorist offences:

(a) Murder;

(b) Bodily injuries;

(c) Kidnapping or hostage taking;

(d) Extortion;

(e) Theft or robbery;

(f) Unlawful seizure of or damage to State or government facilities, means of public transport, infrastructure facilities, places of public use, and property;

(g) Fabrication, possession, acquisition, transport or supply of weapons or explosives;

(h) Releasing contaminating substances, or causing fires, explosions or floods, endangering people, property, animals or the environment;

³ Council of Europe Parliamentary Assembly, Recommendation No. 1426 (1999).

- (i) Interfering with or disrupting the supply of water, power, or other fundamental resource;
- (j) Attacks through interference with an information system;
- (k) Threatening to commit any of the offences listed above;
- (l) Directing a terrorist group;
- (m) Promoting of, supporting of or participating in a terrorist group.

2. For the purpose of this Framework Decision, terrorist group shall mean a structured organization established over a period of time, of more than two persons, acting in concert to commit terrorist offences referred to in paragraph (1)(a) to (1)(k).

B. Security Council resolution 1373 and asylum

In the aftermath of the events of 11 September, the UN Security Council adopted resolution 1373 (28 September 2001). This foresees a wide range of measures to combat terrorism. It should be noted as well that this resolution established a “Counter-Terrorism Committee” to monitor the implementation of the resolution.

A couple of paragraphs refer to asylum-seekers and refugees specifically or could have an impact otherwise on international refugee protection. Of direct relevance to UNHCR’s work are paragraphs 2(c), 3(f) and 3(g) of the resolution. These are analysed in more detail below:

- Paragraph 2 (c) stipulates that States shall “deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens”. It is unclear whether the use of the term “safe haven” would also include the granting of asylum. It seems to be directed more against States harbouring terrorists intentionally and in response to the 11 September events. If “safe haven” also includes the granting of asylum, it would mean that those engaging in terrorist activities are excluded from refugee status in accordance with Article 1F of the 1951 Convention. However, the reference in this paragraph to “financing” or “supporting” of terrorist acts could potentially broaden the scope of applicability of Article 1F. If not properly applied, and given the vagueness of the text, this could lead to possible misuse by some States in that they may exclude from refugee status individuals who contribute financially to, or advocate for, groups pursuing “legitimate” political goals (such as in the past the ANC). This risk of misuse, for political reasons, is aggravated by the fact that there is (still) no agreed international definition of terrorism.
- Paragraph 3 (f) of the resolution is of particular relevance. It “calls upon States to ... take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts”. This paragraph in essence repeats wording that has already been adopted in previous General Assembly resolutions and follows “compromise” formulations proposed by UNHCR, for instance, in relation to the UK initiative on terrorism in 1996. It is welcome that this paragraph refers to the need to respect international law and in particular international human rights standards. Implicit in this wording is that asylum procedures need to include an evaluation of whether the exclusion

clauses are applicable or not. This paragraph is therefore not inconsistent with international refugee law. The only concern stems from the vagueness of the text and the possibility that it could create an unwarranted linkage between asylum-seekers and terrorists.

- Paragraph 3(g) “calls upon States to ... ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists”. The international refugee instruments do not provide protection to terrorists. They extend no immunity from prosecution to those engaged in terrorist activities. Refugees are bound to conform to the laws and regulations of the host country as any other person under the jurisdiction of a State, and may be prosecuted to the full extent of the law. Nothing in the 1951 Convention and/or 1967 Protocol prevents bringing refugees to justice. In this sense, this provision seems to reinforce that those committing terrorist acts should be prosecuted in their respective host countries.

The second clause of this paragraph refers to extradition law, confirming what has already been the trend in recently codified international instruments relating to terrorist acts, namely that political motivations would not as such prevent the extradition of suspected terrorists. These international instruments, however, also contain safeguards according to which extradition may be refused if the requested State believes that extradition could lead to return to persecution. In summary, the paragraph appears to be consistent with international refugee law, provided it is interpreted and applied in conjunction with the non-persecution safeguards in anti-terrorism conventions.

In conclusion, the Security Council resolution is, if properly interpreted and applied, in line with principles of international refugee law. This being said, UNHCR is concerned that an unwarranted linkage between asylum-seekers and refugees is being made despite the fact there are no indications whatsoever that the perpetrators of the terrorist attacks in New York and Washington had stayed in the USA on the basis of asylum claims. UNHCR is also concerned that the vagueness of the text may serve as a pretext for some States to misuse the resolution and deprive certain individuals of their basic rights under cover of a claimed necessity to take anti-terrorist measures.

C. Security Council resolution 1377 and asylum

On 12 November 2001 the Security Council adopted resolution 1377 at the Ministerial level. In this resolution the Security Council, *inter alia*, endorsed its earlier resolution and called upon all States to intensify their efforts to eliminate international terrorism. The resolution also stresses that acts of international terrorism are contrary to the purposes and principles of the Charter of the United Nations, and that the financing, planning and preparation of as well as any other form of support for acts of international terrorism are similarly contrary to the purposes and principles of the Charter of the United Nations. It remains to be seen how this paragraph may influence the interpretation of the exclusion clause, contained in Article 1F(c) of the 1951 Convention.

Annex II

LEGAL DOCUMENTATION ON THE FIGHT AGAINST INTERNATIONAL TERRORISM

A. International instruments

Key international instruments (with ratifications as of 17 September 2001) concerning terrorism are:

1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft; 171 States parties; authorizes the airplane commander to impose reasonable measures on any person who has committed or is about to commit such acts, and requires States parties to take custody of offenders.

1970 Convention for the Suppression of Unlawful Seizure of Aircraft; 174 States parties; requires parties to punish hijackings by “severe penalties”, and either extradite or prosecute the offenders.

1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; 175 States parties; requires parties to punish offences by “severe penalties”, and either extradite or prosecute the offenders; supplemented by the

1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Montreal; 107 States parties; extends the provisions of the Convention to encompass terrorist acts at airports.

1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; 107 States parties; requires parties to criminalize and punish attacks against State officials and representatives.

1979 Convention against the Taking of Hostages; 96 States parties; parties agree to make the taking of hostages punishable by appropriate penalties; to prohibit certain activities within their territories; to exchange information; and to carry out criminal or extradition proceedings.

1980 Convention on the Physical Protection of Nuclear Material; 68 States parties; obliges parties to ensure the protection of nuclear material during transportation within their territory or on board their ships or aircraft.

1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; 52 States parties; obliges parties to either extradite or prosecute alleged offenders who have committed unlawful acts against ships, such as seizing ships by force and placing bombs on board ships; developed by IMO; supplemented by the

1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; 48 States parties; extends the requirements of the Convention to fixed platforms such as those engaged in the exploitation of offshore oil and gas.

1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection; 67 States parties; seeks to curb the use of unmarked and undetectable plastic explosives.

1997 International Convention for the Suppression of Terrorist Bombings; 26 States parties; seeks to deny “safe havens” to persons wanted for terrorist bombings by obligating each State party to prosecute such persons if it does not extradite them to another State that has issued an extradition request.

1999 International Convention for the Suppression of the Financing of Terrorism; four States parties; obligates States parties either to prosecute or to extradite persons accused of funding terrorist activities, and requires banks to enact measures to identify suspicious transactions; will enter into force when ratified by 22 States.

Draft Comprehensive Convention on International Terrorism (UN doc. A/C.6/55/1), 28 August 2000.

Draft Convention on Suppression of Acts of Nuclear Terrorism.

B. Regional instruments

1971 Organization of American States (OAS) Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are Internationally Significant

1977 European Convention for the Suppression of Terrorism, ETS 90

1987 South Asian Association for Regional Cooperation (SAARC) Regional Convention on the Suppression of Terrorism

1998 Arab Convention on Combating Terrorism

1999 Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism

Draft European Union Council Framework Decision on combating terrorism, Brussels, 19 September 2001, COM(2001) 521 final

Draft European Union Council Framework Decision on the European arrest warrant and the surrender procedures between Member States, Brussels, 19 September 2001, COM(2001) 522 final

C. International and regional instruments concerning extradition

1990 UN Model Treaty on Extradition, adopted by General Assembly resolution 45/116, 14 December 1990

1957 European Convention on Extradition, ETS No. 24

1975 Addition Protocol, ETS No. 86

1978 Second Additional Protocol, ETS No. 98

1966 Commonwealth Scheme for the Rendition of Fugitive Offenders, as amended in 1990, *Commonwealth Law Bulletin*, 1990, 1036

1981 Inter-American Convention on Extradition (entered into force 28 March 1992)

1990 Schengen Convention applying the Schengen Agreement of 14 June 1985, including Title III, Chapter IV on Extradition, Articles 59–66

1995 Convention on Simplified Extradition Procedure between Member States of the European Union, OJ No. C/078, 30 March 1995, p. 1

1996 Convention relating to Extradition between Member States of the European Union, OJ No. C/313, 23 October 1996, p. 11

Annex III
**SELECTED RESOLUTIONS BY INTERNATIONAL AND REGIONAL
ORGANIZATIONS RELATING TO INTERNATIONAL TERRORISM**

A. Security Council

Documents include:

Resolution 1269 (1999) on international cooperation in the fight against terrorism, UN doc. S/RES/1269 (1999), 19 October 1999

Resolution 1368 (2001) condemning the terrorist attacks of 11 September 2001 in New York, Washington, DC, and Pennsylvania, United States of America, UN doc. S/RES/1368 (2001), 12 September 2001

Resolution 1373 (2001) on international cooperation to combat threats to international peace and security caused by terrorist acts, UN doc. S/RES/1373 (2001), 28 September 2001

Resolution 1377 (2001) on intensification of efforts to eliminate international terrorism, UN doc. S/RES/1377 (2001), 12 November 2001

These and other UN Security Council documents concerning international terrorism are available on <http://www.un.org/terrorism/sc.htm>

Letter from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council, 7 October 2001, UN doc. S/2001/946, available on <http://www.un.int/usa/s-2001-946.htm>

B. General Assembly

Documents include:

Declaration on Measures to Eliminate International Terrorism, annexed to Resolution 49/60, Measures to eliminate international terrorism, UN doc. A/RES/49/60, 9 December 1994

Resolution on Measures to eliminate international terrorism, UN doc. A/RES/50/53, 11 December 1995

Declaration to supplement the 1994 Declaration, annexed to Resolution 51/210, Measures to eliminate international terrorism, UN doc. A/RES/51/210, 17 December 1996

Resolution on Measures to eliminate international terrorism, UN doc. A/52/165, 15 December 1997

Resolution on Measures to eliminate international terrorism, UN doc. A/RES/53/108, 26 January 1999

Resolution on Measures to eliminate international terrorism, UN doc. A/RES/54/110, 2 February 2000

Resolution on Measures to eliminate international terrorism, UN doc, A/RES/55/158, 30 January 2001

Resolution on Condemnation of terrorist attacks in the United States of America, UN doc. A/RES/56/1, 18 September 2001

These and other UN General Assembly documents concerning international terrorism available on <http://www.un.org/terrorism/ga.htm>

C. United Nations High Commissioner for Human Rights

Report of the United Nations High Commissioner for Human Rights, GAOR, UN doc. A/56/36, 31 October 2001, para. 2.

A human rights approach to the events of 11 September and their aftermath must begin with the victims and their right to justice. They have lost the foremost right, the right to life. Over 6,000 citizens of the United States and civilians of other nationalities have been killed. Those who carried out this carnage by hijacking civilian aircraft, taking over their controls and crashing them into highly populated buildings intended to cause the maximum loss of life. I consider that these crimes constitute crimes against humanity. The victims and their relatives have the right to see that those responsible for these international crimes are rendered accountable under due process of law and punished. World security and stability is now more than ever dependent on the serious efforts to advance equality, tolerance, respect for human dignity and the rule of law to every corner of the globe.

D. Council of Europe

Parliamentary Assembly, “European democracies facing up to terrorism”, Recommendation 1426 (1999), 23 September 1999

Commissioner for Human Rights, Recommendation concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders, CommDH/Rec(2001)1, 19 September 2001

Parliamentary Assembly, “Democracies Facing Terrorism”, resolution 1258 (2001), 26 September 2001

8. There can be no justification for terrorism. The Assembly considers these terrorist actions to be crimes rather than acts of war. Any actions either by the United States acting alone or as a part of a broader international coalition, must be in line with existing UN anti-terrorist conventions and Security Council resolutions and must focus on bringing the perpetrators, organizers and sponsors of these crimes to justice, instead of inflicting a hasty revenge.

10. The Assembly supports the idea to elaborate and to sign at the highest level an international convention on combating terrorism which should contain a comprehensive definition of international terrorism, specific obligations of participating States to prevent acts of terrorism on national and global scale and to punish their organizers and executors.

13. The Assembly expresses its conviction that introducing additional restrictions on freedom of movement, including more hurdles for migration and for access to asylum, would be an absolutely inappropriate response to the

rise of terrorism, and calls upon all member States to refrain from introducing such restrictive measures.

Parliamentary Assembly, “Democracies facing terrorism”, Recommendation 1534 (2001), 26 September 2001

E. Dakar Declaration by African States

Declaration of Dakar against Terrorism, made by the heads of State or representatives of 27 African States, 17 October 2001

F. European Union

European Parliament, Recommendation on the role of the European Union in combating terrorism (2001/2016(INI)), 5 September 2001

“Democratic dialogue based on mutual respect and non-violence, aimed at upholding democracy, is the best means of resolving political, social and environmental conflicts and preventing conflicts from being used as a pretext for committing terrorist acts”. Also “measures taken to combat terrorism must not, under any circumstance, be based on exceptional laws or procedures”.

Statement by European Commission President Romano Prodi on the attacks against the United States, Brussels, 12 September 2001, IP/01/1265, available on http://europa.eu.int/rapid/start/cgi/guesten.ksh?p_action.gettxt=gt&doc=IP/01/1265|0|RAPID&lg=EN .

Council (Justice and Home Affairs) Ministers, Brussels, Conclusions, 20 September 2001, doc. SN 3926/6/01, REV 6, available on <http://www.eurunion.org/partner/EUUSTerror/03926-r6.pdf> .

Joint EU–US Ministerial Statement on combating Terrorism, 20 September 2001, available on

<http://ue.eu.int/newsroom/LoadDoc.cfm?MAX=1&DOC=!!!&BID=109&DID=67801&GRP=3772&LANG=1> .

We will also co-operate in global efforts to bring to justice perpetrators of past attacks and to eliminate the ability of terrorists to plan and carry out future atrocities. We have agreed today that the United States and the EU will vigorously pursue co-operation in the following areas in order to reduce vulnerabilities in our societies: ... border controls, including visa and document security issues; law enforcement access to information and exchange of electronic data.

European Council, Conclusions and plan of action of the extraordinary European Council meeting, 21 September 2001, available on

<http://ue.eu.int/Newsroom/LoadDoc.cfm?MAX=1&DOC=!!!&BID=76&DID=67808&GRP=3778&LANG=1> .

G. Organization for Security and Cooperation in Europe

Gérard Stoudmann, Director, Office for Democratic Institutions and Human Rights (ODIHR)

There is a worrying trend of backtracking on human rights in some OSCE countries, often justified as reaction to security threats, but last week’s terror

attacks should motivate us to redouble our efforts to build democratic societies in which human rights are fully respected. We are convinced that the OSCE countries and all other civilized nations share the same basic values, notwithstanding cultural and religious differences – that’s the bottom line.

Draft Decision on Combating Terrorism by the Ninth Meeting of the OSCE Ministerial Council, “The Bucharest Plan of Action for Combating Terrorism” (to be adopted by the OSCE Ministerial Council in Bucharest on 3 and 4 December 2001)

27. Preventing movement of terrorists: Participating States: Will prevent the movement of terrorist individuals or groups through effective border controls and controls on issuance of identity papers and travel documents, as well as through measures for ensuring the security of identity papers and travel documents and preventing their counterfeiting, forgery and fraudulent use. Will apply such control measures fully respecting their obligations under international refugee and human rights law. Will, through the proper application of the exclusion clauses contained in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, ensure that asylum is not granted to persons who have participated in terrorist acts. Will provide for the timely detention and prosecution or extradition of persons charged with terrorist acts, in accordance with their obligations under international and national law.

H. Organization of American States

Meeting of Consultation of Ministers of Foreign Affairs, Strengthening hemispheric cooperation to prevent, combat, and eliminate terrorism, doc., /Ser.F/II.23, RC.23/RES.1/01, 21 September 2001, available on <http://www.oas.org/OASpage/crisis/RC.23e.htm> .

4. To call upon all member states to strengthen cooperation, at the regional and international levels, to pursue, capture, prosecute, and punish and, as appropriate, to expedite the extradition of the perpetrators, organizers, and sponsors of these terrorist acts, strengthen mutual legal assistance, and exchange information in a timely manner.

5. To reaffirm that actions to combat terrorism must be undertaken with full respect for the law, human rights, and democratic institutions in order to preserve the rule of law, liberties, and democratic values in the Hemisphere;

6. To call upon all member states to promote widespread tolerance and social harmony within their societies in recognition of the racial, cultural, ethnic and religious diversity of the communities that make up our Hemisphere and whose fundamental rights and freedoms were reaffirmed most recently in the Inter-American Democratic Charter.

Meeting of Consultation of Ministers of Foreign Affairs, Terrorist Threat to the Americas, doc. OEA/Ser.F/II.24, RC.24/RES.1/01, 21 September 2001, available on <http://www.oas.org/OASpage/crisis/RC.24e.htm> .

Inter-American Committee Against Terrorism (CICTE), Declaration of the first plenary session, doc. OEA/Ser.L/X.3.1 CICTE/DEC.1 (I-E/01), 15 October 2001, available on http://www.oas.org/OASpage/crisis/declar_e.htm.