

# THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

## Council Meeting

September 2001: Impacts on Human Rights Work

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### SEPTEMBER 2001 – IMPACTS ON HUMAN RIGHTS WORK

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1. When High Commissioner Mary Robinson opened the spring session of the UN Commission on Human Rights, she declared it would be her last. She will not be seeking an extended mandate when her present one runs out in September. UN officials in such key positions normally stay longer than the five years that now constitute Mary Robinson's period. She made no secret either of the fact that she was prepared to continue with her important assignment for a few more years. But she was not called upon by the UN General Secretary to continue; it is only on his recommendation that the general assembly decides on such issues. This in its turn was due to the fact that Kofi Annan did not regard it as politically viable to put forward such a proposal.
2. The background to this was that the new United States UN ambassador in New York, John Negroponte, had given the General Secretary the clear message that the United States was opposed to an extension for Mary Robinson. The reason was obvious: the US administration believed she had sabotaged the war against terrorism. But she had only been doing her job. She had pleaded for international rules to be respected during the war in Afghanistan, stressed that new legislation against terrorism should contain rights guarantees, criticised President Bush's decision to set up military tribunals and pointed out that the prisoners on Guantanamo should be treated as prisoners of war. Many of her comments and suggestions were repeated by others, not least spokespeople for the EU and The Council of Europe, but Mary Robinson was in most cases the one who reacted first.
3. The case of Mary Robinson is an illustrative example. Even independent human rights organisations have had a tough time since September 11, not least those in the USA who have been accused of undermining the struggle against terrorist violence. Organisations in countries where conflicts rage have had even greater difficulties. President Bush's repeated declaration that everybody must choose sides - "with us or the terrorists" - has in itself created an intolerant climate.
4. The shock after the hideous attacks in New York and Washington ensured that the demands for unity and joint action against evil were met with a strong response. Opinion in the USA and also in other countries demanded a strong leadership, President Bush's Gallup figures rose steeply even

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before he had done anything. There was hardly any room for what Bush himself called "legalisms". This leadership chose to refer to retaliatory measures as "war" - in the literal sense of the word. Military terminology was used. Osama Bin Laden's and al Quaida's network was the enemy to be neutralised. The alternative would have been to choose a police-like strategy, to pin one's faith on investigation, police intervention and compiling information. That emphasis was placed on military action appears to be partly due to it being seen as more powerful and thus more visible. This definitely reduced any room for questioning; war means rallying around the flag.

5. Those who tried to discuss the roots of terrorism or how social injustice made it easier for extremists to recruit new members were quickly brushed aside, not only in the USA but also in the Swedish debate. At the time it was seen as making excuses for the attacks on September 11. The message was that poor and subjected people did not represent evil. It was also pointed out that terrorists were generally well to do and had no contact with exploited people. Here in Sweden Ingvar Carlsson and Carl Tham wrote a debate article in the Dagens Nyheter newspaper calling for a more balanced discussion and pointed out that terrorism must also be fought using political measures against global injustice. The reaction in many of the leader columns of large newspapers was close to total condemnation. A few months later President Bush said the same thing at a UN meeting in Monterrey in a speech about financing developments, which was welcomed from all sides.
6. New York was hit on September 11 and a day later the Security Council had already passed its first resolution on the issue, Resolution 1368 (2001). It was to have a major affect on future discussions, even the one on international law. Roughly worded, it acknowledged the right to individual and collective defence in compliance with the UN charter. In its operative part the resolution expressed the council's willingness to take all necessary measures to respond to the attacks on September 11 and to fight all forms of terrorism (again in compliance with the charter). The latter wording was a marker for the Security Council to be able to return to the issue.
7. The wording about the right to self-defence has thereafter been used to legitimise the war in Afghanistan and even the discussions about plans to attack Iraq or other countries. Up to now, the definition of self-defence in accordance with item 5 of the charter has been narrowly interpreted, not least by the Swedish government. But it mainly concerned attack by another country and required self-defence actions to be directly related in time and reason to the original attack. The Security Council could have made it clear that they stood firm by a tight definition of the right to self-defence and that they intended to take the initiative with regard "necessary military measures", but no such discussion took place, not even when the USA and Great Britain began bombing Afghanistan. It is therewith safe to say that the Council indirectly accepted the US interpretation.
8. Now, after months have passed, this very open definition of the right to self-defence appears increasingly unfortunate. There could be good reason for considering military action against Saddam Hussein, but to regard this as self-defence against the September 11 attacks is to make a mockery of international law. The issue of how to interpret item 5 of the charter should be taken seriously by the Security Council but the present feeling is such that any such initiative would be regarded as lack of loyalty in the war against terrorism. Legality is of great importance for human rights work, which is why the Security Council's prejudicial decision on international law is also of great importance in that respect. The other decision that could affect human rights was the Security Council's Resolution 1373, which encouraged member states to undertake a series of measures to stop terrorism in all its forms. Previously adopted UN conventions should be ratified and national legislation should be drawn up and decreed. One of the points called for sanctions against private citizens and organisations financing terrorists. The resolution also demanded that member states report on measures taken within three months. Through diplomatic channels, enormous pressure was put on governments to give this top priority. For many governments it was also a point of honour to demonstrate their resolve and ability to act. Legislative proposals were drawn up very quickly, which many lawyers considered slipshod and somewhat of a rush job. One of the problems had already

been much discussed: what does terrorism actually mean? How should it be defined in legal terms? Many previous UN debates had shown that one man's terrorist was another man's freedom fighter. It would be even more difficult defining complicity.

9. Mary Robinson issued a statement together with Walter Schwimmer, the General Secretary of The Council of Europe, and Gerard Stoudmann, director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in which they warned that the proposed resolution did not pay enough consideration to international law on human rights.
10. A major problem with the legislative proposals drawn up were that they tended to undermine the rights of immigrants and asylum seekers. Resolution 1373 had also urged sharpened vigilance of these groups. Another problem was the return of internment in some cases. The act approved in Great Britain permitted long internment periods for foreigners who could not be sent to other countries. Other problems could be toned down thanks to Mary Robinson's office, ODIHR and The Council of Europe entering into a dialogue with various governments. Independent organisations also contributed to ensuring that a number of unpleasant features of the original legislative proposal were removed.
11. A Security Council sub-committee called the Counter Terrorism Committee had the task of handling and commenting on the reports from the member states. Mary Robinson and a number of independent organisations urged the council to ensure that the sub-committee possessed sufficient joint knowledge of human rights, which probably contributed to that aspect not totally disappearing from the debate.
12. One problem that has still not been resolved at time of writing are the lists of private citizens and organisations or companies that have had their economic resources frozen for being accused of contributing to terrorist networks. This was the trap the three much debated Swedish Somalians fell into. They were kept in a Kafka-like situation and were not even told exactly what they were accused of. In Sweden this rightly led to strong criticism and Swedish representatives raised the issue with the Security Council sub-committee as well as with the US authorities. The US Ambassador in Stockholm wrote in the Aftonbladet newspaper that they could appeal to the authorities in the USA. The three had to prove their innocence for an accusation they knew nothing about. At the same time it had become clear that the US administration now considered itself to be above international legal procedures. It is important to not only clear up the situation of the three Somalian Swedes, but also to critically examine this whole process in order to prevent something similar happening again. It is opportune that the government has now taken this up within the EU and received support for the idea.
13. In the USA measures were understandably stringent. They were mainly aimed at immigrants and refugees, even those staying in the country legally. Not less than 1,200 people with foreign background were apprehended: formally for a review of their resident's permit, in reality for a thorough investigation into any possible contacts with terrorist networks. This process flagrantly violated human rights. Those apprehended were isolated for long periods and were denied legal advice. Their names were kept secret and their relatives were not informed. Many were gradually released, but according to the Department of Justice, 347 people were still in custody by the middle of February.
14. More noteworthy was the US decision to transfer those apprehended in Afghanistan and Pakistan to the Camp X-ray prison camp in Guantanamo. The intention was obviously to avoid them being placed on US territory and therewith under US jurisdiction, which gave the US security services full control over the prisoners. The first pictures of the prisoners arriving at the camp caused a great deal of concern, which seemed to surprise the US Secretary of Defence Donald Rumsfeld. The prisoners were chained hand and foot and had hoods over their heads or were blindfolded. A few were said to

have been drugged before transportation but the Pentagon repeatedly stressed that these were extremely dangerous prisoners.

15. During the continued discussion about these prisoners, both Rumsfeld and President Bush said that the prisoners were guilty of the most hideous crimes. From a legal point of view this was somewhat notable: it is the task of the courts to judge whether somebody is guilty or not. Statements by the supreme power on such issues are normally regarded as unacceptable interference with the legal process. This possibly reflects the tense atmosphere in Washington at the time. Not only Mary Robinson but also the EU through Javier Solana and others recommended that the prisoners be regarded as prisoners of war and be given the protection this status provides. Bush and Rumsfeld said no to this, the prisoners should be regarded as "illegal combatants" and did not deserve to be seen as prisoners of war. This stance could be regarded as somewhat inconsistent considering it was about people apprehended during what the administration themselves regard as a "war". Prisoner of war status means the material standard should be on the same level as for those who keep them prisoner, that they should not be kept interned and should be given the right to a fair trial if prosecuted. They need do no more than identify themselves during interrogation.
16. The administration wavered between different positions. Secretary of State Colin Powell appeared to plead for them to be seen as prisoners of war because it would also be a protection for US soldiers taken prisoner in the future. Others tried to make a distinction between the Taliban, who should be regarded as prisoners of war, and al Quaida followers who were "illegal combatants". In all events it was of great value that the International Red Cross was invited to check the conditions at the camp, even if their reports are usually kept secret. Food and other material conditions appeared to be reasonable but there were indications that interrogation had gone further than that permitted for prisoners of war.
17. A Swedish citizen arrested in Pakistan was also taken to the camp. After some time a Swedish diplomat was given permission to interview this prisoner but in the presence of US security police. With good reason it was pointed out that this could be problematic. As a rule, interviews with prisoners are carried out without the presence of prison guards or similar staff. The Red Cross have this as a definite rule and refuses to interview anybody if it cannot be in private. One would assume that such issues would be dealt with by the individual prisoner, but it is not clear whether they would have sufficient view of the situation to be able to decide themselves not to talk due to a security guard being present. It is also important that the prisoner interviewed is given full information in advance about the purpose of the visit. What exactly happened during this discussion is not known, but important issues were raised during the debate about the visit and it is vital that the foreign ministry carry out an evaluation to ensure that any such situations in the future can be handled in an acceptable manner for all concerned.
18. Other issues have been raised regarding Guantanamo. Five Algerians and a Yemenite were transported from Bosnia to Camp X-ray in January. They were handed over by the federal government in Sarajevo despite the fact that both a local court and a chamber for human rights set up through the Dayton Agreement (which includes foreign judges) had decided against extraditing these six people, who at the time were Bosnian citizens. When I met the interior minister at the end of February who, despite everything, had agreed to hand over these people to the US military he said that he had no possibility of resisting when the US demanded they be handed over. That incident hardly improves respect for international law in Bosnia, or for the Western countries' talk of human rights for that matter
19. The original decision for military tribunals in the USA means that trials can be held behind closed doors, that judges can be chosen from the military, that sentences can be passed based on a simple majority, that there would no possibility for appeal to a higher court and that the death penalty could be passed. The proposal was strongly criticised in the US and despite already being passed, was

actually softened up. This made it possible to appeal against a sentence. But at time of writing the Pentagon has just proposed a law that would make it possible to prosecute prisoners from Guantanamo even without proof that they had committed a crime. This would in that case be remarkable. A state governed by law cannot judge people using laws that were passed after the people were arrested. Furthermore, the aim appears to be to criminalize even a loose connection to the Taliban or al Quaida in a way that is not covered by international law. It is possible that this proposal will not gain support despite coming from the defence ministry, but the fact that it was a serious attempt is definitely food for thought. Despite everything, basic legal principles are more than just "legalisms". Here again, it appears that leading politicians judge people themselves and want the legal process to just fall in line.

20. So much for some of the concrete discussions that have taken place since September 11 with regard human rights. In addition, we have seen that the climate created through "the war against terrorism" has been used by a number of authoritarian leaders to justify tightening down on peaceful opposition. Vladimir Putin was not slow in branding all opposition in the Chechen Republic as terrorist. It is also evident that US and European criticism against the encroachments there has been toned down. Ariel Sharon has depicted violent infringements on the West Bank and in Gaza as a contribution against world terrorism; he described Arafat as another Osama Bin Laden. Jiang Zemin in Peking says that the surrounding world now realises that protests in Tibet and Xinjiang are also a form of terrorism.
21. In some ways it is logical that the politicians who dominate the war against terrorism have not interpreted the September 11 atrocities in terms of victims' rights or the right to live. Mary Robinson pointed out that the attacks in New York and Washington were so atrocious that they must be regarded as "crimes against humanity". In the future it will be possible to try such terrorist crimes at the International Criminal Court being established later this year. But, as we all know, not all governments recognise this court.
22. For obvious reasons, this review of the situation has mainly been about US policy and its wide reaching affect. It is remarkable how US representatives dominate international diplomacy after September 11. It is all about very tough pressure, sometimes combined with economic support as in Central Asia for instance. It is not by chance that the US Ambassador in Stockholm says that those who feel offended by UN decisions can turn to the US authorities, never before has the UN system been so clearly conducted from Washington. Compliance from other governments within for instance the Security Council has been more than noticeable. When criticism finally awoke in Europe it was the conservative politician Chris Patten who led the way.
23. It has also been about propaganda. Military spokesmen skilfully handled questions regarding civilian injuries in Afghanistan in connection with the bombing, journalists found it difficult to travel by land, several of them were killed or injured during this period (in some cases by criminal gangs). The tone, particularly in the US media, was dominated by a warlike atmosphere. But it was an eye-opener when it was revealed that the Pentagon planned to set up a special propaganda unit with the right to consciously use untruthful material and disinformation with the aim of strengthening the struggle against terrorism. Some columnists pointed out that this had been bad practice since the cold war and was now actually illegal.
24. This has been a difficult time for governments and organisations that genuinely care about human rights. Any attempt to uphold the principles of human rights has been interpreted as a lack of commitment to the cause of putting a stop to terrorist atrocities. The reasoning that it would be more effective to combat terrorism with methods within the framework of civil law, has only been partly listened to. Laws have been passed that should be revised to comply with international norms. Private citizens have been undeservedly subjected. A commission to evaluate these patterns on an international as well as national level would be more than justified.