



75TH ANNIVERSARY – UNIVERSAL DECLARATION OF HUMAN RIGHTS

UNODC Commemoration Event, Monday 11 December 2023

“Mainstreaming Human Rights in Criminal Justice Responses to Terrorism”

Remarks by Professor Ben Saul, United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Your Excellencies, Distinguished Participants

It is my honour to join you and the UN Office on Drugs and Crime in celebrating the 75th anniversary of the Universal Declaration of Human Rights. The Universal Declaration gifts us a remarkable, uplifting vision for a social order founded on the sanctity of every human life. It recognises that rights and freedoms are fundamental not only to our survival and dignity, but to the flourishing of every individual within their communities.

In times of crisis, conflict, and terrorism, governments are too often tempted to resort to extreme or excessive measures to combat security threats. Legal constraints may be brushed aside as seeming obstacles to protecting one’s people from violence. Human rights and refugee law, international humanitarian law, and international criminal law may be perceived as inadequate to meet security needs. Some governments pay lip service to international law while bending or breaking it in practice, often with the acquiescence of allies, and sometimes with the full-throated backing of those parts of their populations calling for vengeance, not justice.

Such challenges to legal constraints have been a long feature of campaigns against violence characterised as terrorism, from French Algeria and Northern Ireland, to the global war on terror after 9/11, to current situations in the Middle East and West Africa. The present moment brings renewed risks to human rights in counter-terrorism, because of surging domestic polarisation and political extremism, geopolitical competition, and new tools, like social media, for fuelling dehumanisation, vilification, incitement and misinformation.



The 75th anniversary of the Universal Declaration is a timely reminder that human rights law has always taken a hard-headed and realistic approach to addressing security challenges. The Declaration sprang from the unprecedented tragedy of 80 million lives lost worldwide, and many countries laid waste, in the Second World War. As the UN High Commissioner for Human Rights recently said, it was ‘crafted with lessons drawn from two global wars, the Holocaust, atomic destruction, profound economic devastation, and generations of colonial exploitation, oppression, injustice and bloodshed’.

Having lived through such terrible suffering, the drafters of the Declaration were acutely conscious of the wide spectrum of security threats, both state and non-state actors. In Article 29, they recognised that strictly defined limitations on rights may be necessary for security purposes. The possibility of derogation from rights in public emergencies was added in the International Covenant on Civil and Political Rights in 1966. To exceed these carefully crafted exceptions is to betray a cardinal lesson of the war and the Holocaust – that human rights are so weighty and precious that they must not be too readily curtailed or sacrificed.

The drafters of the Universal Declaration, like those of the UN Charter earlier, also knew first hand that violations of human rights can cause conflict. The preamble observes that ‘disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind’. This sentiment is echoed today by the UN Global Counter-terrorism Strategy in relation to the conditions conducive to terrorism.

For the architects of the Universal Declaration, the structural antidote to violence was more, not less, protection of human rights, so that no-one feels ‘compelled to have recourse, as a last resort, to rebellion against tyranny and oppression’. The Universal Declaration is a clarion call that security and freedom are interdependent, not opposites. The UN Global Counter-terrorism Strategy, and the UN Security Council, likewise insist that respect for human rights is fundamental to effective and principled counter-terrorism efforts.

Unfortunately, today aspiration is not matched by reality in too many countries. The global proliferation of counter-terrorism law over the past two decades, including at the instigation of



the Security Council, has placed enormous strain on the traditional rights-based principles and safeguards of criminal justice which, commendably, UNODC has long championed.

Sweeping definitions of ‘terrorism’ and ‘extremism’ compromise the principle of legality and infringe many fundamental rights. Wide and vague preparatory and organisation-based offences criminalise conduct, and legitimate free expression, with no proximate connection to the commission of terrorist violence. Organisations and individuals are abusively listed as terrorist without due process or judicial safeguards. Counter-terrorism sanctions and financing laws have undermined legitimate non-profit organisations, freedoms of association, assembly and expression, and humanitarian activities. Counter-terrorism laws are deliberately misused against political opponents and dissidents, the media, civil society, and minorities.

Criminal procedure has also been undermined by counter-terrorism laws and practices, including arbitrary arrests, protracted pre-trial detention, torture and ill-treatment, forced confessions, restrictions on legal counsel, non-disclosure of secret evidence, the use of special courts, trial of children in adult courts, and the unlawful use of the death penalty. There is often inadequate participation of victims of terrorism in legal proceedings, and a lack of remedies.

In some contexts, criminal processes allow too much impunity, as when amnesty laws are too broad, or suspects are prosecuted for terrorist group membership or travel offences but not also for the more serious international crimes they have committed. In other situations, criminal processes may over-penalise, as when repatriated women and children formerly associated with terrorist groups are not admitted to rehabilitation and reintegration processes, or former members of armed groups are excluded from disarmament, demobilization and reintegration.

Of course, a different problem is that many states have increasingly pursued measures against terrorism entirely outside the criminal justice system, in ways which can undermine it. Examples include administrative preventive detention, and post-sentence continuing detention, which challenge basic assumptions about the role of criminal adjudication and punishment.



Protecting human rights in criminal justice responses to terrorism is not only necessary to safeguard the dignity of accused persons. It also enhances security, because interrogations without torture, and fair trials, ensure the reliability of convictions and that terrorists are punished. It ensures law enforcement officials are accountable for their conduct, and are thus more disciplined and focused in combating terrorism. It enables justice for victims, who are best served by well-functioning justice systems. It reduces the conditions conducive to more terrorism, lessons starkly illustrated by the irregular and abusive practices at Abu Ghraib and Guantanamo Bay. Protecting human rights ultimately distinguishes responsible states from terrorists, who show contempt for rights and the rule of law.

Celebrating the Universal Declaration is an opportunity to redouble our efforts to ensure human rights are at the centre of counter-terrorism efforts, not at its periphery. Thank you.