



General Assembly

Distr.: General
11 November 2012

Original: English

Human Rights Council

Advisory Committee

Tenth session

18 – 22 February 2013

Item 3 (a) (iv) of the provisional agenda

Requests addressed to the Advisory Committee

stemming from Human Rights Council resolutions:

requests currently under consideration by the Committee:

human rights and issues related to terrorist hostage-taking

Human rights and issues related to terrorist hostage-taking

**Draft final report prepared by Wolfgang Stefan Heinz on behalf of the
drafting group of the Advisory Committee**

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I. Introduction

1. In its resolution 18/10, the Human Rights Council requested the Advisory Committee to prepare a study on human rights and issues related to terrorist hostage-taking, paying particular attention to the impact of terrorist hostage-taking and actions taken pursuant thereto, including ransom payments, on the human rights of hostages and of the local communities concerned, and to the role of regional and international cooperation in this field. The Council also requested the Committee to focus in particular on an assessment of the adequacy of the response contained in existing international human rights instruments to the challenges referred to in paragraph 4 of resolution 18/10.

2. The drafting group submits the present draft final report to the Advisory Committee at its tenth session with a view to submitting a final study to the Human Rights Council at its twenty-fourth session. The present report focuses on general aspects and assesses the adequacy of the response contained in existing international human rights instruments to the challenges posed by the issue of terrorist hostage-taking and actions taken pursuant thereto, including ransom payments, as well as the issue of regional and international cooperation.

3. At its eighth session, the Advisory Committee established a drafting group consisting of Wolfgang Stefan Heinz (Rapporteur), Latif Hüseyinov (Chairperson), Obiora Chinedu Okafor, Shigeki Sakamoto, Ahmer Bilal Soofi and Jean Ziegler (whose term ended on 30 September 2012). Subsequently, Coco Quisumbing joined the drafting group. The drafting group presented its progress report (A/HRC/AC/9/CRP.1) to the Committee at its ninth session.

4. The Advisory Committee has encouraged all interested stakeholders, including States, international organizations, national human rights institutions and non-governmental organizations, to contribute to the study. It circulated a letter to stakeholders on 13 August 2012 and received responses from a number of Governments,¹ one non-governmental organization and one academic.

5. Following several decades during which hostage-taking featured on the list of regularly examined issues, the Commission on Human Rights adopted numerous resolutions, including resolution 2005/31, in which it condemned hostage-taking and urged all thematic special procedures to continue to address, as appropriate, the consequences of hostage-taking.² The Human Rights Council took up the issue of terrorist hostage-taking and, at its sixteenth session, convened a panel discussion on the issue of human rights in the context of action taken to address terrorist hostage-taking, which brought together parties and stakeholders from United Nations bodies and agencies and participants from various regions and countries.³

¹ Contributions were received from Canada, Colombia and Mauritius, as was a joint comment made by France, Germany and Italy, and oral statements by Algeria and Senegal.

² See also Commission on Human Rights resolutions 27 (XXXVII), 1986/49, 1987/28, 1988/38, 1989/26, 1990/36, 1991/40, 1992/23, 1996/62, 1997/28, 1998/73, 1999/29, 2000/29, 2001/38 and 2003/40.

³ See A/HRC/18/29.

II. Conceptual issues⁴

A. Definition of terrorist-hostage taking

6. The notion of hostage-taking was widely debated during the process leading to the adoption of the International Convention against the Taking of Hostages.⁵ The outcome of discussions on the concept was captured in article 1 of the Convention, which reads:

Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages (“hostage-taking”) within the meaning of this Convention.

7. It is evident from the internationally codified definition of hostage-taking that the act requires two sets of elements, namely (a) the seizure or detention of another person; and (b) a threat to kill, injure or continue to detain that person in order to compel a third party to do or abstain from something as an explicit or implicit condition for the release of the hostage. In other words, a typical hostage-taking situation involves at least three parties, whereby “the hostage (a) is the means by which the hostage-taker (b) [seeks to] gain[s] something from a third party(c)”.⁶ While the first set of elements may be common to all acts of hostage-taking, the second constitutes the basis for establishing a distinction between terrorist and non-terrorist hostage-taking situations.

8. Article 1 of the above-mentioned Convention does not explicitly link the definition of hostage-taking to the notion of terrorism. However, the background to the adoption of the instrument indicates that the drafters were primarily concerned with terrorist hostage-taking incidents. The single mention of terrorism in the preamble to the instrument clearly states that it was adopted out of an urgent necessity “to develop international cooperation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism”.

9. Lack of express references to the terrorist nature of hostage-taking in the substantive provisions of the Convention is, arguably, rooted in the prevailing disagreement between states over the concept (and definition) of terrorism at the time when the instrument was negotiated.

⁴ The members of the drafting group thank Felix Ndahinda, Rianne Letschert and Melissa McAuliffe for their important input during the drafting of the present report.

⁵ General Assembly resolution 34/146. For background information on discussions over various proposals, see Ved P. Nanda, “Progress Report on the United Nations’ Attempt to Draft an International Convention against the Taking of Hostages”, *Ohio Northern University Law Review*, vol. 6, No. 1, 1979, pp. 89-108; S. S. Kaye, “The United Nations Effort to Draft a Convention on the Taking of Hostages”, *American University Law Review*, vol. 27, No. 2, 1978, pp. 433-487; and Robert Rosenstock, “International Convention against the Taking of Hostages: Another International Community Step Against Terrorism”, *Journal of International Law and Policy*, vol. 9, 1980, pp.169-195.

⁶ R. D. Crelinsten, “The Study of Hostage-Taking: A System Approach”, in Ronald D. Crelinsten et al., *Report on Management Training Seminar Hostage-Taking Problems of Prevention and Control* (Montreal, University of Montreal, September 1976), p. 4. Available from www.ncjrs.gov/pdffiles1/Digitization/49367NCJRS.pdf.

10. The definition in article 1 of the Convention does not make any distinction based on whether an act is committed in time of peace or during an armed conflict. However, article 12 excludes the applicability of the Convention to situations of hostage-taking committed in the course of armed conflicts covered by the 1949 Geneva Conventions and the 1977 Additional Protocols. Furthermore, in addressing one of the most contentious issues during the negotiation of the treaty, the provision specifically excludes the applicability of the Convention to armed conflicts covered by Additional Protocol 1 (4), in which “peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination”.

11. Hostage-taking is indeed prohibited in all the 1949 Geneva Conventions and 1977 Additional Protocols.⁷ An authoritative commentary on international humanitarian law states that the prohibition of hostage-taking during both international and non-international armed conflicts is established as a norm of customary international law.⁸ Under Additional Protocols I and II, the prohibition of hostage-taking is recognized as a fundamental guarantee for civilians and persons *hors de combat*.⁹ Moreover, the Rome Statute of the International Criminal Court lists hostage-taking as a war crime.¹⁰ The *Elements of Crimes* under the jurisdiction of the International Criminal Court reproduced the definition of hostage-taking contained in the International Convention against the Taking of Hostages with an additional clarification that “the required behaviour of the third party could be a condition not only for the release of the hostage but also for the safety of the hostage”.¹¹

12. In sum, a combined reading of the different above-mentioned international legal instruments displays coalescence in considering hostage-taking a prohibited, and thus criminal, act under international law. It is considered a punishable offence constitutive of a war crime within the particular context of armed conflicts. Outside the context of armed conflicts, the International Convention against the Taking of Hostages requires State parties to criminalize the offence and to cooperate in arresting, prosecuting and punishing hostage-takers. Owing to the persistent disagreements over the definition of terrorism, however, the various instruments examined above do not necessarily tie the concept of hostage-taking to the notion of terrorism.

13. For decades, several actors, including various United Nations bodies, have attempted elusively to design a generally accepted definition of terrorism. In his report to the Human Rights Council at its sixteenth session, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism adhered to the understanding of terrorism proposed by the Security Council in its resolution 1566 (2004).¹² In that resolution, the Council construed terrorism as criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.¹³

⁷ See relevant provisions in the Geneva Conventions, common art. 3 (1) (b); Geneva Convention IV, arts. 34 and 147; Additional Protocol I, art. 75(2) (c); and Additional Protocol II.334, art. 4(2) (c).

⁸ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (International Committee of the Red Cross, Cambridge University Press, 2005), vol. I, pp. 334–336.

⁹ *Ibid.*

¹⁰ A/CONF.183/9, arts. 8 (2)(a)(viii) and (c) (iii).

¹¹ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law* (see footnote 8), p. 336.

¹² A/HRC/16/51, para. 27.

¹³ See also *ibid.*, para. 28.

14. While some may argue that the above definition is somewhat authoritative, it is worth noting that the *Routledge Handbook of Terrorism Research* lists some 250 definitions of terrorism elaborated throughout the past two centuries and beyond.¹⁴ The persistent lack of a consensual definition of terrorism is rooted in the multiple manifestations of terrorist acts, as well as in the diversity of actors, motives and modus operandi of terrorists.¹⁵ For this reason, determining whether a particular case of hostage-taking or kidnapping constitutes a terrorist act; especially when conducted by a group not globally catalogued as terrorist, remains an arduous task.

B. The problem of terrorist hostage-taking: nature, scope and major dimensions

15. Owing to differing classifications of cases of hostage-taking – and more generally of terrorist incidents – in different studies, it is difficult to find aggregate data documenting the phenomenon for a particular period of time. According to one study, from 1968 to 1982, of the approximately 8,000 reported terrorist events, 540 (7 per cent) were transnational hostage-taking acts involving 3,162 hostages, and 20 per cent of those acts resulted in death or personal injury to the victims. “Since 1968, 188 terrorist groups have seized hostages in incidents involving kidnapping, skyjacking, and barricading”.¹⁶ Similarly, data on a longer time period (from 1968 to 2005) indicate that, of some 12,942 terrorism incidents, “1,941 hostage events, made up of 1318 kidnappings, 380 skyjackings, and 243 other hostage events (i.e., barricade missions and non-aerial hijackings)” were recorded.¹⁷ Data from the Global Terrorism Database, which classifies hostage-taking incidents into hijacking, barricades and kidnappings, gives the figure of 4,700 in the category of kidnappings from 1970 to 2010.¹⁸

16. The United Nations Office on Drugs and Crime (UNODC) has recorded kidnapping rates in some 112 countries and territories across the globe, based on police-recorded offences.¹⁹ It should be noted that such data neither establish a distinction between terrorist and non-terrorist kidnappings nor dedicate particular attention to the phenomenon of kidnapping for ransom. Furthermore, the data may not necessarily reflect the real extent of the phenomenon, owing to, among other things, underreporting.

17. According to Red24, an organization that specializes in global security, in 2011, the number of kidnap for ransom incidents worldwide stood at roughly 30,000.²⁰ According to

¹⁴ Joseph J. Easson and Alex P. Schmid, “250-Plus Academic, Governmental and Intergovernmental Definitions of Terrorism” in A. P. Schmid (ed.), *The Routledge Handbook of Terrorism Research* (Routledge, London/New York, 2011), pp. 99–157.

¹⁵ *Ibid.*, pp. 5–7.

¹⁶ Scott E. Atkinson et al., “Terrorism in a Bargaining Framework”, *Journal of Law and Economics*, vol. 30, No. 1, 1987, pp. 1-2, containing data from the United States Department of State, *International Terrorism: Hostage Seizures* (1983).

¹⁷ Patrick T. Brandt and Todd Sandler, “Hostage Taking: Understanding Terrorism Event Dynamics”, *Journal of Policy Modeling*, vol. 31, 2009, p. 762. For other figures, see Keith Bloomfield, “Hostage taking and government response”, *RUSI Journal*, vol. 146, No. 4, 2001, pp. 23–27.

¹⁸ See www.start.umd.edu/gtd/about/.

¹⁹ See “Kidnapping at the national level, number of police-recorded offences”, available from www.unodc.org/documents/data-and-analysis/Crime-statistics/Kidnapping.xls and www.unodc.org/documents/data-and-analysis/statistics/crime/CTS12_Kidnapping.xls.

²⁰ See Red24, *Threat Forecast report 2012*, p. 24. Based on data compiled by the organization in previous years, the top ten threat areas for kidnap for ransom incidents in 2012 were (1) Afghanistan (around 950 kidnappings for ransom per year); (2) Somalia (27 vessels seized in 2010 with more than

global estimates, some 10,000 to 15,000 kidnappings occur per year, mostly on the Latin American subcontinent.²¹ While the “traditional hotspots of Mexico, Venezuela, Brazil and Colombia continue[d] to experience very high levels of kidnapping, the crime [was] also a significant and/or growing threat in Iraq, Afghanistan, Somalia, Pakistan, the Sahel-Sahara region of Northern Africa, Kenya, Nigeria, India, China, Yemen, and the Philippines.”²² It is contended that, in kidnappings, “terrorists successfully capture their hostages in 80 per cent of the acts and receive their ransom demands in 70 per cent of the incidents... In barricade and hostage incidents, the terrorists achieve at least a portion of demands in 75 per cent of the cases”.²³

18. Relevant analyses show that, since the 1960s and 1970s, the phenomenon of kidnappings for ransom or other political aims has been on the rise in some countries or regions, while it has declined in others.²⁴ However, one study covering 764 hostage-taking incidents reported between November 1969 and January 2006 found that 75 per cent (570 incidents) of them occurred after 2000; this suggests that there was a rise in such incidents over the last decade.²⁵ Overall, data from the Global Terrorism Database show that, during the period from 1970 to 2010, only 16.6 per cent of terrorist-related kidnapping incidents involved demands for ransom.²⁶

19. Kidnapping for ransom has become a very lucrative business for terrorist and criminal organizations. According to some figures regarded as rather conservative, the annual global income derived from kidnapping for ransom is in excess of \$500 million.²⁷ In the Philippines, for example, between 1993 and 1996, \$11 million in ransom was paid for the release of more than 600 hostages, generally seized by one of two groups, the New

320 hostages taken); (3) Iraq (no figures available; complex kidnapping risk environment with criminal, terrorist and politically motivated actors all conducting kidnappings. Western nationals remain lucrative targets, both financially and for propaganda value); (4) Nigeria (more than 1,000 kidnappings for ransom a year); (5) Pakistan (15,000 kidnappings a year according to official statistics; 10 to 20 per cent of abductions are for ransom); (6) Yemen (more than 200 foreign nationals but an unknown number of nationals kidnapped in the past 20 years; threat mainly from tribal groups, separatist elements, bandits and Islamist groups, such as al-Qaida in the Arabian Peninsula); (7) Venezuela (Bolivarian Republic of) (more than 1,000 traditional kidnappings for ransom in the first 10 months of 2011 according to official statistics: one of the highest per capita rates of abduction in the world); (8) Mexico (official statistics for 2011 are likely to reveal more than 2,000 traditional kidnappings for ransom, although actual number is far higher, as some estimates refer to some 17,889 kidnappings in 2011); (9) Haiti (few hundred – a decline from 2006, when some 720 incidents were recorded); and (10) Colombia (a declining figure of some 258 kidnappings recorded by the authorities in 2011).

²¹ Sheri Merkling and Elaine Davis, “Kidnap & Ransom Insurance: A Rapidly Growing Benefit”, *Compensation & Benefits Review*, vol. 33, No. 6, 2001, pp. 40-41. See also William Prochnau, “Adventures in the Ransom Trade”, *Vanity Fair*, May 1998, available from www.mmegi.bw/index.php?sid=1&aid=36&dir=2010/January/Monday18.

²² Red24, Threat Forecast 2012 (see footnote 20).

²³ Atkinson et al., “Terrorism in a Bargaining Framework” (see footnote 16), pp. 1-2, containing data from the United States Department of State, *International Terrorism: Hostage Seizures*, 1983, p. 2.

²⁴ Richard Clutterbuck, *Kidnap, Hijack and Extortion: The Response* (London, Macmillan Press, 1987), pp. 14-46.

²⁵ Minwoo Yun, “Implications of Global Terrorist Hostage-taking and Kidnapping”, *XIX Korean Journal of Defense Analysis*, vol. 19, No. 2, 2007, p. 145.

²⁶ James J. F. Forest, “Kidnapping by Terrorist Groups, 1970–2010: Is Ideological Orientation Relevant?”, *Crime & Delinquency*, vol. 58, No. 5, 2012, p. 772.

²⁷ Everard Phillips, “The Business of Kidnap for Ransom”, in David Canter (ed.), *The Faces of Terrorism: Multidisciplinary Perspectives* (Chichester/Malden, Wiley Blackwell, 2009), pp. 193.

Peoples' Army or the Moro National Liberation Front.²⁸ The number of recorded cases of kidnapping for ransom peaked at 113 in 1998, then declined to 50 in 1999 and increased again to 99 in 2001.²⁹

20. Similarly, sources quoting Algerian officials estimate that, in North Africa, Al-Qaida in the Islamic Maghreb earned between 50 million and 150 million euros from 2003 to 2011 mostly through payment of ransoms for kidnapped foreigners.³⁰ In this particular case it was claimed that, in eight separate kidnappings from 2008 to April 2010, more than €18 million (\$25 million) was paid in cash to al-Qaida intermediaries to free citizens from a number of rich countries.³¹ As a consequence, it was claimed that Al-Qaida in the Islamic Maghreb was being financed almost entirely with ransom money from Western countries, which were ready to pay Al-Qaida up to €5 million (\$7 million) to free a single citizen from captivity.³²

21. In 2003, the Government of Colombia reported to the United Nations that some 14,068 cases of kidnapping had been recorded in the country since 1996.³³ Other figures suggest that, between 1991 and 1999, two Colombian guerrilla groups, namely, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army, earned some \$ 1.5 billion through kidnapping for ransom.³⁴ Overall, it is estimated that kidnapping for ransom in Colombia nets groups an average of \$ 220 million a year.³⁵ Data for 2006 suggest that there were between 200 and 265 kidnappings for ransom, 111 of which were attributable to FARC.³⁶ In Chechnya, hostage-taking developed into an important component that partly funded the struggle for independence from the Russian Federation.³⁷ It has been documented that some 1,094 civilians were kidnapped between January 1997 and August 1999 and, on average, a ransom of \$5,000 to \$145,000 per person was paid for their liberation.³⁸ In Iraq, more than 250 foreigners (or 425, depending on figures) were kidnapped and 40 of them killed between March 2003 and March 2006, while some 5000 Iraqis were kidnapped between December 2003 and 2005.³⁹

²⁸ John Griffiths, *Hostage: The History, Facts & Reasoning behind Hostage Taking* (London, Carlton Publishing Group, 2003), p. 22.

²⁹ E/CN.15/2003/7, para. 13.

³⁰ See Ricardo R. Larémont, "Al Qaeda in the Islamic Maghreb: Terrorism and Counterterrorism in the Sahel", *African Security* vol. 4, No. 4, 2011, p. 253, and Vivienne Walt, "Terrorist Hostage Situations: Rescue or Ransom?", *Time*, 12 October 2010, available from www.time.com/time/world/article/0,8599,2024420,00.html.

³¹ Walt, *ibid.*. The United States of America and Great Britain are listed as having held to their policy of non-negotiation with terrorists where others might have either paid or facilitated the payment of ransom.

³² *Ibid.*

³³ E/CN.15/2003/7, para. 23.

³⁴ Phillips, "The Business of Kidnap for Ransom"(see footnote 27), p. 197.

³⁵ *Ibid.*, p.192.

³⁶ *Ibid.*, pp. 191–192.

³⁷ *Ibid.*, p. 201.

³⁸ Irina Mukhina, "Islamic Terrorism and the Question of National Liberation, or Problems of Contemporary Chechen Terrorism", *Studies in Conflict & Terrorism*, vol. 28, No. 6, 2005, p. 530.

³⁹ Yun, "Implications of Global Terrorist Hostage-taking and Kidnapping" (see footnote 25), , p. 141. See also M. Clendenin, "'No Concessions' With No Teeth: How Kidnap and Ransom Insurers and Insureds Are Undermining U.S. Counterterrorism Policy", *Emory Law Journal*, vol. 56, No. 3, 2006, p. 745.

III. Impact of terrorist hostage-taking on human rights

22. Several actors within the United Nations system, including the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and UNODC, have extensively documented the impact of terrorism on various subcategories of victims and addressed their needs and rights.⁴⁰ Obviously, the findings and recommendations therein, including those relating to appropriate legislative and policy measures in favour of victims of terrorism, are equally relevant to victims of terrorist hostage-taking. Particularly relevant are the studies and the resolutions of the Economic and Social Council on international cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims, in which the Council expressly includes references to victims of terrorist hostage-taking.⁴¹ The elaboration in the section below will mostly focus on the specific impact of terrorist hostage-taking incidents on hostages and local communities, as well as on the incidence that ransoms paid to terrorist groups may have on terrorist and other criminal activities.

A. Human rights of hostages

23. It is widely acknowledged that victims of terrorism in general and terrorist hostage-taking in particular may be individuals, family members, a community or a whole ethnic, religious, racial group or an entire nation.⁴² The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism established a distinction between direct, secondary, indirect and potential victims of terrorism.⁴³ Acts of terrorist hostage-taking generate multiple violations of human rights of these different categories of victims. Violations are mainly committed by the hostage-takers; in some cases, however, they occur during counter-terrorism activities. According to the specific circumstances of a terrorist hostage-taking situation, appropriate responses should take into account the interests and concerns of all affected members of society. Responses to hostage-taking situations should respect everyone's right to life, liberty and security of person as enshrined in numerous human rights instruments and reaffirmed in the preamble to the International Convention against the Taking of Hostages.

24. Victims of hostage-taking situations in general and terrorist hostage-taking in particular "report varying types of treatment, ranging from an almost friendly style (food to order, low-threat, and baths) to savage abuse at the hands of their captors".⁴⁴ Yemen stands out as a rather peculiar case whereby, unlike most ransom kidnappings, "the tribesmen have basically used their victims as tools to pressure the Yemeni government for concessions,

⁴⁰ See A/HRC/20/14, paras. 10–69; UNODC, *Handbook on Criminal Justice Responses to Terrorism*, New York, 2009; and UNODC, *The Criminal Justice Response to Support Victims of Acts of Terrorism*, 2011, available from www.unodc.org/documents/terrorism/Victims_Rights_E-Book_EN.pdf.

⁴¹ See E/CN.15/2003/7, E/CN.15/2004/7, and Economic and Social Council; resolutions 2002/16, 2006/19 and 2009/24. See also UNODC, *Counter-Kidnapping Manual*, 2005, available from <https://cms.unov.org/documentrepository/indexer/MultiLanguageAlignment.bitext?DocumentID=d026597e-ebdf-4ec9-9eac-94f0bcddee75&DocumentID=39ff4ee9-b06d-4e7f-a59f-bc5415c9206d>.

⁴² See Frank Bolz, Jr. et al., *The Counterterrorism Handbook: Tactics, Procedures, and Techniques* (2nd ed.) (Boca Raton/ London/ New York /Washington, CRC Press, 2002), p. 89.

⁴³ A/HRC/20/14, para.16.

⁴⁴ Richard P. Wright, *Kidnap for Ransom: Resolving the Unthinkable* (Boca Raton, CRC Press, 2009), p. 48.

and many hostages have received very good treatment from their captors”.⁴⁵ Since a typical hostage-taking incident generally threatens not only the physical but also the psychological well-being and integrity of the hostage both throughout and after the duration of the incident,⁴⁶ it generates multiple infringements of their human rights. In fact, owing to the interdependence and interrelatedness of all human rights, most hostage-taking incidents amount to violations of numerous civil, political, economic, social and cultural rights.⁴⁷ Depending on particular circumstances, the situation of persons taken into captivity by terrorist hostage-takers amounts to a violation of virtually every right listed in the Universal Declaration of Human Rights and other relevant instruments.⁴⁸

25. The enjoyment of the right to life, the right to liberty and security of person, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment; the freedom of movement and residence, the freedom of thought, conscience and religion, the freedom of opinion and expression, the freedom of assembly and association, the protection of privacy, family and home, the right to political participation, to work under favourable conditions, to rest and leisure, food, clothing and housing, participation in cultural life, health care and social services, education, the special protections for children and the social and international order needed to realize rights are either fundamentally violated or restricted.⁴⁹

26. It is contended that the psychological impact of being taken hostage is similar to other terrorist, and more generally traumatic, experiences.⁵⁰ Hostage-taking has a severe and sustained impact on children, many of whom display symptoms of post-traumatic stress disorder.⁵¹ Typically, adults taken hostages have the following reactions:

(a) Cognitive: impaired memory and concentration; confusion and disorientation; intrusive thoughts and memories, denial (namely, that the event happened), hypervigilance and hyperarousal (a state of feeling too aroused, with a profound fear of another incident);

(b) Emotional: shock and numbness, fear and anxiety, helplessness and hopelessness, dissociation (feeling numb and “switched off” emotionally), anger (at anybody – perpetrators, themselves and the authorities), anhedonia (loss of pleasure in doing that which was previously pleasurable), depression (a reaction to loss) and guilt (for example, at having survived if others died, and for being taken hostage);

(c) Social: withdrawal, irritability, avoidance (of reminders of the event).⁵²

⁴⁵ Ibid., p. 27.

⁴⁶ Ellen Giebels, Sigrid Noelanders and Geert Vervaeke, “The Hostage Experience: Implications for Negotiation Strategies”, *Clinical Psychology and Psychotherapy*, vol. 12, No. 3, pp. 241–253.

⁴⁷ See A/HRC/12/22.

⁴⁸ Including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child.

⁴⁹ For the exact formulation of these rights, see the Universal Declaration of Human Rights, arts. 3–28.

⁵⁰ David A. Alexander and Susan Klein, “Kidnapping and hostage-taking: a review of effects, coping and resilience”, *Journal of the Royal Society of Medicine*, vol. 102, No. 1, 2009, p. 17.

⁵¹ Ibid., p. 18.

⁵² Ibid., p. 18. See also A. Schmid, “Magnitude of Terrorist Victimization” in Dilip K. Das and Peter C. Kratoski (eds.), *Meeting the Challenges of Global Terrorism: Prevention, Control and Recovery* (Lanham, Lexington Books, 2003), pp. 38–39.

B. Impact on local communities

27. Communities living in areas chronically affected by the scourge of terrorist hostage-taking bear a constant burden of insecurity. Generally, terrorist hostage-taking groups, such as FARC in Colombia, Abu Sayyaf in the Philippines or Al-Qaida in the Islamic Maghreb in the Sahara-Sahel region operate in areas that are characterized by poor law enforcement and absence of effective governmental control.⁵³ In many cases, terrorist operatives take advantage of communities living in peripheral areas characterized by problems of rampant insecurity, and sociopolitical, economic and cultural marginality. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism listed, inter alia, ethnic, national and religious discrimination, political exclusion and socioeconomic marginalization as conducive to the spread of terrorism.⁵⁴ In many places where such conditions prevail, terrorists, including hostage-takers, simply fill a void in governance by establishing strong links with local communities. In a number of cases, terrorist organizations have succeeded in supplanting the State and imposed themselves as the provider of services and protectors of communities. In the absence of an appropriate response from legitimate State authorities, the local populace sees individuals or groups that commit kidnappings as heroic figures who defy the authorities and helping the poor and weak.⁵⁵ Examples from Afghanistan, Colombia, the Philippines and, more recently, the Sahara-Sahel region, including northern Mali, show, however, that control of entire regions and communities by terrorists increases the burden of insecurity and marginality rather than help to solve the development and other challenges faced by local communities.

28. In North Africa, for instance, Al-Qaida in the Islamic Maghreb is reported to have developed cooperative relationships with regional drug traffickers, criminal organizations and rebel groups to increase their resources and financing.⁵⁶ In order to succeed, it has relied on established links with local communities by casting itself as an ally and potential protector of local communities.⁵⁷ Integration within local communities has allowed the group to deepen its roots, develop its resource base and develop its operational strength.⁵⁸ The escalation of the crisis in northern Mali since represents one extreme illustration of the lasting impact that terrorism in general and terrorist hostage-taking activities for ransom in particular can have on the stability of a country or, indeed, of an entire region. While a multiplicity of factors and actors account for the dynamics that led to the occupation of northern Mali by a composite alliance (including the Movement for the National Liberation of the Azawad, Al-Qaida in the Islamic Maghreb and the Movement for Oneness and Jihad in West Africa), terrorist hostage-taking activities conducted by Al-Qaida in the Islamic Maghreb across the Sahel region played a significant role in financing the forces at the heart of the insurgency.⁵⁹ Established links with local communities of the Sahel region

⁵³ Wright, *Kidnap for Ransom* (see footnote 44), p. 192.

⁵⁴ A/HRC/16/51, para. 12.

⁵⁵ Wright, *Kidnap for Ransom* (see footnote 44), p. 192.

⁵⁶ Modibo Goïta, "West Africa's Growing Terrorist Threat: Confronting AQIM's Sahelian Strategy", *Africa Security Brief*, No. 11, February 2011, p. 2.

⁵⁷ *Ibid.*, p. 3.

⁵⁸ *Ibid.*

⁵⁹ See Wolfram Lacher, "Organized Crime and Conflict in the Sahel-Sahara Region", Carnegie Endowment Papers, September 2012 (available from http://carnegieendowment.org/files/sahel_sahara.pdf); Annual Review of World Affairs, *Africa, Strategic Survey* 1, 2012, pp. 272–274; and Larémont, "Al Qaeda in the Islamic Maghreb" (see footnote 30), pp. 242–268.

enabled Al-Qaida in the Islamic Maghreb not only to “confront and resist government security services but also undermine Sahelian States from within”.⁶⁰

29. In the Philippines, the different rebel and terrorist groups have used historic grievances of the Muslim communities in Mindanao to garner support from the Moro population.⁶¹ According to some accounts, membership in Abu Sayyaf skyrocketed from a few hundred to more than a thousand after its first major kidnapping payoff as the prospect of money-making enticed new recruits.⁶² In October 2012, news sources reported that the Government and the Moro Islamic Liberation Front had agreed on a cessation of hostilities.⁶³

30. In Europe, such terrorist groups as Basque Homeland and Freedom (ETA) and the Irish Republican Army (IRA) engaged in kidnapping operations for ransom, and used the ransom money to bankroll their terrorist activities and networks. Their activities – including kidnappings of businessmen in the case of ETA (mostly in Spain and France in the 1970s and 1980s), and of persons suspected of collaborating with authorities in the case of the IRA – imposed a tremendous security and financial burden on populations living in areas where they frequently operated.⁶⁴

31. The prevailing lawlessness and constant fear of reprisals in regions plagued by the phenomenon of terrorist hostage-taking jeopardize the security and well-being of local communities. Examples from North Africa, Chechnya, Colombia, the Philippines, Iraq and Afghanistan show that the enjoyment of fundamental rights and freedoms – mostly economic, social, civil and political rights, including the right to development – by members of local communities is extremely restricted. Repression, corruption and uncertainty associated with the parallel economy underlying terrorist hostage-taking and related illicit trafficking activities have a clearly detrimental impact on the productive sectors of local economies, including tourism, farming, trade and, more generally, the socioeconomic development of the affected regions.

C. Impact of the payment of ransom

32. Most terrorist hostage-takers characteristically demand high sums of money to be paid by families, Governments, employers or those insuring the hostages. In many cases, the families of captives have no other choice but to pay large sums of money to save the lives of their loved ones; they therefore bear the economic burden of paying the ransom where no other actors are willing or expected to pay. It has been documented that the payment of large ransoms can completely wipe out family savings and leave the victimized

⁶⁰ Goïta, “West Africa’s Growing Terrorist Threat (see footnote 56), p. 2.

⁶¹ Astrid Tuminez, “Rebellion, Terrorism, Peace: America’s Unfinished Business with Muslims in the Philippines”, *Brown Journal of World Affairs*, vol. 15, No. 1, 2008, pp. 211–223.

⁶² Justine A. Rosenthal, “For-Profit Terrorism: The Rise of Armed Entrepreneurs”, *Studies in Conflict & Terrorism*, vol. 31, No. 6, 2008, p. 487.

⁶³ Centre for Humanitarian Dialogue, “Philippine Government and Moro Islamic Liberation Front reach historic peace agreement”, 8 October 2012. Available from <http://reliefweb.int/report/philippines/philippine-government-and-moro-islamic-liberation-front-reach-historic-peace>.

⁶⁴ See Mikel Buesa and Thomas Baumert, “Untangling ETA’s Finance: An in-depth Analysis of the Basque Terrorist’s Economic Network and the Money it Handles”, *Defence and Peace Economics*, available from <http://dx.doi.org/10.1080/10242694.2012.710812>; Forest, “Kidnapping by Terrorist Groups (see footnote 26), pp. 772–775; and Wright, *Kidnap for Ransom* (see footnote 44), p. 190.

family destitute. To make matters worse, Governments rarely provide full restitution of economic loss to the victims.⁶⁵

33. Studies suggest that, in many cases, large ransoms lead to “a vicious cycle in which kidnapping is seen as more remunerative by more criminals; larger numbers of victims are taken; higher ransoms are sought and paid; and the frequency of kidnappings in a particular country or region begins to spiral out of control”.⁶⁶ In some contexts, the money raised from ransoms is used to finance a guerrilla war or terrorist-type activities.⁶⁷

34. Similar examples from North Africa, Latin America, Iraq and Afghanistan show that hostage-takers generally use ransom money to strengthen their criminal enterprises. The extortion of ransoms fuels sub-economies and provides capital for both terrorist and criminal activities. The payment of ransom not only encourages further hostage-taking, but inevitably results in further terrorist attacks, leading to the injury and death of civilians”.⁶⁸ Consequently, some have suggested that policies aimed at limiting concessions to terrorist hostage-takers, including non-payment of ransom, would certainly curb the phenomenon since potential actors would have no incentive to engage in hostage-taking activities without realistic chances of obtaining ransom.⁶⁹ The divergent positions on ransom payment are examined in the sections below.

IV. Responses to terrorist hostage-taking

A. Overview, good practices and challenges

35. Reactions and responses to terrorist hostage-taking situations vary according to the context and actors involved. While during the nineteenth and early twentieth centuries the prevailing response to hostage incidents was the use of overwhelming physical force, in recent years, armed response has generally yielded to the techniques of negotiation and conflict-resolution in recognition of the risks that an armed response creates for the hostages”.⁷⁰ Depending on the context and the actors involved, both negotiation and rescue operations are still either exclusively or jointly used in response to hostage-taking situations. It has been contended that either or both approaches are more likely to succeed when the counter-terrorist team is skilled and well trained in role-playing exercises, when the team has reliable intelligence on the hostage-takers and on the physical layout of the place where the hostages are held, and when they engage with the terrorists in such a way as to avoid provoking them while resisting compliance with unreasonable demands.⁷¹

36. Counter-terrorism strategies in general and in specific cases involving terrorist hostage-taking have benefited from increased cooperation between States, but they remain

⁶⁵ Cecilia M. Bailliet, “Towards holistic transnational protection: an overview of international public law approaches to kidnapping”, *Denver Journal of International Law and Policy*, vol. 38, No. 4, 2010, p. 584.

⁶⁶ Wright, *Kidnap for Ransom* (see footnote 44), pp. 73–74.

⁶⁷ Bloomfield, “Hostage taking and government response” (see footnote 17), p. 23.

⁶⁸ S/2009/502, para. 60.

⁶⁹ Charlinda Santifort and Todd Sandler, “Terrorist success in hostage-taking missions: 1978–2010”, *Public Choice*, July 2012. Available from <http://link.springer.com/article/10.1007/s11127-012-0008-z>.

⁷⁰ Alexander and Klein, “Kidnapping and hostage-taking” (see footnote 50).

⁷¹ Brian Forst, *Terrorism, Crime, and Public Policy* (Cambridge/New York, Cambridge University Press, 2008), p. 286.

far from uniform.⁷² As pointed out by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, countries directly concerned by hostage-taking situations are faced with a dilemma: protecting the human rights of all (including hostage-takers), securing the lives of the hostages and – as far as feasibly possible – avoiding paying ransoms.⁷³ While mostly countries formally profess their commitment to human rights for all, a number of them hold ambivalent positions on the payment of ransoms to free their nationals taken as hostages by terrorist groups.

37. The legality of the payment of ransom to terrorist hostage-takers is generally subject to open debates in different countries. Only a limited number of States responded to the query over their domestic practices in dealing with terrorist hostage-taking for ransom. Colombia listed a number of legislative and policy measures, including the improvement of the security apparatus and international cooperation, used in fighting the scourge of hostage-taking and kidnapping. Canada stated that it held a policy on non-payment of ransom, and hence objected to a source mentioned in the progress report listing it among countries that paid ransom. In a joint commentary, Germany, France and Italy stated that they could not support any statement, conclusion or recommendation in favour of the criminalization of ransom payment, as the matter remained controversial. Contributions by Algeria and Senegal addressed the regional position without touching on domestic measures.

38. For many other States, determining national laws or policies prohibiting negotiation with or payment of ransom to terrorist hostage-takers remains a daunting task. Several States appear to hold either ambiguous or contradictory positions on negotiation with terrorists and the payment of ransoms to terrorist hostage-takers. A publicly professed policy of non-concession to terrorists does not prevent them from getting involved in the payment of ransoms to free their nationals held hostage by terrorists.⁷⁴ To substantiate such involvement is, however, difficult.

39. In 2009, the African Union referred to existing international instruments proscribing the financing of terrorist when it adopted its unequivocal decision to combat the payment of ransom to terrorist groups.⁷⁵ In its decision, the African Union strongly condemned the payment of ransom to terrorist groups for hostages to be freed, and requested the international community to consider the payment of ransom to terrorist groups a crime.⁷⁶ On the basis of this decision, Member States, in 2010, mandated the Commission of the African Union, to mobilize international support for an end to the payment of ransom.⁷⁷ It is still relatively too early to assess compliance by African countries with this decision in terms of adopting legislations and policies to that effect. Like the African Union, in March 2010, the League of Arab States adopted resolution 525 on ways of combating international

⁷² David Cortright and George A. Lopez, *Uniting against Terror: Cooperative Nonmilitary Responses to the Global Terrorist Threat* (Cambridge /London, MIT Press, 2007), pp. 9–11 and 29–46.

⁷³ A/HRC/18/29, para. 22.

⁷⁴ Walt, “Terrorist Hostage Situations: Rescue or Ransom?” (see footnote 30).

⁷⁵ Decision 256 (XIII), reiterated in decision 311(XV), paras. 6 and 8.

⁷⁶ Decision 256 (XIII), paras. 7 and 8.

⁷⁷ See African Union Peace and Security Council, Report of the Chairperson of the Commission on Measures to Strengthen Cooperation in the Prevention and Combating of Terrorism (PSC/PR/2(CCXLIX)), paras. 25–26. Available from www.africa-union.org/root/au/Conferences/2010/November/situationroom/Terrorism%20report-PSC%2022%2011%2010.pdf.

terrorism, in which it resolved to criminalize the payment of ransom to terrorist individuals, groups, enterprises or organizations.⁷⁸

40. The Council of Europe has no equivalent to decision adopted by the African Union requesting the criminalization of ransom payment to terrorist hostage-takers. The Parliamentary Assembly of the Council of Europe has, however, made a similar recommendation with regard to the related phenomenon of piracy, in which it called on Member States to establish clear policies and legislation against the payment of ransoms, and to ensure compliance by both private actors and State authorities.⁷⁹ Moreover, the Members of the Council of Europe are required to share information in cases involving kidnappings by terrorists.⁸⁰ The problem of terrorist hostage-taking is also covered by various instruments of the Council of Europe relating to terrorism.⁸¹

41. Europol, the law enforcement agency of the European Union, has a European network of advisory teams that provides strategic and/or tactical advice, coordination and support for kidnapping, hostage-taking and extortion investigations.⁸² The network links the advisory teams to Europol, to facilitate immediate international cooperation in response to life-threatening risks, shares good practices and develops standards in this specific field throughout the European Union.⁸³ The documentation available does not specify what the relevant good practices are.

42. Beyond declarations, joint communiqués, press releases relating to terrorism and transnational crime in general, there seems to be no official document addressing the specific phenomenon of terrorist hostage-taking for ransom for the Association of Southeast Asian Nations (ASEAN).⁸⁴ Similarly, the Organization of American States (OAS) has not specifically addressed terrorist hostage-taking for ransom, even if its work on the broader issues of organized crime and terrorism may be relevant in addressing the phenomenon.⁸⁵ Relevant case law of the Inter-American Court of Human Rights dealing with cases of kidnapping and disappearance has emphasized States' obligations to protect lives and ensure access to justice for victims.⁸⁶

43. An examination of best practices in responding to the phenomenon of kidnapping has generally led to them being divided into legislative, operational and preventive measures.⁸⁷ Since this particular phenomenon (kidnapping) covers terrorist hostage-taking, relevant findings are applicable. Recommendations made in studies on international cooperation in the prevention, combating and elimination of kidnapping and in providing assistance to victims as detailed in the Counter-Kidnapping Manual are fully relevant to

⁷⁸ See S/2010/204, annex, p. 62.

⁷⁹ Resolution 1722 (2010), para. 17.4.

⁸⁰ Council recommendation 2007/562/EC of 12 June 2007 concerning sharing of information on terrorist kidnappings.

⁸¹ See the website of the Council of Europe on Action against Terrorism: relevant Council of Europe instruments and documents, at www.coe.int/t/dlapil/codexter/relevant_instruments_en.asp. See also Council of Europe, *The Fight against Terrorism: Council of Europe Standards* (4th edition, Strasburg, 2007); and Rianne Letschert, Ines Staiger and Antony Pemberton (eds.), *Assisting victims of terrorism: Towards a European Standard of Justice* (Dordrecht, Springer, 2010), pp. 73–141.

⁸² Europol Review, General report on Europol activities, 2012, p. 24. Available from www.europol.europa.eu/sites/default/files/publications/europolreview2011.pdf.

⁸³ Ibid.

⁸⁴ See www.asean.org.

⁸⁵ Bailliet, "Towards holistic transnational protection" (see footnote 65), pp. 599 and 607.

⁸⁶ Ibid., pp. 592–593.

⁸⁷ See footnote 40. See also E/CN.15/2003/7, paras. 23–43.

terrorist hostage-taking,⁸⁸ and mostly relate to the improvement of information-sharing, law enforcement, judicial and operational cooperation, domestic legal systems and security apparatuses.⁸⁹ Recommendations insist on the need for coherence and coordination in national policies and strategies, the criminalization of the offence in conformity with such international standards as the International Convention against the Taking of Hostages, the United Nations Convention against Transnational Organized Crime and the International Convention for the Suppression of the Financing of Terrorism, as well as on the reinforcement of international cooperation (law enforcement and capacity-building). Furthermore, preventive measures cover such areas as (a) increasing awareness and understanding of terrorist hostage-taking; (b) strategies aimed at increasing risks while decreasing opportunities for hostage-takers; and (c) mobilization of resources and training for actors involved in combating the phenomenon.

44. The criminalization of the payment of ransom by Governments and non-governmental actors remains a controversial measure. Since the ultimate objective of responses to a terrorist hostage-taking situation is the preservation of life, some may argue that a law that prevents all actors – including family members – from paying ransom for the liberation of their relatives in captivity would be a violation of the latter’s right to life. Beyond the narrow but relevant debates over ransom payment, acts to prevent and eradicate the phenomenon are more likely to succeed if they are part of a global strategy of fighting terrorism that addresses root causes.⁹⁰ Such strategies should be centred on the needs and interests of individual and collective victims, including hostages and communities living in areas plagued by terrorism.

B. Adequacy of international and regional instruments of relevance to hostage-taking, the payment of ransom and victims’ rights

1. International instruments

45. Under the aegis of the United Nations, the global community of States has adopted 14 legal instruments and four amendments intended to prevent terrorist acts.⁹¹ Most of the early international conventions on particular dimensions of international terrorism focused on the strengthening of cooperation between States to prevent acts of terrorism and bring offenders to justice. They hardly addressed the needs of and remedies for the victims. Nonetheless, a number of these conventions have particular relevance for hostage-taking situations.

46. Acts committed aboard aircrafts are covered by the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft, the Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation the new Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation. While none of these instruments expressly addresses the situation of terrorist hostage-taking or provides for reparation for victims, this particular dimension of terrorism certainly falls within the prohibited acts under these instruments, which offer grounds for the prosecution of offenders.

⁸⁸ See footnote 41.

⁸⁹ See Bailliet, “Towards holistic transnational protection” (see footnote 65), pp. 598–599.

⁹⁰ A/59/565 para. 148; Alex P. Schmid, “Root Causes of Terrorism: Some Conceptual Notes, a Set of Indicators, and a Model”, *Democracy and Security*, vol.1, 2005, pp. 127-136.

⁹¹ See www.un.org/terrorism/instruments.shtml.

47. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents expressly proscribes the intentional commission of murder, kidnapping or other attack upon the person or liberty of an internationally protected person. The use of kidnapping in the instrument may be construed in a broad sense that encompasses certain hostage-taking acts.

48. With regard to victims, article 3 (1) of the International Convention against the Taking of Hostages imposes a duty on the State party in the territory of which the hostage is held to “take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure”. Moreover, article 3 (2) of the Convention provides for the right to restitution by a State party of “any object which the offender has obtained as a result of the taking of hostages”. It does not address issues of the legality of the payment of ransoms to terrorist hostage-takers.

49. Moreover, acts of hostage-taking for ransom clearly fall within the scope of the United Nations Convention against Transnational Organized Crime, which, in its article 5, paragraph 1, declares that State parties should establish as a criminal offence “agreeing with one or more persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit”.

50. Nonetheless, it is possible to argue that the payment of ransom to terrorist hostage-takers for the release of hostages may fall within the proscribed financing of terrorism under the International Convention for the Suppression of the Financing of Terrorism, which, in its article 1 (a), criminalizes the conduct of any person who “provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out... [a]n act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex”.

51. The above reading of the International Convention for the Suppression of the Financing of Terrorism is corroborated by Security Council resolution 1373 (2001), in which the Council called on States to prevent and suppress the financing of terrorist acts, including through the criminalization of the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts. The above-mentioned Convention was the first of its kind to expressly provide for the establishment of mechanisms to compensate victims of criminal acts referred to in the Convention through funds derived from the forfeitures.⁹²

52. In the particular case of terrorist organizations renowned for kidnapping for ransom, such as Al-Qaida in the Islamic Maghreb, FARC and Abu Sayyaf, it is widely reported that funds collected through payment of ransom are used for further terrorist activities. Accordingly, anyone paying ransom may be presumed to have at least knowledge of the fact that the funds will be used to commit other terrorist acts.

53. While in the immediate years following the events of 11 September 2001 the issue of terrorism was addressed with an almost exclusive focus on suspected perpetrators, the issue of victims’ rights has gradually moved to the centre of the debate within the context of the United Nations. The United Nations Global Counter-Terrorism Strategy stresses the need to promote and protect the rights of victims of terrorism, and points to the dehumanization of victims of terrorism as one of the conditions conducive to the spread of terrorism. It also includes a pledge by States to consider putting in place, on a voluntary basis, national systems of assistance that would promote the needs of victims of terrorism

⁹² International Convention for the Suppression of the Financing of Terrorism, art. 8, para. 4.

and their families and facilitate the normalization of their lives. The Strategy forms a basis for a concrete plan of action to (a) address the conditions conducive to the spread of terrorism; (b) prevent and combat terrorism; (c) take measures to build the capacity of States to fight terrorism; (d) strengthen the role of the United Nations in combating terrorism; and (e) ensure the respect of human rights while countering terrorism.

54. The Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law provide for a wide range of rights for victims, including victims of such terrorist acts as hostage-taking. For instance, since victims of terrorist hostage-taking are often subjected to gross human rights violations, they are entitled to full and effective reparation, which include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁹³ Moreover, general human rights guarantees enshrined in various international, regional and national instruments apply also to victims of terrorist hostage-taking.

2. Relevant regional instruments

55. A number of regional intergovernmental bodies have adopted their own legal instruments and set up mechanisms aimed at addressing various aspects of terrorism. The instruments generally refer to the standards set in relevant global treaties. The Council of Europe has adopted a number of instruments aimed at preventing and combating terrorism.⁹⁴ Similarly, the European Union adopted Council Framework Decision 2002/475/JHA on combating terrorism and developed the holistic European Union Counter-Terrorism Strategy.⁹⁵ Adopted in 2005, the Strategy commits the European Union to the fight against terrorism globally while respecting human rights and allowing its citizens to live in an area of freedom, security and justice.

56. OAS has adopted two major instruments on terrorism: the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that Are of International Significance; and the Inter-American Convention against Terrorism. It also established the Inter-American Committee against Terrorism, which has a mandate to promote and develop cooperation among OAS Member States to prevent, combat and eliminate terrorism.⁹⁶

57. The African Union has adopted two instruments aimed at ensuring State cooperation in combating terrorism: the Convention on the Prevention and Combating of Terrorism; and the Protocol thereto. It has moreover adopted a decision that unequivocally calls for the criminalization of payment of ransom to terrorist hostage-takers (see paragraph ... above).

58. In 2007, ASEAN adopted its own Convention on Counter-Terrorism. In 1998, the League of Arab States adopted the Arab Convention for the Suppression of Terrorism,

⁹³ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 18.

⁹⁴ Such as the European Convention on the Suppression of Terrorism; the Protocol amending the European Convention on the Suppression of Terrorism; the Council of Europe Convention on the Prevention of Terrorism; and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

⁹⁵ See http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_terrorism/133275_en.htm.

⁹⁶ See www.oas.org/oaspage/crisis/crisis_en.htm.

while the Organization of Islamic Conference has its Convention on Combating International Terrorism.⁹⁷

V. Conclusions and recommendations

59. Various records show that the phenomenon of terrorist hostage-taking in general and hostage-taking for ransom in particular has increased in recent years. For decades, the phenomenon of hostage-taking by armed groups, drug dealers and other criminal gangs has been a part of day-to-day life in certain parts of the world, such as a number of Latin American countries or the Philippines. The relatively recent proliferation of incidents of hostage-taking for ransom in northern, West and East Africa shows that the phenomenon is proving to be a booming enterprise for terrorist groups. Moreover, hostage-taking for ransom is increasingly a modus operandi of groups involved in piracy across the Horn of Africa. A clear understanding of terrorist hostage-taking and differentiation between this phenomenon and related criminal acts requires a combined reading of the International Convention against the Taking of Hostages, various international, regional and national instruments on combating terrorism and organized crime, and relevant academic literature.

60. The International Convention against the Taking of Hostages is the only binding treaty addressing terrorist hostage-taking. Since hostage-taking is generally considered a modus operandi of terrorists, other instruments on specific aspects of combating terrorism adopted by international, regional or national bodies apply to terrorist hostage-taking situations. Various global, regional or intergovernmental bodies have also adopted resolutions and decisions requesting the criminalization of terrorist hostage-taking. However, the various instruments either do not unequivocally address the legality of payment of ransom to terrorist hostage-takers or provide for the rights and entitlements of all categories of individual and collective victims of terrorist hostage-takers.

61. The global community of States has adopted a wide range of instruments aimed at preventing or combating specific aspects of terrorism. Existing treaties, declarations, decisions and resolutions adopted by international or regional intergovernmental bodies address a wide range of terrorist acts. Some instruments, mostly those adopted by regional bodies, are dedicated to terrorism in general, while global instruments are dedicated to particular aspects and dimensions of the phenomenon. Most substantive provisions in existing global anti-terrorism legislation are dedicated to the reinforcement of State cooperation in addressing the subject matter of the treaties. Hostage-taking is generally mentioned as one of the modus operandi of terrorists and expressly features in a number of proposed definitions of terrorism, including in Security Council resolution 1566 (2004).

62. Global, regional or national instruments on combating terrorism hardly address the needs and entitlements of various categories of direct and indirect individual or collective victims of terrorist acts, including terrorist hostage-taking. A lack of specific standards, existing human rights instruments and standards, including those specifically addressing the rights and needs of victims of crime, abuse of power and gross human rights violations may be invoked when addressing the fate of those affected by terrorist hostage-taking. The Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International

⁹⁷ See www.unhcr.org/refworld/docid/3de5e6646.html.

Human Rights Law and Serious Violations of International Humanitarian Law provide for a wide range of rights for victims, including victims of such terrorist acts as hostage-taking. Generally, support and assistance for victims should receive much more attention from States than it has to date.

63. The International Convention against the Taking of Hostages clearly contains an undertaking by States to criminalize hostage-taking. Since the Convention has to date been ratified by 168 States, it is fair to state that an overwhelming majority of State considers this to be a criminal act. Neither this particular instrument nor any other international or regional treaties, expressly address the legality of the payment of ransom to terrorist hostage-takers. International instruments against organized crime and the financing of terrorism, as well as a number of United Nations resolutions, may be interpreted as proscribing any provision of funds to terrorists inasmuch as such funds are used to commit further terrorist acts. On the other hand, it should be noted that responses to terrorist hostage-taking situations have to take into account the conflicting demands of various stakeholders. Relatives of hostages are generally willing to do whatever it takes to gain the freedom of their beloved ones, while most States would rather avoid paying, but also wish to prevent terrorists from obtaining funds – including through ransoms – to be used in further terrorist activities. This is clearly a controversial issue among States.

64. An assessment of the existing instruments aimed at combating terrorist hostage-taking may lead to two possible conclusions. The first is that, in the light of the existing uncertainties, loopholes and shortcomings in international treaties with regard to the conceptualization of terrorist hostage-taking and the legality of the payment of ransom to terrorists and rights of victims, there is a clear need to discourage terrorist groups from obtaining funds that contribute to the reinforcement of their movements and lethal activities. Conversely, the desirability of preventing in all circumstances relatives or other non-State actors from taking any action that would prevent the killing of hostages, including through the payment of ransom, is questionable.

65. States should abide by their commitments to increase their cooperation in tackling terrorism, including terrorist hostage-taking in particular, as contained in the various instruments adopted by international and regional intergovernmental institutions.

66. In their fight against terrorism in general and terrorist hostage-taking in particular, States should promote and protect all relevant human rights⁹⁸ and, in the context of an armed conflict, international humanitarian law.

67. States should bear in mind the necessity of addressing the phenomenon within the wider normative and institutional framework aimed at combating terrorism in general. A comprehensive strategy is necessary when addressing all causes, manifestations and consequences of terrorism. More specifically, in spite of spatial and contextual differences between situations of hostage-taking or kidnapping for ransom by terrorists, pirates or common criminals, the threats that such acts pose to the human rights of hostages and local communities may not differ substantially. Accordingly, legislative or policy initiatives may benefit from a more holistic treatment of these phenomena and further international exchanges between States and civil society about interesting and successful approaches.

⁹⁸ For a comprehensive overview, see OHCHR, Human Rights, Terrorism and Counter-terrorism, Factsheet No. 32. Available from www.ohchr.org/Documents/Publications/Factsheet32EN.pdf.

