

# Human Rights After September 11

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## Human Rights After September 11

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## BACKGROUND AND ACKNOWLEDGEMENTS

This report is based on an international seminar which the International Council on Human Rights Policy organised in January 2002 to discuss the longer-term implications, for those who work on human rights, of the suicide attacks against targets in the United States on September 11, 2001 and their aftermath, notably the formation of an international campaign against terrorism.

The meeting took place in Geneva on January 10-12, 2002. Several background studies were prepared in advance of the seminar. The report draws on these and other sources.

An original draft was prepared by Nejla Sammakia, Civil Affairs Officer with the United Nations Special Mission in Afghanistan until October 2001. Previously, Ms. Sammakia was Researcher at Human Rights Watch and Amnesty International, and, earlier, Palestine Correspondent for Agence France Presse.

Additional writing and editing was done by Mohammad-Mahmoud Ould Mohamedou, Research Director at the International Council and co-ordinator of this project, and Robert Archer, Executive Director of the International Council.

Ten background papers written for the seminar have been integrated in parts into this report. The papers and their authors are:

"Upholding International Legality against American and Islamic *jihād*" by Abdullahi Ahmed An-Na'im, Professor of Law at Emory University, Atlanta

"Human Rights after September 11: Civil Liberties, Refugees, Intolerance and Discrimination" by Richard Carver, Director, Oxford Media Research, Oxford

"The Indirect Effects of the September 11 Events and their Aftermath in Relation to Drugs Trade, Arms Trade, International Crime and Financial Crime" by Stephen Ellis, Senior Researcher, African Studies Centre, University of Leiden

"Human Rights in Foreign Policy: Current Dilemmas" by Thomas Hammarberg, Chairman of the International Council on Human Rights Policy and Secretary General of the Olof Palme International Centre

"Military Force and Criminal Justice: The United States Response to September 11 and International Law" by Nicholas Howen, Regional Representative for Asia-Pacific to the Office of the United Nations High Commissioner for Human Rights, Bangkok

"Terrorism and Human Rights – Power, Culture and Subordination" by Makau Mutua, Professor of Law, State University of Buffalo, New York

"A Rights-based Understanding of the Anti-globalisation Movement" by Kumi Naidoo, Secretary General and CEO of CIVICUS, and Indira Ravindran, Research Associate, CIVICUS, Washington, DC

"The Role of the Media after September 11" by Nejla Sammakia, journalist and human rights consultant, Cairo

"By What Authority? The Legitimacy and Accountability of Non-governmental Organisations" by Hugo Slim, Senior Lecturer, Oxford Brookes University, Oxford

"Peace, Poetry and Pentagonese" by Patricia J. Williams, Professor of Law at Columbia University, New York

In addition, the International Council's Secretariat prepared an "Issues Paper" in October 2001, which sets out the background to the problem and a number of key issues.

All these papers can be accessed directly on the International Council Internet site at: [www.ichrp.org/cgi-bin/show?what=project&id=118](http://www.ichrp.org/cgi-bin/show?what=project&id=118)

The following individuals participated in the seminar:

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Robert Archer	Executive Director, International Council on Human Rights Policy. United Kingdom.
Tapan Bose	Secretary General, South Asia Forum on Human Rights. India.
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A draft of this report was sent out for comment to a range of human rights experts in different countries, in June-July 2002. We would like to thank the following individuals for their perceptive comments: Theo van Boven, Stephen Ellis, Bimal Ghosh, Thomas Hammarberg, M.W. Herold, Nicholas Howen, Makau Mutua, Nejlá Sammakia, Sol Santos, Hugo Slim and Jo Szwarc.

## I. INTRODUCTION

On the morning of September 11, 2001, four commercial airplanes were hijacked over the Eastern part of the United States of America. Two were flown into the two towers of the World Trade Centre in New York, and one into the Pentagon building in Washington, D.C. The fourth crashed in a field near Shanksville, Pennsylvania. The Twin Towers collapsed, as did another building in the vicinity. Approximately three thousand people perished in the attacks. The United States government went on the highest state of alert.

### The Context

No one claimed responsibility for the attacks. American officials called the events an "act of war" and linked a group of nineteen alleged hijackers (fifteen Saudis, two Emiratis, an Egyptian and a Lebanese) with the Saudi millionaire and Islamist militant Osama bin Laden, who had declared war on the United States in 1998, and who is suspected of being responsible for the simultaneous bombings of the US embassies in Kenya and Tanzania on August 7, 1998. Singling out the Al Qaeda network, the United States declared a "war against terrorism", and vowed to hunt and punish those responsible and to take action against governments that harbour them.

On September 17, the United States government asked the Taliban government in Afghanistan to hand over Osama bin Laden, who was believed to be in that country. The Taliban Government rejected the American demands, and asked for evidence that bin Laden was involved in the attacks.

On September 28, the United Nations Security Council adopted Resolution 1373, which required governments to take wide-ranging steps to combat international terrorism. The Security Council established a Counter Terrorism Committee (CTC) to monitor the resolution's implementation and required all states to report before the end of 2001 on the action they had taken to inhibit terrorism.

On October 7, the United States launched airstrikes against targets in Afghanistan, with support from the United Kingdom, and deployed troops in support of Afghan forces associated with the Northern Alliance. The Taliban were forced to retreat and eventually evacuated the capital Kabul on November 15.

In parallel, representatives of different Afghan political and tribal factions met in Germany to discuss and form an interim government. Recognised by the United Nations, this became operational on December 5. It committed itself to holding elections within two years on the basis of national consultations.

During the following months, the United States and other governments (including Norway, Australia, France, Canada and the United Kingdom) continued to conduct military operations in Afghanistan in conjunction with forces loyal to the interim government. In a number of separate battles, Al Qaeda and Taliban forces were broken up (or rallied to the new government) but the majority of Al Qaeda's leaders (including Osama bin Laden) and the Taliban leader Mullah Mohammad Omar appeared to have escaped.

The United States government stated at the outset that it would pursue the 'international campaign against terrorism' indefinitely, and set no limit as to the number of countries that might be targeted. American troops were deployed in support of anti-terrorist campaigns in some countries (including the Philippines and Uzbekistan). Several other countries claimed the right to act aggressively to deal with what they referred to as 'terrorism'. They included the Russian Federation in Chechnya, Israel in the Palestinian territories and India in relation to Kashmir.

On January 29, 2002, US President George Bush delivered the annual State of the Union speech in which he listed Iraq, Iran and North Korea in an "axis of evil", which he claimed must be confronted. Several governments associated with the 'international campaign against terrorism', notably in the European Union, distanced themselves from this assessment. At the same time, the Israel-Palestine conflict continued to cause considerable tension. Governments associated with the 'campaign against terrorism' from the Middle East, Europe and the United States took different positions on Palestinian violence against Israeli civilians and on Israel's aggressive military interventions in areas occupied by Palestinian civilians.

### The Issues

This report does not analyse the September 2001 attacks on the United States themselves or detail the events that have followed. It does not focus on particular places or actors. Rather, it discusses the relevance of recent events to the work of human rights organisations. What new economic and political policy issues are emerging? Which ones require attention? Its goal is to provide useful guidance by identifying issues that human rights organisations, and those working with them, should prioritise.

The report is based on a two-day meeting, which the International Council convened in order to encourage international discussion of human rights issues raised by the events of September 11 and their aftermath. The meeting debated a wide range of subjects, some of which do not relate directly to the events of September 11. The report does not therefore attempt to cover every matter raised in the discussion or reflect all the different perspectives expressed. It focuses on *important general trends* that preoccupied the participants, coming as they did from different regions of the world; and *on*

*practical implications for human rights work.* What are the main issues? What should human rights organisations be doing about them?

Several major themes emerged rather sharply. First, there was concern that, as a result of the September 11 events, *multilateral and more diplomatic approaches to solving international problems may surrender ground to unilateral and more forceful approaches.* The very great power of the United States – military, economic, political – particularly troubled participants in that respect, because it gives the United States administration the feeling that it is free to act as it sees fit.

Second was a concern that *approaches to solving international problems based on the rule of law will give way to approaches that are security-driven.* In different words, considerations of national interest, which privilege more powerful states, may gain influence relative to law-based approaches, including human rights (which presumes acceptance by all states that they are subject to international rules and standards). The effect would be a more arbitrary (less just) world order, in which more powerful states would be in a stronger position and less powerful states in a weaker position to assert their interests.

Third, there was concern about *the legal definition of 'terrorism' and the definition and application of policies to suppress it.* Participants criticised the misuse of legal terms and the use by political leaders in the United States administration (but equally by Osama bin Laden and others who support similar views) of simplistic intolerant language that diminishes the space required for reasoned discussion and the construction of trust. The spread of polarised and imprecise rhetoric creates a political environment in which certain groups of people (notably prisoners, religious and ethnic minorities, migrants and dissidents) are classically vulnerable to repression and violation of their rights. It also marginalises human rights values, which are founded on a vision of human dignity, and human rights work, which relies for effectiveness on responsible use of procedures and respect for law.

A further concern was that *recourse to military solutions, as the first rather than the last response to political violence, would create new risks of conflict in many parts of the world* and would not deal effectively with international terrorism. Terrorism is not a new phenomenon. Many societies have learned at great cost that military responses tend to envenom disputes and rarely resolve them in the absence of political initiatives that tackle causes of alienation and violence.

This led, finally, to a discussion of related issues. While a simple link cannot be made between the attacks on September 11 and economic exclusion, in broader terms there is a *relationship between global inequity* (or perceptions of inequity) *and political violence* (or sympathy for it). An international campaign to suppress international terrorism that ignores large

economic and political grievances would be unsuccessful and would create a more embittered world.

After September 11, many observers (particularly in the United States) spoke of a 'new' political environment in which much had changed, perhaps radically. Considering the trends listed above, those at the meeting found themselves asking whether the context is indeed so novel – or whether, rather, the attacks and international responses to them have simply revealed, albeit brutally, trends that were already in place. In particular, the polarisation of political opinion (for and against what the United States represents, for and against what Al Qaeda symbolises) was detectable beforehand. It might be seen in the emergence of anti-globalisation protests around the world; in the bitterness of North-South divisions (not least between NGOs) during the 2001 UN World Conference against Racism and Racial Discrimination in Durban (and also the 2002 UN Human Rights Commission in Geneva); and perhaps in the cynicism and loss of popular support for traditional democratic institutions in many industrialised countries.

Taken together, these trends suggest that a rather deep political fracture is emerging, which runs through many issues that underpin work on human rights:

- over the value of *force* as a preferred instrument to secure peace,
- over the importance of addressing economic exclusion and *global inequity*,
- over decision-making based on *multilateral consensus* and negotiation rather than economic or political power, and
- over *the rule of law*, and whether the powerful as well as the weak are subject to it.

Many of the most flagrant contradictions in public policy reflect differences of position that countries take in relation to these 'fractures'. This might be true of: the refusal by the United States, which champions human rights, to subject itself to international law; the European Union's maintenance of a restrictive asylum regime, though it too champions human rights; the lobbying for Palestinian freedom by Arab governments, many of which are authoritarian; the repression of displaced and ghettoised Palestinians by Israel, a state founded around Jewish experience of displacement and repression. Such inconsistencies deepen public cynicism regarding politics and international relations. Mistrust, already widespread before September 11, has since been sharply exacerbated by fear.

## The Report

This is the backdrop to the discussion that follows. The report is addressed primarily to human rights organisations and those working with them. However, the message and analysis are relevant to a wider audience, and particularly to other institutions and constituencies that carry in one way or another a responsibility for human rights. We hope that many will find interest in it.

The report begins (Chapter Two) by considering the issue of 'terrorism' and its definition. Chapter Three identifies and discusses some specific threats to human rights. Chapter Four reflects on United States 'exceptionalism' and issues of multilateralism and security. Chapter Five examines motives and the relevance of related causes, in particular economic marginalisation. Finally, Chapter Six identifies some particular challenges facing human rights organisations if they are to remain effective. A final section sets out some general recommendations.

## II. THE PROBLEM OF TERRORISM

The September 2001 attacks on the United States were almost universally condemned around the world. From the perspective of human rights organisations, in particular, the use of civilian planes to destroy the World Trade Centre constituted a crime against humanity.<sup>1</sup>

This starting point is clear and has underpinned the reactions of human rights organisations to acts of terrorism since September 11. Acts of violence against civilians are unacceptable and should be sanctioned.

This attitude is shared by the vast majority of people around the world. This said, however, no simple conclusions can be drawn in relation to questions connected to the attacks. It cannot be assumed that there was approval or disapproval, for example, of the United States' response; or of the response of the UN Security Council and other governments; or of the military intervention in Afghanistan; or of the security policies introduced to contain and destroy terrorism; or of the causes of and justification for political violence; or of Al Qaeda itself; or of the definition and application of the term 'terrorism'. Each of these matters must be considered separately and carefully, taking account of different interests and perspectives.

### **Distinguishing obligations: states and non-state bodies**

'Terrorism' is generally understood to refer to the deliberate killing of innocent people (and hostage-taking and destruction of property) in order to spread fear through a whole population and force the hand of political leaders.<sup>2</sup>

In broad political terms, terrorism is not new. Terror is probably as old as political violence and much behaviour in war has always had the purpose of 'striking terror' in enemy hearts. In modern times, militant groups seeking to overthrow governments or authority have frequently used exemplary

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<sup>1</sup> United Nations High Commissioner for Human Rights, Mary Robinson, Press Briefing, September 25, 2001. See also Office of the United Nations High Commissioner for Human Rights, "A Human Rights Perspective on the Post-September 11 International Situation" October 11, 2001. In June 2002, High Commissioner Robinson explained that the description was appropriate because "the September 11 attacks were mainly aimed at civilians. They were ruthlessly planned and their execution timed to achieve the greatest loss of life. Their scale and systematic nature qualify them as crimes against humanity within existing international jurisprudence". See Fifth Commonwealth Lecture, "Human Rights in the Shadow of 11 September", London: Commonwealth Institute, June 6, 2002.

<sup>2</sup> Michael Waltzer, "Five Questions about Terrorism", *Dissent*, Winter 2002, 49, 1. Waltzer distinguishes this basic and most widespread form of terrorism from 'state terrorism' used by governments against their people to spread fear, and from 'war terrorism', the effort to kill civilians in such large numbers that their government is forced to surrender.

violence to intimidate political opponents via public opinion. Cases include the first and the current Algerian war; Palestine (some Zionists during the 1940s such as the Stern Gang, and more recently some Palestinian militant groups like the Al Aqsa Martyrs Brigades); Spain (ETA); Peru (Sendero Luminoso); Sri Lanka (the Liberation Tigers of Tamil Eelam); Kashmir (Lashkar-e-Toiba); Northern Ireland (the IRA and some protestant organisations); and, of course, in Europe in the nineteenth century (anarchists and others). States have also used terror to intimidate and repress political opponents.

In many instances, those who commit acts of terror take actions that moderate or modify the impact of violence on civilians and non-combatants. Such behaviour may make the violence itself less heinous. The IRA, for example, sometimes sent messages to warn the authorities of impending bomb explosions; ETA assassination squads have generally targeted officials and security officers rather than civilians, and so on. To the degree that acts of political violence are indiscriminate and make no effort to limit the violence suffered by civilians and innocent people, they are generally considered, politically, to be less justifiable – and more akin to ‘pure’ criminality, banditry or mob violence.

In broader terms, ‘ethnic cleansing’, of the sort that occurred during successive conflicts in the Former Yugoslavia in the 1990s, is also a form of terror. It involves numerous forms of serious violations of international law, including killings, torture, verbal intimidation and threats, arbitrary detention, burning of houses and symbolic buildings such as mosques, with the purpose of expelling a group from a particular area. Ethnic cleansing in the Former Yugoslavia was sanctioned or organised both by political authorities and by independent groups.

Where terror or violence are co-ordinated or controlled by states, the responsibility of that political authority becomes central under human rights law and humanitarian law. Responsibility is at the heart of legal and human rights arguments concerning Nazi crimes (Nuremberg), the genocide in Rwanda, the abuses of human rights committed in the Former Yugoslavia while President Milosevic was in power, the accusations against President Pinochet in Chile and the formation of the International Criminal Court.

States that have signed up to international human rights agreements have a duty to respect and uphold those agreements, and are accountable if they do not. Only states can be held accountable directly in relation to such treaties. Armed groups cannot be held responsible in the same way because they have not signed up to the documents concerned and have no authority to do so.

In simple terms and in most instances, human rights law and (to a lesser extent) humanitarian law therefore impose more specific and more direct

duties on states than they do on other actors (individuals, political associations or armed groups).

On the basis of this, human rights groups (and governments themselves) do not treat all abuses in the same manner. They distinguish between crimes committed by soldiers under the authority of a government and crimes committed by armed men associated with a terrorist organisation. The standards applied to the conduct of the American and allied forces in Afghanistan, and their treatment of the prisoners they take, is not the same standard as that applied to the conduct of Al Qaeda militants. This is because, unlike the United States or France, Al Qaeda neither has the status of a government nor is a party to international conventions that govern the conduct of governments.

It is of course true that, irrespective of their organisational affiliation, all individuals can be held responsible under international criminal law for war crimes and crimes against humanity<sup>3</sup>. Those responsible for the attacks on September 11, and members of other armed groups who commit crimes of similar gravity, can be brought to justice by any state under the universal jurisdiction principle. The newly established International Court of Justice (ICC) could also punish those responsible for such crimes. International law therefore imposes clear duties on individuals, and members of armed groups may be subject to international legal prosecutions.

It is perfectly correct to say, too, that human rights organisations are well aware of this. Though there is not a consensus on the practical application of policy in relation to armed groups (that is to say, about whether human rights organisations should actively report on and campaign against their abuses), it is beyond doubt that, in relation to the most serious human rights abuses, armed groups, no less than governments, are subject to international law.

For political and legal reasons, nevertheless, many human rights organisations have been reluctant to address the abuses of armed groups. This position was supported by a traditional reading of international law. Today, though the emphasis of advocates has continued to focus more acutely on holding states accountable, international law clearly and increasingly provides firm grounds for addressing human rights abuses by

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<sup>3</sup> Crimes against humanity include systematic or widespread acts of murder, extermination, enslavement, torture, deportation or forcible transfers of population, arbitrary imprisonment, enforced disappearance of persons, persecution on political, religious, racial, or gender grounds, and rape, sexual slavery and other serious forms of sexual violence. Also included are practices like *apartheid*. Genocide — which involves acts such as killing or persecuting members of a racial, religious or ethnic group with the purpose of destroying that group — is also a crime against humanity.

armed groups.<sup>4</sup> In this regard, human rights organisations need to sharpen their message, or communicate that message more effectively to the wider public. They may need to say more clearly and in a more detailed way that individuals (such as those responsible for the attacks on September 11) are guilty of international crimes; and they may need, not only to argue that such acts should be prosecuted under international criminal or humanitarian law, but show that such cases *can* be prosecuted in an effective, fair, and consistent manner.

Since September 11, in particular, this has become a major political challenge for human rights organisations. Large sections of public opinion (notably, but not only in the United States) do not understand or appreciate why human rights groups rarely appear to criticise the atrocities committed by Al Qaeda (and groups like it) but reiterate punctiliously shortcomings – some of which appear minor – in the performance of the United States and other governments that are attempting to combat them. At one level, such criticism is inevitable. In countries that have experienced long-running political conflicts, governments and elements of the public have consistently challenged human rights groups on the same grounds.

The challenge since September 11 is nevertheless of a different order. One of most important recommendations of this report is that human rights NGOs need to develop new and better ways of communicating their message to the wider public. If they are to remain politically relevant, and effective, they need both to signal more clearly where they stand on political violence committed by non-state groups, while at the same time advocating a coherent position in relation to international human rights and humanitarian law. It has become evident that both these things cannot be done well without some effort to redraft and re-present the traditional positions adopted by human rights groups. Making this effort is the more urgently required because human rights NGOs find it difficult to articulate their points of view in language that appeals to the general public, while governments – particularly the United States and in the European Union – refer very frequently to human rights to justify their actions and policies.

Participants in the Council's discussion were concerned by this question of communication and reflection. They felt that if it was not addressed successfully, the political influence of the human rights approach might decline. Several participants commented that human rights organisations have tended to campaign in narrow elite circles, and failed to make an impact on the wider public; they need urgently to learn how to do so.

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<sup>4</sup> The legal and political arguments are described in International Council on Human Rights Policy, *Ends and Means, Human Rights Approaches to Armed Groups*, Geneva: ICHRP, 2000, pp. 60-64.

Within this context, nevertheless, discussion focused on certain specific questions. What legal force do 'terrorism' and related terms have in international law? How have the United States and other governments used the term? Were the attacks against the United States in September 2001 different in kind from similar attacks? What legal justification does the 'campaign against terrorism' have? Finally, in relation to all the above questions, what issues should preoccupy human rights organisations? These questions are addressed below and, from different aspects, in the remainder of this report.

### Definition of terrorism

From a legal point of view, there exists no precise, internationally accepted definition of terrorism. Several conventions – notably the Convention for the Suppression of Terrorist Bombings (1997) and the Convention for the Suppression of the Financing of Terrorism (1999)<sup>5</sup> – determine specific responsibilities. The United Nations General Assembly is developing a general framework. Certain Security Council resolutions refer to it. International human rights groups have avoided using the term.<sup>6</sup>

Part of the difficulty in agreeing a definition is political. Historically, the international community has supported certain wars of resistance. Many struggles against colonialism involved violence. In recent times, the struggle in South Africa against apartheid, and in East Timor against Indonesian occupation did so. The conflict over Kashmir, involving Kashmiris and the governments of India and Pakistan is another case in point. As has often been remarked, one person's terrorist is another's freedom fighter.

There are also disagreements about what the term can be applied to. Efforts by the United Nations to draw up a draft comprehensive convention on the subject have been hampered by the fact that some Member States believe that states can be guilty of terrorism while others argue that the term should apply only to non-state entities (such as armed groups). The whole process is rendered extremely difficult by suspicion and mistrust between countries, which has sharply worsened since September 11.<sup>7</sup>

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<sup>5</sup> The United States has not ratified either of these conventions, which each has some fifty signatories.

<sup>6</sup> For an overview of the fragmented nature of international anti-terrorism law, see Nico Schrijver, "Responding to International Terrorism: Moving the Frontiers of International Law for 'Enduring Freedom'?", *Netherlands International Law Review* 48, 3, 2001, pp. 271-291.

<sup>7</sup> "Muslims Deadlocked on Defining Terror", *The International Herald Tribune*, April 3, 2002, p. 3.

The formula “terrorist act” has some credibility. It is the term used most easily by human rights organisations and has been adopted by most states to refer to actions that include the threat or use of violence to cause extreme fear in the general public for political purposes. Some specific terrorist acts have been defined in treaties that cover hijacking, hostage taking and sabotage.

Protocols I and II to the Geneva Conventions prohibit state forces and armed groups from terrorising civilians during international and internal armed conflicts respectively. A number of terrorist acts qualify as crimes against humanity while others are common crimes under national law. The international treaties and the Geneva Conventions demand that states prosecute or extradite those responsible for committing terrorist acts, including the type carried out in the September 11 attacks.

During the period immediately following the events on September 11, the United States and other governments associated with the ‘international campaign against terrorism’ employed the terms ‘terrorism’ and ‘terrorist’ frequently and imprecisely.<sup>8</sup> As one commentator has noted:

one side’s use of *terrorist* to describe the other is never the result of a reasoned exchange between antagonists. It is a refusal of dialogue, a negation of the other. The designation terrorist is produced by the one-way gaze of power. Only one point of view, one vision, one story is necessary and permissible, since what defines the gaze of power is its absolute, unquestionable authority. To label an enemy a terrorist confers the same invisibility a colonist’s gaze confers upon the native. Dismissing the possibility that the native can look back at you just as you are looking at him is a first step toward blinding him and ultimately rendering him or her invisible.<sup>9</sup>

The terms were used to rally the public emotionally against named and unnamed enemies, the nature of whose responsibility was at the time unclear and untested in court.<sup>10</sup> That the media and public should be fearful and alarmed, especially in the United States, was understandable.

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<sup>8</sup> For ease of reading, we have not always put the words ‘terrorist’ or ‘terrorism’ in quotation marks throughout this report. This does not imply our agreement with use of the term.

<sup>9</sup> John Edgard Wideman, “The T Word, How Prejudice Fuels the War on Terrorism — Whose War: The Colour of Terror”, *Harper’s Magazine* 304, 1822, March 2002, p. 36. See also Jean Baudrillard, “L’Esprit du Terrorisme”, *Le Monde*, November 2, 2001. Baudrillard points out that, paradoxically, the essence of terrorism is symbolism, and its strategy that of an ‘excess of reality’.

Human rights organisations became concerned by the risks that such stereotyping and inflaming rhetoric can cause for innocent people who may wrongly be accused of terrorist acts. Given the ambiguity of the term and the absence of legal consensus about its application, they have criticised its use and been understandably reluctant to use it themselves. A number of human rights organisations – Amnesty International, the Cairo Institute for Human Rights Studies, Human Rights Watch, the International Commission of Jurists and the International Federation for Human Rights Leagues – are addressing this question, in order to clarify the issues and end loose and imprecise use of the term by governments and official authorities.

### Did September 11 create a new paradigm?

How should the attacks on September 11 be characterised? Were they different in kind from previous terrorist attacks, and did this justify the scale of the United States’ response?<sup>11</sup>

The attacks were made without warning, they were indiscriminate, and they targeted civilians (in the World Trade Centre and in their use of civilian aircraft). In these three respects, the attacks lay at one end (the least acceptable) of the ‘terrorism’ spectrum. Just on these grounds, nevertheless, the attacks were not distinguishable, except in scale, from other attacks associated with terrorism. As such, the conventional response would have been to treat them as criminal acts subject to the law and proper legal process. The conventional response to such an attack by ‘terrorists’ would be to produce evidence, identify and apprehend the perpetrators, and put them on trial with the co-operation of other countries if necessary.

This was not the response of the United States government after September 11. The American authorities regarded the attacks as “an act of war” and declared that the United States Government would take global action to defeat Al Qaeda and “every terrorist group of global reach”, reflecting a belief that Al Qaeda members are too fanatical, too unconditional, too sophisticated

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<sup>10</sup> One commentator notes that the United States “has insisted that ‘terrorism is terrorism,’ its character always and everywhere the same, absolute and indivisible, not subject to extenuating circumstance or further explanation...When wrapped up in the ribbons of patriotic slogan, terrorism becomes a show of diplomatic resolve or a lesson in democracy, the prerogative of governments apportioning its distribution to Cambodian peasants, dissident Soviet intellectuals,...Chechen rebels, Palestinian refugees, Iraqi schoolchildren”. (Lewis H. Lapham, “Spoils of War”, *Harper’s Magazine* 304, 1822, March 2002, p. 8.)

<sup>11</sup> For a more detailed discussion of the legal issues, including the question of whether the US response was a legitimate exercise of self-defence under the UN Charter, see Nicholas Howen, “Military Force and Criminal Justice: The US Response to September 11 and International Law”, paper prepared for the meeting organised by the International Council on Human Rights Policy on Global Trends and Human Rights: Before and After September 11, Geneva, January 10-13, 2002.

and too global to be defeated by traditional law enforcement methods. Their goal, it was argued, is "remaking the world and imposing [Al Qaeda's] radical beliefs on people everywhere".<sup>12</sup>

The US military action in Afghanistan initiated on October 7, 2001 marked the first time the United States, or any other country, has launched a high-intensity, sustained military campaign abroad to destroy the infrastructure and members of a group accused of terrorism, and to overthrow the government of its host state. This is a significant shift in policy.<sup>13</sup> Previously, the United States had tackled terrorism that affected its interests by applying international law to arrest and extradite suspects. It had occasionally used force, but in an unsustainable way, for example in August 1998 against alleged Al Qaeda targets in Sudan and Afghanistan in retaliation for the bombing of US embassies in Kenya and Tanzania.

The September 2001 attacks *were* different from most kinds of 'terrorist' attacks in some respects, however. In the first place, they were exceptionally lethal. It is hard to think of any other single act of terrorism, committed by a non-state body, that has caused a comparable number of deaths.

Secondly, the alleged attackers did not take responsibility for the attacks and did not immediately link them to a set of political demands.<sup>14</sup> In itself, this is not especially unusual. Other armed groups have also refused to acknowledge their responsibility for acts of terror. It is rare, however, for political violence on such a scale to be dissociated from specific political demands. This raised several issues. One was the difficulty of attribution. Although it appeared probable from the beginning that Al Qaeda was responsible for the attacks, the United States government (and later its allies) blamed the organisation without adducing adequate evidence. Legally, this presents a number of difficulties. One concerns the justification for initiating hostilities in Afghanistan, another the justification for bringing cases to trial.

Third and most significantly, the attacks were international in character. They were launched against the United States, *in* the United States, by citizens of other countries. The first and second of these differences reinforced the impression that the attacks were especially dangerous; but neither transformed them into something inherently distinct from other forms of

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<sup>12</sup> Howen, "Military Force and Criminal Justice", p. 2. The quote is from the presidential address to the US Congress on September 20, 2001.

<sup>13</sup> *Ibid*, p.2.

<sup>14</sup> If Al Qaeda is assumed to have been responsible, a political rationale for the attacks can be deduced from the various declarations of Osama bin Laden and others. In these terms, a platform can be inferred: the main aim of the attacks was to counter US policies in the Arab and Muslim world, particularly the American presence in Saudi Arabia, the support for Israel and the policies vis-à-vis Iraq.

terrorism. The third might do so, because it enabled the United States to argue that it was dealing with an act of war and was therefore entitled to respond militarily on grounds of self-defence, in accordance with the UN Charter.

As a condition of UN membership, Member States must commit themselves to peaceful resolution of international disputes. The United Nations Charter permits resort to the use of force only in certain circumstances. The principal justification is self-defence.<sup>15</sup> Under the Charter, states are permitted to use force to defend their territory and citizens from attack and it was on these grounds that the United States justified its actions. Other states involved in the 'international campaign against terrorism' acted in support of a state that had suffered aggression.<sup>16</sup> The UN Security Council authorised military action in Afghanistan by the United States and by allies acting in its support in those terms, though it did so in language that was non-specific.<sup>17</sup> At the same time, Resolution 1373 imposed a binding legal obligation on states to refrain from providing active or passive support to terrorist groups.

While allowing military action on grounds of self-defence, the UN Charter constrains a state's freedom to respond militarily. First, the response should not be revengeful or retaliatory. Secondly, reaction should be proportionate to the injury suffered: it should not be unreasonable in scale or violence. Thirdly, military action ought not to continue if the danger of further attack recedes.

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<sup>15</sup> UN Charter, Article 51: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security..." Military attacks may also be authorised by the UN Security Council under Chapter VII to restore or maintain international peace and security. It is becoming more accepted, though the matter is still controversial, that military intervention from abroad is sometimes permissible if it is the only means to stop widespread human rights abuses

<sup>16</sup> Citizens from many other countries were also killed in the attack. Other governments, when they supported the United States, did so because it had been attacked, but also because they recognised that their own citizens *and citizens in other countries* were at risk if action was not taken. A secondary justification for military response was, therefore, that it was necessary to protect civilian lives *in general*. It was presumed to be in the interests of all states to ensure the security of citizens in all countries from acts of terror, even if the danger in some countries is much greater than in others. The force of this argument was reinforced by later claims that 'terrorist' groups, perhaps including Al Qaeda, possessed or could come to possess weapons of mass destruction (chemical, biological and nuclear). Though it remains unclear whether the anthrax attacks in the United States were connected directly to the September 11 attacks or to Al Qaeda, and press reports suggest that no evidence has been found that Al Qaeda had the capacity to launch biological or nuclear attacks, the reasoning remains influential. Terrorist organisations able to make sophisticated, ruthless attacks of the sort that occurred on September 11 are likely to use weapons of mass destruction if they can acquire them.

<sup>17</sup> The Security Council neither endorsed nor challenged the United States' claim to self-defence. Resolution 1373 merely recognises the right of individual or collective self-defence without referring specifically to the US response.

These constraints are significant in the case of September 11 because the United States advanced new as well as traditional self-defence arguments to justify the military action it took with its allies in the context of the 'international campaign against terrorism'.

First of all, territorial aggression – aggression to acquire territory – was the classical justification for self-defence. Those who attacked the United States in September had no territorial ambitions, however. The attack was of a different kind.

Secondly, the self-defence justification assumed traditionally that both parties – the attacked and the attacker – would be states. However, the military response first envisaged in Afghanistan was not against another state but against an informal force present in the country. The decision to attack and overturn the Taliban government in Afghanistan was not taken until it refused to co-operate with American demands to extradite or cease protecting the leaders of Al Qaeda. The Taliban government was attacked on the grounds that, by shielding Al Qaeda, it was complicit in Al Qaeda's acts of terrorism and thereby made itself an enemy of the United States. This represents a second departure from the classic understanding of self-defence.<sup>18</sup>

Thirdly, the self-defence justification was not confined to a specific enemy or specific territory. Although the initial intervention took place in Afghanistan, in effect a new doctrine appears to have emerged, which asserts that all parties that support or harbour terrorists with ambitions to target United States property or citizens are 'enemies' and subject to attack. On grounds of self-defence, the United States has claimed that it is entitled to intervene militarily on the territory of any state where 'international terrorists' operate, and to attack any state that harbours and protects such 'terrorists' – anywhere. This both widens the application of the self-defence justification, and greatly reduces its precision.<sup>19</sup>

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<sup>18</sup> The legal issues that arise in relation to this question are discussed by Howen, "Military Force and Criminal Justice", pp. 5-7. It is not clear whether the United States was justified legally in attacking Afghanistan. Based on the Nicaragua precedent, Taliban involvement appears not to have been sufficient to confer on them responsibility for September 11, or warrant military strikes or their overthrow. [The International Court of Justice considered US support for Nicaraguan Contra rebels against the Sandinista government insufficient to make the sponsoring state responsible for an armed attack. (*Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. USA), 1986, ICJ, 14, June 27, 1986.)] The fact that the Taliban were a brutal government that had grossly violated human rights of their own citizens is also unrelated to the justification of self-defence (and was not invoked formally as such).

<sup>19</sup> In June 2002, US Defence Secretary Rumsfeld argued for an expansion of the traditional definition of collective self-defence. He expressed the view that "if a terrorist can attack at any time, at any place, using any technique, and it is physically impossible to defend in every place, at every time, against every technique, then one needs to calibrate the definition of defensive". See Thom Shanker, "NATO Must Attack Terrorists Before they Hit, Rumsfeld Says", *The New York Times*, June 6, 2002.

The 'international campaign against terrorism' is open to criticism both in terms of its proportionality and in relation to its duration. It is difficult to see in what circumstances it could ever be shown that the risk of terrorism had ceased; but it is no less difficult to show that the danger remains constant. The definition of risk is particularly problematic in relation to terrorism.

The campaign's open-endedness is even more worrying. The United States has not defined a precise enemy, nor has it indicated what would constitute an outcome justifying the cessation of military hostilities. If 'international terrorists' are the enemy, the United States could find itself in serial wars as the groups it targets are eliminated and replaced by new ones. Unless it is demonstrated that the 'international campaign' can definitively root out all forms of terrorism that have an international dimension, it is difficult to see how the campaign can ever be brought to a distinct conclusion.

### Justifications of intervention

The above aspects constitute the principal concern of human rights organisations.<sup>20</sup> The status of the 'international campaign against terrorism' has been defined vaguely and, in consequence, its extent and objectives are unclear – both politically and legally. *Human rights organisations are particularly concerned about the legal ambiguity of a campaign that has been described as a war, is undertaken in self-defence, has the approval of the Security Council, but has no defined geographical scope or limit, has failed to define its enemy in a clear manner, and has refused to position the conflict in terms of human rights law or humanitarian law.*

In some respects, the United States (and to a lesser extent its allies) act as if they are at war. For instance, they have suspended normal judicial processes in relation to Al Qaeda suspects and detainees, introduced special regulations, and have approved the establishment of semi-military tribunals to try people accused of terrorism.<sup>21</sup> At the same time, the United States administration has refused to accord detainees the protection and privileges of prisoners of war, and has moved detainees from Afghanistan to a military base in Cuba precisely to ensure that the legal issue of their status does not have to be addressed (since the base at Guantanamo is both outside US jurisdiction and outside other national jurisdictions).

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<sup>20</sup> See Elizabeth Olson, "Human Rights Seen as Loser in Terror War", *The International Herald Tribune*, March 25, 2002, p. 2.

<sup>21</sup> On November 13, 2001, President George W. Bush signed a Military Order in which he declared that non-citizens suspected of terrorist activities can be tried before military tribunals with almost none of the customary safeguards against wrongful conviction and no appeal recourse to civilian courts. See Ronald Dworkin, "The Trouble with the Tribunals", *The New York Review of Books* 49, 7, April 25, 2002, p. 10.

This is problematic in at least three respects:

- If the 'international campaign' is not a war, detainees and suspects ought to be protected by the full range of international human rights guarantees for due process and fair and humane treatment. Detainees should not be held incommunicado, as several thousand have been in the United States since September 2001.
- If it is a war, military detainees in Guantanamo and elsewhere (several thousand are held in Afghanistan in extremely bad material conditions) should be treated correctly under the terms of the Geneva Conventions.
- If neither is the case, and the United States and its allies are asserting that the campaign constitutes a novel use of international force, much more effort needs to be made to set out legal guidelines that indicate clearly how humanitarian law and human rights law are to apply.

Human rights organisations are correct to press for clarification on this question. The states involved in the 'international campaign against terrorism' have been ambiguous about its character. This ambiguity has created a political and legal grey area in which the United States and other states involved in the coalition are legally *less accountable than they would normally expect to be*. In effect, they have stepped outside the framework of law that holds them accountable. While ambiguity as to the status of the conflict persists, the basic rights of many people who are caught up in it – innocent as well as guilty – cannot be safeguarded, and in some cases will certainly be violated. In the long-term, this will do no service to the interests of any party, certainly not the interests of those who acted in order to protect values associated with freedom and the rule of law.

Some specific issues that arise in relation to civil liberties and discrimination against immigrants and minorities are reviewed in the next chapter.

### III. THREATS TO THE RULE OF LAW

While it may be too early for the human rights community to assess realistically the various effects of the September 11 events, it is clear that a new situation has been born. The United States has launched a war on Afghanistan. Europe and the United States have introduced security measures that restrict civil liberties, including rights to privacy and free speech, freedom of assembly and association, and due process rights for those detained. Many other countries followed suit. Governments that have traditionally come under scrutiny for their human rights record will expect less scrutiny when they join the international coalition against terrorism.

The legal ambiguity that surrounds the status of the 'international campaign against terrorism', and the manichean terms in which it has been presented to the public ("good versus evil", "axis of evil", "civilisation versus darkness", "with us or against us"), have created conditions in which it is unusually easy for political authorities to evade legal accountability. In an increasing number of countries, regulations have been reinforced, reinterpreted or suspended. New regulations have been introduced; and there is a greater willingness to consider covert action, in both the civil and military spheres. These measures are justified by governments in terms of the need to oppose terrorism; but many are likely to lead to human rights violations, either immediately or in the future.

The United Nations Secretary General has insisted that no trade-off can be made between effective action against terrorism and protection of human rights.<sup>22</sup> Recalling that certain rights may not be derogated from under any circumstances, the High Commissioner for Human Rights, the Council of Europe and the OSCE Office for Democratic Institutions and Human Rights, among other organisations, have urged all states to ensure that any measures in response to human rights which restrict human rights strike a fair balance between legitimate national security concerns and fundamental freedoms, and remain fully consistent with their international law commitments.<sup>23</sup> Despite existing international standards that oversee emergency situations or

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<sup>22</sup> Kofi Annan, "Statement at the Open Meeting of the Security Council on Counter-Terrorism", New York, January 18, 2002.

<sup>23</sup> Joint Statement by Mary Robinson, United Nations High Commissioner for Human Rights, Walter Schwimmer, Secretary General of the Council of Europe and Gérard Stoudmann, Director of the OSCE Office for Democratic Institutions and Human Rights, November 29, 2001.

derogation from human rights, these have not been implemented adequately or fully. As Amnesty International noted:

Some human rights treaties accept that on some occasions, emergencies which “threaten the life of the nation” may justify limiting or suspending some human rights guarantees, but only to the extent strictly required by the situation. The limitation may only be for the duration of the emergency, while the state of emergency is officially declared. The limitation of guarantees should not conflict with other obligations under international law, and should not be discriminatory. This limitation is given the technical term ‘derogation’.<sup>24</sup>

These concerns are not unwarranted. When the Security Council created a Counter Terrorism Committee to monitor resolution 1373 on terrorism, it declined to appoint a human rights expert to that body. In March 2002, the United Nations High Commissioner for Human Rights suggested that a mechanism should be established to monitor the resolution’s implementation from a human rights perspective.<sup>25</sup>

In the aftermath of the September 11 events, human rights organisations find themselves addressing a range of human rights violations in a political context that is generally less sympathetic to their concerns, in the United States and Europe and in many other countries around the world. Among the areas of concern, the following are felt to be particularly important:

- rights of detainees (incommunicado detention, conditions of imprisonment, denial of access to legal representation, monitoring of inmate conversations with attorneys, presumption of guilt, use of classified evidence, use of torture);
- unfair trials and trials of civilians by military commissions;
- discrimination and racial profiling;
- illegal arrests and secret detentions;
- illegal extradition procedures (expulsion and return) and violations of the rights of asylum-seekers; and
- denials of freedom of expression.

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<sup>24</sup> Amnesty International, *Rights at Risk — Amnesty’s International Concern Regarding Security Legislation and Law Enforcement Measures*, London: January 2002, pp. 6-7. See also, Amnesty International, *The Backlash — Human Rights at Risk Throughout the World*, London: October 2001.

<sup>25</sup> It was suggested that an independent expert, appointed by the United Nations Commission on Human Rights, should analyse laws, practices and reports on the struggle against terrorism with a view to making recommendations on safeguarding human rights.

## Issues related to the conduct of the military campaign

The United States military, and many of the forces that have participated in the ‘international campaign against terrorism’, make efforts to avoid civilian casualties. Despite such precautions, serious mistakes leading to allegations of atrocity or abuse have occurred in almost all the recent military campaigns in which the United States and other NATO forces have been involved.

Some of these incidents have involved opposing military forces<sup>26</sup>, but many of the most troubling cases have involved civilians. Civilians have been bombed by mistake because ordinance was misdirected, or because they were identified erroneously as combatants, or bombed because they were in civilian buildings that were identified incorrectly as military targets. Cases include the bombing of a civilian convoy during the Kosovo campaign in 1999, the bombing of a village and the International Committee of the Red Cross (ICRC) compound in Afghanistan in 2001, the bombing of a wedding party in Afghanistan in July 2002, the bombing of an air raid shelter in Baghdad in 1991, and the bombing of the Chinese Embassy in Belgrade in 1999.

In a few cases, the attacks were intentional and ‘borderline’ in terms of the laws of war. An example is the bombing of the Serbian State television building during the Kosovo conflict. There was no mistake about the target, it was bombed precisely, and the risk of civilian casualties was appreciated (though it was bombed at night). The decision was controversial in law because a television centre is not demonstrably a legitimate military target.<sup>27</sup>

The hostilities in Afghanistan caused an unknown number of civilian deaths – certainly hundreds, possibly several thousand.<sup>28</sup> Two particular difficulties arise in addressing the issue of accountability in relation to those deaths. The first is the absence of reporting; in many instances, journalists and independent observers were not able to visit places where killings occurred. This is partly for security reasons (many areas were highly dangerous, and journalists were themselves targets); but it was also partly because the United

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<sup>26</sup> The sinking of the Belgrano in the Falklands conflict is an example; the bombing of retreating Iraqi forces on the highway from Kuwait to Basra at the end of the second Gulf War in 1991 is another.

<sup>27</sup> See, for example, Amnesty International, ‘*Collateral Damage*’ or *Unlawful Killings?* — *Violations of the Laws of War by NATO during Operation Allied Force*, London, June 7, 2000.

<sup>28</sup> The figure of 3,100 has been put forward by an unofficial count at the end of 2001. See Marc W. Herold, *A Dossier on Civilian Victims of United States’ Aerial Bombing of Afghanistan: A Comprehensive Accounting*, Department of Economics and Women’s Studies, University of New Hampshire, United States, December 2001. The report can be accessed at [www.cursor.org/stories/archivist.htm](http://www.cursor.org/stories/archivist.htm). A regularly updated database is available at <http://pubpages.unh.edu/~mwherold>.

States military and other forces under its control limited access as a matter of policy.

A second difficulty relates to the line of authority between troops under American command and the Afghan forces of the Northern Alliance, which operated alongside American troops (and strategically under US command). The Northern Alliance was manifestly less alert to international law than its international allies. During the campaign leading to the fall of Kabul, many Afghans and foreigners were executed or killed in combat by Northern Alliance troops and many others were taken prisoner by Northern Alliance and other Afghan leaders working with it. It is far from clear what responsibility, if any, will be accepted by governments belonging to the 'international campaign against terrorism' for the conduct of Afghan forces with which they allied. In a number of instances, serious allegations of abuse and mistreatment of prisoners have been made, but it remains unclear who can be held responsible.

In some cases, the US authorities (and the international forces allied with them) were clearly responsible for decisions that led to allegations of abuse. In late November 2001, several hundred alleged Al Qaeda and Taliban activists were killed in a firefight that took place at Qalai Jangi, a temporary gaol in northern Afghanistan. International military forces clearly directed this operation, and afterwards there was considerable concern at the number of deaths.

For so long as the 'international campaign against terrorism' continues, it is likely that regular and irregular troops will find themselves operating in a variety of alliances. As a result, it may become more difficult to apply traditional methods of attributing command responsibility when allegations of abuse of atrocity are made. This will be the case when, for example, US regular troops operate alongside less regular forces (such as the Northern Alliance in Afghanistan), but equally when unconventional US units operate alongside the regular forces of another country. It will be important to clarify the application of humanitarian and human rights law to the conduct of forces involved in new and emerging patterns of military organisation.

The most publicised controversy of this sort concerns several hundred Al Qaeda detainees transferred by the United States to an American military base at Guantanamo in Cuba. Legally speaking, this base is neither under US domestic jurisdiction, nor under the legal jurisdiction of any other country. During the campaign, the United States took several hundred prisoners, but refused to consider these detainees as prisoners of war. With a few exceptions, they were not granted the full protection to which prisoners of war are entitled under the Geneva Conventions. The transfer to Guantanamo, and the conditions under which the prisoners have been kept, clearly violated the Third Geneva Convention Relative to the Treatment of Prisoners of War

(articles 13 and 46 in particular). Reservations with regard to American policy have been expressed publicly by several parties, including European Union states (whose citizens are among those detained) and the International Committee of the Red Cross.<sup>29</sup>

Particular concern has been expressed at the US administration's decision in November 2001 to create special military tribunals to try Al Qaeda prisoners who are alleged to have committed crimes against the United States. These tribunals will only try non-American citizens, and the rules under which they will operate are unclear. The US Congress also passed an Anti-terrorist Act in 2001, allowing for wiretapping, the suspension of client-lawyer privileges and the use of secret evidence.

Equally troubling have been indications that the United States administration may have permitted aggressive interrogation of Al Qaeda suspects, which could amount to ill treatment or torture.<sup>30</sup> In an October 15, 1999 *US Department of State Initial Report of the United States of America to the United Nations Committee against Torture*, it is stated that "Torture is prohibited by law throughout the United States. It is categorically denounced as a matter of policy and as a tool of state authority. Every act constituting torture under the convention constitutes a criminal offense under the law of the United States... No exceptional circumstances may be invoked as a justification of torture". The United States has adopted a Torture Victims Protection Act, which allows US citizens and foreign nationals alike to claim damages against any individual who engages in torture, and, in 1994, the United States extended their jurisdiction to any act of torture committed outside the US by a US national or resident.

In this context, it has been reported that, to circumvent United States regulations and international extradition procedures, the United States government has arranged covertly to transport dozens of individuals arrested abroad to third countries (such as Egypt and Jordan), where interrogation

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<sup>29</sup> See Olivier Audeoud, "Prisoniers Sans Droits de Guantanamo", *Le Monde Diplomatique* 577, April 2002, p. 16.

<sup>30</sup> The issue of torture illustrates the degree to which public opinion may tolerate infringements of rights in support of the 'campaign against terrorism'. Callers to radio programmes in the United States said they were "more understanding" of the need for "roughing up" and polls showed that forty-five per cent of Americans would support torture if it were to provide information about terrorism. See, for instance, Steve Chapman, "Should We Use Torture to Stop Terrorism?", *The Chicago Tribune*, November 1, 2001; "Torture Seeps into Discussion by News Media", *The New York Times*, November 5, 2001, p. C1; "Time to Think about Torture as U.S. Option", *Newsweek*, November 5, 2001; Alan M. Dershowitz, "Is There a Torturous Road to Justice", *The Los Angeles Times*, November 8, 2001; Jim Rutenberg, "Media Stoke Debate on Torture as US Option", *The International Herald Tribune*, November 6, 2001, pp. 1 and 4; and Bruce Hoffman, "Should We Torture? — A Nasty Business", *The Atlantic Monthly* 289, 1, January 2002, pp. 49-52.

may involve torture and other violations of human rights law, including threats to relatives.<sup>31</sup> If confirmed, human rights organisations should clearly campaign against such practices which would clearly undermine respect for United States law as well as international law.

In the light of these various developments, human rights organisations are correct to urge the United States government, other governments associated with the 'international campaign against terrorism', and the UN Security Council, to clarify the legal status of military actions initiated in the context of the campaign, and the status of prisoners detained in the course of it. At present, the status of such detainees is unclear, the application of legal principles to the conflict is equally unclear and many people are exposed to risk of abuses and violations as a result.

If military action is extended to other countries – a course which the United States government has indicated it is considering – these questions will become even more pressing.

### Restraints on civil liberties

The United States administration defined the 'international campaign against terrorism' from the beginning as a multidimensional operation. Though the military intervention in Afghanistan dominated headlines, governments took important initiatives in many areas – encouraged by the UN Security Council's decision of September 28, 2001 which required all states to prevent terrorism and report on the steps they had taken to do so.<sup>32</sup>

Since September 2001, governments have sharply increased their legal and operational capacity to monitor individuals suspected of terrorism (or of giving support to it), co-ordinate and exchange intelligence with respect to terrorism, monitor and control immigration, and police financial transfers. As the International Federation of Journalists noted, there is a worrying rush in Canada, the United States, Great Britain, Australia, France, Russia and within the European Union, to approve legislation on phone-tapping, police surveillance, encryption technology, detention of migrants, control of the Internet and freedom of movement.<sup>33</sup>

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<sup>31</sup> Rajiv Chandrasekaran and Peter Finn, "US Behind Secret Transfer of Terror Suspects", *The Washington Post*, March 11, 2002, p. A1. Known as 'rendition', this procedure has in the past been used by the United States during operations in Nigeria, Kenya, South Africa and the Philippines.

<sup>32</sup> Member States were required to report to the United Nations by December 27, 2001 on steps they had taken to implement Security Council Resolution 1373. The Resolution asks states to respond to the threat of terrorism in two specific areas: suppressing the financing of terrorism and denying terrorists a safe haven from which to operate.

Human rights organisations are particularly concerned by the impact of such measures on civil liberties. After September 11, the United States Federal Bureau of Investigation (FBI) took approximately 1,200 individuals of Arab and Islamic heritage (including US nationals) into custody. Of these, some three hundred were still detained by the Immigration and Naturalisation Service (INS) in June 2002.<sup>34</sup> The US administration has refused to provide basic information about them. They have refused to indicate who is detained<sup>35</sup> or what charges might be laid, have not allowed detainees to consult lawyers, and have even refused to divulge precisely how many people are held.

Whereas some European and other countries used the crisis to pass security laws that were already under consideration, the United States responded by issuing new measures. Foremost amongst these was the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, known as the Patriot Act, which became law on October 26, 2001. US officials have also said that in some cases, the United States will act as triers of both law and fact.<sup>36</sup>

In Europe, cavalier use of the term 'terrorism' has worried human rights organisations. Some proposed measures may criminalise accepted forms of dissent, including some trade union activities, anti-globalisation protests and forms of direct action. The European Union took the opportunity to push for a pan-European arrest warrant, a proposal which civil liberties experts criticised on the grounds that judicial processes throughout the EU are not equally fair or just.

The British Government has extensive experience of domestic terrorism. Its Terrorism Act 2000, passed before September 11, covered global terrorism. Yet within days of the attacks, a more extensive Anti-Terrorism, Crime and Security Bill was drafted (and passed in November 2001). The main aim of the new Act was to declare a state of emergency, allowing the government to derogate from Article 5 of the European Convention on Human Rights (only incorporated into British law in 1998), which provides for freedom from arbitrary detention and indefinite detention without trial. One of the least

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<sup>33</sup> International Federation of Journalists, *Journalism, Civil Liberties and the War on Terrorism*, Brussels: IFJ, October 2001.

<sup>34</sup> In September 2001, the INS introduced an 'interim rule' allowing it to detain individuals for up to forty-eight hours without charge or for a further undefined period "in emergency or other extraordinary circumstances".

<sup>35</sup> Susan Sachs, "US Defends Withholding Immigrants' Names", *The New York Times*, May 21, 2002. On April 30, 2002, the US government's jailing of these individuals (material witnesses in the grand jury investigation of the September 11 attacks) was ruled unconstitutional by the US District Court of New York. See Larry Neumeister, "Judge Declares Detainments Unconstitutional", Associated Press, April 30, 2002.

<sup>36</sup> Pierre-Richard Prosper, US Ambassador-at-large for War Crimes Issues, address at the Peace Palace, The Hague, The Netherlands, December 19, 2001.

remarked aspects of the Act is its discriminatory nature: the interior minister's powers of indefinite detention are only to be applied against those who are subject to immigration control.

In Sweden, the assets of a group of Swedish citizens of Somali lineage – including a candidate of the governing Social Democratic Party – were frozen in early 2002. As a local journalist remarked, the danger is that countries like Sweden, which claim to defend the rule of law, are passing laws that deny to some individuals rights which are crucial to the rule of law – such as the right to trial, to appeal and access to evidence.<sup>37</sup>

In other countries, governments have responded to the September 11 events by hardening legislation that restricts dissent. Some have permitted their security forces to act more aggressively in conflicts in which they are engaged. In general, human rights organisations are right to be concerned that many governments will take political advantage of the loosely defined legal status and broad remit of the 'campaign against terrorism' to weaken their own legal and political accountability. It is likely that abuses and violations of rights will increase in many parts of the world as a result. The list below illustrates trends that may be emerging.<sup>38</sup>

- In Russia, President Vladimir Putin linked the 'war against terrorism' and the fight against Osama bin Laden to Russia's military campaign in Chechnya. There have been widespread and serious violations of human rights and humanitarian law in that conflict, many of them committed by Russian troops. Media laws have been amended to make it a crime to report statements made by 'terrorists' because such reports justify terrorism. This puts at risk all journalists as well as human rights workers.
- In China, the Chinese government has associated the war in Afghanistan with its own campaign against the independence movement in the predominantly Muslim East Turkestan. The government claimed that the independence movement was linked to "international terrorist forces" and has arrested peaceful activists in the region.
- After September 11, the Israeli government extended military operations in the Occupied Territories of Palestine. It destroyed much of the infrastructure of the Palestine National Authority. In these

operations, many civilians were killed. Israel justified its use of force in terms of the 'international campaign against terrorism', arguing that military action was required to suppress Palestinian suicide attacks.

- In Malaysia, citing security threats, the government reinforced the country's Internal Security Act. This act, retained from the British colonial period, allows for detention without trial and has been used to imprison pro-democracy activists and opposition supporters.
- In Macedonia, the government has portrayed its mainly Muslim opponents as "terrorists" and has sought a change of United States policy vis-à-vis the country, in the wake of the September 11 attacks.
- In Uzbekistan, the government has linked the detention (and torture) of Muslim opponents to the threat posed by the Afghanistan-based Islamic Movement of Uzbekistan, described by the United States as being linked to the Al Qaeda network.
- In Australia, the government used the September 11 attacks to justify its policy of detaining hundreds of asylum-seekers from Afghanistan.
- In Zimbabwe, facing elections, the government labelled the main opposition party "terrorist" and foreign correspondents "terrorist sympathisers". In December 2001, it tabled a Public Order and Security Bill that defined as terrorism a variety of ordinary forms of civil disobedience, created new offences related to incitement, severely circumscribed rights of assembly and suspended normal legal guarantees by extending the time allowed for detention without charge of those arrested under the new law.
- South Africa too linked the attacks in the United States to its own domestic terrorism problem, mainly caused by a mostly Muslim urban group, and resuscitated an anti-terrorist law that had been shelved because of intense public criticism.

Certainly in the United States, and also in much of Europe, the general public has accepted that the 'campaign against terrorism' is a positive obligation or a regrettable necessity. In these conditions, human rights organisations will need to argue forcefully for civil liberties without appearing to condone violence.

This said, advocates in countries with independent courts, free and critical media, effective parliamentary oppositions and a well-developed jurisprudence have (at least in principle) less to fear than those in countries lacking some of these essential checks on misuse of power. In the latter societies, many people may be detained for their political beliefs, or because of their nationality or religion. Human rights organisations may need once again to highlight the protection of 'prisoners of conscience'.

<sup>37</sup> Serge Schmemmann, "Swedes Question US-directed Freezing of Suspects' Bank Accounts", *The International Herald Tribune*, January 28, 2002, p. 5

<sup>38</sup> For further examples, see Amnesty International, *Annual Report 2002*, London: 2002.

Equally, where the rights and safety of civilians are threatened by politically motivated violence (as in the Moluccas, or parts of the Philippines and parts of Russia), human rights organisations will need to make sure that they are seen to be working on their behalf – both by pressing governments to protect people who are under their charge, and condemning acts of unjustifiable violence that are committed by state and non-state actors alike.

### Racism and discrimination

There is reason to be particularly concerned about two groups of people who are especially vulnerable in the political environment created by the attacks on September 11 and the ‘international campaign against terrorism’: minorities (particularly, though not exclusively, individuals of Arab origin and Muslims) and migrants.<sup>39</sup>

Generally, the events of September 11 and the ‘international campaign against terrorism’ have tended to increase public anxiety and encourage stereotyping of groups of people perceived to be associated with political violence. As noted already, several countries have introduced specific regulations that target people of Arab lineage and Muslims. This exacerbates discrimination.

Racial discrimination and xenophobia have increased in some countries after September 11. In particular, there appears to have been an increase in anti-Islamic and anti-Arab,<sup>40</sup> and also anti-Jewish<sup>41</sup> (and anti-American) feelings. Attacks on people who resemble Arabs have been reported in Russia, in other European countries and in the United States. The FBI and the Civil Rights Division (CRD) of the United States Department of Justice have opened some sixty civil and criminal investigations into acts by private individuals committed in retaliation for the September 11 events, including

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<sup>39</sup> See International Council on Human Rights Policy, *The Persistence and Mutation of Racism*, Geneva: ICHRP, 2000.

<sup>40</sup> On September 16, 2001, *USA Today*, CNN and Gallup polled Americans about their reactions to the attacks in New York and Washington. Forty-nine per cent of those interviewed said they would approve requiring Arabs, including US citizens, to carry a special ID. Fifty-eight per cent were in favour of requiring Arabs, including US citizens, to undergo special, more intensive security checks before boarding airplanes in the United States. Carroll Bogert notes that the very fact that such comments could enter the public domain shows how the national mood has shifted in the United States which, she adds, “has obviously become a less hospitable place for human rights since President George Bush declared a war on terror. Many Americans seem to feel that their government should do anything and everything it takes to keep terrorists at bay”. See “Challenges and Opportunities for Human Rights”, *Open Society News*, Winter 2002, p. 15. See also, Susan Sachs, “For Many American Muslims, Complaints of Quiet but Persistent Bias”, *The New York Times*, April 25, 2002, p. A16; and European Monitoring Centre on Racism and Xenophobia, *Summary Report on Islamophobia in the EU after 11 September 2001*, Vienna: May 2002. The report can be accessed at <http://eumc.eu.int/publications/terror-report/index.htm>.

death threats, assaults, killings and attacks on mosques and businesses.<sup>42</sup> Many attacks have been reported against Jews and synagogues in Europe, especially in France. (One response of the European Union to the crisis was an initiative to subject foreigners to a higher degree of surveillance than other citizens.)

Where xenophobia (focused particularly on Arabs and Muslims) does increase, refugees and migrants are likely to be particular targets, especially in countries that experience continued economic recession. Moreover, the increase in irregular migration, including human trafficking, and attempts to suppress it, generate numerous violations of labour and human rights. Across the world, large numbers of people are smuggled by networks that have previously dealt in narcotics or other illegal substances and are now seeking to diversify. The perception that immigrants from poor countries pose a security risk has grown since September 11.

There is a serious danger that this large and vulnerable group of irregular immigrant workers – almost invisible to the legal world – will be at risk of even greater exploitation, as well as more aggressive security surveillance. As non-nationals in a foreign country, refugees, asylum-seekers and irregular migrants are particularly vulnerable to non-transparent deterrents to entry. Human rights organisations will need to continue to campaign forcefully for the protection of refugee and migrant rights.

### Indirect effects

In the context of the ‘international campaign against terrorism’, governments have also intensified international action against international crime, money laundering, people trafficking and the drugs and arms trade. In many respects, the co-ordination and enforcement of programmes in these areas is potentially a positive development. Over time, however, the effects may be complex. The different co-ordinating institutions that are being reinforced or created to address these broader questions will continue to operate long after their immediate association with the attacks on September 11 has been forgotten. Human rights organisations should monitor the evolution of these programmes to ensure that relevant human rights issues that may emerge are not ignored.

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<sup>41</sup> Susan Sachs, “Anti-Semitism is Deepening among Muslims”, *The New York Times*, April 27, 2002, p. B9.

<sup>42</sup> See Amnesty International, *Memorandum to the United States Attorney General – Amnesty’s Concerns Relating to the Post 11 September Investigations*, London: November 2001.

Two brief examples may illustrate the sorts of issue that may need to be considered. The first is the monitoring of electronic communications. In December 2001, the FBI announced that it was developing an Internet spying technology (dubbed Magic Lantern) that would allow it to install a logging device in computers via the Internet, without having to access the target physically. In early 2002, the US government prepared legislation for a Cyber Security Enhancement Act (CSEA), supported by the powerful US-based Internet Service Providers Association (ISPA), which will require Internet providers round the world to provide to US authorities information about the identity of their subscribers. If adopted, this Act will be combined with the Echelon global surveillance programme of the United States National Security Agency (NSA), allowing the United States to monitor all worldwide communication using telephone, fax and email amongst governments, corporations and individuals. Monitoring is certain to increase and for obvious reasons this is likely to win public support in many countries. There are equally obvious risks, especially over time, however. Human rights organisations will need to ensure that the right to privacy, both of individuals and private institutions, is protected adequately.

A second example concerns the monitoring and control of financial transfers. Here also, the public will support official regulation of financial transactions, certainly in connection with terrorism, and wherever terrorism is associated with organised crime, the drugs trade, or the arms trade. Problems may arise, however. In November 2001, the American authorities closed down the US offices of an informal Somali money transferring firm, Al Barakaat, accusing it of having links to Al Qaeda. The effect of the action was to disrupt financial transfers between Somali migrant workers and businesses and local people, who as a result were placed in serious financial difficulty. In April 2002, it was reported that, in fact, no evidence had been found linking the bank with Al Qaeda. Government intervention of this sort may become frequent in a number of domains and, if it is not monitored, will not be properly accountable. In some cases, there will be a human rights dimension to consider.

In more general terms, if the 'campaign against terrorism' is extended, it may well do so via developments in areas of institutional coordination of this sort. In the weeks immediately after September 11, the United States and other governments focused their attention almost exclusively on the Al Qaeda network and other Islamist groups. This is still largely the focus. As a result, there has been understandable apprehension in the Muslim world that the 'international campaign against terrorism' is in fact a campaign against Muslims. Yet the Bush administration has maintained that its target is terrorism, not Islam. Significantly, when he identified an "axis of evil", President Bush included North Korea alongside Iran and Iraq.

There are no grounds at present for presuming that over time the 'campaign against terrorism' will not extend more widely and into non-Islamic areas. Indeed, it is doing so in Colombia. The United States was already rather deeply engaged in that country before September 11. It supported a major programme to eradicate drug production which, in political terms, was scarcely separable from the Colombian Government's longstanding military campaign against guerrilla forces opposed to it. The Colombia case resembled Afghanistan in some respects. Both countries are important centres of drug production. In both, political violence has been endemic. Nevertheless, Colombia was different in one important respect: the conflict there is essentially national, whereas the 'international campaign' has been defined as a campaign against *international* terrorism.

The arrest of three senior IRA figures in Colombia in 2001 and the claim that guerrillas are operating across the Venezuelan border (as well as the collapse of talks between the Colombian government and its opponents) has made it more likely, however, that the Colombia case will fall within the objectives of the 'international campaign'. The accusation against those detained is that the IRA and its Colombian allies belong, in effect, to an international network that is involved in political 'terrorism', in arms smuggling and the drugs trade (to raise money). If such charges begin to cohere, the United States and its allies will find it more difficult not to extend the 'international campaign' into new geographical areas. If they do, of course, the risk increases greatly that the campaign will become overextended and never-ending. If they do not, it will become politically vulnerable, because the allegation that this is a campaign of the West against Islam will seem more credible.

It is true, of course, that the United States has a direct interest in what happens in both Colombia and Afghanistan. The Colombian drug trade into the United States directly affects American interests, as do heroin production in Afghanistan and Afghanistan's strategic location in relation to valuable oil reserves believed to exist in the Caspian Sea region. The United States does not have a similarly *direct* interest in, for example, Sri Lanka or Kashmir. Some argue on those grounds that natural limits can be foreseen for the 'international campaign', which are co-extensive with the incidence of conflicts in areas of American interest.

The principal point to emphasise is that intelligence-gathering networks which specialise in monitoring illegal narcotics traffic, weapons trading and money laundering will generate information showing numerous links between organised crime, drugs and terrorism across the globe. The different initiatives that governments have taken to strengthen the capacity of such organisations, and improve their international co-ordination, will have unforeseeable political effects on the evolution of the 'international campaign against terrorism'. These need to be monitored.

#### IV. EXCEPTIONALISM, MULTILATERALISM AND SECURITY

The predominance of American influence on international policy, and the effects of this predominance on inter-state relationships, multilateral institutions, and international policy more generally have become increasingly evident since the events of September 11. There is widespread concern that a more unilateral, more power-based approach to international relations may be emerging. The United States will play a crucial role in determining whether this is so.

At the same time, the conduct of the United States and US policy itself should not be stereotyped. American exceptionalism has a long history and, if it is to be influenced, deserves understanding and study. Human rights organisations should engage more consistently with national organisations in the United States that work on national (rather than international) issues. They should encourage a process that would enable American organisations (and eventually American society itself) to widen and deepen their international contacts and thereby identify with and understand more the experience and perceptions of other regions.

##### **Unilateralism versus multilateralism**

The United States, the sole superpower, has long regarded itself as the principal champion of human rights in the world. In official statements, and in publishing the Department of State's annual report on human rights, the United States government claims a moral authority in relation to human rights. Other governments do so too, of course. European governments and the European Union, in particular, attach importance to human rights in their foreign policies and, like the United States, have applied various forms of human rights conditionality in their aid and trade relationships.

However, European states have also integrated human rights standards to their domestic policies. This process has accelerated in recent years, as further integration of the EU has proceeded. Following adoption and implementation of the European Convention on Human Rights, even Britain (which has no written constitution and for many years strenuously resisted such a step) has integrated international human rights standards within domestic law. In this regard, the commitment of these states to human rights standards has been increasingly coherent. They have increasingly accepted that standards applied to Slovenia, Cambodia or Nigeria will apply similarly to France, Ireland and the Netherlands.

This is not the position in the United States. To a unique degree, the United States government – historically as today – distinguished policies relating to

international matters from policies that apply domestically. At home, it is taken for granted that the American Constitution, interpreted by US courts, is the only legitimate point of reference for determining social and political rights. This belief is embedded deeply in society. It is an article of faith shared by successive administrations, all major political parties and the vast majority of Americans. Human rights is relevant for foreign affairs: international human rights standards are just that, international.

It is difficult, but essential, for non-Americans to understand the importance of this separation, which fundamentally is not due to hypocrisy (of the conscious sort) but to the history and importance of the American constitutional tradition in American society. The separation runs right through the country's institutions, and colours the behaviour of American NGOs as much as the American administration. In general, United States NGOs that work on human rights work on international human rights. This remains true even though Human Rights Watch, the International Human Rights Law Group and the Lawyers Committee for Human Rights have been increasingly addressing a number of domestic human rights issues. (They have somewhat adjusted their respective frameworks and language to do so.) In general, American organisations that work on domestic questions identify not with a human rights but with a *civil* rights tradition and framework, which is linked to the American Constitution rather than international law.

A consensus therefore exists within the United States that American policy should be founded on American Constitutional values (and no others). This self-referential approach – the bedrock of American exceptionalism – is reinforced further by the sheer size of the country. It is a cliché to say that the United States is a world to itself; in real ways, it is. While a sophisticated elite in the United States government and other American institutions manage the country's foreign affairs and interests, the majority of Americans (and American institutions, including the media) are essentially swayed by domestic perceptions and issues. They do not feel they need to consider, and indeed are not particularly aware of, opinions and perceptions in other areas of the world. It is of course obvious to say that Americans view international matters through American eyes. Most peoples view the world through the eyes of their own society. What is unusual is that the United States is relatively free to disregard non-American perspectives. By virtue of its unparalleled military, economic and political power, the United States is largely able to define its international policies in terms of its national interests. This is precisely the language in which American administrations frame American policy – and it is uncontested within the country because the worldview of the great majority of American people is still largely an American worldview.

A superpower with enormous international influence and vast interests abroad, whose actions and policies affect the lives of almost every individual

on the planet, thus brings a provincial vision to its task. A state that is everywhere expected to take a leadership role politically is, in practice, extraordinarily sensitive to a domestic political environment that is largely unfamiliar with, and detached from, other worldviews.

A further feature of American exceptionalism is the moralistic nature of United States political culture. By this is meant three things: the tendency to require politicians to behave in a morally upright manner (in public); the tendency to infuse political values with moral ideas drawn from a particular (Puritan fundamentalist) religious tradition; and above all, the tendency to consider the United States as a morally admirable society – the acme of modern civilisation, the standard against which other societies should judge themselves. (For many Americans it is not rhetoric to say that the United States is "God's country".) Such identification of nationalism with morality is not unique to the United States. In many countries, people believe their societies are morally privileged. In the United States, nevertheless, this belief is present to a distinctive degree, and this has implications because the United States is such a prominent power.

These contradictions raise complex questions for human rights organisations. The latter need, of course, to defend international legal standards and the values of multilateralism. At the same time, they need to consider more carefully the nature of American exceptionalism and its influence on US policies and in turn their effect on human rights.

### **The policy effects of American exceptionalism**

The current United States administration has been much criticised internationally for its decision to oppose or withdraw from a number of international treaties or commitments on the environment (Kyoto) and disarmament<sup>43</sup> and its willingness to protect its own economic interests (steel quotas) while requiring other countries to extend free trade where this serves American interests.

Similar behaviour has characterised United States policy in relation to human rights. The United States has not ratified some key human rights treaties including the International Covenant on Economic, Social and Cultural Rights, the International Convention for the Elimination of All Forms of Discrimination against Women, and the International Convention on the Rights of the Child. The US government refuses to accept that capital punishment is a human

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<sup>43</sup> See Institute for Energy and Environmental Research and the Lawyers' Committee on Nuclear Policy, *The Rule of Power or the Rule of Law? – An Assessment of US Policies and Actions Regarding Security-Related Treaties*, Washington: April 2002; and Joseph S. Nye Jr., "Unilateralism vs. Multilateralism", *The International Herald Tribune*, June 13, 2002, p. 8.

rights issue.<sup>44</sup> It has opposed the establishment of the new International Criminal Court (because of fears that US personnel might be liable to indictment).<sup>45</sup> There is evidence that it is putting UNICEF under pressure to downplay the human rights approach and distance itself from the Convention on the Rights of the Child.

At the same time, the United States has campaigned aggressively to sanction other countries (such as Cuba and China) for human rights abuses – but has not done so consistently. It has largely ignored the rights of Palestinian refugees but highlighted the importance of protecting refugee rights in the Balkans. By failing to condemn (as extrajudicial execution) Israel's targeted assassination of Palestinian activists, it has proved biased on human rights matters. Once again, the United States is far from isolated: similar criticisms could be made against other Western and many non-Western governments. Nevertheless, the United States' political pre-eminence, combined with its claim to be the principal defender of human rights, damages the credibility and claim to independence of all human rights work – and certainly undermines respect for United States policies on human rights.

Militarily, the United States has no competitor since the collapse of the Soviet Union. It is the only state with the capacity to intervene militarily across the globe, and it has a marked technological lead over all other armed forces. Recent experience of military co-operation, with NATO forces in Kosovo and with allied governments in Iraq and elsewhere, demonstrated both the overwhelming dependence of other forces on American technology and transport capacity, and the political difficulties involved in close co-ordination of military operations. When the US administration decided on a military response after September 11, it made little effort to pretend that military dimensions of the 'international campaign against terrorism' were not conceived, led and largely implemented by the United States. As a result, as Sabeel Rahman has perceptively remarked,

the coalition is neither an expression of true multilateralism, nor is it a return to strictly unilateralist Cold War-era policies. Rather, it is a dangerous mix of the two, in which the United States will make an effort to secure some form of international sanction for its actions but will ultimately pursue its own design regardless of the strength or validity of such support. The result is that the United States will get

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<sup>44</sup> The United States carries out more executions than any other state except China and Saudi Arabia. European Union countries resisted American requests for the extradition of suspected terrorists after September 11 for this reason.

<sup>45</sup> See Neil A. Lewis, "US Rejects Global Pact on War Crimes", *The International Herald Tribune*, May 6, 2002, pp. 1 and 4.

enough international backing to legitimise its actions, but not enough to protect it from political censure. Such piecemeal international support will not be strong or widespread enough to prevent the impression that the United States is once again asserting its hegemonic authority over a reluctant international community.<sup>46</sup>

In the aftermath of September 11, the United States' unquestioned military dominance combined with its tradition of political exceptionalism (particularly the refusal to submit to international standards relating to human rights) may well create conditions in which security considerations will rise in importance, and the status of human rights in international affairs will fall (at least for a period). Equally, unilateral approaches based on power rather than multilateral ones are likely to become more dominant. In addition, some states will make common cause with the 'international campaign' and accept international military assistance in order to repress domestic opposition groups, whether or not these have violated international law.<sup>47</sup>

In the longer-term, the United Nations and the Security Council are also crucial actors. The structures of global governance are more than fifty years old and it is clear that in many respects they are outdated. The dominance of the United States within the 'international campaign against terrorism' and NATO's intervention in Kosovo (which was undertaken without approval from the Security Council) are two recent events that have highlighted weaknesses of the system. The 2001 World Conference against Racism and the 2002 UN Commission on Human Rights also revealed deep levels of mistrust between states (and NGOs) which the system is not able to address well.

Many of the international institutions are underfunded, and therefore less effective than they should be; or are vulnerable to the influence of donor agencies because they are dependent on them financially. Genuine reform of the United Nations has probably become imperative – though it cannot go beyond the limits accepted by powerful states. Reform will need to safeguard the interests of small states and ensure that larger states are able to exercise an appropriate level of influence; and provide an adequate and well-conceived representation of civil society voices and the views of non-governmental organisations.

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<sup>46</sup> Sabeel Rahman, "Another New World Order? Multilateralism in the Aftermath of September 11", *Harvard International Review* 23, 4, winter 2002, pp. 40-44.

<sup>47</sup> See also Brigitte Hamm, Jochen Hippler, Dirk Messner, Christoph Weller, *World Politics at the Crossroads – The Eleventh of September 2001 and the Aftermath*, Bonn: Development and Peace Foundation, 2002, p. 7.

### Political language and public rhetoric

The world has polarised politically since September 11 – though the trend was apparent beforehand. Many NGOs were shocked by the bitter divisions that emerged between NGOs at the UN World Conference against Racism in Durban; this event preceded by a few days the attacks in New York and Washington. The emergence of large movements of protest against globalisation in many parts of the world, and the decline in public support for democratic institutions in many industrial societies also seem to indicate an underlying malaise and loss of trust in political institutions in many areas of the world. This crisis of confidence has worsened since September 11. The spread of divisions and mistrust are likely to have important effects on international relations, and on the human rights system.

The use of manichean rhetoric by American politicians after the September events has been particularly unhelpful in this context. The US President declared the struggle to be between “good and evil”, “civilisation” and the “forces of darkness”. Much of the imagery that he and some senior officials used borrowed from the tradition of American fundamentalist Christians. Designed to comfort and mobilise American domestic opinion, it sounded inappropriate and alarming to much of the world. The word ‘terrorism’ was accorded almost evangelical power. The American public (and to some extent world opinion) was invited to side with ‘good’ against ‘evil’, without regard for the complex issues and perceptions that lay beneath the surface of events.<sup>48</sup> Members of Al Qaeda became, not an enemy to be analysed rationally and fought, but almost non-human creatures to be “smoked out from their holes” like animals and eradicated. Though American and other Western leaders made clear efforts to demonstrate their respect for ‘legitimate’ Islam, the terms in which the issues were presented, to the American public in particular, were both provocative abroad and misleading at home.<sup>49</sup>

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<sup>48</sup> It is difficult to see how usage of the word ‘evil’ can be incorporated effectively into a secular vocabulary of law and politics without implicating theology. See Douglas Klusmeyer and Astri Suhrke, “Comprehending ‘Evil’: Challenges for Law and Policy”, *Ethics and International Affairs* 16, 1, 2002, pp. 27-42.

<sup>49</sup> In her paper for the ICHRP meeting, Patricia J. Williams examined in some detail the nature and resonance of evangelical rhetoric in the political speeches of American politicians after September 11. She emphasised the fundamentalist character of this discourse and its resonance in the United States. The imagery associates the United States with the “Promised Land”, the “New Jerusalem”, “God’s Kingdom”, a place for “God’s people”. It is significant that the political rhetoric used by United States politicians and by Osama bin Laden both borrow so directly from fundamentalist religious traditions. See “Peace, Poetry and Pentagonese”, paper prepared for the meeting organised by the International Council on Human Rights Policy on Global Trends and Human Rights: Before and After September 11, Geneva, January 10-13, 2002.

The elimination of nuance and precision from public language creates two particular problems for human rights organisations. The human rights approach is most effective in an environment in which institutions operate rationally, have careful regard for the law, and are precise in using procedures. It is by drawing attention to the implications of legal agreements and the integrity of procedures that human rights organisations are best able to exert influence and protect groups of people (such as minorities, immigrants or political dissidents) who are especially vulnerable because they are powerless, disliked, feared or different. To the degree that political rhetoric becomes imprecise, and emotional rather than rational, it is more difficult for human rights organisations to protect such groups. In the current environment, for example, it is evident that using the word ‘terrorist’ loosely may put large numbers of people at risk of discrimination, violence or injustice. Imprecise use of the term ‘war’ increases similarly the vulnerability of large numbers of people because it is not clear what legal framework applies if they are caught up in conflict or detained. Human rights organisations can protect vulnerable people less well in an impassioned political climate in which figures of authority are cavalier in their use of words.

More generally, such an environment implicitly or explicitly devalues or marginalises the methods and values of human rights organisations. The human rights approach assumes that public institutions are inherently liable to abuse the rights of people, and it applies reason and consistency to protect them. Where political leaders claim that ‘truth’ and ‘right’ (let alone God) are on their side, that the issues are morally self-evident, and that all responsible and just people should clearly take one side, the rational disciplines and painstaking scepticism required for the human rights approach tend to be swept aside.

There is, therefore, concern that, in the post-September 11 climate, respect for national and international law, by states and other institutions, might weaken, and that the influence of human rights on international relations might decline. States that have integrated human rights in domestic law and policy might choose to suspend or weaken such laws on the grounds that this is necessary if action against terrorism is to be effective. Governments less sympathetic to human rights law will merely take advantage of the anti-terrorist campaign to justify or extend acts of oppression.

### The media and human rights after September 11

In this climate, the media have a particular responsibility. Some publications in the United States and elsewhere did report events after September 11 seriously and independently. They analysed the dilemmas involved in extending security laws, for example; they reported the conflict in Afghanistan critically and from a range of perspectives; and they sought to explain

objectively the history and significance of Islamic (and Jewish and Christian) fundamentalism. By and large, nevertheless, the United States broadcast media – and the international media – flooded their audiences with highly emotive images and faithfully transmitted the statements of political actors, but failed adequately to explain the events or provide a critical perspective. As a result, the media – like the politicians – tended to stereotype or dehumanise the ‘other side’. In this regard, the media have also played an important role in amplifying the political polarisation that has emerged so strongly in the period after September 11. This applies to the media in most countries, but the influence of American and international media must be underlined because they are influential in setting the international news agenda.

The Bush administration recognised early on after the September events that it needed urgently to project its message abroad, particularly in the Arab and Islamic world. It did so energetically to such a degree that the success of American officials in influencing the media’s coverage of events is cause for concern.<sup>50</sup> The US Department of Defence restricted access to and supplied information about military action in Afghanistan. Television networks were officially asked to “use caution” in broadcasting footage featuring Osama bin Laden. Some network executives instructed their journalists to balance their coverage of bombing in Afghanistan by ‘reminding’ viewers that 4,000 civilians had died on September 11. The US administration also attempted to discredit the Arab news network Al Jazeera, which, for a period, had exclusive access to Afghanistan and had received videotapes from bin Laden.

Admittedly, media coverage, in America and elsewhere, tends to reflect audience attitudes and expectations. When challenged to explain why most programmes did not question the war or report events more sceptically, editors and producers admitted that many of their readers and viewers complained when they had done so. Certainly in the United States, the public mood – and some media organisations such as the Fox News Network – supported the government’s actions and its presentation of the issues. This was less true in other parts of the world (in Europe, in Africa, in Latin America), where coverage and public attitudes were both more nuanced.

Naturally, the United States has no monopoly on nationalism, and the emotional power of war and fear were exploited in many other countries, by the media as well as by political leaders. Arab media launched a virulent

attack on the American response to September 11, reflecting the mood in the street, where resentment of US policy – particularly in relation to Israel – had been growing for years. Most Arab print media not only denounced the United States response, but analysed the attacks on September 11 in terms that virtually justified or approved of them. Many called the US war on Afghanistan a battle against Islam. Without doubt their governments permitted or promoted such reporting, because few media in the region are genuinely independent. Coverage of this sort certainly inflamed opinion and increased political polarisation. The government of Egypt eventually stepped in and cautioned its press to tone down anti-American rhetoric, no doubt to protect its long-standing relationship with the United States, but also to reduce the level of public emotion.<sup>51</sup>

Some responsible and bold television coverage did occur in the region. Al Jazeera, in particular, featured commentators with a wide range of opinions, including many American, British and French officials. Some independent or opposition party newspapers in the Middle East and North Africa also provided a more balanced approach to events. Some criticised the West for what they saw as a betrayal of (hard-gained and proclaimed) democratic values that had been admired worldwide. Generally, the Arab media did little to examine the implications for human rights of the attacks on September 11 or the security measures that were taken in response by the ‘international campaign against terrorism’. In practice, the Egyptian and other governments in the region were themselves cracking down on non-violent critics as well as suspected terrorists.

It is obvious, of course, that media play an important role in creating and influencing public opinion and public policy. Many of the criticisms and shortcomings mentioned in relation to coverage of events after September 11 are common to news coverage of many other matters, including coverage of human rights in general.<sup>52</sup>

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<sup>50</sup> In February 2002, the US government announced, but later cancelled, the creation of an Office of Strategic Influence at the Pentagon. The official mission of this department was to be the preparation and ‘planting’ of stories, including false ones, in domestic and foreign media. See Eric Schmitt and James Dao, “A ‘Damaged’ Information Office is Declared Closed by Rumsfeld”, *The New York Times*, February 27, 2002.

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<sup>51</sup> Nejla Sammakia, “The Role of the Media after September 11”, paper prepared for the meeting organised by the International Council on Human Rights Policy on Global Trends and Human Rights: Before and After September 11, Geneva, January 10-13, 2002.

<sup>52</sup> On these issues, see International Council on Human Rights Policy, *Journalism, Media and the Challenge of Human Rights Reporting*, Geneva: ICHRP, 2002.

## V. MOTIVES, CAUSES AND JUSTIFICATION

Discussions of justification and cause do not alter the fact that the attacks on the World Trade Centre were criminal and constituted a crime against humanity, nor do they diminish the responsibility of those who organised and carried them out. Investigating and understanding the reasons behind a given action in no way excuse it. Moral evaluation may or may not be part of description, analysis and interpretation, and when it is, it must always be kept conceptually distinct.<sup>53</sup>

It is nevertheless important to comprehend causes and motives – to understand the conditions in which such attacks occur, the thinking that underpins them, grievances that may appear to justify them, and the perceptions of such acts by others. Many experts in counter-terrorism and security accept that a successful strategy to eliminate terrorism requires the removal or mitigation of such causes. Since September 11, the international community has been divided over this question. It is one of the most evident fissures within the ‘international campaign on terrorism’ and marks equally a rather clear line of difference in public opinion.

### **Marginalisation and disempowerment**

On one side are those – in general closely associated with the American administration – who deny the relevance of social and economic factors. Since most of those who allegedly perpetrated the attacks were well-educated and from well-to-do families, they argue, it is either inappropriate or dishonest to link their actions with global inequity. Doing so confuses the issues and tends to mitigate guilt or justify criminal behaviour. The acts were criminal, the alleged organisers were criminal and they should be brought to justice or defeated militarily. Considerations of context are not germane.

Other governments and very large numbers of ordinary people in many regions do not agree. While they accept that understanding context does not reduce responsibility, they consider that policies to eliminate terrorism will fail unless they take account of economic and social factors, and political attitudes, that cause people to sympathise with or abhor politically-motivated violence. For many such people, this is not a sentimental position. It is not based on the attitude that terrorists are heroes underneath, or that use of violence by the state is inherently repugnant or always oppressive. More often, it is a position adopted on the basis of painfully acquired experience.

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<sup>53</sup> Jean Jackson, “ACTA Declares College Faculty ‘Weak Link’ in War on Terrorism”, *MIT Faculty Newsletter*, 19, 3, January-February 2002.

From Ireland to Kashmir via East Timor and Spain, experience has suggested that recourse to military force on its own rarely eliminates violent movements that are perceived to have some social legitimacy; more usually it embitters such conflicts. Military responses are more likely to be successful if they are combined with, or subordinate to, policies that ameliorate or remove economic and political grievances that give rise to the perception that political violence is legitimate.

The two positions are simplified. Cases can be found where military repression has succeeded (against the Sendera Luminosa in Peru) and where combinations of social policy and repression have failed (in East Timor). Nevertheless, even a cursory review reveals the political complexity of the larger context into which the 'international campaign against terrorism' has been launched.

It is widely believed that levels of economic and political inequity in the world are related to globalisation and that in turn is identified with Western, particularly American capitalism. There is a widespread perception that globalisation exports (or imposes) particular cultural values without respect for other cultures or beliefs. There is a widespread perception, too, that Western governments and companies sell to others their own forms of governance (democracy, the rule of law) not for disinterested reasons but because they benefit economically from doing so. Free trade helps rich countries more than poor ones; legal regulation allows international companies to operate with less risk; democracy is encouraged (but not if it leads to independent regimes). These perceptions may or may not be well-founded, but they certainly exist and influence behaviour.

### Injustice

The attacks threw a cruel light on such attitudes. Americans and Europeans regarded the attacks as a wrong inflicted unjustly on innocent people. In many other parts of the world, however, although there was widespread condemnation because of the extraordinary violence of the event and the deaths of so many people, they were construed as an act of revolt against an unfair and oppressive world order symbolised by the power of the United States. In places where the United States is regarded as an oppressive influence (because of its actions or its support to oppressive local authorities), there was sometimes a sense that the United States had received its come-uppance.

In particular, the United States foreign policy in the predominantly Muslim Arab world has long caused widespread resentment. Western governments are perceived to apply double standards in relation to terrorism. There was widespread concern in the region that the 'international campaign', though it claimed to oppose all forms of terrorism, was focused primarily on Muslim

countries. It is also widely assumed that Western governments, and notably the United States, are biased in their policy towards Israel (and give credit improperly to the Israeli Government's claim that it is fighting a war against 'terrorism' alongside the United States and on the same terms). The Cairo Institute for Human Rights sums up the perception:

Any discussion of the feelings of hatred between the West, on the one hand, and the Arabs and Muslims, on the other, cannot but deal with the rights of Palestinian people. One cannot be indifferent to the accumulated feeling of injustice that the Arabs suffer from because of the Israeli occupation crimes that the US, in collusion with Europe, endows with impunity and protection. Consequently, this undermines the credibility of international human rights law and it increases the reservations of many people in the Arab and Islamic world in regards to universality of human rights principles and values.<sup>54</sup>

Tellingly, immediately following the attacks, there was in the United States and in most of the Western world a widespread inclination to blame what had happened on fanatical Islam (without information about the alleged hijackers' religious commitments). The assumption was that only true believers filled with hope that God would reward them with entry into paradise could be inspired to destroy their own lives and those of many others. Yet at the very same time that so many Americans, for instance, saw this tragedy rooted in perverse religious impulse, their own response was thoroughly religious.<sup>55</sup>

By refusing to consider the rationality of the terrorists, and by denying them their humanity, the United States authorities have failed or omitted to explain the motivation for the attacks against the World Trade Centre and the Pentagon, unjustified as they may be. The approach it has taken also makes it very difficult to make sense of, or respond effectively to public reactions to the attacks in different parts of the world. These, it must again be stressed, are complex and cannot sensibly be characterised in simple terms – as attitudes for or against violence, or for or against terrorism.

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<sup>54</sup> Cairo Institute for Human Rights Studies, *Terrorism and Human Rights – Towards a Universal Approach for Protecting Human Rights and Combating Terrorism*, report of a conference organised in collaboration with the International Federation for Human Rights and the Euro-Mediterranean Human Rights Network, Cairo, January 26-28, 2002. At its simplest, the double standard issue is one of bias. The claim is that the suffering of Arabs and Muslims at the hands of Israel or US-supported policies are not awarded the same attention as other crimes (though some would argue that they are), including Muslim on Muslim or Arab on Arab human rights violations. Consequently, Islamic and Arab human rights initiatives have increasingly aimed consciously at regional rather than international impact. This was noticeable following the Al Aqsa Intifada in September 2000. The aftermath of the events of September 11 deepened the gap.

<sup>55</sup> E. J. Dionne Jr., "The Question of Faith After September 11", *Harvard Divinity Bulletin* 30, 3, Winter 2001-2002, pp. 24-26.

That said, it is important to recognise that people in other countries – including in the Arab world – hold deeply ambivalent attitudes to the United States. Its wealth and power do make it the object of envy and hatred. Many of its policies are self-interested and do damage the interests of other societies (and in some cases, humanity). Yet the American Dream has been internalised all over the world. The United States is the first destination of migrants, its popular culture is emulated by successive generations of youth across the globe and, when problems and conflicts arise, governments and peoples almost everywhere look to the United States to sort them out.

### Challenges for human rights organisations

In such a polarised and complex environment it is harder for human rights organisations to conduct their work. They defend respect for the law – and as such are bound to promote its application. Issues of cause and justification must therefore be treated carefully if human rights organisations are to fulfil this core role as they ought to. At the same time, human rights groups will not be credible if they appear to condone simplistic military approaches or adopt positions without regard for larger issues that inform the problem at hand. Currently, for example, human rights organisations cannot seem to condemn Palestinian suicide bombers and give the impression that they do not censure military abuses by Israeli forces – or vice versa. As Palestinian and Israeli human rights organisations and international human rights organisations well know, it is extraordinarily difficult to sustain a consistently objective position – one that is *perceived* to be objective – in a highly polarised environment. The difficulty becomes even more acute when organisations address, not just matters of law and fact, but matters of cause and motive. Yet these cannot indefinitely be avoided, because they are crucial issues for public opinion.

In the larger context of the ‘international campaign’, for example, human rights organisations that do not condemn terrorism in forceful terms stand to be disowned by a large proportion of the population in Europe, and even more people in the United States. (It will not help to argue that ‘terrorists’ are not bound in the same way by international law as states are, and do not fall within the remit of human rights organisations; or that ‘terrorism’ is not an appropriate legal category.) Organisations that *do* firmly condemn terrorism, on the other hand, will be accused by others of colluding with the interests or the propaganda of the United States and ‘the West’ generally. Yet *the disciplined capacity of human rights organisations to hold a clear, consistent, just and defensible line, when political opinion is highly polarised, is perhaps the most important defence of fairness and honesty that they contribute*. This lucidity (or courage) is vital to their long-term credibility.

What must a ‘clear and defensible human rights line’ include? We have discussed already the importance of defending precise language and the use of legal terms (Chapter Two and Chapter Four). In a period of polarisation, accuracy and dispassion are often the first casualties.

In addition, human rights organisations must take account of causes and motives. It is necessary to condemn the attacks on September 11, and those responsible for them, but it is not enough to do so. The attacks denied justice and life to the approximately three thousand people killed on that day, and identifying, arresting and judging those who commissioned the attacks would provide those people, and their relatives, a form of justice. However, the networks that sustain such acts of terrorism are in turn sustained by grievances of many kinds – some of which are well-founded. The world in which we live is flagrantly unequitable. Far too many people are very poor; far too many are sick and cannot obtain health care; too many children receive no education. Poverty and deprivation stand beside extreme and conspicuous wealth.

From this wider perspective, human rights organisations exist to bring justice and promote human dignity. They cannot stand aside from these larger questions or take refuge from them in the decipherment of technical legal rules. They must be seen to be engaged, publicly, in the defence of large human interests – and, eventually, the laws they stand up for must also be seen to defend those larger interests too.<sup>56</sup>

In this context, the relations between human rights organisations and social movements like the anti-globalisation campaigns (which can be described positively as movements for economic justice) deserve attention.<sup>57</sup> These campaigns are disparate, vibrant alliances in which numerous kinds of groups participate.<sup>58</sup> Many of them would consider that they support human rights or *are* human rights organisations, even though they may not be familiar with human rights law or engage in legal advocacy. Organisations that exist primarily to undertake these activities are attracted by such alliances. They offer opportunities to step out of sometimes narrow preoccupations and disciplines, to join other organisations around broad issues such as social exclusion, and to build support for human rights in new constituencies.

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<sup>56</sup> On this issue, see, for instance, William F. Schulz (and Mary Robinson), *In Our Own Best Interest – How Defending Human Rights Benefits Us All*, Boston: Beacon Press, 2002.

<sup>57</sup> See Kumi Naidoo and Indira Ravindran, “A Rights-based Understanding of the Anti-globalisation Movement”, paper prepared for the meeting organised by the International Council on Human Rights Policy on Global Trends and Human Rights: Before and After September 11, Geneva, January 10-13, 2002.

<sup>58</sup> Indeed, their gathering power and the campaigns themselves are, paradoxically, a manifestation of increased globalisation.

However, joining with larger groups of campaigners who are united by common ethical values (but are not necessarily interested in their legal expression) involves risk. The two qualities that human rights organisations distinctively bring to advocacy are knowledge of the law and a precise grasp of institutional procedures. Certainly, they can 'shame and blame' those who are guilty; but so can others. The rich and passionate campaigning tradition of human rights organisations is often most effective when criticism is accompanied by precise descriptions of legal obligation. Where human rights organisations can use their well-honed capacity for argument to add credibility and effectiveness to an alliance, this will clearly be valuable. On the other hand, if human rights advocates, taken as a whole, were to surrender legal rigour for a more imprecise rhetoric, campaigns for justice would scarcely be stronger – but the ability of human rights organisations to defend vulnerable people effectively would be much reduced. Once again, in a period of polarisation this is a particular challenge. Human rights organisations cannot afford to stand on the edge of events, or be seen to be compulsively parsing law; but they might do harm to the cause of human rights if, from weakness or passion, they give themselves up to the forces of polarisation and put 'loyalty to the cause' before accuracy.

Note that a familiar imbalance tends to assert itself on this question. A human rights approach to poverty should consider poverty in the North (the United States, Portugal or Italy) as well as poverty in the South. In practice, little attention has been given to poverty in industrialised countries, which reinforces a perception that the human rights approach – like neo-liberal economics – is a value system that the North exports but does not apply to itself. Human rights organisations should give increased attention in coming years to work on economic and social rights; and programmes in this area should look for and include organisations which are tackling poverty in a range of countries.

Saying that human rights organisations should work more on economic and social rights does not imply, of course, that it is not sensible for many organisations to continue to focus on protection of political and civil rights. It is simply to say that, overall, more attention should be given to economic and social rights than has been given to date. Human rights work needs to be diverse, and organisations should not be expected to adopt the same methods or objectives.

The tradition of exceptionalism in the United States is relevant here. American policy-makers are distinctively unsympathetic to the notion of social and economic rights. The United States government has not ratified the International Covenant on Economic and Social Rights and its approach to social benefits and social protection in the United States remains rather

illiberal.<sup>59</sup> Human rights organisations should encourage more support for domestic US organisations that are campaigning around and for economic and social rights in the United States. More international recognition for such organisations, support and collaboration with them would be valuable.

A final general point should be made about NGO accountability. NGOs are self-mandated. They are legitimate and credible if their work is of good quality, and their claims are honest. In legal terms, they operate under Article 71 of the UN Charter. However, as they become more prominent and challenge governments, corporations and other powerful actors on a wider range of issues, it is inevitable that their legitimacy and their authority to speak on matters of public policy will be questioned.

In this context, NGOs and human rights groups need to be clear about their legitimacy to speak, and its limits. Legitimacy can be defined as "the particular status with which an organisation is imbued and perceived at any given time that enables it to operate with the general consent of peoples, governments, companies and non-state groups around the world".<sup>60</sup> From this working definition, it can be further observed that an NGO or human rights group's legitimacy is both *derived* and *generated*. It is derived from morality and law.<sup>61</sup> It is generated by veracity, tangible support and more intangible goodwill. Legitimacy is also generated by good performance. In a potentially more critical political climate, human rights organisations can expect to be challenged increasingly about their legitimacy and will need to have firm arguments to support the validity of their organisations and their claims.

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<sup>59</sup> The United States administration accommodated elements of the argument, put forward by a number of governments, that social and economic reform must be included in any successful programme to combat terrorism. This was the political significance of the US decision, announced at the United Nations International Conference on Financing for Development, held in Monterrey in March 2002, to increase its aid budget by several billion dollars. Political conditions were attached immediately, and the overall level of American aid remains the lowest (relative to income) of all the industrialised countries. The decision does nevertheless suggest that arguments in favour of global social and economic reform are having an influence on policy – and may have more influence in the international political environment that has emerged since September 11.

<sup>60</sup> Hugo Slim, "By What Authority? The Legitimacy and Accountability of Non-governmental Organisations", paper prepared for the meeting organised by the International Council on Human Rights Policy on Global Trends and Human Rights: Before and After September 11, Geneva, January 10-13, 2002, pp. 7-9.

<sup>61</sup> An NGO or human rights group's wider legitimacy is morally derived, as a mission to end human rights violations and is based on the universally acknowledged moral values of human equality, dignity, impartiality, justice, freedom and personal and collective responsibility.

## VI. CONCLUSIONS

We have argued in this report that human rights organisations and more generally the human rights *tradition* contribute certain distinctive disciplines and strengths to the larger struggle for justice. Two of these strengths are precise use of legal language and well-developed knowledge of official and legal procedures, which make it possible to engage effectively with governments and international institutions. Another is the insistence on objectivity, on fair and impartial judgement, which follows logically from loyalty to the rule of law and international legal principles. Another is respect for accuracy. Human rights organisations attach particular importance to facts and to exact language. Taken together, these characteristics are less evident in other traditions that also struggle to advance justice and human progress, using other skills.

In a period of political polarisation, such as the one ushered by the September 11, 2001 attacks on the United States, these qualities are arguably more important than before – precisely because they are put into question by the urgency and scale of the issues, and because they are challenged by some of the political actors. In such conditions, human rights organisations themselves feel marginalised, even irrelevant. Their interest in detail and procedure seems less useful. The slow, painstaking analysis of responsibility may seem an inappropriate or ineffective response to burning and immediate issues; human rights organisations may face criticism because they do not take sides.

The events on September 11 and afterwards may or may not have reshaped world affairs. It can be maintained that they merely revealed, brutally, trends that were already in place. The essential point, however, is that, on a wide scale and in many countries, *there is disquiet at the direction of events and both mistrust and fear have sharply increased*. In this emerging environment, human rights organisations feel challenged to be relevant and effective – but also feel that their old methods have less purchase on decisions and decision-makers. There is a resulting loss of confidence and sense of indecision.

This sense of crisis among human rights activists has many facets, not all of which can be examined in this report. Of the themes that have emerged, four particularly deserve mention.

### **Economic inequity**

The first was discussed in Chapter Five. If the larger context is one in which human rights organisations must address broader underlying grievances and injustices, which lead to or *are* violations of human rights, then economic

inequity – the unequal and unfair distribution of resources and opportunities – must be put more at the centre of human rights activity. Such injustices should be addressed simply because they are injustices. There may be no mechanical relation between underlying injustices and political violence (or sympathy for it); this does not alter the responsibility of human rights organisations to address injustice. On the other hand, there may be a relation: in that case, human rights organisations should not address injustice because of its effects.

If human rights organisations applied their forensic and legal skills to economic and social issues as effectively as they have to the protection of political and civil rights, they would make a considerable impact on policy. Moreover, this impact would complement rather than duplicate the work of trade, investment, health, development and humanitarian organisations that work in the same areas of policy.

To date, nevertheless, despite increasing their efforts, the work of human rights organisations on programmes and on campaigns against economic inequity have not been particularly effective. In general, they have seemed to outsiders to be somewhat abstract, complicated, and unlikely to produce immediately useful results. The claims of human rights activists that economic, social and cultural rights are indivisible from political and civil rights, and just as important, will continue to ring hollow until they can show to health, education, economic, and other institutions which are not primarily human rights institutions, that adoption of a human rights approach will improve tangibly the quality of their work.<sup>62</sup>

### Role of the state

At the heart of the human rights approach stands the state. As noted at the outset in this report, states occupy a privileged position in human rights law. They have the monopoly of force; and by signing up to international human rights standards, they incur the primary duty to ensure that the rights of people under their authority are protected.

Historically, the approach assumes a certain kind of state – one that is likely to abuse (since “power corrupts”), but which also has the ability to carry out its duties competently. Human rights law thus mainly addresses states that have bad intentions, abuse their authority, or become corrupted, rather than states that, for example, are incompetent, dysfunctional, or were never expected to do the things that modern states are expected to do by human rights law. The approach assumes that states share a common idea of good

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<sup>62</sup> As noted, the point is not meant to imply that the work of human rights organisations should not be diverse, but that more and more effective attention should be given to this dimension of rights.

performance, can be influenced by reason, are accountable in various respects, and are vulnerable to embarrassment. Above all, it is assumed that they are capable of reforming themselves.

The merit of this approach is that it enables all states to be judged on equal terms, against objective standards (of international law), and thereby can claim to protect and promote the rights of citizens equally across all societies. Its weakness is that numerous states do not fit this (Westphalian or Hegelian) vision of the state. They may do so in form or they may not; but there is no match in operational behaviour.

Countries in which economic inequity is concentrated (though not necessarily political oppression) tend to be countries where the state’s institutions and values least resemble those of the modern state envisioned by human rights law. This may reassure human rights theorists at first sight, because it suggests that economic inequity may recede as respect for political and civil rights is strengthened and systems of modern governance are adopted.

Such a comfortable assumption may be misplaced, however. Some experts argue that many states are *essentially* dissimilar from the modern state and always have been; they have no common historical foundation. They suggest that state systems (as they are understood and represented in international law) never existed in many regions of the world before modern colonialism created them, and have not taken root since. In such societies, the state is an economic machine that generates resources for those who control it. Officials may not see themselves as obliged to provide professional services to people from whom they will receive no personal or direct benefit. Neither citizens nor officials may hold attitudes in relation to the state that are conducive to effective government.<sup>63</sup>

There can be argument about the theory. It is clear, however, that many states are not able to finance or deliver the expensive services that a modern state respectful of human rights is expected to provide (health, education, environmental protection, financial oversight, social welfare, and so on). In such cases, it is at least arguable that, sometimes, their poor performance is not primarily attributable to bad intention, abuse or corruption but to lack of capacity or incompetence or *different* intention. Crimes there may be, but

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<sup>63</sup> Stephen Ellis, remarks at the meeting organised by the International Council on Human Rights Policy on Global Trends and Human Rights: Before and After September 11, Geneva, January 10-13, 2002.

they may be understood in different terms in the capital of the country concerned, compared with Geneva or New York.<sup>64</sup>

Making this argument does not imply that abusive states should not be judged critically. A human rights violation is a violation, and states that abuse the rights of their people should be held to account. Moreover, as the Vienna Declaration and Programme of Action of the World Conference on Human Rights (1993) notes “while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognised human rights”.

The problem is a real one, nevertheless. In practical terms, the operational assumptions of human rights advocates may sometimes be unrealistic. Certain states may not share the international model of good performance; they may not be amenable to pressure; and they may not be able to reform themselves. The notion that it will be effective to hold such states accountable to international standards may seem fanciful, and not just to observers. Many local activists have felt from time to time a profound sense of unreality and isolation when they have pressed government officials to respect standards of behaviour with which neither the officials nor the public appear to identify. What sense does it make to lobby for reform in terms of an institutional framework that is fictive, or is largely unrecognised within the society concerned?

This is an enormous challenge. For local human rights activists, how is human rights work to be done in the absence of a state that resembles the institution described (and aspired to) in human rights law? With respect to the human rights approach, how is it possible to sustain a system and methodology that claim to be universal, realistic and effective, if there is one kind of law but there are different kinds of state?

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<sup>64</sup> This argument can be caricatured. In very few countries do people sympathise with murder, rape, widespread expropriation and other serious crimes that state officials may commit. What is at issue is the systemic capacity of a given state to deliver services in a way that is consistent with respect for human rights standards. In these terms, in many countries there is a gap between what a state is expected to do (in law) and what it can reasonably be expected to do in practice. In some instances, that gap is wide. If the gap is a material one (essentially due to a shortfall in resources), it can often be remedied quickly, given the will. Where the gap is one of expectation and capacity, however, a straightforward remedial strategy is far more difficult to design. Afghanistan provides an obvious contemporary example. Aid in large volumes can build schools and hospitals, and finance the salaries of teachers and officials and judges. However, is Afghanistan's political culture such that these institutions will take root and provide services in an accountable and sustained manner? To many Afghans as well as officials from the ‘international campaign against terrorism’, it is obvious that this is a sensible question to ask. This is especially true at a time when the country is undergoing important political transformations.

In these terms, the debates about non-state actors, which have preoccupied human rights theorists and others in recent years, may need to be extended. As a result of such debates, human rights law has already changed considerably. It has expanded to encompass abuses against women and others in the private sphere, and placed new or additional responsibilities on private companies and armed groups; international human rights law increasingly binds more than states. The ‘campaign against international terrorism’ will force these, and new arguments further into the open. Its list of possible targets includes some states that fit the classical model and others that do not. Human rights organisations are challenged to set practical human rights and reform objectives in countries like Afghanistan, that will be taken seriously by people in those countries and by governments involved in the ‘international campaign’. This will not be an easy task, and represents a long-term challenge to the human rights approach, not merely an immediate task in relation to Afghanistan.

### Universality redux

The above discussion could be reframed as an argument about universality. Is it correct to claim that human rights law represents the values and aspirations of all peoples; or (a different point) that all peoples *perceive* human rights standards to reflect their values and aspirations?

Blamed on Islamist extremists, the events of September 11 sparked anew the discussion about differences in culture, politics and beliefs between Western and Islamic societies.<sup>65</sup> Some commentators drew on Samuel Huntington's Clash of Civilisations thesis to argue that Osama bin Laden's war against the United States was evidence that civilisational identity is indeed shaping patterns of cohesion and disintegration and that conflicts between different civilisations have come to influence crucially global politics.<sup>66</sup> Others concluded that those who attacked the United States had essentially political motives for doing so.

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<sup>65</sup> See Abdullahi An-Na'im, “Upholding International Legality against American and Islamic *jihād*”, and Makau Mutua, “Terrorism and Human Rights – Power, Culture and Subordination”, papers prepared for the meeting organised by the International Council on Human Rights Policy on Global Trends and Human Rights: Before and After September 11, Geneva, January 10-13, 2002.

<sup>66</sup> Samuel Huntington's paradigm was articulated in “The Clash of Civilisations?”, *Foreign Affairs*, summer 1993; and in *The Clash of Civilisations and the Remaking of World Order*, New York: Simon and Schuster, 1996.

The discussion draws attention to the relationship between human rights and culture. Human rights organisations have been challenged consistently to reconcile the claim that human rights are universal values with the fact that cultural and religious practises and assumptions differ widely across the globe. Is a religious belief or cultural practice illegitimate if it does not accord with human rights standards? Are human rights standards less universal if they do not correspond to religious beliefs or cultural practices in some societies?

The general approach of human rights organisations has been to reconcile international standards, conventions and treaties with local practice by means of cross-cultural dialogue and internal discussion within cultures.<sup>67</sup> This may be more difficult in the polarised environment that has come about after September 11 – though the outcome will reflect political and moral choices that are made and will not be due to the inherent character of cultures or religions, which are of paramount significance everywhere, in the West as well as the Islamic world.<sup>68</sup>

In relation to terrorism, no intrinsic connection can be made between Islam and terrorism. All terrorists are highly motivated – be it by political or nationalistic ideology, or religious zeal. In responding to September 11, Western politicians and commentators have too often assumed that fundamentalism and Islam are synonymous.<sup>69</sup>

The Islamic world is also challenged to renounce interpretations of jihad in the Shari'a that permit aggressive use of force in pursuit of political or religious objectives. The dominant understanding is that Shari'a law strictly regulates the conduct of war, but there has been much debate on this question throughout the history of Islam. In the current environment, it has become increasingly difficult to hold such discussions; Muslims who try to do so are often endangered.

A wider issue concerns the emergence of modern human rights during the second half of the twentieth century, a period in which Western societies, and notably the United States, became politically and economically dominant. Human rights law is marked by its political and cultural origins during this period, and its transmission and adoption abroad have been associated with the spread of many Western (notably American) institutions and values. Since the end of the Cold War, this trend has become even more evident to people from other societies.

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<sup>67</sup> See Abdullahi An-Na'im, *Human Rights in Cross-Cultural Perspectives – Quest for Consensus*, Philadelphia, Pennsylvania: University of Pennsylvania Press, 1992.

<sup>68</sup> An-na'im, "Upholding International Legality", p. 7.

<sup>69</sup> See also Michael Ignatieff, *Human Rights as Politics and Idolatry*, Princeton, New Jersey: Princeton University Press, 1991.

An ethical or legal principle is not less valid because it originates at a certain time and in a certain context. What matters is its usefulness and value to those who adopt it. Nevertheless, the fact that human rights and human rights institutions have a particular history has political implications, particularly at periods when international relations are highly polarised and mistrustful, as they have become in the post-September 11 period.

Human rights ideas and principles have been adopted and embraced in many parts of the world. They have been a transforming and liberating element in many societies. In parallel, however, 'human rights' are associated with American and Western influence; they are regarded as imports and subject to the same sort of reserve. Many people in the non-West perceive that human rights have been enforced inconsistently, used as an instrument of political conditionality, or applied without respect for local values.

These perceptions fuel resentment and give weight to those who argue that human rights values are Western values, not universal ones. In the end, the way to change this perception is to remedy imbalances in international power relations, which is beyond the remit of human rights organisations. The human rights approach must prove its value, locally as well as internationally; it will not survive if it is to be taken on trust.

Both national and international human rights organisations should therefore expect their legitimacy to be challenged in the period after September 11. National organisations will be asked to show that they are articulating views that are relevant and legitimate in relation to their own societies. International organisations will be asked, not least by local human rights organisations, to show that they really are independent and genuinely international and are not articulating the views of special or national interests.

The larger question beneath these challenges is whether human rights organisations can continue to claim persuasively that their values are universal, given the widening rifts that are emerging at many levels, not least between the West and much of the Muslim world. This challenge will come not only from states and social groups that have traditionally opposed human rights for ideological reasons or because they are themselves oppressive. Human rights organisations can also expect to be condemned if they criticise policies of the United States or other governments in the 'international campaign'. These may seek to eliminate robust dialogue on human rights by accusing their critics of supporting or sympathising with terrorism.<sup>70</sup>

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<sup>70</sup> See Mutua, "Terrorism and Human Rights".

### Precision, balance and vision

Taken together, what do these different challenges require from human rights organisations? Critics and some human rights activists would say that human rights organisations must rid themselves of practices and attitudes that are *elitist*, *excessively legalistic* and *overly Western*.

International NGOs must recognise and address the nature of these challenges. Overall, the conundrum is this: the professionalisation of the human rights movement combined with the rapid spread of a diffuse human rights ideology in the 1990s has projected a rather elite group of human rights organisations into the spheres of (power) policy-making, sometimes spelling diminished contacts with grass-root organisations – or turning that connection into a distant relationship. More importantly, it has confined the parameters of the type of response that these organisations can provide to serious international crises. Finally, their own (secular) values have sometimes been a factor of misunderstanding in settings where cultural values and religion were predominant.

These are issues that affect NGOs differently. Local and national NGOs may find themselves somewhat isolated from their social and political environment. They may depend heavily on financial donors based in Northern countries. The legal culture in their countries may be confined to a small urban elite, largely detached from the experience and preoccupations of the poor and rural majority. As indicated in the earlier discussion of states, their human rights approach may not fit society's political or social expectations. Problems of this kind tend to weaken and demobilise, and may delegitimise the work of local human rights NGOs, however responsible that work may be. International NGOs face different challenges. They may be large and professionalised institutions; well-organised to attract media attention. Their high profile enables them to engage with governments and other political actors; often, they are very respected in public opinion. This 'success' creates new challenges of effectiveness and legitimacy. What responsibilities do they have in relation to national and local NGOs? How do they remain relevant – and honest to their original ethos of truthful independence? How do those which are secular (and those which are not) reconcile their universal values with settings in which local cultural and religious values are predominant? To whom are such organisations really accountable?

No clear or firm answers to these challenges can be given, but perhaps four pointers may be highlighted.

The first is that the 'traditional' work of human rights organisations should not be abandoned. It is more than ever essential to focus attention on the rule of law, on the need for precise interpretation of legal terms, on respect for procedures that hold authorities accountable, and on protection by these

means of individuals whose rights would otherwise be neglected or violated. This patient work must be done as rigorously as ever, even in circumstances ('the campaign against terrorism') where authorities feel that they have more liberty to override constraints on their actions because public opinion is itself more tolerant of doing so. The traditional virtues and disciplines of human rights advocacy remain vital to the credibility of the whole human rights initiative.

Secondly, however, human rights organisations need to learn how to address some broader issues more successfully. They need to find fruitful ways of linking up with other social movements that are working on issues of exclusion, poverty and discrimination.

Thirdly, human rights organisations must find an equilibrium, in two respects. They need to keep a balance between retaining old virtues and disciplines and broadening their appeal and their agenda. They also need to keep a balance in relation to the polarised political context that will be the environment for the foreseeable future. Both forms of equilibrium will be difficult to sustain. If human rights organisations forego or forget their technical skills in argument and their respect for objectivity, they will lose their cutting edge as advocates and will not greatly assist the efforts of others who are also seeking to create a more just world, using different skills. If they fail to show that they can remain politically independent, their work will be treated with cynicism, and human rights law and the human rights approach as a whole will become progressively politicised and discredited.

Finally, there are also opportunities to innovate. Much of this report has suggested that the September 11 events and their aftermath have brutally drawn attention to the shortcomings of international governance and the dangers that political violence pose to people everywhere, even the materially privileged. If human rights organisations are to remain relevant and contribute as they should to reform and progress, they will want to identify new issues that should inform their vision. In doing so, it may also be helpful to think about how human rights organisations have innovated successfully in the past and why some efforts have failed. Such an exercise may help organisations move forward faster and more successfully.<sup>71</sup>

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<sup>71</sup> For example, over a period of twenty years (roughly 1960-1980), the demands of the women's movement were mainstreamed and today an important body of human rights standards deals with women's rights. In retrospect, the integration of women's rights within human rights seems entirely normal to most activists. This was not always so. Originally the issue was controversial and many activists and legal experts resisted the idea that women's rights were distinctive and needed specific attention. Today, similar arguments continue on other matters.

The general trends that underlie the international context after September 11 present a new set of challenges to human rights organisations and people working to promote international human rights standards. There is an urgent need to face those challenges. This report has attempted to identify some of the issues, though it is too early to do so comprehensively, given that the 'campaign against terrorism' continues to unfold and so far no limit has been set on its duration or extent.

The current environment is different from the environment in which human rights organisations operated between 1950 and 2000, and which culminated in the 1990s in a climate globally favourable to the promotion of human rights. In this new period, arguments in favour of establishing international standards and holding the record of governments to account by rational argument and an orderly process of monitoring may not command the same attention from governments, or publics. Governments may seek to repudiate international standards in an international environment that is characterised by political polarisation and mistrust.

The perception that many states apply double standards in relation to human rights is similarly problematic. Hypocrisy matters, because it is profoundly more difficult to promote the values of human rights if publics are cynical and some governments either circumvent international human rights law or exempt themselves from standards they seek to impose on others.<sup>72</sup>

The September attacks revealed the emergence of a different type of terrorism. At the same time, the tension between security and civil rights has been growing in many countries as a result of new laws and measures that have been introduced after September 11. There is doubt that international law can handle the twofold threat that this evolution represents. In the final analysis, renewed commitment, vigilance, self-criticism and innovation can help human rights organisations live up to the challenge.

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<sup>72</sup> Human Rights Watch, *World Report 2002*, New York: Human Rights Watch, 2002, p. xxvi.

## VII. RECOMMENDATIONS

Many of the problems and challenges raised in this report are not new. Human rights organisations were already beginning to address them, or would have had to address them before long. The events of September 11 have created a sense of urgency, however. The progress that the human rights approach has registered in recent years is at risk, from several directions. The political climate is much less favourable. Above all, perhaps, human rights organisations are themselves uncertain how to go forward from here.

The *general* recommendations below are addressed to human rights organisations, governments and international organisations in the spirit that they can be used as *pointers for action* to address the issues discussed in this report. Some of the recommendations addressed to human rights organisations are equally pertinent for governments and international organisations.

### **In relation to the 'international campaign against terrorism'**

*States should define the limits of the 'international campaign against terrorism' clearly, in relation to international law.*

Human rights organisations are right to be concerned about the legal ambiguity of a campaign that has been described as a war, is undertaken in self-defence, has the approval of the Security Council but has no defined geographical scope or limit, has failed to define its enemy in a clear manner, and has refused to position the conflict in terms of human rights law or humanitarian law.

*Acts of terrorism should be defined clearly.*

Human rights organisations are rightly concerned about the loose and imprecise application and incomplete understanding of the notion of terrorism. A precise and limited definition of acts of terrorism is necessary.

*Action to combat terrorism should respect human rights and the framework of international law.*

Hasty introduction of sweeping and exceptional laws will cause violations of human rights. People should not be detained on suspicion of terrorism on the basis of evidence that cannot be reviewed or challenged.

*Military intervention should respect human rights and the framework of international law.*

It is important to build international agreement as to when military interventions are legitimate or justified, and when they are not. This work cannot be done rapidly or easily and may require some institutional reform. It

is vital to ensure that military interventions are subject to appropriate human rights safeguards.

*Command responsibility with respect to new patterns of military operation should be clarified.*

The 'international campaign' has stimulated the emergence of new combat alliances involving both irregular and regular troops. It will be important to clarify attribution of command responsibility and the application of humanitarian and human rights law to these new forms of military arrangement.

*Human rights organisations should forcefully address abusive practices that are carried out in the name of anti-terrorism.*

Such abuses are occurring in democratic countries and are an even more serious problem in countries where citizens' rights are less protected by independent courts, free and critical media, effective parliamentary oppositions and well-developed jurisprudence.

*In the context of such abuses, human rights organisations should give special attention to*

- *the right to freedom of expression,*
- *the rights to freedom from racial and religious discrimination and*
- *the rights of migrants and refugees.*

*Human rights organisations should monitor the effects of action taken to control international crime and illegal trade in narcotics, weapons and people, and money laundering.*

International co-ordination and powers of investigation in such areas have greatly increased during the 'international campaign against terrorism': many of the effects may be positive but in the long-term some could have important human rights implications.

*It is essential to bring a just and permanent end to the conflict in the Middle East.*

The continued Israeli-Palestinian conflict generates numerous human rights violations and poisons the contemporary international climate, including relations within United Nations structures.

### **Changes in the wider environment**

The political context is less favourable to human rights. Multilateral and diplomatic approaches to solving international problems have given ground to unilateral and more forceful approaches. Recourse to military solutions, as an

early rather than last response to political violence, will create new risks of conflict in many parts of the world. In a more polarised global context in which fear and mistrust are widespread:

*Human rights organisations should develop, and communicate, clear positions with respect to violence against civilians, by non-state forces as well as forces under government control.*

If they are to remain politically relevant and effective, human rights organisations need to communicate more clearly where they stand on political violence committed by non-state groups, while advocating a coherent position in relation to international human rights and humanitarian law.

*It is essential to defend precise use of language and responsible application of procedures.*

In a climate that is politically polarised and less sympathetic to human rights, it is more than ever essential to focus attention on the rule of law, on the need for precise interpretation of legal terms, on respect for procedures that hold authorities accountable, and on protection by these means of individuals whose rights would otherwise be neglected or violated.

*At the same time, human rights organisations must be seen to defend large human interests, including issues of economic inequity.*

Human rights organisations (governmental and non-governmental) have been giving more attention to economic, social and cultural rights. Developing this dimension of human rights further is essential to the long-term credibility of the human rights approach. In this context, human rights organisations could link creatively with social movements and organisations from other traditions, which use different methods to end exclusion, poverty, and discrimination.

*The media could improve the quality of their coverage of human rights issues.*

Human rights organisations and media professionals should assist one another to improve the profession's understanding of human rights issues and reporting of stories that involve human rights.

*Human rights organisations need to consider carefully the nature of American exceptionalism and its influence on US human rights policies.*

Work on human rights would be strengthened if organisations outside the United States engaged more consistently with US organisations that work on national economic and civil rights.

### In the longer-term

Human rights organisations face a number of longer-term challenges to which they will need to give attention. These include the development of

#### *New strategies in relation to state institutions.*

State institutions stand at the heart of the human rights approach. Traditionally, human rights organisations relied heavily on 'shaming' states into reform. Recently, training and co-operation programmes have spread as human rights values have been widely adopted officially. In many societies, nevertheless, state institutions are recalcitrant or dysfunctional and where this is so a standard human rights approach may seem ineffective or inappropriate. Fresh thought may be needed, not so much concerning the value and relevance of human rights standards as their application in particular societies.

#### *Fresh approaches to religion and culture.*

Human rights advocates need to strengthen the universality of human rights and deepen public perception of their universality. The Universal Declaration of Human Rights has been strengthened over time by other human rights instruments. Whether or not the Universal Declaration, and the form that human rights have taken, belong in the Western tradition, in the coming period new challenges will no doubt be made to the claim that human rights are universal. Organisations need to develop ways to communicate human rights values in widely different societies and encourage local ownership of them. This is more a matter of the practice of human rights than about the standards themselves.

#### *Sharper alertness to issues of accountability.*

In a rather polarised political environment, in which mistrust is widespread, organisations will need to be more alert to issues of accountability. They will need to justify themselves, and not only because governments in many countries will be less tolerant of dissent. Accountability is multi-dimensional. It touches on relations between North and South and between national and international NGOs, on the growth of campaigning and the extension of advocacy into new areas, and on the development of alliances with organisations from different traditions. Human rights organisations will be invited to apply their distinctive skills in new areas, and will need to do so without loss of legitimacy or effectiveness.

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## USEFUL INTERNET SITES

[www.amnestyusa.org/usacrisis/](http://www.amnestyusa.org/usacrisis/)

*Amnesty International USA resources on the September 11 crisis.*

[www.enduring-freedoms.org](http://www.enduring-freedoms.org)

*A site created by the Fédération Internationale des Droits de l'Homme, in collaboration with Reporters Without Borders and Human Rights Watch, which compiles, since November 2001, human rights violations perpetrated by the "fight against terrorism".*

[www.guardian.co.uk/wtccrash/story/0,1300,554018,00.html](http://www.guardian.co.uk/wtccrash/story/0,1300,554018,00.html)

*A chronology of events since September 11, with links to analysis.*

[www.hrw.org/campaigns/september11/](http://www.hrw.org/campaigns/september11/)

*Human Rights Watch on the aftermath of the September 11 attacks.*

[www.lchr.org/aftersept/aftersept\\_main.htm](http://www.lchr.org/aftersept/aftersept_main.htm)

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[www1.umn.edu/humanrts/links/response.html](http://www1.umn.edu/humanrts/links/response.html)

*University of Minnesota resource link to responses to September 11.*

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