



**HEAR NO EVIL, SEE NO EVIL:
THE U.N. SECURITY COUNCIL'S APPROACH TO HUMAN RIGHTS
VIOLATIONS IN THE GLOBAL COUNTER-TERRORISM EFFORT**

Human Rights Watch Briefing Paper

August 10, 2004

SUMMARY.....	2
BACKGROUND	4
The Security Council's Counter-Terrorism Effort	4
The CTC and Human Rights: Existing Arrangements	6
THE CTC'S PERFORMANCE TO DATE.....	7
Egypt	8
Uzbekistan	9
Malaysia	10
Morocco.....	11
Sweden	13
Absence of Information on the Application of Counter-Terrorism Measures.....	15
CTC Inquiries that may Encourage Harmful Practices.....	16
RECOMMENDATIONS.....	17

SUMMARY

The United Nations Security Council has the international stature and resources necessary to exercise farsighted global leadership in the campaign against terrorism. To date, it has largely failed to fully realize this potential. An important reason has been its failure to take seriously the protection of human rights in the context of counter-terrorism.

Counter-terrorism measures pose dangers to established human rights protections. As numerous recent cases attest, those dangers are not hypothetical and not limited to minor players or issues. Rights violations in turn are threatening to undermine the success of counter-terrorism efforts in many countries.

There is mounting evidence, for instance, that the U.S. detainee abuse scandal epitomized by practices at Baghdad's Abu Ghraib prison in part reflects decisions by the United States to turn its back on well-established principles of international human rights law and commonly held understandings of human rights principles.¹ Treating human rights standards as an inconvenient obstacle that can be brushed aside violates international law and can make governments more vulnerable to terrorism. Each photograph of American soldiers humiliating a detainee in Iraq could be considered a recruiting poster for al-Qaeda. Indeed, counter-terrorism measures anywhere that are accompanied by systematic or egregious rights abuse risk provoking, in reaction, increased support for violent extremism.

Current controversies in the United Kingdom over its discriminatory anti-terrorism law,² and in Sweden over the rendition of suspects to Egypt where they were allegedly tortured,³ also show the damage that can be done to the legitimacy of counter-terrorism efforts when states accept lower human rights standards. As this briefing paper shows, drawing on examples from Egypt, Morocco, Malaysia, Uzbekistan, and Sweden, the problem is a global one.

True global leadership by the Security Council in the effort against terrorism would require that the council not only press governments to take decisive and concerted action to block the financing of terror, and promote improved cross-border information sharing, among other steps that the council is taking, but also that it play a prominent role in ensuring that counter-terrorism measures not erode pillars of the human rights framework—pillars which have taken decades to erect. Instead of asserting such leadership, the Security Council all too often has allowed itself to be a forum where

¹ See Human Rights Watch, "The Road to Abu Ghraib," June 9, 2004, available at <http://hrw.org/reports/2004/usa0604/> (tracing the antecedents of the Abu Ghraib abuses, including discussions in Washington on using torture or other forms of cruel, inhuman, or degrading treatment; specific authorization of illegal interrogation tactics for use in Guantanamo Bay, Afghanistan, and Iraq; and U.S. government failure to take corrective action despite repeated reports of abuse).

² See Human Rights Watch, "Neither Just Nor Effective: Indefinite Detention Without Trial in the United Kingdom Under Part 4 of the Anti-Terrorism, Crime and Security Act 2001," June 24, 2004, available at <http://hrw.org/backgrounder/eca/uk/index.htm>.

³ See Human Rights Watch, "Sweden Implicated in Egypt's Abuse of Suspected Militant," May 5, 2004, available at <http://hrw.org/english/docs/2004/05/05/egypt8530.htm>.

governments offer no more than self-serving accounts of aggressive steps they have taken to combat and prevent terrorism.

The Security Council is currently restructuring its work on counter-terrorism, bolstering the efforts of its Counter-Terrorism Committee (CTC) with the establishment of a fully staffed Counter-Terrorism Executive Directorate (CTED). Although the CTC has unequalled power to compel governments to explain their actions and has set up a mandatory counter-terrorism reporting system for all UN member states, that reporting system currently includes no human rights component

This briefing paper analyzes the work of the CTC to date, reviewing in detail a number of country reports submitted to the CTC and other CTC documents. Because CTC communications to governments are not made public, it is impossible to fully know the CTC's response to a particular state report. Based on publicly available information, however, Human Rights Watch's review of the CTC reporting system found the following:

- When governments describe new draft anti-terror or security laws containing provisions that rights-trained experts would readily recognize as inviting abuse, the CTC says nothing;
- When governments trumpet repressive laws currently being used for crackdown against nonviolent political opponents as part of their contribution to counter-terrorism efforts, the CTC says nothing;
- When governments promote repressive laws used in the past for transparently political ends as part of their contribution to counter-terrorism efforts, the CTC says nothing;
- When governments make demonstrably inaccurate statements about actions that implicate fundamental human rights, the CTC says nothing; and
- When governments describe actions with major rights implications, the CTC does not even raise the issue.

The illustrations in this paper show more generally that the CTC has focused largely on steps that governments have taken on paper (passing new laws, setting up new bureaucratic departments, and so on), not what they are actually doing in practice. The illustrations also show that, in some cases, the CTC may actually be indirectly encouraging abuses, as when it pushes governments to show results without at the same time explicitly raising relevant and empirically well-founded human rights concerns.

To date, the strongest rights measure taken by the Security Council was its commitment when establishing the CTED to ensure regular liaison between the CTED and the U.N. Office of the High Commissioner for Human Rights (OHCHR). This is an important step because, at present, information already available in the U.N. human rights system is not regularly heeded or being used effectively by the CTC. It is an insufficient step, however, because the Security Council has resources and authority that the OHCHR does not have, and needs its own dedicated human rights staff if its counter-terrorism initiatives are to take human rights seriously.

The Security Council's disregard for the human rights implications of counter-terrorism has been particularly disappointing because, given the stature of the council, any effort could have far-reaching effects.

As detailed in the concluding section of this paper, HRW believes the work of the Security Council could be substantially improved if it were to take two straightforward steps:

- (1) Appoint at least one human rights expert to fill the new senior staff positions on the CTED, with the responsibility to review counter-terrorism measures for their compliance with states' rights obligations, to ensure more effective "cross-referencing" between the CTC and U.N. human rights bodies and other rights monitors, and to offer forward-looking proposals for making rights an important tool in the counter-terrorism effort;
- (2) Require that governments include in their reports to the CTC an accounting of the human rights implications of their counter-terrorism measures.

The Security Council is uniquely placed to play a leading role in reversing the global trend in which rights are viewed as an inconvenient obstacle to progress in the campaign against terrorism. The council should be leading the effort to show in concrete ways that rights are an essential ally.

BACKGROUND

The Security Council's Counter-Terrorism Effort

U.N. Secretary General Kofi Annan has repeatedly warned against making human rights yet another victim of terrorism. During the first open debate of the Security Council on counter terrorism in January 2002, he told the Security Council to "make sure that the [counter-terrorism] measures you adopt do not unduly curtail human rights, or give others a pretext to do so." Speaking at an open debate of the CTC in October that year, he said that "to pursue security at the expense of human rights is short-sighted, self-contradictory, and, in the long run, self-defeating." And in the very first paragraph of his 2002 report on the work of the organization, he stated "I firmly believe that the terrorist menace must be suppressed, but States must ensure that counter-terrorist measures do not violate human rights." To date, this counsel has not been heeded.

In late September 2001, in response to the terrorist attacks on the United States on September 11, the U.N. Security Council passed Resolution 1373.⁴ It is an unusual document because it is the first Chapter VII resolution that applies to the entire U.N. membership. The resolution requires tough criminal, financial, and administrative measures aimed at individuals and entities considered supportive of or involved in terrorism.

⁴ S/RES/1373 (2001), September 28, 2001.

Resolution 1373 requires states, among other things, to prevent and suppress the financing of terrorist acts by the adoption and enforcement of very strict legal and financial measures; to refrain from providing any form of support to those engaged in terrorism; to establish terrorist acts as serious criminal offences in domestic law, with commensurably serious punishment; and to take measures before granting refugee status to ensure that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts.

The CTC was established under Resolution 1373 to monitor its implementation, and to increase the capability of states to fight terrorism. It consists of all members of the Security Council.⁵ Resolution 1373 required all governments to report to the CTC within 90 days of the adoption of the resolution explaining what steps they had taken to implement the resolution, with subsequent reporting according to a timetable set out by the CTC.⁶

Resolution 1373 itself makes no positive reference to member states' obligations to respect international human rights, humanitarian and refugee law. The human rights deficit was addressed in Security Council Resolution 1456 of January 20, 2003, which requires states to "ensure that any measure taken to combat terrorism comply with all their obligations under international law and [that they] adopt such measures in compliance with international law, in particular international human rights, refugee and humanitarian law." This represents an important commitment and a step forward, but the CTC has so far failed to actively promote states' compliance with international human rights standards.

In March 2004 the Security Council provided additional institutional support for its counter-terrorism efforts through creation of the Counter-Terrorism Executive Directorate (CTED).⁷ The first Executive Director of the CTED took up his post only at the end of June, however. In the meantime, the CTC has continued to have at its disposal a corps of experts, established shortly after the CTC's inception, who provide guidance to the CTC on analyzing technical aspects of states' reports and who prepare draft responses.⁸

⁵ The Russian Federation assumed the chairmanship on May 28, 2004, for a period ending on December 31. From April 4, 2003 to May 17, 2004, the chairmanship of the Committee was held by the Permanent Representative of Spain to the United Nations, Inocencio F. Arias. He replaced the Permanent Representative of the United Kingdom, Sir Jeremy Greenstock, who served as the Committee's first Chairman. See <http://www.un.org/Docs/sc/committees/1373/mandate.html> (retrieved June 10, 2004).

⁶ Note Verbale SCA20/01(6), October 26, 2001. According to the CTC website, "Stage A" reporting requires that States first address themselves to and report on progress in (i) having legislation in place covering all aspects of Resolution 1373, and a process in hand for becoming party as soon as possible to the twelve international conventions and protocols relating to terrorism; and (ii) having in place effective executive machinery for preventing and suppressing terrorist financing. Once the required legislation is in place, "Stage B" reporting is slated to include (i) executive machinery in place (police and intelligence structures; customs, immigration and border controls; and controls preventing access to weapons) that in particular will prevent recruitment to terrorist groups, the movement of terrorists, establishment of terrorist safe havens and any other forms of passive or active support for terrorists or terrorist groups. See <http://www.un.org/Docs/sc/committees/1373/reports.html> (retrieved June 11, 2004).

⁷ S/RES/1535 (2004)

⁸ For the list of experts, see <http://www.un.org/Docs/sc/committees/1373/composition.html> (retrieved June 23, 2004). Understanding that the newly appointed executive director would soon be presenting an organizational plan for the CTED, Human Rights Watch wrote to him on June 25, 2004, endorsing the idea to include a human

The CTC and Human Rights: Existing Arrangements

Members of the CTC have at times been unsympathetic to the notion that the CTC should pay attention to the human rights dimensions of the campaign against terrorism. On March 6, 2003, for example, the then chairman of the CTC, U.K. Ambassador Sir Jeremy Greenstock, reminded a special meeting of the CTC that while the CTC did not ask states to do anything incompatible with their human rights obligations, monitoring such obligations was not the responsibility of the committee. Earlier, on January 18, 2002, Ambassador Greenstock said in a public meeting of the Security Council that it was “open to other organizations to study States’ reports and take up their content in other forums.”⁹ Several member states of the CTC have echoed these views in statements since the formation of the CTC.

Other U.N. officials and experts, however, have raised serious concerns about the CTC’s reluctance to address human rights. Immediately after passage of Resolution 1373, for example, then High Commissioner for Human Rights Mary Robinson expressed concerns about the possible impact of the resolution on human rights worldwide. In late 2001, she suggested that it would be useful to provide guidance to states to ensure that misapplication of the resolution did not result in human rights violations. Her office then prepared such a document, hoping that it would become an official CTC document and that it would be circulated to all member states. The paper focused on the legality of counter-terrorism measures, dealing with issues such as non-derogability, non-discrimination, the right to seek asylum and non-refoulement, and due process. This guidance was posted on the CTC website, as the high commissioner had recommended, but the CTC declined to make it an official document and circulate it to all member states.

The next high commissioner, the late Sergio Vieira de Mello, met with CTC members on October 21, 2002 and raised concerns about the possibilities for abuse inherent in broadly worded anti-terrorism laws as well as in decisions to fight terrorism outside the confines of the rule of law. Among other things, he reiterated a recommendation of his predecessor that the CTC appoint a human rights adviser.¹⁰

On July 12, 2004, in one of her very first statements, the new High Commissioner for Human Rights Louise Arbour emphasized the need to reconcile the struggle against terrorism with respect for fundamental human rights standards. She recalled that one of the last judgments of the Supreme Court of Canada in which she participated addressed an aspect of this issue and concluded that the successful protection of citizens and the successful protection of their rights are not only compatible with each other but

rights coordinator within the CTED, and offering some thoughts on the role this staff member might play. Human Rights Watch also took the opportunity to share with the new CTED Executive Director some of its concerns regarding the impact of counter-terrorism measures on human rights worldwide and the role of the CTC in that context. Many of the points made in that letter are reflected in this briefing paper.

⁹ Quoted at http://www.un.org/Docs/sc/committees/1373/human_rights.html (retrieved June 24, 2004).

¹⁰ Address by Sergio Vieira de Mello, High Commissioner for Human Rights, To the Counter-Terrorism Committee of the Security Council, October 21, 2003, available at http://www.un.org/Docs/sc/committees/1373/sel_docs.html (retrieved June 29, 2004).

are, indeed, interdependent and that there can be no genuine personal security if rights are in peril.¹¹

In other parts of the U.N. system the threat that some governments' counter-terrorism efforts present to human rights is also well recognized: in June 2003 Sir Nigel Rodley, a member of the U.N. Human Rights Committee and former Special Rapporteur on Torture, appeared before the CTC to remind the committee that Resolutions 1373 and 1456 must be taken together to ensure that Resolution 1373 did not become "an instrument for circumventing states' human rights obligations." Rodley stressed the desirability for the CTC to pose questions to member states on the human rights dimensions of their reports.¹²

These appeals have a sound foundation. While it is true that there are other U.N. organs dedicated to human rights monitoring and promotion, they lack the resources and clout of the Security Council, which can call for reporting by all U.N. member states (rather than signatories of certain treaties in certain years), and which is best placed to insist on sustained attention to the human rights consequences of counter-terrorism measures. Almost one quarter of U.N. member states are not party to the International Covenant on Civil and Political Rights (ICCPR), for example, and almost a third are not party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

As noted above, the strongest rights commitment by the CTC to date has been the commitment to establish regular liaison between the CTED and the Office of the High Commissioner for Human Rights (OHCHR).¹³ This would supplement the existing dialogue between the CTC and OHCHR through meetings and exchanges of information between staff, while the Chair of the CTC receives from OHCHR regular updates on counter-terrorism findings by the U.N. human rights bodies.

For reasons detailed in this paper, Human Rights Watch believes that such arrangements to cross-reference the work of the CTC and U.N. human rights bodies, though important, are not sufficient.

THE CTC'S PERFORMANCE TO DATE

In preparing this paper, Human Rights Watch analyzed country reports to the CTC, and other publicly available documents of the CTC. What we found suggests that, in most

¹¹Address of the High Commissioner for Human Rights Louise Arbour to the 81st Session of the Human Rights Committee, available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/FEC66240ABED211BC1256ECF006F6D26?opendocument> (retrieved July 15, 2004).

¹² Briefing by Sir Nigel Rodley, Vice-Chairperson Human Rights Committee, June 19, 2003, available at <http://www.unhcr.ch/hurricane/hurricane.nsf/0/EE1AC683F3B6385EC1256E4C00313DF5?opendocument> (retrieved June 28, 2004).

¹³ The CTC Report of February 19, 2004 (S/2004/124) identified one of the tasks of the Assessment and Technical Assistance Office of the CTED as "liaison with the Office of the U.N. High Commissioner for Human Rights and other human rights organizations in matters related to counter-terrorism."

cases, the CTC has paid little or no attention to the potential human rights consequences of counter-terrorism measures. We have found no evidence that the CTC regularly raises human rights on its own initiative or that it consistently uses information coming from human rights treaty bodies or U.N. monitoring mechanisms in its follow-up questions to member states upon the receipt of their reports.

Some of the rights consequences of counter-terrorism measures identified by U.N. human rights bodies and civil society groups have been highly disturbing and likely to set back the counter-terrorism effort. However, based on our analysis, government reports to the CTC appear to accept at face value representations of how counter-terrorism provisions are used, without consideration being given to their possible, or actual, abuse, or to their effectiveness. This approach is at odds with the fundamental approach applied in other U.N. mechanisms that have state reporting requirements.

Egypt

In its initial submission to the CTC,¹⁴ the Egyptian government highlighted the definition of terrorism contained in Act No. 97 of 1992, as

any use of force or violence or any threat or intimidation to which the perpetrator resorts in order to carry out an individual or collective criminal plan aimed at disturbing the peace or jeopardizing the safety and security of society and which is of such a nature as to create harm or create fear in persons or imperil their lives, freedom or security; harm the environment; damage or take possession of communications; prevent or impede the public authorities in the performance of their work; or thwart the application of the Constitution or of laws or regulations.

If the CTC had a human rights expert on staff, that expert would have recognized immediately that language as vague as that included in the Egyptian law all but invites abuse by overzealous officials. Indeed, when the U.N. Human Rights Committee, the treaty body responsible for overseeing implementation by States Parties of the ICCPR, examined Egypt's most recent periodic report on November 28, 2002, it expressed alarm at the jurisdiction of military courts and state security courts in cases of civilians accused of terrorism, and "the very broad and general definition of terrorism given in Act No. 97..." Just one week earlier, the CTC had issued its request for a second supplementary report from Egypt.¹⁵ Judging from the response,¹⁶ this request did not apparently raise

¹⁴ Letter dated 20 December 2001 from the Permanent Representative of Egypt to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, S/2001/1237, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/714/85/PDF/N0171485.pdf?OpenElement> (retrieved June 25, 2004).

¹⁵ Letter dated 22 November 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council, S/2002/1289, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/712/26/PDF/N0271226.pdf?OpenElement> (retrieved June 25, 2004).

any matter relating to Act No. 97, and there was no modification of the request subsequent to the publication of the Human Rights Committee's findings. It is unclear at this writing whether a CTC request to Egypt in December 2003 for a third supplementary report has corrected this deficit, as that report is overdue.

Uzbekistan

In its initial report to the CTC,¹⁷ and again in its first supplementary report,¹⁸ Uzbekistan lists among the offences and penalties with respect to the prevention and suppression of terrorist acts the following articles of its Criminal Code:

- Article 159 Attacks against the constitutional order of the Republic of Uzbekistan
- Article 242 Organization of a criminal association
- Article 244-1 Preparation and distribution of material containing a threat to public security and public order¹⁹
- Article 244-2 Creation or direction of or participation in religious extremism, separatism, fundamentalism or other banned organizations

These articles are the ones chiefly deployed in a campaign of persecution against nonviolent independent Muslims that has seen an estimated 7,000 people incarcerated, including some 4,000 adherents of the nonviolent group Hizb ut-Tahrir (Party of Liberation), whose teachings in favor of an Islamic state the government finds seditious.²⁰ Despite the Uzbekistan government's assertion that these prosecutions are a response to terrorism, in the vast majority of cases researched by Human Rights Watch, those imprisoned were not charged with terrorism or even with committing any act of violence. In essence, Uzbekistan has criminalized legitimate religious practice and belief in a way that casts individuals' exercise of their rights to freedom of conscience, expression, and association as attempts to overthrow the government. In its reports to the CTC, it is characterizing instruments of gross and widespread abuse of human rights as a legitimate counter-terrorist response.

Uzbekistan's campaign against nonviolent independent Muslims who preach or study Islam outside the official institutions and guidelines has been going on for a decade. In

¹⁶ Letter dated 20 January 2003 from the Permanent Representative of Egypt to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, S/2003/277, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/276/05/PDF/N0327605.pdf?OpenElement> (retrieved June 25, 2004).

¹⁷ Letter dated 27 December 2001 from the Permanent Representative of Uzbekistan to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, S/2002/4, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/222/23/PDF/N0222223.pdf?OpenElement> (retrieved June 24, 2004).

¹⁸ Letter dated 26 August 2002 from the Permanent Representative of Uzbekistan to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, S/2002/974, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/580/25/PDF/N0258025.pdf?OpenElement> (retrieved June 24, 2004).

¹⁹ The initial report also highlights how "[s]pecial attention is given to detecting... printed and graphic materials and publications intended to undermine the State and public order..."

²⁰ For further information see Human Rights Watch, "Creating Enemies of the State: Religious Persecution in Uzbekistan," March 2004, available at <http://hrw.org/reports/2004/uzbekistan0304/>.

the early and mid-1990s the government justified the repression of independent Islam as an effort to preserve secularism. Beginning in 1998 it referred to the need to prevent terrorism, and today the Uzbek government places the arrests firmly in the context of the global campaign against terrorism since September 11, 2001.

The case of Uzbekistan also illustrates how requiring human rights reporting would enable the CTC to improve its assessment of the effectiveness of the counter-terrorism provisions that states are reporting. In countries where due process is lacking, and torture and unfair trials are common, there can be no guarantee that convictions secured under counter-terrorism laws are truly removing from society those involved in terrorism. The soundness of any criminal conviction in Uzbekistan is called into question by the fact that torture and ill-treatment in Uzbek prisons and police precincts remain widespread, and occur with near-total impunity. Uzbek courts continue to accept as evidence confessions extracted under torture. No legal safeguards against torture have been introduced, despite persistent recommendations to that effect by international monitoring bodies, including the U.N. Special Rapporteur on torture and the Committee against Torture.

Malaysia

Malaysia's initial report to the CTC presents the Internal Security Act (ISA) as one of the main legislative provisions satisfying the requirements of Resolution 1373.²¹ The report states that the ISA "is utilized to detain persons with a view to preventing them from acting in any manner prejudicial to Malaysia's national security, maintenance of essential services or the economic life of Malaysia or as a preventive measure." Malaysia's initial report also states: "The application and enforcement of all the laws cited ... are subject to the rule of law and the principles of natural justice, with the Legislative, Executive and Judicial branches of government acting as checks and balances. Further safeguards for due process are also enshrined in the Federal Constitution and incorporated into the relevant laws."

The ISA is a draconian law, passed in 1960 in response to a Communist insurgency, and has been used in succeeding decades against political opponents of Malaysia's longtime ruling party. Under the ISA, the government can detain individuals without charge or trial, denying them even the most basic due process rights. It allows the government to hold detainees for two years after arrest, and then renew this period indefinitely without judicial approval or scrutiny; ISA detainees have no right to contest their detention in court.

That the ISA has been used as a political tool cannot have escaped the attention of the CTC's experts: it was used notoriously in the case of Malaysia's former deputy prime minister Anwar Ibrahim, who was initially detained in 1998 under ISA provisions.²²

²¹ Letter dated 4 January 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Malaysia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, S/2002/35, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/226/57/PDF/N0222657.pdf?OpenElement> (retrieved June 28, 2004).

²² See Human Rights Watch press advisory, September 21, 1998, available at <http://www.hrw.org/press98/bck-brif/my-pr0921.htm> (retrieved June 29, 2004).

That case alone should also have alerted the CTC to the hollowness of Malaysia's assurance of due process guarantees and judicial independence. As Human Rights Watch recently pointed out in a major report on the ISA, its regular use as a political tool casts doubt on the Malaysian government's claim that the ISA is now being used for "legitimate" purposes.²³ The ISA took on new life as an anti-terror measure in 2001, and over the past three years, the Malaysian government has detained over 100 people suspected of involvement in terrorist activity, only a handful of whom have been released. Most of these detainees are accused of being members of the militant group Jemaah Islamiyah, which is allegedly responsible for killing more than 200 civilians in bombing attacks in Indonesia in 2002 and 2003. While some may well be dangerous individuals, many likely are innocent of involvement in terrorist conspiracies. Despite their prolonged detention, the Malaysian government has yet to bring any of the cases to court or offer convincing evidence that the detainees were involved in illegal activity.

Morocco

Following the September 11 attacks on the United States, Morocco increased surveillance and escalated crackdowns on Islamic groups, many of which were believed by authorities to have a local link to Al-Qaeda. Moroccan security authorities carried out arrests and detentions on a large scale, and criminal prosecutions. Only one of these is alluded to in Morocco's reporting to the CTC:²⁴ the action against a "sleeping cell" of Al-Qaeda in 2002-03, consisting of three Saudis and seven Moroccan men and women accused of planning to blow up NATO warships in the Straits of Gibraltar and of plotting attacks on cafes and public buses in Marrakech.

On May 16, 2003, twelve suicide bombers struck in five different locations in Casablanca, killing 33 people as well as themselves, and injuring over a hundred. These attacks led to wide-scale arrests. Although overreaching by authorities and concomitant rights abuse is particularly likely in the wake of such a traumatic attack, the CTC appears not to have addressed the matter.

Morocco's reporting to the CTC makes no mention at all of the arrests and prosecutions connected to the May 16, 2003 bombings: its one report subsequent to the attacks, a second supplementary report dated December 3, 2003, is purely a response to questions and requests for clarification from the CTC on issues raised in its previous supplementary report. Despite Morocco's second supplementary report being already over three months late at the time of the May 16 bombings, the CTC did not, subsequent to the bombings, make a follow-up request to Morocco that its overdue report should include information on actions taken in consequence of the May 16 events.

²³ See Human Rights Watch, "In the Name of Security: Counterterrorism and Human Rights Abuses Under Malaysia's Internal Security Act," May 2004, available at <http://hrw.org/reports/2004/malaysia0504/>.

²⁴ Note Verbale dated 10 July 2002 from the Permanent Mission of Morocco to the United Nations addressed to the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, S/2002/777, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/491/17/PDF/N0249117.pdf?OpenElement> (retrieved June 28, 2004).

The exact numbers of detainees who were arrested by the judicial police or any other security body since May 16, 2003 in connection with terrorism charges, and the number of the detainees who have faced terrorism charges and have been brought to trial since then, have not been officially disclosed. Morocco's minister of justice stated on May 12, 2004 that 2,000 people had thus far been indicted in terrorism-related cases since the May 2003 bombings, 14 people had been sentenced to death and "scores of others" had been sentenced to prison terms of up to 30 years.²⁵ Local nongovernmental organizations estimate the number of people detained at 5,000. A number of those who are known to have been convicted in connection with the May 16, 2003 attacks have alleged a range of abuses including torture in pre-trial detention, deprivation of legal counsel, being held in unlawful and prolonged *garde à vue* detention, and being forced to sign false confessions.

The example of Morocco also illustrates the apparent lack of CTC interest in rights implications of draft anti-terror legislation. New counter-terrorism legislation, the Anti-Terror Bill 03.03, was passed on May 29, 2003. Its drafting was flagged in Morocco's first supplementary report to the CTC,²⁶ and details of the law are presented in Morocco's second supplementary report.²⁷ The bill revises the Penal Code and Criminal Procedure Code by adding new provisions and amending others. Acts of terrorism are defined in a broad and sweeping manner: a list of specific acts can be classified as terrorism when they "are deliberately perpetuated by an individual, group or organization, where the main objective is to disrupt public order by intimidation, force, violence, fear or terror." The list of acts includes theft of goods, extortion, and the promulgation and dissemination of propaganda or advertisement in support of the mentioned acts. The anti-terror legislation also extends the permissible length of detention without judicial order for offenses that are deemed to constitute acts of terrorism to twelve days, without right of appeal, and allows for suspects to be prevented from meeting their legal counsel for up to ten days.

Moroccan human rights groups stressed, prior to the bill's passing, that the Anti-Terror Bill would unnecessarily compromise basic human rights, and that the existing penal codes provided sufficient law enforcement power to combat illegal and criminal activity of any kind.²⁸ Inquiry from the CTC about what deficiencies the new law was intended to address, and whether essential safeguards of human rights and due process were in place, appear to have been completely absent.

²⁵ Maghreb Arabe Presse, May 12, 2004.

²⁶ Note Verbale dated 10 July 2002 from the Permanent Mission of Morocco to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, S/2002/777, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/491/17/PDF/N0249117.pdf?OpenElement> (retrieved June 28, 2004).

²⁷ Note Verbale dated 3 December 2003 from the Permanent Mission of Morocco to the United Nations addressed to the Chairman of the Counter-Terrorism Committee, S/2003/1173, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/657/87/PDF/N0365787.pdf?OpenElement> (retrieved June 28, 2004).

²⁸ Memorandum regarding the anti-terror bill 03.03, Secretary of the National Network against the Anti-terror Bill, Rabat, February 24, 2003. Many Moroccan lawyers and human rights activists have pointed out that the fact that the government did not rely on the new Anti-Terror legislation to carry out massive arrests and large-scale detentions and trials following the May 16 Casablanca bombings shows that the Anti-Terror legislation was not needed.

The Moroccan Organization for Human Rights²⁹ and Amnesty International³⁰ reported in November 2003 to the U.N. Committee against Torture about some of the deficiencies in the criminal justice system and about lack of substantive and procedural protections following the passing of the anti-terror legislation that in many cases resulted in unfair trials and harsh punishments. The Committee against Torture expressed in November 2003 a concern with regard to the impact of the anti-terror legislation in Morocco and specifically “the considerable extension of the time limit for police custody, the period during which the risk of torture is greatest, both in criminal law and in anti-terrorist legislation.”³¹ It remains to be seen whether the CTC, in evaluating Morocco’s second supplementary report from December 2003, will signal any concerns consistent with the position taken by the Committee against Torture.

Sweden

Sweden’s initial report to the CTC in December 2001 includes, in response to the CTC’s question on legislation and procedures for denying safe haven to terrorists, the statement that “persons who risk capital punishment or torture or other inhuman or degrading treatment or punishment may never be returned to their country of origin or another country where they would be exposed to such a risk.”³²

In the case of at least two persons expelled from Sweden, however, this statement, which is offered without qualification, is blatantly false. Two days before submitting this report to the CTC, Sweden expelled two Egyptian asylum seekers, Ahmed Agiza and Mohammed al-Zari, and forcibly returned them to Egypt, despite an acknowledgment that the two had a well-founded fear of persecution in their home country. The two men were excluded from refugee status based on secret evidence provided by the Swedish security police that the men were associated with Islamist groups responsible for terrorist acts and were not permitted an opportunity to challenge the exclusion or their expulsion orders. It has since been reported that the men were transferred from Stockholm to Cairo aboard a U.S. government-leased airplane and that they were hooded, physically abused, and drugged in transit.

Their expulsions from Sweden were ordered on the basis of diplomatic assurances by the Egyptian government that the men would not be subjected to torture or ill-treatment, would receive fair trials, and would not face the death penalty. However, these assurances have apparently proved to be hollow, and Sweden’s scheme for monitoring them wholly inadequate. Upon return to Egypt, Agiza and al-Zari were held

²⁹ OMDH report: *Unfair Trials*, Rabat, November 2003: <http://www.omb.org/news/16mai.htm>

³⁰ Amnesty Briefing to the Committee against Torture, November 2003: <http://web.amnesty.org/library/Index/ENGMDE290112003?open&of=ENG-MAR>

³¹ U.N. Committee against Torture, U.N. document CAT/C/CR/31/2, February 5, 2004.

³² Letter dated 20 December 2001 from the Permanent Representative of Sweden to the United Nations addressed to the Chairman of the Committee established pursuant to resolution 1373 (2201) concerning counter-terrorism, S/2001/1233, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/714/40/PDF/N0171440.pdf?OpenElement> (retrieved June 24, 2004).

for five weeks in incommunicado detention, and there have been credible allegations that they were tortured and ill-treated.³³

The men's allegations of torture were first brought to the attention of Swedish authorities in January 2002 during the first official monitoring visit to them by Swedish diplomats. These torture allegations were detailed in a confidential monitoring report by the Swedish ambassador to Egypt that was eventually made public in May 2004. Swedish authorities at the time concluded, without further investigation, that the men's allegations were unfounded. Agiza's April 2004 re-trial in an Egyptian military court was riddled with fair trial violations—a clear breach of the diplomatic assurances—and the Egyptian government failed to investigate the allegations of torture that Agiza made in court. The Swedish representatives monitoring Agiza's trial failed to act upon these public allegations of torture.

International law prohibits absolutely the return of any person, no matter what his or her status or suspected crime, to a place where he or she would be at risk of torture or ill-treatment. There are no exceptions to this principle.

After U.S. involvement in the men's transfers was exposed by a Swedish television news program,³⁴ the Swedish government itself called for an "independent, international inquiry" into the cases. The Swedish Parliamentary Constitution Committee and the Justice Ombudsman are also conducting separate inquiries into U.S. involvement in the transfers and the men's treatment in Sweden.

The Human Rights Committee, in examining Sweden's periodic report in April 2002, explicitly raised the issue of "cases of expulsion of asylum-seekers suspected of terrorism to their countries of origin," addressed the insufficiency of mere pledges of humane treatment by the country of origin, and urged Sweden to "maintain its practice and tradition of observance of the principle of non-refoulement."³⁵ The Committee, in its response to Egypt's most recent periodic report, also reemphasized the prohibition on refoulement and drew specific attention to the problem of renditions, noting that "Egyptian nationals suspected or convicted of terrorism abroad and expelled to Egypt have not benefited in detention from the safeguards required to ensure that they are not ill-treated, having notably been held incommunicado for periods of over one month..."³⁶

The CTC should be taking due account of the very public allegations in the Agiza and al-Zari case, and demanding that Sweden account for its misleading statement in its initial report. To the knowledge of Human Rights Watch, the CTC has not done so.

³³ A fuller account of the Agiza and al-Zari case is featured in Human Rights Watch, "Empty Promises: Diplomatic Assurances No Safeguard Against Torture," April 2004, available at <http://hrw.org/reports/2004/un0404/>.

³⁴ A transcript of the Swedish TV4 Kalla Fakta Program entitled "The Broken Promise" is available at <http://hrw.org/english/docs/2004/05/17/sweden8620.htm>.

³⁵ Concluding Observations of the Human Rights Committee: Sweden, CCPR/CO/74/SWE, April 24, 2002, 2002, available at <http://www.unhchr.ch/> (retrieved June 28, 2004).

³⁶ Concluding Observations of the Human Rights Committee: Egypt, CCPR/CO/76/EGY, November 28, 2002, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.76.EGY.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.76.EGY.En?Opendocument) (retrieved June 28, 2004).

A significant proportion of what states are required to report, and of the follow-up questioning by the CTC, focuses on questions of extradition. The CTC should be ensuring, by requiring explicit mention in states' reporting, that all states understand their obligation in international law not to return any person to a place where he or she would be at risk of torture or ill-treatment.³⁷

Absence of Information on the Application of Counter-Terrorism Measures

The CTC's reporting requirements appear, to date, to have emphasized merely structural aspects of counter-terrorism provisions put in place by governments: there appears to have been little attention paid to actual implementation of new or existing security measures. However, the initial set of questions to which states were obliged to respond, as set out in the CTC Chairman's Note of October 26, 2001,³⁸ includes an instruction to report not just on legislation and executive action but "other action, if any... taken to implement the letter and spirit" of resolution 1373. In several parts of that guidance note the question posed by the CTC is accompanied by a request for examples of actions taken. Yet state reports reviewed by Human Rights Watch are strikingly lacking in information of this kind. It is not possible to determine whether the CTC is making an effort to assert the need for this information, as the CTC's subsequent communications to states requesting clarifications and supplementary data are not public documents.

A strengthened requirement of states to report on actual application might reveal issues that would immediately signal a concern about compliance with Resolution 1456. It is well known, for example, that in some countries counter-terrorism arrests and prosecutions have occurred on a very wide scale. Had this been reported to the CTC by the states concerned, numbers alone – such as the estimated 7,000 people imprisoned in Uzbekistan, mentioned above – should have triggered concern either that the state in question faces an internal terrorist threat so great that it requires immediate practical assistance from the CTC, or that counter-terrorism legislation is being used excessively and inappropriately, possibly opportunistically, for example to suppress non-violent opposition or dissent.

CTC Inquiries that may Encourage Harmful Practices

Not only is the absence of a human rights monitoring function problematic, but that in failing to conceptualize its obligations with appropriate reference to maintaining fundamental human rights standards, the CTC may itself be prompting outcomes that are detrimental. Sir Nigel Rodley, speaking to the CTC in June 2003, expressed the particular concern that in the course of reviewing Slovakia's first report, the CTC's

³⁷ Concluding Observations of the Human Rights Committee: Egypt, CCPR/CO/76/EGY, November 28, 2002, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.76.EGY.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.76.EGY.En?Opendocument) (retrieved June 28, 2004).

³⁸ Guidance for the Submission of Reports Pursuant to Paragraph 6 of Security Council Resolution 1373 (2001) of 28 September 2001, available at <http://www.un.org/Docs/sc/committees/1373/guide.htm> (retrieved June 28, 2004).

follow-up questions requesting clarification regarding expulsions and exclusion of persons from refugee status based on suspected links with terrorist groups, “could be understood to be urging that State to overlook the principle that in no case should a person be sent to a territory where he or she faces torture or cruel, inhuman, or degrading treatment or punishment.”³⁹

Similar criticism could be made of the way in which the CTC has put follow-up questions to other state reports. Malaysia’s initial report to the CTC highlights as a legislative provision applicable to terrorist offenses the Prevention of Crime Act 1959, which empowers a police officer to arrest without a warrant “any person he has reason to believe is involved in criminal activities involving dishonesty, or is a member of a secret society or is an undesirable person...,” and provides for the registration of such persons, which in turn requires periodic reporting to police and restrictions on association and movement, and creates liability to imprisonment for breach of those restrictions or for any subsequent offence involving violence.⁴⁰ Instead of querying the compliance of this legislation with human rights standards, the CTC asked Malaysia to explain, in its first supplementary report, why the Prevention of Crime Act 1959 applied only in Peninsular Malaysia, which could be read as endorsing it and advocating its extension to the whole country.⁴¹ Malaysia’s response, pointing to the countrywide applicability of the similarly draconian Emergency (Public Order and Prevention of Crime) Ordinance 1969,⁴² apparently elicited no follow-up response from the CTC, having gone unremarked when mentioned in Malaysia’s initial report.

RECOMMENDATIONS

Human Rights Watch has made the following recommendations to the new CTED Executive Director for steps to address the concerns identified above:

- Specialized personnel with expertise in human rights should be recruited to the CTED staff to review states’ reports to the CTC from the perspective of their

³⁹ Briefing by Sir Nigel Rodley, Vice-Chairperson Human Rights Committee, June 19, 2003, available at <http://www.unhchr.ch/hurricane/hurricane.nsf/0/EE1AC683F3B6385EC1256E4C00313DF5?opendocument> (retrieved June 28, 2004).

⁴⁰ Letter dated 4 January 2002 from the Chargé d’affaires a.i. of the Permanent Mission of Malaysia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, S/2002/35, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/226/57/PDF/N0222657.pdf?OpenElement> (retrieved June 28, 2004).

⁴¹ Letter dated 27 November 2002 from the Permanent Representative of Malaysia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, S/2002/1334, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N02/726/92/PDF/N0272692.pdf?OpenElement> (retrieved June 28, 2004).

⁴² The Emergency (Public Order and Prevention of Crime) Ordinance 1969 allows, *inter alia*, for “any police officer to arrest without warrant and detain for up to 60 days... pending inquiries any person who cannot satisfy the police officer as to his identity or as to the purposes for which he is found or being about to act or being likely to act in any manner prejudicial to public order...”. It also mandates the responsible minister to issue a detention order of up to two years “against any person to prevent that person from acting in any manner prejudicial to public order or to suppress violence or to prevent crimes involving violence” as well as to issue a restriction order for up to two years “to control and supervise the activities, freedom of movement or place of residence or employment of any person.”

fulfillment of obligations under Resolution 1456, including by reference to the scrutiny of and comment on those states by U.N. and regional human rights mechanisms, and to the reporting of human rights non-governmental organizations.

- Any human rights issues of concern identified in this ongoing review process should be incorporated as matters of further inquiry in CTC requests to states for supplementary reports. There should also be closer attention to ensuring the timeliness of states' supplementary reporting.
- States should be required to report to the CTC not just on the fulfillment of their obligations under Resolution 1373, but also on the steps taken to ensure that this is consistent with the requirements of Resolution 1456.
- There should be an enhanced requirement that states provide details of the practical application of the legislation and executive machinery covered by Resolution 1373.
- The substantive communications from the CTC to states about the matters on which they are required to provide supplementary information should be made public.
- The CTED should be scrupulous in ensuring that CTC comments on state reports cannot be construed as requiring or proposing courses of action that are detrimental to the safeguarding of international human rights, refugee and humanitarian law.
- The CTED should ensure that the CTC Directory of Counter-Terrorism Information and Sources of Assistance is appropriately vetted for compliance with Resolution 1456.

Key to the implementation of these recommendations, in our view, is the creation of at least one senior staff position in the CTED, filled by a human rights expert, preferably heading a team of two or three, with the responsibility to review counter-terrorism measures for their compliance with states' rights obligations, to ensure more effective "cross-referencing" between the CTC and U.N. human rights bodies and other independent rights monitors, and to offer forward-looking proposals for making rights an important tool in the counter-terrorism effort.

The job description for this human rights position should include reviewing how U.N. mechanisms and others are reporting on compliance by states' with their human rights commitments, and evaluating member state reports to the CTC with particular focus on areas where counter-terrorism measures and human rights inevitably overlap, such as the conduct of law enforcement, detentions, prosecutions, denial of refugee status, and refoulement. To this end the new human rights staffer should also be mandated to take full account of "shadow" reporting—commentary by non-governmental organizations on states' compliance with Resolutions 1373 and 1456. Most importantly, the senior staffer should shape the questions to be put to governments about practical aspects of their implementation of Resolution 1373 obligations, specifically how human rights commitments are taken into account and safeguarded.