SEPTEMBER 11 AND THE PRESENT INTERNATIONAL CRISIS: HUMAN RIGHTS POLICY ISSUES ARISING

ICHRP Secretariat

BACKGROUND

1. In January 2002, the International Council on Human Rights Policy will hold its next annual assembly. The purpose of this meeting is to discuss broad global trends that affect efforts to protect human rights. These discussions enable the International Council to identify issues that might be taken up for research or in other ways be addressed through the Council's programme.

2. In the wake of the suicide attacks on September 11, 2001 against targets in the United States and the subsequent formation of a 'global coalition against terrorism', the International Council has decided to begin its annual assembly with a discussion on the human rights implications of these events. Human rights organisations, and indeed all those who work to promote and protect human rights, have been shocked and troubled by the ramifications of the September 11 events, which have spread across the world, triggering consequences and reactions of many kinds.

3. The meeting will bring together members of the International Council with about twenty-five participants from all world regions. Background papers will be available on a range of themes. The International Council expects to publish a report which draws on the debates that will take place.

4. In preparing for the meeting, the Council's Secretariat drafted a brief note identifying issues that might be addressed. A number of those to whom we sent the note suggested it be distributed more widely, and we are now doing so. The note makes no claim to be comprehensive nor does it aim to suggest answers to the many questions that arise. It is offered simply as an initial reflection on the human rights policy issues that emerge from the ongoing crisis.

FIRST CONSIDERATIONS

5. Responses to the attacks on September 11 are dominating news around the world. In this situation, it is easy to overstate their importance and in so doing lose sight of deeper trends or forget that many other issues remain relevant and will scarcely be affected. Nor, at this moment, is it possible to foresee in any detail or accurately how events will play out. Too many factors are involved.

6. This said, a clear gap exists between the stated aim of the international coalition that formed after September 11 and the focus of its political and military activity. The declared aim is to stamp out international terrorism. Military and political action has been concentrated on a particular group of Islamist organisations. To remain politically coherent, before long the United States and the coalition it leads will need to be more specific. If the intention is truly to tackle terrorism across the globe, there will be implications of many kinds for human rights in many countries. For the moment, however, the campaign targets certain Islamist armed groups only and this note reflects that judgement.

CONTEXTUAL FACTORS

7. The attacks themselves were almost universally condemned. By contrast, perceptions of cause and motive, and perceptions of the legitimacy of the attacks and responses to them, have varied from region to region and country to country. Perceptions drive action and generate consequences. This means that, whatever one thinks of the moral, criminal or political nature of the attacks, consideration of their consequences must take account of larger contextual issues. Doing so does not necessarily imply a relativist legal position with respect to the acts themselves, nor does it imply holding specific attitudes, one way or another, towards the political actors involved. Simply put, larger and contextual issues need to be discussed because they influence the consequences of September 11 and *perceptions* of those consequences.

8. In particular, perceptions of international economic and political relations (the distribution of wealth and power, nationally and internationally) will be an underlying influence to the extent that international actions are not taken to address inequality and injustice, and misinformation and ignorance, in all parts of the world. The direct influence of this factor will increase if there is a sustained or deep global recession following (but not only caused by) September 11.

9. Partly because gaps between poor and rich and powerful and marginal have widened, signs of political alienation and embitterment, and stresses within political institutions have been multiplying. Many national and international institutions are not considered to be legitimate or relevant by their publics. The attacks on September 11 – but not only those events – are likely to deepen such polarisation. At least until recently, this problem was not well understood by the richest and most powerful countries, or by the majority of their peoples. Until powerful states recognise the political risks of exclusion, alienation and mistrust will significantly influence the direction of events.

HUMAN RIGHTS POLICY ISSUES ARISING

The cultural dimension – "Islam" and the "West"

10. With respect to the suicide squads (and assuming they were Islamists, linked to Osama bin Laden's Qaida network or other radical groups), different analyses of their motivation have been advanced. On one view, they hold to a straightforward if ambitious political strategy. Their aim is

to free Saudi Arabia (and other Islamic countries) from foreign influence, overturn the Saudi government (and other repressive governments), liberate Palestine and end sanctions against Iraq. The attacks on the United States were necessary in order to achieve these primary goals. On another, hatred of America (or the "West") is more fundamental, arising from a conviction that American and Western hegemony and power are intrinsically hostile to the values of Islam.

11. In addition, the perceptions of the attacks in most of the Islamic world (certainly in Arab countries) needs to be considered. The bombings have been widely perceived as a reaction to injustice. While condemning the attacks, many are strongly inclined to view them as a response to legitimate grievances that are caused by US and "Western" interventions in the region – especially support for Israel and authoritarian governments in the Middle East and North Africa, and maintaining sanctions against the Iraqi people.

12. US (and "Western") officials have calibrated their political rhetoric with increasing care and have repeatedly stated that their war is not against Islam. Nevertheless, in fact, the "global campaign" that has been declared against terrorism has so far focused exclusively on certain Islamist groups. "Terrorists" who employ indiscriminate violence but have no particular grudge against America - such as the Liberation Tigers of Tamil Eelam (LTTE), the Real Irish Republican Army (RIRA) or the Basque Separatist Movement (ETA) - have not yet been targeted, nor have non-Islamist "terrorists" who have a grudge against the United States, such as the Ejercito de Liberación Nacional (ELN) and Fuerzas Armadas Revolucionarias de Colombia (FARC) in Colombia. In addition, the language of righteousness adopted by North Atlantic Trade Organisation (NATO) governments has distinctly suggested that they are embarking on a war of good against evil, of civilisation against barbarity.

13. In such a context it is not surprising that many - including large numbers of people in the Middle East and Islamic world - perceive the conflict has been defined in cultural terms, along a frontier between "Western" or "Christian" and "Islamic" values and identity. This has resurrected discussion of Samuel Huntington's thesis (1993, 1996) that the fundamental sources of conflict in the post-Cold War world will not primarily be political or economic but cultural. Huntington's "clash of civilisations" paradigm has been discussed world-wide in the wake of the September attacks, and this has made clear that, whatever its merits, a widespread *perception* exists that cultural/religious (or "civilisational") differences are relevant to analysing the attack and responses to it.

14. What are the implications for work on human rights? Firstly, the perception of difference means that we can expect a fresh debate about the universality of rights. Huntington himself argued that international human rights standards reflected western "civilisation" and disputes about their universality indicated deep "civilisational" differences.

15. Further reflection may show that some "civilisational" differences are real, and not only perceived. If this is so, a profound debate on the foundations of human rights cannot be avoided. Such a discussion cannot be confined to "Islam" and the "West" (even if the "campaign" on terrorism remains focused on Islamists). If it is true that values and attitudes to government are significantly different between the "Western" and "Islamic" worlds, they are at least as different in South Asia, East Asia and many other regions of the world. Should a fissure develop between the United States (and Europe) and the Islamic world, it is only one of several possible fissures – each of which could become sensitive in the event of serious conflict.

16. Definitional work will be essential. What is meant in specific terms by saying that culture (or civilisation) may cause or motivate behaviour (in ways that are distinct from ideology or politics or other categories of analysis)? More practically, what might be the relevant and specific cultural

differences between "Western" and "Islamic" culture in relation to the present crisis? What explanatory power do they have?

17. Other questions arise: Is there a risk, after September 11, of a deepening cultural/religious divide – and if so what are the implications for human rights work? What is specific to 'culture' – relative to ideology and politics, for example? In terms of human rights and culture, what issues should be considered? If perceptions of a divide persist, can existing international human rights standards retain a universal appeal? Or will we need to find other references (ethics?) around which to build agreement on cross-cultural values to buttress human dignity and freedom?

A different type of war – confusions of law and terminology

18. The attacks of September 11 were initially described as an "act of war", and NATO countries have said they are "at war" with terrorism. This is more than rhetorical language (by comparison with "war on drugs" for example), as can be seen from the current military intervention in Afghanistan.

19. Looked at from the perspective of human rights law, this use of "war" is confusing and troubling. The conventional response to attacks perpetrated by "terrorists" is that states ought to identify the perpetrators, apprehend them and put them on trial. Where those responsible reside abroad, governments should seek their extradition. The logic of this approach is usually accepted by states. Even in cases where single terrorist acts have led to many deaths (Lockerbie, Air India, Bologna train station and so forth), the affected states have agreed (at least publicly) that the response must come within the confines of the criminal law system. Where evidence has emerged that states have sought a military response to terrorism (e.g., "shoot to kill" in the United Kingdom and Spain), it has brought strenuous denials from the governments concerned and resulted in public scandals.

20. There are exceptions. Aggrieved states have asserted a right to strike militarily when terrorists have acted at the behest (or with the support) of another state (US air attacks on Libya in 1986). Also, of course, the manner in which states officially describe their response to terrorist acts has often differed from policies pursued in secret. Many states have pursued military solutions clandestinely while maintaining a public commitment to approaches based on the rule of law. It may be said that states have responded to people they call "terrorists" on a continuum from "pure criminal law" to "pure war". There are clear rules at both ends of this continuum, and grey areas between - the zone associated with counter-terrorism. The adoption of special regulations to counter terrorism relieves states from some of the constraints associated with the legal regimes that apply in war and peace. In the current crisis the international coalition has been ambiguous about the status of its campaign: whether deliberate or not, this fudge has created a political and legal grey area that has reduced the degree to which the United States and its coalition partners can be held legally accountable. Politically, of course, this makes good sense but is very dangerous if sustained.

21. Use of the word "terrorism" also causes concern. International human rights groups try to avoid this terminology, focusing instead on specific definitions of terrorist acts found in international law. In most circumstances, states will be eager to restrict the term to non-state entities that oppose them; sometimes they will win support from other states for doing so. To many people, however, state and non-state forces are equally capable of committing "terrorist" acts. There is no broad consensus, however, on applying the term in specific situations. In the present crisis, however, the word "terrorism" is being used as if it were self-evident to whom it applied. No doubt much of this can be attributed to poor journalism. On the other hand, it is certain that the

United States and its allies are aware of these difficulties and yet they persist in defining their enemy in deliberately ambiguous terms.

22. This is not mere semantics – the confusion will affect the short-term response of the international community to civil war situations like Chechnya or Algeria, and in the longer term may determine what is deemed an appropriate response to all armed groups. If the result were to be less tolerance for the abuses these groups commit, that would be no bad thing - provided, of course, that similar intolerance is shown for abuses that are committed by state forces. This is by no means assured.

23. How should human rights advocates position themselves in relation to the "war on terrorism"? What are the acceptable constraints for the conduct of this "war"? Are existing approaches adequate to ensure accountability and thus keep the "war" within acceptable limits? There is a crying need for clarity and precision of terminology. Human rights advocates have a crucial role to play here. What are issues? How should they proceed?

Explanation, moral context and mitigation

24. After September 11, the attacks themselves were almost universally condemned. By contrast, opinions diverged widely when it came to what is relevant in order to understand or explain what motivated them. There is equally intense disagreement about whether the attacks should be condemned in absolute terms, without mitigation in any dimension, and whether it is morally acceptable to compare them with killings that result from state terror, including that initiated, supported, funded or tolerated by the United States and its allies.

25. It is reported that over six thousands civilians were killed on September 11. In scale the attack was therefore comparable to the massacres at Srebrenica (former Yugoslavia). In terms of human rights law, it is not considered relevant to know that some of the Bosnian Muslims who were killed at Srebrenica had earlier burned Serbian villages and killed some Serbian civilians, or that Serbs in the vicinity had suffered greatly under German occupation in the Second World War, including at the hands of a Bosnian Muslim militia that fought alongside the Germans. Why should the attacks on September 11 be treated any differently? Are they any less (or more) reprehensible, because hundreds of thousands of deaths have resulted in Iraq from malnutrition and disease, as a result of the sanctions policy? Or because hundreds of Palestinian civilians have died at the hands of Israeli soldiers over the past year? Should we look at responsibility only from the victim's perspective, or are the intentions of the killers also relevant? There is also intense debate about the moral and political justifications for the American or coalition response.

26. A presumed advantage of international human rights law was that it would define acts that were intolerable, prohibited and deserving of condemnation and enable them to be judged without regard to motivation. The laws of war similarly forbid reprisals against civilians in all circumstances. An enemy's conduct in wartime is irrelevant and does not reduce responsibility for abuse. International standards were intended to put to rest the urge to compare, explain, and debate.

27. In practice, people did explain and compare. September 11 is not a unique event. However, given the global media coverage and global awareness of the attacks, the moral issues – and disagreements – are more visible. The effect could be to unravel the (imperfect) consensus that has existed on the importance and objectivity of international standards. In the American press, journalists ask whether it is wrong if civilians are targeted in reprisal attacks – with little deference to the point that such killings would be war crimes. Elsewhere, it is suggested that the Americans "had it coming", obscuring the fact that the overwhelming majority of those killed were civilians.

28. Divisions in this matter are not geographically or culturally defined. An American Ambassador was shocked when a British television audience raised precisely such questions, and the European press appears to divide on political grounds over moral questions.

29. Has the global public and political attention given to the September attacks shifted the presumptions against which acts of political violence and terror have been judged? Should moral or comparative or contextual factors ever be taken into account in future – or should relativisation of responsibility be resisted, in relation to the September 11 attacks as in the past? Have human rights legal positions been sidelined in mainstream moral and political debates? If so, what are the consequences? What should be the response?

Threats to civil liberties

30. A global "war on terrorism" will undoubtedly involve measures that affect civil liberties, including rights to privacy and free speech, freedom of assembly and association, and due process rights for those detained. It is likely that in many countries new laws will be proposed that, broadly speaking, allow greater scope for the state to restrict these freedoms on national security grounds. These will include phone-tapping and other surveillance techniques, expanded powers of search and seizure, limits on access to detainees, and special procedures or even courts for "terrorists".

31. National security justifications for restricting human rights are familiar, and international standards are quite detailed in the guidance they provide on how to ensure such justifications do not run roughshod over individual freedom. The scale of the attack, however, and the level of public anxiety it creates, could result in unprecedented restrictions and, simultaneously, public tolerance for such measures (whatever the cost to human rights).

32. The response to new restrictions will differ depending on the context. Advocates in countries with independent courts, free and critical media, effective parliamentary oppositions and a well-developed jurisprudence will have less to fear than those in countries lacking one or more of these essential checks on misuse of power. Even if new restrictions are neutral in their wording, their application is likely to have a discriminatory impact on particular groups, notably Muslims and in particular Arab Muslims.

33. Are existing methods for defending human rights in the face of national security arguments adequate? Will new arguments need to be developed to convince the public of the risks of too much security, and if so, what might those arguments be? Where should advocates be most vigilant in ensuring national security justifications are not misused? (Which groups, in which countries, face the greatest risk?)

Freedom of movement

34. Many governments – notably the governments of richer economies that tend to attract immigration, but also governments close to centres of exodus – have been reviewing and tightening their immigration and refugee policies. Following the attacks on September 11, governments will tighten immigration controls further and further restrict access to their territories, including for asylum-seekers. Likely measures include stricter visa requirements on all travellers, enhanced measures to deny admission to asylum-seekers, greater scope for detaining asylum-seekers and illegal immigrants, and increased recourse to expedited expulsion measures. It is also possible that non-nationals legally resident in particular countries might face new restrictions, and that some or all of the measures taken may have a discriminatory impact (or

even intent). As with national security restrictions, it is likely that enhanced immigration controls will have a discriminatory impact on particular groups, and initially at least especially Muslims and Arabs.

35. If conflict escalates, it is not inconceivable that governments will rely on the concept of "enemy aliens" – a concept used widely in the past to justify collective detention of foreigners in time of war.

36. Refugee rights are already severely restricted in many countries – will new restrictive measures be qualitatively different, or simply make a bad situation worse? (In other words, what *new* policy issues will arise?) What are the implications for multiculturalism in the face of public fears (however groundless) that certain immigrant communities harbour dangerous elements? One charge raised against the Islamists is that they take advantage of the civic freedoms (speech, association, and so on) in developed countries to preach a political programme that, if achieved, would deny those freedoms. Will the liberal notion of tolerance for radical opinions come under strain and, if so, what are the implications?

Racism

37. An international campaign against "terrorism" will increase public anxiety and encourage stereotyping of groups of people who are believed to be associated with political violence. Official security measures will also exacerbate discrimination against the same groups. In many countries this has already lead to an increase in anti-Islamic and anti-Arab feeling. If the "war on terrorism" extends beyond non-Islamist groups, other nationalities and minorities will in time be targeted or suffer reprisals in various parts of the world.

38. What action can be taken to improve dispassionate media reporting? What action can be taken to protect populations and minorities from stereotyping or acts of violence or discrimination?

Foreign policy shifts

39. As the Americans build their "coalition against terrorism" it can be expected that countries which join will expect favours in return. Depending on the importance of the country in question, such favours will include in many cases demanding less outside scrutiny over domestic affairs, including human rights issues. In the Cold War, the allegiance of a country to a particular bloc was often (though not always) a reliable indicator of how it might react to human rights abuses in another country, and certainly affected voting patterns on human rights issues in the United Nations. Already, it is clear that included in the Russian price for signing up to the coalition was less US and European criticism over how it conducted its war in Chechnya. What impact will shifts in alliances have on importance states attach to human rights in their foreign policy?

40. Policy shifts may occur in numerous areas as an *indirect* result of the international campaign against terrorism. It is likely, for example, that international action will intensify against international crime, arms trading, money laundering, trafficking in people, and the drugs trade. As noted, it is unclear whether the campaign will extend over time to all forms of terrorism and, if so, how "terrorism" will be defined.

Armed groups

41. Armed groups (or, as some prefer, "terrorists") operate in many countries. Many people see armed groups as 'good' or 'bad'. There is disagreement about whether political violence is ever legitimate, even when the motive is to end injustice. Such judgements are understandable but in general sanctifying or *demonising* armed groups does not help to improve respect for human rights.

42. In a study that the International Council published in 2000 that examined the obstacles and possibilities for holding armed groups accountable for human rights abuses, one conclusion was the need to leave open the possibility of dialogue on human rights issues with all armed groups, no matter how brutal their record.[1] Another finding was the fact that even where an armed group's ideology appeared to preclude acceptance of human rights, there were other means of influencing its behaviour, including through engaging with the constituencies from which such groups derive support and legitimacy.

43. Should these and other points be tested in relation to the radical Islamist groups that allegedly have sponsored this attack? Has any serious effort been undertaken to discuss human rights or limits on war with these groups? How might such efforts be undertaken and by whom?

Violence and dissent

44. In recent years, the adequacy of the older democracies to reflect the values and aspirations of their people has increasingly been questioned. In many other countries, people are disenchanted because democratisation and elections have not improved their lives or the performance of their institutions. The competence and legitimacy of international institutions is similarly questioned. The United Nations, the World Bank, the European Union, the Association of Southeast Asian Nations (ASEAN), for instance, are widely perceived to be distant, ineffective, and unwilling or unable to defend the interests of people and societies that are less powerful and less rich.

45. At the same time, new national and international movements have formed that claim to represent or articulate the views of those who are marginalised. These movements are often conflated into one "anti-globalisation" campaign, though they address diverse subjects and include a vast diversity of opinion and organisations. States have given increasing political attention to "anti-globalisation" campaigners since the movement was associated with violence for the first time (in Geneva in 1998). At succeeding international events (Seattle, Prague, Genoa) the level of protest and the scale of disorder has risen, causing governments to relocate or cancel several major meetings and adopt increasingly restrictive security measures. The contest between the campaigners and the government officials is (was?) the dominant theme of discussions on the benefits and costs of globalisation.

46. The events of September 11 will influence official attitudes and policies towards dissent. Already, some commentators have made connections between the "anti-globalisation" campaign and the September 11 attacks, on the grounds that both were an irrational response to the triumph of ("western") capitalism. Of course, most governments will wish to reaffirm that peaceful dissent is legitimate but they will find it difficult to separate "legitimate" from "illegitimate" forms of protest. Protesters and activists will face, more acutely, dilemmas they are already considering. How far should they co-operate with groups that are violent or could be associated with "political violence"? How far should they refuse to allow their own activity to be curtailed because others are violent? How important is it, for civil society organisations as well

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[1] International Council on Human Rights Policy, *Ends and Means - Human Rights Approaches to Armed Groups*, Geneva: ICHRP, 2000, available at http://www.ichrp.org/excerpts/16.pdf.

governments, to restore confidence in public institutions and their capacity to reform? How can NGOs and civil society organisations reconcile their realisable (incremental) campaign goals with the idealistic anger of disenchanted supporters?

47. Societies that have well-established civil organisations, and states that have well-organised and accountable institutions, will cope with these predicaments better than societies that do not. We may be entering a period where repression and abuse of legitimate protest will increase internationally, because of the campaign against terrorism but not primarily in the countries that will chiefly promote that campaign. If so, such repression will only increase the disenchantment and alienation of people in poorer and politically marginalised societies.

48. What are the limits of legitimate dissent? What criteria should influence the alliances that NGOs and civil society organisations make with organisations that tolerate or promote violence? What constraints on free expression and freedom of association should governments be permitted, if they are faced with the threat of "terrorism" or political violence more generally?

Disarmament/arms control

49. Campaigners, including human rights groups, have made significant advances in the past decade on arms control issues. While the landmines ban stands out, there have been successes too in regulating the sale of weapons to abusive governments and in tackling proliferation issues. The current crisis creates both risks and opportunities for this agenda. There is a risk of regression if instability increases both the demand for weaponry and the willingness of the main producers (United States, Russia, France, Britain and China) to supply it. There is the opportunity to advance on arms control efforts if instability forces serious attention to the consequences of the nuclear stand-off in South Asia, or the easy availability of weapons.

OPPORTUNITIES

50. In this note, we have generally highlighted risks in relation to human rights work. There will also be opportunities. For example, international media are commenting on the fact that, in the aftermath of the attacks, big government (at least in the United States) is back. Certainly, US legislators have shown a sudden willingness to advance tens of billions of dollars to fight terrorism, bail out troubled airlines, stimulate the economy and cover the economic costs of the attacks in New York and Washington.

51. Time will tell whether this is evidence of a deeper philosophical shift. It is possible that human rights claims requiring increased government spending (especially, but not only in regard to economic and social rights) will advance in a less hostile environment. Such a shift might also encourage more development aid, debt relief and more equitable global economic relations.