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# The Arab Convention for the Suppression of Terrorism a serious threat to human rights

## **PART ONE: Background**

Provisions of the Arab Convention for the Suppression of Terrorism, also known in English as the Arab Convention for the Combatting of Terrorism (the Convention) adopted by the League of the Arab States (the Arab League) present a serious threat to human rights in Arab countries. Amnesty International is calling for its amendment to ensure that it is consistent with international human rights and humanitarian law,<sup>1</sup> particularly given the long-standing commitment of member states of the Arab League, and of the League itself, to human rights, as manifested by membership of the United Nations and ratification of international human rights treaties. National laws, including constitutions of all members of the Arab League, emphasize in various ways and degrees their commitment to international human rights standards.<sup>2</sup> As will be discussed below, the Arab Convention for the Suppression of Terrorism also starts by affirming commitment to the UN Charter and international human rights standards.

In the wake of the 11 September 2001 attacks in the USA, the UN Security Council adopted Resolution 1373, which established a “Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise”.<sup>3</sup> It called upon “all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution.”<sup>4</sup> Since 11 September 2001, many countries, including in the Middle East and North Africa, have intensified measures in the name of “efforts of combatting terrorism”, and in the name of implementing Security Council Resolution 1373. Amnesty International is concerned that many such measures appear to be wide-sweeping and sacrifice guarantees and

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<sup>1</sup> The Convention does not have any provisions on amendments by state parties. Therefore, there is a need for an amending Protocol that is adopted by the Arab League which can be ratified by member states when ratifying or acceding to the Convention.

<sup>2</sup> For a discussion on human rights and the constitutions of Arab countries, see Fateh Azzam; "Civil and Political Rights in Arab Constitutions" in Salma Khadra Jayyusi, Editor, *Human Rights in Arabic Texts (Huqooq al-insan fi-al-nusus al-'Arabiyya)* (Arabic); Beirut: Centre for Arab Unity Studies; forthcoming 2002.

<sup>3</sup> Security Council Resolution 1373, (28 September 2001), para. 6.

<sup>4</sup> *Ibid.*

respect for human rights in the name of the fight against “terrorism”. The Arab Convention for the Suppression of Terrorism entered into force on 7 May 1999, one month after the seventh ratification by a member state of the Arab League.<sup>5</sup> Provisions of the Convention as well as its spirit are being used by countries of the region to demonstrate their commitment to these efforts, and as an indicator of what measures can be adopted in this regard. Amnesty International has major concerns about many provisions of this Convention, which fail to meet international human rights standards that states members of the Arab League have an obligation to respect and implement in law and practice.

Amnesty International acknowledges that acts of violence in countries that are members of the Arab League, and across the region, are not new. Governments in the region have over many years adopted laws and policies in the name of combatting violence or “terrorism”, which are not in conformity with their obligations under human rights law and standards. However, in the last few years, more governments have taken some positive steps towards human rights reform, including the adoption of new laws that provide greater safeguards, further ratification of international human rights treaties, implementing recommendations by Amnesty International and other human rights bodies or organisations, creation of human rights bodies, and introducing human rights education programs. In light of this, Amnesty International is concerned that implementation of the Convention will take states backwards rather than forwards in respecting their obligations under human rights law and standards. The lessons from the past show that durable security and stability can only be realized when fundamental human rights are respected – and not sacrificed under any pretext.

This has been clearly demonstrated in Israel's practices in the Occupied Territories, where gross violations of Palestinian rights continue to be perpetuated under the pretext of combatting “terrorism”. By September 2001, one year after the start of the *Intifada*, more than 570 Palestinians, including 150 children, had been killed by Israeli security forces. Israeli forces have killed Palestinians unlawfully by shooting them during demonstrations and at checkpoints when lives were not in danger. They have shelled residential areas and carried out extrajudicial executions. All Palestinians in the Occupied Territories — more than three million people — have been collectively punished through the imposition of closures and curfews. In addition, hundreds of Palestinian homes have been demolished. Amnesty International has repeatedly called on the Israeli authorities to abide by international human rights standards and

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<sup>5</sup> Article 40 (1) of the Convention states that it enters into force 30 days after the seventh ratification by an Arab state.

urged the Palestinian Authority and armed groups to act in accordance with humanitarian law.<sup>6</sup> The organization also called for the international community to take the necessary action to ensure respect for human rights in the region. A permanent and durable peace can only be built on a foundation of human rights. The past year has shown more clearly than ever that if human rights are sacrificed in the search for peace and security, there will be no peace and no security.<sup>7</sup>

**Amnesty International believes that the Convention, as the text currently stands, should not be implemented by member states of the Arab League because several of its provisions are not consistent with the obligations of the member states under human rights and humanitarian law. The League and its member states should re-affirm their commitment to human rights in law and practice, including in the current intensified effort to combat and suppress acts that are classified as “acts of terrorism”.**

Amnesty International has expressed concerns about new proposed legislation or measures in many parts of the world, including those at the regional and international levels. For example, Amnesty International has issued strong statements concerning the European Union,<sup>8</sup> and similarly issued statements on UN Security Council Resolutions or other UN

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<sup>6</sup> Amnesty International takes no position either on Israel's occupation of the Palestinian territories or on the right of the Palestinians to take up arms against occupation. However, the fact that the situation in the West Bank, including East Jerusalem, and the Gaza Strip is one of occupation is fundamental to understanding the continuing resistance over 35 years of the Palestinians and in assessing the human rights standards Israel should use in relation to the Palestinians.

<sup>7</sup> For further information on violations during the Intifada, see: "Broken lives: a year of *intifada*, Israel/ Occupied territories/ Palestinian Authority", AI Index: MDE 15/083/2001, and other AI reports and documents on Israel and the Occupied Territories.

<sup>8</sup> See for example: "Comments By Amnesty International on the EU Commission's proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status before the Justice and Home Affairs Council 27-28 September 2001", Aide-Memoirs by Amnesty International European Union Office, Brussels, 25 September 2001. Also see "Security and respect for Human Rights, Amnesty International's Appeal to the EU and its Member States-Brussels", 12 October 2001. See also: "A human rights framework for the protection of security: Submission by Amnesty International to the Group of Specialists on Human Rights and the Fight against Terrorism established by the Steering Committee on Human Rights of the Council of Europe's Committee of Ministers", 26 November 2001, AI Index: IOR /61/005/2001.

discussions concerning measures to “combat terrorism”.<sup>9</sup> Amnesty International is also following very closely the current discussion in the UN General Assembly concerning a draft Comprehensive Convention on International Terrorism and has already expressed its deep concern about some of the provisions in the draft.<sup>10</sup> Against this background, Amnesty International has monitored closely and expressed concern over attacks on vulnerable groups including Arab or Muslim groups in the USA and Europe as well as asylum seekers and other racially motivated attacks.<sup>11</sup> Amnesty International has also called for the negotiations on the future of Afghanistan to be based on respect for human rights.<sup>12</sup>

## **1.1 Introduction**

The Arab Convention for the Suppression of Terrorism was adopted by the Council of Arab Ministers of Interior and the Council of Arab Ministers of Justice of the League of Arab States in Cairo, Egypt on 22 April 1998. It was open to accession by the member states of the Arab League who did not participate in its finalization (last preambular paragraph). The Convention entered into force on 7 May 1999.

The League of Arab States was established in 22 March 1945, before the United Nations, and is composed of the Arab states that were independent at the time, which have signed the Charter of the Arab League (the Charter). The Charter states that the purpose of the League is to strengthen relations between the member-states, the coordination of their policies in order to enhance co-operation, to safeguard their independence and sovereignty. The Charter was initially ratified by seven Arab states. Today, there are 22 members of the

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<sup>9</sup> See for example: “Amnesty International recommendations to the Security Council in relation to the Council’s response to the 11 September 2001 attacks”, 25 September 2001, and “Statement by Amnesty International on the implementation of Security Council Resolution 1373”, 1 October 2001.

<sup>10</sup> Amnesty International statement to UN General Assembly, 56th Session 2001, “Draft Comprehensive Convention on International Terrorism: A Threat to Human Rights Standards,” 22 October 2001, AI Index IOR 51/009/2001.

<sup>11</sup> See for example: “The backlash - human rights at risk throughout the world”, 04 October 2001, AI Index: ACT 30/027/2001. See also a number of Amnesty International’s Urgent Actions on this on Amnesty International’s special page on the crises on the organisations’s website: <http://www.amnesty.org>.

<sup>12</sup> See: “Human Rights Agenda for Afghanistan: human rights must be central to the negotiation of any settlement to the conflict”, November 2001, AI Index: ASA 11/028/2001.

League.<sup>13</sup>

*Algeria, Bahrain, the Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen.*

When the Charter was adopted, it was announced that the purpose of the League was to “serve the common good of all Arab countries, ensure better conditions for all Arab countries, guarantee the future of all Arab countries and fulfill the hopes and expectations of all Arab countries.”<sup>14</sup>

## **1.2 The Arab League and Human Rights:**

The Charter of the Arab League does not itself refer to human rights in general, or to specific instruments, or the United Nations. This is simply because the Arab League was established before the United Nations and before the adoption of most international human rights standards.<sup>15</sup> However, following the adoption of the Charter of the Arab League, other resolutions were adopted by the Arab League that reflect commitment of the League, as an organization and all its member states, to the UN Charter and international human rights law and standards. For example, the Joint Defence and Economic Cooperation Treaty Between the States of the Arab League, adopted in 17 June 1950,<sup>16</sup> states that the governments adopt the treaty “to cooperate for the realization of mutual defence and maintenance of security and peace according to the principles

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<sup>13</sup> These include the Occupied Territories, referred to as Palestine, which is not recognized as an independent state by the United Nations. Amnesty International takes no position on whether it is a state. In this document, reference is made to Palestine in connection to how the Arab League refers to it.

<sup>14</sup> Foundation of the League of Arab States, Arab League website: <http://www.leagueofarabstates.org>.

<sup>15</sup> Prior to the adoption of the Charter of the League of Arab States, international human rights standards were largely limited to the International Labour Organization’s Conventions and Recommendations, and provisions for the protection of members of minorities in peace treaties after World War I.

<sup>16</sup> As reviewed in 2 February 1951 and 16 February 1952.

of both the Arab League Pact and United Nations Charter....” (Preamble).<sup>17</sup> It states in Article 12 that “[n]o provision of this Treaty shall in any way affect, or is intended to affect, any of the rights or obligations devolving upon the Contracting States from the United Nations Charter or the responsibilities borne by the United Nations Security Council for the maintenance of international peace and security.”

The commitment of the states members in the Arab League to human rights is manifested in their extensive ratification of international human rights treaties (See Annex 1).<sup>18</sup> For example, Tunisia, Algeria, Egypt, Libya, Jordan, Kuwait, Lebanon, Morocco, and Yemen have all ratified the main six international human rights treaties. Iraq has ratified five treaties but have not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture). Sudan and Syria have not ratified the Convention against Torture and the Convention on Elimination of All Forms of Discrimination Against Women (the Women’s Convention), but have ratified the four other treaties. Saudi Arabia has ratified the Convention against Torture, the Convention on the Rights of the Child, the Women Convention, and the Convention on Elimination of All Forms of Racial Discrimination. Oman has ratified only the Convention on the Rights of the Child. Djibouti has ratified only the Convention on the Rights of the Child and the Women Convention. Similarly, United Arab Emirates has only ratified the Convention on the Rights of the Child and the International Convention on the Elimination of all Forms of Racial Discrimination. Somalia is a party to all the treaties except the Women Convention and the Convention on the Rights of the Child. Finally, all the members of the Arab League have signed the Rome Statue of the International Criminal Court (the Rome Statute) except Tunisia, Iraq, Saudi Arabia, Somalia, Palestine, Qatar, Lebanon, Libya, and Mauritania.

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<sup>17</sup> The Charter of the United Nations opens with affirming that “[w]e the Peoples of the United Nations [are] determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small....”. It affirms this in many provisions of the Charter of the United Nations, particularly Article 55 which states that “[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

<sup>18</sup> Many members have ratified the treaties but have entered sweeping reservations that have been considered by the relevant treaty-bodies to be incompatible with the purpose and meaning of the relevant conventions, and have requested the concerned states to withdraw such reservations.

Palestine has not ratified any treaty.<sup>19</sup>

Another important attempt to reflect the commitment of the Arab League to human rights is manifested in the Arab Charter on Human Rights, which was adopted by the Council of the Arab League on 15 September 1994.<sup>20</sup> Although the Charter guarantees many important human rights, it fails to recognise many other rights and safeguards guaranteed in international human rights standards. Many international, regional and national non-governmental organisations have expressed their concern over the lack of conformity of the Charter with international human rights law and standards, particularly as members of the Arab League are state parties to human rights treaties, contributed to the drafting of and supported the adoption of numerous non-treaty human rights standards by the UN. For example, the Charter includes a prohibition on torture as "treatment", but does not clearly prohibit torture as "punishment", including corporal punishment. In addition, although the Charter includes a number of safeguards in relation to detention, such as the recognition of the right to liberty, and the right not to be arrested or held without legal grounds or without prompt access to a judge, it does not recognize the right to prompt access to outside world including to a lawyer, outside medical attention or one's family. Further, the guarantees to right to freedom of belief, opinion, and religion are restricted in the Charter in a manner that is incompatible with international human rights law, particularly Articles 18 and 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). The Charter omits the right to freedom of expression. Finally, the Charter does not recognize all the rights of fair trial as guaranteed in international human rights standards, including the prohibition of use of statements obtained under torture as evidence in court proceedings, guarantees to public trial, and the presumption of innocence.<sup>21</sup>

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<sup>19</sup> The Palestinian Authority, which is not a member of the UN, has not ratified human rights treaties. However, President Arafat stated to AI delegates in 1993 that he would abide by international human rights law. He has made similar declarations on some other occasions in the last few years. Amnesty International therefore expects the Palestinian Authority to respect human rights law and standards.

<sup>20</sup> Adopted by Council Resolution 5437. According to Article 42 (b) of the Arab Charter on Human Rights, the document enters into force two months after the date of deposit of the seventh instrument of ratification.

<sup>21</sup> For an analysis of the Arab Charter on Human Rights, see: "The Arab Charter on Human Rights: A Comment", Mona Rishmawi, *Interights Bulletin*, Volume 10, Issue 1, 1996.



The last preambular paragraph of the Charter reaffirms “the principles of the Charter to the United Nations and the Universal Declaration of Human Rights, as well as the provisions of the United Nations Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the Cairo Declaration on Human Rights in Islam.”

## **2.1 Legal issues relevant to “combatting terrorism” and human rights**

While every state has the right and obligation to prevent and investigate crimes, to prosecute those believed to be responsible where there is sufficient admissible evidence. All these steps must be in full conformity with international human rights and humanitarian law, including the right to a fair trial.

It should be noted from the start that as of November 2001, there is no international definition agreed upon within the United Nation of the term “terrorism”, and there is no one international comprehensive treaty on “terrorism”.<sup>22</sup> There are, instead, a number of treaties that deal with various crimes that are defined as “terrorist” crimes.<sup>23</sup>

The UN Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights have in the last few years addressed the issue of “terrorism” and

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<sup>22</sup> A discussion within the General Assembly was resumed on 15 October 2001 in the Sixth Committee’s working group on international terrorism discussion on the proposed draft comprehensive Convention on international terrorism. Amnesty International has raised concerns about many of the issues under discussion and the possibility of compromising human rights standards in such a Convention. For further details, see: Amnesty International statement to UN General Assembly, 56th Session 2001, “Draft Comprehensive Convention on International Terrorism: A Threat to Human Rights Standards,” 22 October 2001, AI Index IOR 51/009/2001).

<sup>23</sup> These include: The Tokyo Convention on offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1963; The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970; The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971, and the Protocol thereto of 10 May 1984; The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973; and The International Convention against the Taking of Hostages, of 17 December 1979.

human rights in a number of resolutions, and have appointed a Special Rapporteur to study the question. In her August 2001 progress report to the Sub-commission, the Special Rapporteur on terrorism noted that the issue of “terrorism” has been “approached from such different perspectives and in such different contexts that it has been impossible for the international community to arrive at a generally acceptable definition to this very day.”<sup>24</sup> The Special Rapporteur also pointed out that the term “terrorism” is emotive and highly loaded politically. It is habitually accompanied by an implicit negative judgement and is used selectively.<sup>25</sup> The Special Rapporteur underscored in her report the risk of mixing definitions with value judgments, which often leads commentators to qualify as “terrorist” those acts they are opposed to, or to reject the use of the term when it relates to activities they support.<sup>26</sup>

The Commission on Human Rights adopted a resolution on 23 April 2001 on human rights and terrorism in which it clearly emphasized that the fight against “terrorism” should be in full conformity with respect for human rights.<sup>27</sup> It rejected the argument that some human rights can be sacrificed for the sake of combatting acts of “terrorism”, even for those who are accused of such acts. The resolution states in the preamble that:

*“all measures to counter terrorism must be in strict conformity with international law, including international human rights standards.”*<sup>28</sup>

It also states in the preamble that it is guided by the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on human rights; and emphasizes

*“the need to intensify the fight against terrorism at the national level, to enhance*

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<sup>24</sup> Terrorism and Human Rights: Progress report by prepared by Ms. Kalliopi K. Koufa, Special Rapporteur, UN Doc. E/CN.4/Sub.2/2001/31, para. 24.

<sup>25</sup> *Ibid*, para. 25.

<sup>26</sup> *Ibid*.

<sup>27</sup> UN Commission on Human Rights, Resolution 2001/37, 23 April 2001.

<sup>28</sup> *Ibid*.

*effective international cooperation in combatting terrorism [must be] in conformity with international law and to strengthen the role of the United Nations in this respect”.*

In its operative paragraphs, the resolution

*“[u]rges States to fulfil their obligations under the Charter of the United Nations and other provisions of international law, in strict conformity with international law, **including human rights standards**, to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever and by whomever committed, and calls upon States to strengthen, where appropriate, their legislation to combat terrorism in all its forms and manifestations”;*<sup>29</sup> (emphasis added)

and

*“[requests the Secretary-General to continue to collect information ... on the implications of terrorism, as well as the effects of the fight against terrorism, on the full enjoyment of human rights from all relevant sources....”*<sup>30</sup>

After the attacks in the USA on 11 September 2001, the discussion of “terrorism”, including the need to define “terrorism” and decide on measures to combat it, has taken a prominent place in the international agenda, particularly among states. Security Council Resolution 1373 was adopted under Chapter VII of the United Nations Charter, and is therefore binding on all UN member states. It calls on states to adopt a wide-ranging measures to combat what are broadly described as “terrorist acts”. The Council has called on states to take steps to suppress the financing of such acts, to refrain from supporting them, to ensure that those participating in them are brought to justice, and to take special measures in respect of asylum seekers. Amnesty International welcomed “the determination expressed by the Council in its resolution that states ensure that the alleged perpetrators of grave crimes such as have been committed in the USA on 11 September 2001, and those aiding them, be brought to justice.” But, Amnesty International expressed also

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<sup>29</sup> *Ibid*, para. 5, emphasis added.

<sup>30</sup> *Ibid*, para. 10.

concern that:

*the terms “terrorists” and “terrorist acts” in the resolution are open to widely differing interpretations and therefore may facilitate violations of human rights in states that are bound to implement the resolution.*<sup>31</sup>

Amnesty International further stated that while the resolution requires states to ensure that “terrorist acts” are established as criminal offences in domestic laws and that the punishment “duly reflects the seriousness of such terrorist acts”, ... this should not be interpreted as a call for that punishment to include the death penalty, which Amnesty International opposes. Successive United Nations resolutions adopted by the Commission on Human Rights have stated that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights. In Amnesty International’s opinion, this should also apply to any action that states take to implement resolution 1373.<sup>32</sup>

Of particular concern to Amnesty International are provisions in the resolution that deal with refugee and asylum issues, requiring states to take measures, before granting refugee status, to ensure that an asylum seeker has not facilitated or participated in “terrorist acts”. The resolution calls for adopting appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights. However, Amnesty International pointed out, that “acts of terrorism” are not included in the 1951 Convention relating to the Status of Refugees as a legitimate ground for exclusion from refugee status.<sup>33</sup>

The UN High Commissioner for Human Rights, Mary Robinson, has also welcomed the unanimous adoption of Security Council resolution 1373. However, she shared the concerns of many human rights organizations regarding the resolution. She clarified these concerns as follows:

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<sup>31</sup> Statement by Amnesty International on the implementation of the Security Council Resolution 1373, 1 October 2001.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

*democracies may introduce measures eroding core human rights safeguards, that non-democratic countries may clamp down on legitimate dissent and freedom of expression, and that refugees and asylum seekers may be excluded on a new and very general ground for being suspected of being involved in terrorism.”<sup>34</sup>*

## 2.2 States of emergency or armed conflict

**A) States of emergencies:** these are often declared in cases of disturbances and demonstrations, including violent ones, or natural catastrophes. They are also sometimes declared during armed conflict, either internal or international.<sup>35</sup> Only the ICCPR permits states parties to derogate from certain rights contained in the Covenant under a genuine state of emergency, subject to a number of restrictions. Article 4 states:

*“1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.*

*“2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.*

*“3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United*

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<sup>34</sup> Remarks by Mary Robinson, High Commissioner for Human Rights at the International Conference on Globalization: Humanizing Globalization: a role for human rights, Ghent, 30 October 2001.

<sup>35</sup> States of emergencies are declared in the following countries member to the Arab League: Egypt (ongoing since 1981), Algeria (ongoing since February 1992), Syria (ongoing since March 1963), Sudan (ongoing since December 2000 (the last time it was declared)), Jordan declared a state of emergency declared in 1939 which was lifted in 1992.

*Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.”*

The articles referred to in paragraph 2 above protect the right to life; freedom from torture or cruel, inhuman or degrading treatment or punishment; prohibition of slavery; prohibition of imprisonment merely on the grounds of inability to fulfil a contractual obligation; prohibition of holding anyone guilty of a criminal offence for an act or omission that did not constitute an offence under national or international law when it was committed; right to recognition before the law; and freedom of thought, conscience and religion.

In addition to the non-detonable rights specified above, the Human Rights Committee (the body of experts responsible under the ICCPR responsible for monitoring the implementation of this treaty), in its recent General Comment on this article stressed that there are “elements that in the Committee’s opinion cannot be made subject to lawful derogation under article 4”.<sup>36</sup> These include the right of persons deprived of their liberty to be treated with humanity and with respect for inherent dignity of the human person; the prohibition against taking hostages, abductions, or unacknowledged detention; and protection for the persons belonging to minorities.<sup>37</sup> The Committee further stated that the right to an effective remedy for violations of any of the provisions of the ICCPR constitutes a treaty obligation inherent in the Covenant as a whole.<sup>38</sup> It emphasized that the rights recognized as non-detonable must be secured by procedural guarantees, including judicial guarantees. For example, any trial leading to the imposition of the death penalty, which is imposed in pursuant to the non-detonable rights to life (Article 6 of the ICCPR) must conform to the provisions of the Covenant including the requirements of Articles 14 and 15.<sup>39</sup> Finally, the Committee found no justification for derogation from the right to fair trial during emergency situations, particularly considering that humanitarian law guarantees certain aspects of this right.

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<sup>36</sup> Human Rights Committee, General Comment No. 29, States of Emergency (Article 4), UN Doc. CCPR/C/21/Rev.1/Add.11, para 13

<sup>37</sup> *Ibid.* para. 11.

<sup>38</sup> UN Doc. CCPR/C/21/Rev.1/Add.11, para 14.

<sup>39</sup> *Ibid.* para. 15.

Such guarantees include that only a court of law may try and convict a person for a criminal offence, the presumption of innocence, the right to take proceedings before the law to challenge the lawfulness of detention, and finally the prohibition of certain application of administrative detention.<sup>40</sup>

In its interpretation of Article 4, the Human Rights Committee has stated that states of emergency must be of exceptional and temporary nature. Two conditions must be satisfied before a state of emergency is declared: the situation must amount to a public emergency which threatens the life of the nation and the state must have officially proclaimed a state of emergency. It stressed that not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation and that the measures introduced derogating from the ICCPR should be limited to the extent strictly required by the exigencies of the situation.<sup>41</sup> The Committee explained this by stating that:

*“the mere fact that a permissible derogation from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement that specific measures taken pursuant to the derogation must also be shown to be required by the exigencies of the situation. In practice, this will ensure that no provision of the Covenant, however validly derogated from will be entirely inapplicable to the behaviours of the State party.”*<sup>42</sup>

The Committee further stated that any state introducing measures derogating from the provisions of the ICCPR must be able to justify not only that the situation for which they declared the state of emergency “constitutes a threat to the life of the nation, but also that **all the measures derogating from the Covenant are strictly required by the exigencies of the situation.**”<sup>43</sup> (Emphasis added) The Committee stressed the duty of the states declaring emergencies to carry out careful analysis under each article of the ICCPR, based on an objective assessment of the

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<sup>40</sup>*Ibid.* para. 16 and footnote 9.

<sup>41</sup>*Ibid.* para. 16 and footnotes 2,3, and 4.

<sup>42</sup>*Ibid.* para. 4.

<sup>43</sup>*Ibid.* para. 5.

actual situation. This is essential because a declaration of a state of emergency does not automatically mean that all the detonable rights can be subject under the ICCPR, by the states parties, to derogation at will, even when a threat to the life of a nation exists.<sup>44</sup>

**Other permissible limitations of rights:** Other international human rights treaties either do not allow for derogation of the rights protected under states of emergencies, or allow only for limitations under certain situations, which do not necessarily constitute states of emergency. Such limitations are permissible only under clear conditions. However, Article 2 (2) of the Convention against Torture specifically states that

*“[n]o exceptional circumstances whatsoever, whether a state of war, internal political instability or any other public emergency, may be invoked as a justification of torture”.*

This is consistent with the absolute prohibition of torture, even under states of emergency or armed conflict, as embodied in the ICCPR and international humanitarian law, as discussed below.

The Universal Declaration for Human Rights does not allow for derogation under states of emergency, but permits limitations only when they are “determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society” (Article 29 (2)). Also the International Covenant on Economic, Social and Cultural Rights does not make any exception for derogation or limitation in cases of emergency, and allow limitations that are determined by law “only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” (Article 4(2)) The Women Convention, the Convention on Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child do not have any provisions that allow for limitation or derogation from the rights guaranteed in these instruments in any situation.

**B) Armed conflict:** In addition to finding that aspects of fair trial standards can not be derogated from even in armed conflict (see above on states of emergencies), the Human Rights

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<sup>44</sup> UN Doc. CCPR/C/21/Rev.1/Add.11, paras 5 and 6.



Committee has stressed that states parties are not allowed in any circumstances to invoke Article 4 of the ICCPR as a justification for acting in violation of international humanitarian law or peremptory norms of international law. It stressed that during armed conflict, both international and non-international, rules of international humanitarian law apply and help “to prevent the abuse of State’s emergency powers.”<sup>45</sup> As mentioned above, international humanitarian law provides that aspects of fair trial cannot be suspended, even during armed conflict.

International humanitarian law applies in situations of armed conflict, both international and non-international. The safeguards set forth in the Four Geneva Conventions of 1949 and their two Additional Protocols of 1977 protect various categories of people, defined as protected persons. In international armed conflict, civilian persons are protected under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, and prisoners of war are protected under the Third Geneva Convention relative to the Protection of Prisoners of War. Common Article 3 of the Geneva Conventions prohibits, among other things, the surrender of protected persons such as civilians, wounded, sick and detainees, in non-international armed conflict. These prohibitions are spelled out in more details in the Second Additional Protocol to the Geneva Conventions. The Geneva Conventions do not allow for derogation from fair trial provisions included in them. Indeed, the denial of the right to fair trial during armed conflict can, in certain circumstances, be a war crime. Similarly, prohibition of torture is absolute, even during armed conflict, and cannot be derogated from under any circumstances. Article 147 of the Fourth Geneva Convention defines grave breaches of the Convention, which amount to war crimes. Therefore, those suspected of grave breaches must be tried by the state where they are found, or if this state is not willing or able to try them, it must extradite them to another state for trial, or they may be transferred to an international criminal court.

The Rome Statute of the International Criminal Court includes grave breaches as one of the crimes within the Court’s jurisdiction, and incorporates the definition from Article 147 of the Fourth Geneva Convention. The Rome Statute includes grave breaches as war crimes (Article 8 of the Rome Statute. According to the Geneva Conventions, grave breaches include wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement, wilfully depriving protected persons and

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<sup>45</sup> *Ibid.* paras. 3 and 11.

prisoners of war of the rights of fair trial, taking of hostages, and unlawful extensive destruction of property not justified for military necessity. The Rome Statute includes four types of war crimes. These are: grave breaches (Article 8 (2) (a)); other serious violations of international humanitarian law in international armed conflict (Article 8 (2) (b)); serious violations of common Article 3 (Article 8 (2) (c)); and other serious violations of international humanitarian law in non-international armed conflict (Article 8 (2) (d)).

## **PART TWO: Concerns regarding the Arab Convention for the Suppression of Terrorism**

The Convention confirms the commitment of the states parties to human rights as defined in international human rights law. The preamble of the Convention states that it is “committed to the highest moral and religious principles and, in particular, to the tenets of the Islamic *Shari’a*, as well as to the humanitarian heritage of an Arab Nation that rejects all forms of violence and terrorism and advocates the protection of human rights, with which precepts the principles of international law conform...”, and “further committed to the Pact of the League of Arab States, the Charter of the United Nations and all the other international covenants and instruments to which the Contracting States to this Convention are parties.”

Many of the provisions of the Convention are in conformity with the obligations of member states of the Arab League under the UN Charter and international human rights law, which emphasise the need to respect human rights in all actions, including those for "combating terrorism" (see above). For example, it states that in their effort to combat “terrorism”, states parties should undertake to ensure effective protection for those working in the criminal justice system, those providing information or witnesses, and to ensure assistance necessary for victims of “terrorism” (Article 3 (2) (2-4)). The value of such provisions has been confirmed recently in Article 68 of the Rome Statute. Such assistance for victims, however, should also include ensuring effective remedies for violations when committed by the agents of the state (Article 2 of ICCPR), or redress for any act of torture, fair and adequate compensation, including means of rehabilitation (Article 14 of the Convention against Torture) or general reparation for victims as reflected in Article 75 of the Rome Statute.

Despite the positive provisions of the Convention and its formal commitment to human rights law, there are several provisions that are a cause of grave concern to Amnesty International.

The organization is also concerned about the failure of the Convention to recognize and mention many other rights and obligations that are enshrined in international human rights and humanitarian law. These are mainly related to the definition of “terrorism”, the death penalty, jurisdiction under which crimes of “terrorism” is applied, impunity for criminals, lack of guarantees for fair trial, detention, lack of guarantees for freedom of expression and the role of the media or right to privacy, protection of judicial review, extradition, protection of refugees and asylum seekers, in addition to other general concerns.

## 2.1 Definitions

The Convention defines “terrorism” as

*Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize national resources.*<sup>46</sup>

Amnesty International is very concerned that this broad definition can be subject to wide interpretation and abuse, and in fact does not satisfy the requirements of legality in international human rights and humanitarian law.<sup>47</sup> Similarly, the term “violence” is not defined in the Convention. Such vagueness does not make clear to judges, legal experts and the public at large precisely what acts qualify as “terrorism”. This increases the risk that some people may be charged or tried even though there is not enough evidence that they have committed a specific

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<sup>46</sup> The Convention states in Article 2 (A): “Cases of struggle in its various forms shall not be deemed a crime, including armed struggle against foreign occupation and aggression for the purpose of liberation and self-determination, in accordance with the principles of international law. Any act infringing the territorial integrity of any of the Arab States shall not be deemed amongst such cases.”

<sup>47</sup> A principle of international law which cannot be made subject to derogation is that there should be no prosecutions for acts which have not been already clearly defined as criminal offences or which were not contrary to generally recognized principles of law.

crime that was recognized as such in the law at the time of its commitment, or that those convicted will be subjected to increased penalties including the death penalty (see below) because they have been convicted of “terrorism” under vaguely defined laws. Further, the definition provides for the scope of imposing harsh penalties for committing crimes of “terrorism” under the pretext that the acts were “violent”, without clear criteria defining the degree. These could include, for example, acts by political opposition, including their freedom of expression and association (please see below).

Amnesty International is concerned at the inclusion of the “threat” to violence in the definition. This could potentially be used against people who are not accused of committing violence, but for their alleged affiliation with certain political opposition parties that use violence, since such affiliation may be seen as **threat** to commit an act of violence, as in the first sentence of the definition. The Rome Statute does not in its definition include “threat”, but limits the criminal responsibility for those who commit, whether individually or with others, orders, solicits, or induces the commission of a crime (Article 25 of the Rome Statute). Furthermore, the mere affiliation with a violent political group could lead to holding the person responsible for any violent acts committed by the group on the basis of the mere affiliation, and not the actual involvement in the act.

The definition can also be read as applying to non-violent conduct in that it includes "occupying or seizing" public or private installations or property. In the light of the absence of clear definition of what degree constitutes "terrorism" or violence, this could include people demonstrating in front of or inside a government or company building, or in them, or sitting on a public road, and therefore pose a clear threat to people's right to freedom of association and freedom of expression.

The definition used in the Arab Convention is very similar to the definition of "terrorism" in Article 86 of the Egyptian Penal Code.<sup>48</sup> The Human Rights Committee, when examining Egypt's second periodic report of its implementation of the ICCPR, noted that the definition contained in the legislation was so broad that it encompassed a wide range of acts of differing

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<sup>48</sup> The wording on "terrorism" was introduced to the Penal Code through the 1992 Law No. 97, which amended the Egyptian Penal Code.

gravity.<sup>49</sup>

Further, although the Convention makes reference to “terrorist purpose” (article 1 (3)), “terrorist elements” (article 3(1) (1)), and “terrorist group” (article 4(1)(1A)), the Convention does not include any definition of those terms. Similarly, Article 2 of the Convention defines what is **not** a “political crime”, but does not define what **is** a political crime.

Finally, it is worth noting that the Convention, in its definition of “terrorism” includes attacks which cause “damage to ... any public facility or public ... property”. In certain situations, such attacks could include conduct not prohibited by international humanitarian law in non-international armed conflict. Some observers fear that by making such conduct which is not prohibited by international humanitarian law in non-international armed conflict a crime of “terrorism”, which all states must repress, could make lawful acts of war crimes of “terrorism” rather than legitimate acts of war, which are accepted by international humanitarian law. In that case, members of armed political groups will lose an important incentive to comply with international humanitarian law, since they will feel that whatever they do will be perceived as a crime of international concern. Other observers fear that by labelling such conduct as “terrorist”, government armed forces will stop seeing people taking a direct part in hostilities as protected by international humanitarian law.

## **2.2 General concerns**

In general, there is no reference in the body of the Convention to international human rights law, and the Convention makes reference only to national law of the states parties and the Convention itself. However, international human rights law should take precedence over national law or regional agreements.<sup>50</sup> For example, in measures to combat “terrorism”, states parties undertake to work towards “arresting and trying perpetrators of terrorism crimes in accordance with national legislation or extraditing them in accordance with the provisions of this Convention or bilateral agreements between the requesting and requested States” (Article 3 (2) (1)). Arresting and trying

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<sup>49</sup> See UN Doc. CCPR/C/79/Add.23, para. 8 (9 September 1993).

<sup>50</sup> See Vienna Convention on the Law of Treaties.

perpetrators has to be in full conformity with international human rights law concerning the right to fair trial, the presumption of innocence, and the right to challenge the legality of detention. States must also respect the prohibition of torture. These are rights that cannot be derogated from according to Article 4 of the ICCPR, as confirmed by the Human Rights Committee.<sup>51</sup> In the provisions in the Convention concerning the extradition of criminals, it is stated that extradition has to be in accordance with the principles and conditions stipulated in the Convention (Article 5). There is, however, no mention of the requirement to respect international or human rights law and standards of international humanitarian law, although there is a clear potential for abuse or error under extradition procedures that could lead to violations of human rights law, and during armed conflict, of international humanitarian law (see section below on extradition).

The Convention also does not make clear that its provisions apply to crimes committed by any person, including agents of the state. Crimes that are under international criminal law are the concern of the international community, and when they are of a grave nature like genocide, war crimes, crimes against humanity and torture, should be investigated and prosecuted regardless of the official capacity of the alleged perpetrators. Human rights law requires states to provide reparations for victims of violations. The right to reparations includes bringing those responsible for such crimes to justice, regardless of their official capacity. This is reflected in Article 3 of the ICCPR, and Article 5 of the Convention against Torture. Article 27 of the Rome Statute states that the Statute:

*shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility, nor shall it, in and of itself, constitute a ground for reduction of sentence.*

It further states that:

*immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from*

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<sup>51</sup> UN Doc. CCPR/C/21/Rev.1/Add.11, para. 16.

*exercising its jurisdiction over such a person.*<sup>52</sup>

Not only does the Convention contain no clear reference to crimes committed by state officials, but it also gives the impression that there is no responsibility of the state in any case. For example, Article 18 of the Convention refers to the “civil” rights of the victims that result from the case. It does not guarantee the right to reparations when such acts are committed by agents of the state and state officials as mentioned above.

Article 3 (2) (5) of the Convention provides for “suitable incentives to encourage people to inform on terrorist acts, supply information aiding their discovery, and cooperate in the arrest of their perpetrators”. Considering that there are many problems regarding the definition of acts of “terrorism” as discussed above, and that such definition could lead to the infringement of many rights, such as freedom of expression and association, Amnesty International is concerned that informers may be paid to provide information. In such cases the court and the accused should be aware that a witness was paid a reward so as to be able to challenge the credibility of the testimony.

### **2.3 The death penalty**

Amnesty International opposes the death penalty in all cases as it violates the right to life and is the ultimate cruel, inhuman, and degrading punishment. The Special Rapporteur on extrajudicial, summary and arbitrary executions stated that:

*The death penalty must under all circumstances be regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner possible. It is also indispensable that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights instruments are fully respected in proceedings relating to capital offences.*<sup>53</sup>

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<sup>52</sup> *Ibid.*

<sup>53</sup> Report of the Special Rapporteur on extra-judicial, summary or arbitrary executions to the Fifty-Seventh session of the Commission on Human Rights, UN Doc. E/CN.4/2001/9, para. 76.

This applies to all countries regardless of which international treaty they have or have not ratified. Further, Article 6 (2) of the ICCPR limits the imposition of the death penalty, in the states that still maintain the punishment, to the most serious crimes. The Convention does not contain any such restriction. Article 6 (2) of the ICCPR is a non-derogable right under any circumstances including states of emergency (see earlier on derogations and states of emergency). This is also reflected in the Safeguards guaranteeing protection of the rights of those facing the death penalty, which stated that "most serious crimes" mean that "their scope should not go beyond intentional crimes with lethal or other extremely grave consequences" (Safeguard 1). This has been confirmed by the most recent resolution of the Commission on Human Rights on the question of the death penalty, which also emphasized "that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights."<sup>54</sup> The Commission resolution also states that death penalty should not be imposed for "non-violent financial crimes or for non-violent religious practice or expression of conscience".<sup>55</sup> The resolution calls upon states that still maintain the death penalty to progressively restrict the number of offences for which the death penalty may be imposed; and to establish a moratorium on executions, with a view to completely abolishing the death penalty.<sup>56</sup>

Amnesty International is concerned that the Convention provides for the widening of the scope of the death penalty in practice in many countries under the pretext of punishing crimes of "terrorism". Particularly, the Convention does not limit death penalty to the most serious crimes, and could lead in practice to situations whereby the death penalty is imposed on new crimes that are labelled "terrorist" crimes, instead of joining the worldwide trend and the recommendations of the Commission on Human Rights to limit and decrease the scope of the death penalty.

In view of the irreversible nature of the punishment, international human rights standards require that careful and thorough application of fair trial standards are observed in the cases of the

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<sup>54</sup> Commission on Human Rights Resolution 2001/68 "The Question of the death penalty", UN Doc. E/CN.4/RES/2001/68 (25 April 2001), preamble.

<sup>55</sup> *Ibid.* para. 4 (b).

<sup>56</sup> *Ibid.* para. 5.



death penalty. The death penalty Safeguards emphasize that the guilt of the accused person must be established on the basis of clear convincing evidence leaving no room for an alternative explanation of the facts. (Safeguard 5). The final judgment must be issued only by a competent court after a process that gives all possible guarantees of fair trial. (Safeguard 7). The Human Rights Committee has stressed that “[t]he procedural guarantees [in the ICCPR] must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, the right to review by a higher tribunal. These rights are applicable in addition to the right to seek pardon or commutation of the sentence.”<sup>57</sup> Amnesty International is concerned that none of these rights are guaranteed in the Convention.

For example, the Special Rapporteur on extrajudicial, summary or arbitrary executions expressed his concern about the apparent lack of respect for fair trial standards in trials leading to the imposition of capital punishment in the Libyan Arab Jamahiriya as well as disregard of the safeguards which guarantee protection of the rights of those facing the death penalty.<sup>58</sup> Commenting on Syria, the Human Rights Committee expressed great concern that:

*the number of offences punishable by the death penalty [in Syria]... is particularly disturbing in the light of precise, consistent reports alleging that a large number of sentences have been passed and executions carried out following unfair trials in which the accused were sentenced although evidence was used that had been obtained through confessions which had been extracted under torture.*<sup>59</sup>

Amnesty International's concerns in this regard are exacerbated by the fact that all the states members to the Arab League retain the death penalty, and none of them is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (see Annex 1 on Ratification of International Instruments). Furthermore, several states members of the Arab League have introduced harsher penalties when

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<sup>57</sup> Human rights Committee, General Comment no. 6, Article 6: Right to Life, para. 7.

<sup>58</sup> Report by the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1996/4, 25 January 1996, para. 300.

<sup>59</sup> Concluding Observations by the Human Rights Committee: Syrian Arab Republic, UN Doc. CCPR/CO/71/SYR, para. 8.

they introduced "terrorism" legislation, including introducing the death penalty for crimes that were previously punishable by life imprisonment, or made crimes punishable by death if committed as acts of "terrorism", which are normally punishable by a lesser punishment. This was the case when Egypt introduced its "anti-terrorism" legislation in 1992. The Human Rights Committee was of the opinion that the definition of "terrorism" introduced in 1992 should be reviewed, especially in view of the fact that it enlarges the number of offences which are punishable by the death penalty. The Committee underscored that according to Article 6(2) of the ICCPR, only the most serious crimes may lead to the death penalty.<sup>60</sup>

Concerning Kuwait, the Human Rights Committee expressed "serious concern over the large number of offences for which the death penalty can be imposed, including very vague categories of offences relating to internal and external security ...." The Committee recommended that the provisions of Article 6 of the ICCPR be "strictly observed and that the death penalty is not imposed except for crimes that can be seen to be the most serious crimes ...."<sup>61</sup> On Iraq, the Human Rights Committee expressed concern about the increase in the categories of crimes punishable by the death penalty, and that the new categories include non-violent crimes. The Committee recommended that Iraq abolishes the death penalty for crimes which are not among the most serious crimes.<sup>62</sup>

Another concern is that the Convention does not have clear provisions, in line with international human rights law, prohibiting the imposition of the death penalty against children,<sup>63</sup> pregnant women and mentally handicapped persons.<sup>64</sup> The Special Rapporteur on extra-judicial,

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<sup>60</sup> See UN Doc. CCPR/C/79/Add.23, 9 September 1993, para. 8.

<sup>61</sup> Concluding Observations of the Human rights Committee: Kuwait, UN Doc. A/55/40, paras 452-497 (19 July 2000).

<sup>62</sup> Concluding Observations of the Human rights Committee: Iraq, UN Doc. CCPR/C/79/Add.84, para 10.

<sup>63</sup> A person under the age of 18 years when they committed the offence.

<sup>64</sup> Article 6 (5) of the ICCPR and Article 37 (A) of the Convention on the Rights of the Child prohibit the imposition of the death penalty on persons who were under the age of eighteen when they committed the crime. Article 6 (5) of the ICCPR also prohibits the implementation of the death penalty on pregnant women. The Safeguards guaranteeing protection of the rights of those facing the death penalty adds to

summary or arbitrary executions, and who also has the mandate to look at the question of the death penalty, has reported to the Commission on Human Rights in 2001 that the Islamic Republic of Iran, Nigeria, Pakistan, Saudi Arabia, Yemen and the United States of America have executed persons who were under the age of eighteen at the time of the crime. Saudi Arabia and Yemen are members of the Arab League.<sup>65</sup>

UN treaty bodies have often expressed concern over the imposition of the death penalty in countries of the region, raising many of the issues discussed above. When reviewing the second periodic report of Algeria, the Human Rights Committee noted in 1998 that:

*while the Emergency Decree of 1992 relating to "subversion of terrorism" has been repealed, some of its provisions have been incorporated in the normal penal laws. Those provisions prescribe an increased number of offences for which the death penalty may be imposed; a lowering of the age to 16 for which a person may be liable to such a penalty; an extension from 2 to 12 days for which a suspect may be administratively detained incommunicado; and a definition of "terrorist" or "subversive" activities which lends itself to abuse.*<sup>66</sup>

*The Committee recommends that the amendments to the Penal Law be brought into strict compliance with articles 6 and 9 of the Covenant.*

It should be noted that the death penalty is not one of the punishments that the International Criminal Court can impose, despite the seriousness of the crimes dealt with by the Court.

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the prohibition related to the imposition or implementation of the death penalty against children and pregnant women, also prohibit imposing the death penalty on new mothers or those who have become insane. These standards have been affirmed by several resolutions and reports of the UN, including the Report of the Special Rapporteur on the question of disappearances and summary executions, UN Doc. E/CN.4/2001/9, 11 January 2001, and UN Commission on Human Rights Resolution 2001/68 on the question of the death penalty, UN Doc. E/CN.4/RES/2001/68, 25 April 2001.

<sup>65</sup> UN Doc. E/CN.4/2001/9, 11 January 2001, para. 81.

<sup>66</sup> Concluding Observations of the Human Rights Committee : Algeria, 18/08/98, CCPR/C/79/Add.95, para. 11

## 2.4 Jurisdiction over the crimes

The Convention limits the possibility of extradition to three specific cases: first, where the crime was committed in the territory of the requested state, except where this crime damaged the interests of the requesting state (Article 6(C)); second, where the crime was committed outside the requesting state by a non-national and the law of the requested state does not permit bringing of charges for such crime if committed outside its territory (Article 6 (F)); and third when the legal system of the requested state does not permit the extradition of its citizens (counter to the principle of either try or extradite) (Article 6 (H)). It is clear that the Convention is inconsistent with principles of international law over pursuit, and in some cases requires the exercise of universal jurisdiction over grave human rights violations, and violations of international humanitarian law. These include (1) crimes under international law, such as war crimes, crimes against humanity, and genocide, as well as torture, extrajudicial executions and “disappearances; and (2) crimes under national law of international concern, such as hijacking, hostage taking, and attacks.<sup>67</sup> Customary international law and treaty law have developed now to require states to exercise jurisdiction over certain grave crimes under international law. This is evident, for example, in the obligation under the Geneva Conventions on every contracting party to search for persons suspected of committing or ordering grave breaches of the Conventions and to bring them to justice in their own courts, or to extradite them to a state which have provided a *prima facie* evidence against them, or to surrender them to an international criminal court (see earlier concerning armed conflict and a discussion on grave breaches). Similarly, the Convention against Torture requires states parties who find a person in their jurisdiction who is suspected of having committed acts of torture to submit the case to its competent authorities for prosecution, or extradite the person to another state which is able and willing to prosecute (Articles 5 (2), 7, and 8 of the Convention against Torture). It is also now increasingly recognized under general principles of law that states must try or extradite persons suspected of genocide, crimes against humanity, extrajudicial executions, enforced disappearances, and torture.<sup>68</sup>

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<sup>67</sup> Amnesty International takes no position on these crimes *per se*.

<sup>68</sup> See: “Universal Jurisdiction: The duty of states to enact and implement legislation, Amnesty International, September 2001”, AI Index: IOR 53/002/2001.

## 2.5 Impunity

The Convention contains some provisions that could provide impunity for perpetrators of certain crimes, including those crimes that fall clearly under the responsibility of the international community to investigate, and where there is sufficient evidence to prosecute on the basis of universal jurisdiction.

For example, the Convention states that extradition is not permitted “if a final judgement in the crime, having *res judicata* force, has been issued in the requested Contracting State or in a third Contracting State.” (Article 6 (d)) However, Amnesty International is concerned that there might be instances where such final judgment imposes a punishment that is not proportionate to the gravity of the crime committed and the circumstances of the offender, when the crime amounts to a crime under international law.<sup>69</sup> For example, Article 4 (2) of the Convention against Torture states that each state party shall make acts of torture offences “punishable by appropriate penalties which take into account their grave nature.” It is recognized that no person shall be tried and punished again for an offence in the same jurisdiction for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedures of that country (*ne bis in idem*).<sup>70</sup> A retrial for the same conduct or a new case opened for trial on other conduct related to that case, particularly in such situations when there is new evidence, or in situations where the initial trial occurred for the purpose of shielding the person concerned from criminal responsibility, or in such cases when the trial was not conducted independently, impartially, or according with fair trial standards and the norms of due process when the conduct is a crime under international law will avoid impunity.<sup>71</sup>

Furthermore, the Convention specifically does not allow for extradition in cases when an

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<sup>69</sup> See Report of the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders, UN Doc A/Conf.144/28, rev. 1 (91.IV.2), Res 1(a), 5(C), 1990.

<sup>70</sup> See for example Article 14 (7) of the ICCPR, and Article 20 (1,2) of the Rome Statute. It should be noted that the principle of *ne bis in idem* applies only within the same jurisdiction.

<sup>71</sup> The need to permit retrials in such circumstances is recognized in Article 20 (3) of the Rome Statute allows for a re-trial by the Court and should be recognized in the case of national courts as well.

amnesty has been issued covering the perpetrators of these crimes in the requesting state (Article 6 (G)). Amnesty International is concerned that amnesties might be issued when a state is unable or unwilling to try alleged perpetrators of crimes under international law. Amnesties and similar measures of impunity that prevent a determination of guilt or innocence by a court, the emergence of the truth, and full reparation for victims are contrary to international law. It is the duty of the state to try those who are suspected of crimes, rather than finding ways to amnesty them. Not only that victims and their families will not, in cases of amnesties, receive justice, but those who actually committed crimes might continue to commit them if they are not properly tried.

The Convention also prohibits the trial or detention of a witness or expert in a state where he or she is to provide information on a case in a state that has requested extradition. Although this is generally positive for protection of witnesses and experts, as mentioned earlier, if such witness or expert has him or herself been involved in grave violations like torture, grave breaches, genocide, war crimes or crimes against humanity, it is the responsibility of the state in which this person is to bring him or her to trial for such actions. Universal jurisdiction legislation is essential to fulfil such obligations.

Another potential problem of impunity arises from Article 6 (H) of the Convention, which limits the possibility of extradition only in such cases when both states involved have provided in their national legislation that the conduct is punishable by more than one year's imprisonment. However, there might be such cases when one of the states does not punish such conduct by its national legislation for more than one year. Extradition in such cases is not possible although, as discussed earlier, such conduct might fall under the concern of the international community and there is a clear obligation to try, extradite, or surrender to an international criminal court. For instance, torture is not clearly punishable by law in many countries which are members of the Arab League. Both the Committee against Torture and the Human Rights Committee have raised concerns on such cases in those Arab countries where torture is not clearly defined, is not clearly made a crime, or there is no clear punishment for such crimes in national laws. In some countries, although torture is made a crime in law, there is no clear definition of torture, or the one that exists is not in line with the definition in Article 1 of the Convention against Torture. These include Algeria, Egypt, Iraq, Jordan, Kuwait, Morocco, Sudan and Saudi Arabia.

## 2.6 Guarantees for fair trial

Article 3 (2) (1) of the Convention details measures to arrest and try accused persons. However, the Convention is totally silent about guarantees for fair trial for those accused of crimes of “terrorism”, and in some cases includes provisions that actually undermine such safeguards. States are obliged under human rights standards to guarantee fair trial standards to all persons, including those accused of acts that amount to “terrorism” under national laws. There is also an absolute obligation to ensure that the right to fair trial is respected in any situation, including states of emergency and armed conflict (see further on this in Part I).

International human rights law and standards provide safeguards before and during trial.<sup>72</sup> Such safeguards include the right of a detained person to be informed immediately of the reasons of their arrest or detention, and the right to be informed promptly of the charges brought against them (Principle 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the Body of Principles)). The right to be informed in a language that they understand and foreign nationals should have the right to access to consular representatives (Principles 13 and 16 of the Body of Principles and Article 36 of the Vienna Convention on Consular Relations). The right to access, without delay, to legal counsel before trial, and the right to have time and facility to communicate confidentially with counsel (Principles 1 and 22 of the Basic Principles on the Role of Lawyers and Principle 17 (1) and 18 (4-5) of the Body of Principles). Detainees should have prompt access to the outside world, including access to their families and independent doctors (Principles 16 (1), 19, and 24 of the Body of Principles). This is crucial as a safeguard against torture.

A cornerstone of the right to fair trial is the presumption of innocence. It is, therefore, essential that all the procedures are based on that premise, and that there are guarantees for the accused person to challenge the lawfulness of his or her detention, through procedures of *habeas corpus* or *amparo* (Article 9 (4) of the ICCPR). This is an essential safeguard against, for example, arbitrary detention and torture (see section below on detention). The Convention does not mention any of these rights.

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<sup>72</sup> For a detailed discussion on fair trial standards, see: “Fair Trial Manual”, December 1998, AI Index POL 30/02/98.

During trial, everyone has the right to equal access to courts, regardless of whether or not they are accused of crimes of "terrorism". They must be tried by a competent, independent, and impartial tribunal, established by law (Article 14 (1) of ICCPR and Principle 5 of the Basic Principle on the Independence of the Judiciary). In practice, state security courts, or trial according to state security legislation are invoked in almost all the countries of the region to try those accused of "terrorism". Several human rights treaty-bodies have expressed concern about such courts and legislation in each of these countries. In the case of Kuwait, the Human Rights Committee expressed concern "about the number of persons still detained under prison sentences handed down in 1991 [during the Gulf War] by the Martial Law Courts in trials which did not meet the minimum standards set by Article 14 of the Covenant...." The Committee suggested that those cases should be reviewed by an independent and impartial body, and compensation, where appropriate, should be paid pursuant to Article 9 (5) and 14 (6) of the Covenant.<sup>73</sup> On Jordan, the Human Rights Committee recommended that the state party considers the abolition of exceptional courts such as the State security courts and allow the ordinary judiciary to recover full criminal jurisdiction in the country.<sup>74</sup> Similar concerns on such courts has been expressed by the Human Rights Committee in the case of Syria in relation to the incompatibility of the State Security Court with the ICCPR, and the Committee suggested that "the procedures of the State Security Court scrupulous respect the provisions of Article 14, paragraph 3 of the Covenant, and should grant the accused person the right to appeal against the Court's decisions (Article 14, paragraph 5 of the Covenant)."<sup>75</sup>

On Egypt, the Committee against Torture expressed concern about "the existence in Egypt of many special courts, such as the military courts whose functioning would suggest that they are subordinate to the head of the executive branch, since some provisions of the Act on the State of Emergency authorize the President of the Republic to refer cases to the State security courts

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<sup>73</sup> Concluding observations of the Human Rights Committee: Kuwait, UN Doc. A/55/40, 19 July 2000, paras. 17 and 18.

<sup>74</sup> Concluding observations of the Committee against Torture : Jordan. UN Doc. 26/07/95. A/50/44, para. 175.

<sup>75</sup> See Concluding Observations of the Human Rights Committee: Syrian Arab Republic, UN Doc. CCPR/CO/71/SYR. para. 16.



and to approve the decisions handed down.”<sup>76</sup> The Human Rights Committee commented on these courts in Egypt raising concern at the long duration of the state of emergency in Egypt, stating further that:

*under the Emergency Act, the President of the Republic is entitled to refer cases to the State security courts, to ratify judgments and to pardon. The President's role as both part of the executive and part of the judiciary system is noted with concern by the Committee, notwithstanding that in the matter of appeal it was explained that it would act only to reduce sentences. On the other hand, military courts should not have the faculty to try cases which do not refer to offences committed by members of the armed forces in the course of their duties.*<sup>77</sup>

The Committee also stated its concern about the multitude of special courts in Egypt. From the point of view of legal consistency in the judicial procedure and procedural guarantees it is important that special courts exist as an exceptional measure, if at all, the Committee said.<sup>78</sup>

The Human Rights Committee has noted generally that “quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice.”<sup>79</sup> Amnesty International has frequently raised its grave concerns over the use of such exceptional laws and legislation, which have facilitated many violations of the right to fair trial.

It is a general principle of human rights that hearings must be public. Exceptions are only permissible on the grounds of morals, public order (which relates mainly to the order in the court room, and national security in a democratic society (Article 14 (1) of the ICCPR). The Human Rights Committee has stated that apart from these exceptions, the public in general, including

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<sup>76</sup> Concluding observations of the Committee against Torture : Egypt. UN Doc 12/06/94. A/49/44, para. 88.

<sup>77</sup> Concluding Observations of the Human Rights Committee : Egypt UN Doc. CCPR/C/79/Add.23, para 9.

<sup>78</sup> *Ibid.* para. 11.

<sup>79</sup> Human Rights Committee: General Comment 13, Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14), 13/04/84, para 4.

members of the press must have access to hearings, and this should not be limited to a certain group of people.<sup>80</sup> Again, there are no guarantees for public hearings in the Convention.

Those detained and brought to trial for crimes classified as acts of “terrorism” that occur during armed conflict, either national or international, still have guarantees to fair trial under humanitarian law. The Human Rights Committee has stated that “[d]uring armed conflict, international or non-international, provisions of humanitarian law become applicable and help, in addition to provisions in article 4 and article 5, paragraph 1, of the Covenants, to prevent the abuse of a State’s emergency powers.”<sup>81</sup> Article 75 of the Additional Protocol 1 of the Geneva Conventions, and Articles 82, 88, and 99 of the Third Geneva Convention contain provisions on fair trial during international armed conflict. Specific provisions on fair trial of civilians during international armed conflict are contained in Articles 64 to 78 of the Fourth Geneva Convention. Common Article 3 of the Geneva Conventions contains provisions that relate to non-international armed conflict. It states that:

*In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*

*(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.*

*To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*

*(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*

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<sup>80</sup> General Comment 13, para 6.

<sup>81</sup> CCPR/C/21/Rev.1/Add.11, para 3.

- (b) taking of hostages;*
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;*
- (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples (emphasis added).*

Defence lawyers should have equal access to information and evidence, and adequate time and facilities to prepare a defence as afforded the prosecution. Amnesty International is concerned that the Convention states that contracting states “shall undertake to maintain the confidentiality of information shared between them and not to supply it to any non-contracting state or other body without first obtaining the consent of the state where the information originated” (Article 4(1) (5)). This provision should expressly state that the right of defence lawyers to exculpatory information and evidence which is in the hands of the state concerning the case, and therefore affect the possibility of providing adequate defence to the accused person.<sup>82</sup>

Finally, Articles 24, 25 and 26 of the Convention allow for “preventative custody”, which shall not exceed sixty days. There is no requirement that the detained person shall be brought before a judge during that period. Several human rights mechanisms have stressed the importance of bringing a person promptly before a judge. For example, the UN Special Rapporteur on torture has stressed - in the case of Turkey - that legislation should “ensure that any extensions of police custody are ordered by a judge, before whom the detainee should be brought in person; such extensions should not exceed a total of four days from the moment of arrest or, in a genuine emergency, seven days, provided that the safeguards referred to in the previous recommendation are in place.”<sup>83</sup> The Human Rights Committee has stressed the same period of time when it

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<sup>82</sup> Principle 21 of the Basic Principles on the Role of Lawyers states that: “[i]t is the duty of competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.”

<sup>83</sup> Turkey (27 January 1999) E/CN.4/ 1999/61/ Add.1, para. 113.B.

considered the report of Kuwait.<sup>84</sup> Amnesty International considers the period of 60 days under “preventative detention” to be excessively long and thus amount to arbitrary detention. This is confirmed by the views of the Human Rights Committee concerning Peru as it considered that detention for up to 15 days in cases of “terrorism”, drug trafficking and espionage did not comply with Article 9 of the ICCPR.<sup>85</sup>

## **2.7 Detention**

The Convention fails to incorporate safeguards for the rights of detainees. For example, the Convention does not guarantee the right to be promptly brought before a judge, and to be tried within reasonable time, or released (Article 9 (3) of the ICCPR). The Convention also does not include a prohibition of arbitrary detention as required by Article 9 (1) of the ICCPR. The Convention does not include a clear prohibition of torture and cruel, inhuman, or degrading treatment or punishment. The Convention also does not require that detention conditions should be humane. It also does not include a clear prohibition on the use of “any statement which is established to have been made as a result of torture ... as evidence in any court proceedings, except against a person accused of torture as evidence that the statement was made” (Article 15 of the Convention against Torture).

## **2.8 Freedom of expression and the role of the media**

The Convention contains some provisions that clearly threaten the right to freedom of expression as guaranteed by Articles 19 of both the Universal Declaration of Human Rights and the ICCPR.

For example, Article 3 (1)(7) of the Convention is concerned with measures to “strengthen the activities of the security media services, and the coordination between them and the media activities in each country. It is not clear from the Convention what these measures are and there

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<sup>84</sup> A/55/40, paras 452-497, (19 July 2000), paras 20, 21.

<sup>85</sup> Concluding Observations by the Human Rights Committee: Peru, UN Doc. CCPR/CO/70/Per (15 November 1999), para. 13.

is a clear risk that they could be interpreted to allow for censorship and interference with freedom of expression in the general civilian media, imposed or required by the "security media services", on the pretext of "security", which is again not defined.

Article (2 (b) (1, 2)) considers attacks on monarchs, presidents, heads of governments, and other senior officials not to be political crimes, even if politically motivated. However, the Convention does not contain any definition of what are deemed to be political crimes. Article 6 (a) of the Convention does not allow for extradition for political crimes. This indicates that extradition is allowed in non-political crimes. It follows therefore that the attacks mentioned above are extraditable under the Convention. However, it is not clear what such attacks mean. Amnesty International is concerned that the word "attack" may be widely interpreted to include expression of opinion or criticism. In such case, any measure taken against the person, including trial or extradition, would violate the fundamental right to freedom of expression.

## **2.9 Right to privacy**

Article 3 (1) (4) and (8), and Article 4 (1) (3) in the Convention relate to the issue of cooperation in developing surveillance and monitoring systems on borders, creating and developing information databases related to "terrorist" individuals and groups, and information on "combatting terrorism". The Convention does not require judicial review or prior judicial authorisation when such measures are used against individuals and groups. Such measures of surveillance and monitoring are thus not restricted and could be interpreted and implemented very widely. This is particularly so since the Convention does not define clearly "terrorist elements". A situation might arise, therefore, where the authorities would be collecting and exchanging information about people who are engaged in peaceful legitimate activities, and where the methods used to collect information may breach privacy rights. As such, they could lead to measures that interfere with the right to privacy as guaranteed by Article 17 of the ICCPR and Article 12 of the Universal Declaration of Human Rights.

## **2.10 Judicial review and other safeguards**

As discussed above, the Convention places wide-ranging powers in the hands of the executive

and does not require that there should be any judicial review of such measures. Problems are evident in the absence of any provision to allow for challenging lawfulness of detention, particularly in the light of the wide detention powers that are provided and which could lead to arbitrary detention, as discussed above. Similarly, limits on freedoms of expression, and possibilities of measures of surveillance are subjected to decisions and measures of the executive, based on security considerations, without a provision for a judicial review to challenge the legality of such measures and the extent to which they can be used.

There is also the need for guarantees of judicial safeguards and review to challenge the legality of detention and challenging failure to adhere to fair trial procedures. Requests of judicial delegation of powers to another state to undertake on its behalf any judicial procedure of a case related to a "terrorist crime", according to Article 9 of the Convention are carried out in accordance with provisions of domestic law, and not international human rights law. Judicial review should be available to challenge the lawfulness of such delegation requests under international law.

There is also a need for effective measures of scrutiny, including independent investigation of the activities of the intelligence services, and requiring that they obtain prior judicial authorisation before they conduct certain surveillance activities that may breach human rights, including right to privacy.

## **2.11 Extradition**

Articles 6 to 8 of the Convention govern extradition. However, these articles include no safeguards in relation to surrender of individuals or extradition. Amnesty International believes that surrender and extradition must not be carried out to a jurisdiction where they would become prisoners of conscience,<sup>86</sup> be subjected to the imposition of the death penalty, or torture, cruel, inhuman or degrading treatment or punishment. Amnesty International would also require that alleged perpetrators should have a fair trial. With respect to crimes under international law such

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<sup>86</sup> Prisoners of Conscience, according to Amnesty International's mandate, are people who are detained for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, and who have not used or advocated violence.

as genocide, crimes against humanity, war crimes and torture, Amnesty International believes that states should extradite suspects, subject to the above restrictions, or submit the cases to the relevant authorities for the purposes of prosecution. Article 3 of the Convention against Torture prohibits the return (*refouler*) or extradition of a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In determining whether there are such grounds, states shall take into account all relevant considerations including whether there is a consistent pattern of gross, flagrant or mass violations of human rights (Article 3 (2) of the Convention against Torture). It is important to note here that the Convention against Torture did not limit such considerations only to patterns of torture, but other grave violations of human rights. (See also below in relation to refugees and asylum seekers).

Amnesty International has expressed its concern repeatedly over the existence of such patterns of violations of human rights, including torture, unfair trials, and the death penalty in many countries of the Middle East and North Africa.

There are examples, including in the region, where provisions in extradition agreements meet such standards. One such example is a bilateral extradition agreement between Spain and Morocco, signed on 30 May 1997, which provides that “extradition should not be carried out if there is reason to believe that the person in question will be subjected to a procedure which does not afford the guarantees internationally considered to be essential for ensuring respect for human rights, or that he will serve his sentence in inhumane conditions; and if there is serious reason to believe that the extradition request has been drawn up for the purpose of implementing a penalty or instituting proceedings based on considerations of race, religion, nationality or political opinion, or that the person is in danger of receiving worse treatment on account of one of those considerations.”<sup>87</sup>

The Convention does not allow for extradition if “upon the arrival of the extradition request, the case has expired or the penalty is null and void by lapse of time, according to the law of the requesting Contracting state” (Article 6 (E)). International law places the responsibility on the international community to act on certain cases of grave human rights violations and are of

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<sup>87</sup> Second Periodic Report of Morocco to the Committee against Torture, UN Doc. CAT/C/43/Add.2 (5 January 1999), para. 38.

concern to the international community.<sup>88</sup> In such cases, there can be no statute of limitation on the crime by lapse of time or otherwise. This is confirmed by Article 29 of the Rome Statute which states that “the crimes within the jurisdiction of the Court shall not be subject to any statute of limitations”.

## 2.12 Refugees and asylum seekers

The Convention is generally silent about the duty to upholding the rights of refugees and asylum-seekers, and to respect human rights law, the 1951 Convention relating to the Status of Refugees (the UN Refugee Convention) and its 1967 Protocol, to which many Arab countries are parties. The provisions on extradition might place refugees and asylum seekers in any state member of the Arab League in a vulnerable situation.

Specifically, Article 3 (1) (1) of the Convention has the potential of arbitrarily prohibiting asylum-seekers or refugees from entering or residing in the country. It states that, in their commitment to prevent and combat terrorist crimes, states parties shall work towards:

*preventing their territories being used as a [forum] for the planning or organizing terrorist crimes or attempted crimes, or participating therein in any shape or form. This shall include working to prevent terrorist elements from infiltrating into their territories, or residing therein either individually or in groups, or receiving, harboring, training, arming, financing, or affording them any facilities.*

This article is of concern as it could lead to decisions on asylum applications being made not on the merit of the case but on the pretext that asylum-seekers or refugees might be considered to be “terrorist elements”, a term that is not defined in the Convention. This could affect groups of people rather than ensuring that asylum cases are examined on an individual basis. “Acts of terrorism” are not expressly included as one of the recognised grounds for exclusion from refugee status under the UN Refugee Convention. However, such acts are grounds for exclusion

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<sup>88</sup> These include crimes under international law that are of concern to Amnesty International: war crimes, crimes against humanity, and genocide, as well as torture, extrajudicial executions, and “disappearances”.



when they constitute crimes against peace, war crimes, crimes against humanity, serious non-political crimes outside the country of refuge, or acts contrary to the purposes and principles of the United Nations. Amnesty International believes that a determination to exclude an individual from refugee status, in application of Article 1(f) of the UN Refugee Convention, should only be made after full consideration of the claim in a fair and satisfactory asylum procedure. Each case should be considered on an individual basis and according to facts and evidence, not suspicions.

Considering the potentially very serious consequences of an incorrect decision for the individual concerned, the procedure should comply with all procedural safeguards provided in human rights law, notably to be informed that exclusion is under consideration, and to have the right to be informed of the evidence, to rebut the evidence and to appeal against a decision to exclude on the above grounds. Association with, or membership of a group resorting to violence or committing serious human rights abuses should not in itself be a ground to exclude an individual from refugee status; and family members should not be excluded by association. Where a head of a family is excluded from refugee protection, the claim of his or her family members to refugee status should be considered in their own right.

Finally, in the light of the wide extradition powers as mentioned above, Amnesty International is concerned that individuals might be returned to countries where they will face serious human rights violations, including being subjected to torture, unfair trials, or the death penalty. States are obliged under human rights treaties to comply with the principle of *non-refoulement*, generally regarded as a principle of customary international law, and thus binding on all states. States should ensure that all the necessary safeguards are in place to prevent the return of any individuals who are excluded from refugee status to countries where they would themselves risk becoming victims of serious human rights abuses.<sup>89</sup> The Convention does not include any provision that guarantees this safeguard.

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<sup>89</sup> This principle is evident in Article 33 of the 1951 Refugee Convention, and Article 3 of the Convention against Torture.

### **PART THREE: Conclusions and Recommendations**

In the light of the discussion above, Amnesty International believes that there should be no further ratifications of the Convention on the basis of the text that was finally adopted. Instead, new effort should be made to revise the Convention to bring it into harmony with international human rights and humanitarian law. Specific amendments should ensure that:

- the Convention, in its various provisions, should refer to international human rights and humanitarian law as the point of reference, rather than the Convention itself and the various national legislation;
- the Convention should state clearly that the crimes that it deals with relate to those that are committed by any person, including state officials or agents of the state;
- the Convention should include a clear chapter that defines the different terms used in it. Such definitions should be in line with human rights law and should not infringe on rights and freedoms protected by international human rights law including freedom of association, expression, and the right to privacy.
- Amnesty International opposes the death penalty in all cases on the grounds that it is the ultimate cruel, inhuman and degrading punishment and violates the right to life. Amnesty International calls on all member states of the Arab League to take immediate measures to halt executions and to reconsider their policies on the use of the death penalty. They should limit the imposition of the death penalty in the light of the resolutions of the Commission on Human Rights, and should specifically stop imposing the death penalty for non-violent offences, restrict the number of offences punishable by death, and establish a moratorium on executions pending total abolition of the death penalty. Governments should ensure that those facing trials for capital offences are unconditionally guaranteed the additional safeguards for fair trial provided under the UN safeguards guaranteeing protection of the rights of those facing the death penalty; and ensure that the death penalty is not imposed in law and practice on anyone aged under 18 at the time of the offence.
- the Convention should clearly embody the principle of “try or extradite” and request state

parties to enact national legislation that enables them to exercise universal jurisdiction over grave human rights violations and violations of international humanitarian law and not limit the jurisdiction over crimes to territorial jurisdiction or passive or active territorial jurisdictions, as is the case in the current text of the Convention;

- there should be no provisions that could lead to providing impunity to perpetrators of certain crimes, including the provisions on denial of extradition;
- the Convention should include clear provisions that provide guarantees for fair trial that are consistent with human rights and humanitarian law;
- the Convention should include clear provisions that guarantee rights for those in detention, including access to the outside world;
- provisions in the Convention that might infringe on freedom of expression or the right to privacy, including the provisions about the definition of acts of "terrorism", and the provisions on surveillance, should be amended so that they are in line with international human rights law;
- the Convention should guarantee the right to judicial review and other similar safeguards for measures of restrictions that might be taken by the executive authorities in state members, for example to challenge lawfulness of detention, limits on freedom of expression, and measures of surveillance;
- extradition provisions should be in line with human rights law, particularly to ensure that no one is surrendered or extradited to a jurisdiction where he or she might face further human rights abuses;
- refugees and asylum-seekers should have the right to have their cases examined on an individual basis. The wide definition of "terrorism" in the Convention does not warrant the exclusion of those individuals who would be deemed to be deserving of protection under the provisions of the UN Refugee Convention. All asylum-seekers should be guaranteed access to a fair and satisfactory asylum procedure.

In addition to these specific recommendations, the League and its member states should reiterate their firm commitment to human rights in all their legislation, policies and action, including those that relate to combatting acts that are being classified as “acts of terrorism”.

At the same time, States members in the Arab League should make a concerted effort to start implementing the various concluding observations or comments that were adopted by the different treaty bodies when reviewing reports by states parties. Particularly, a number of recommendations were made requesting states to review their laws and practice that relate to detention and trials during states of emergencies, armed conflict, or under the various special courts and state security procedures. Such laws and practice should be made in line with the states obligations under human rights and humanitarian law, and according to the specific recommendations of the treaty bodies.

An important step to prevent violations of human rights and humanitarian law, and which is emphasized as an obligation under several human rights instruments, is the need to train law enforcement officers, other government officials, judges and the military, among others, in international human rights and humanitarian law.

Finally, it is essential that there are clear procedures to investigate promptly and thoroughly, by an independent and impartial body, any claims of violations, including misuse of powers and authority, in order to minimize the possibility of human rights violations occurring in the process while governments are taking measures in the name of combatting “terrorism”.

**ANNEX I****LIST OF RATIFICATIONS**

by

**State Members of the Arab League**

Country	ICCP R	1 <sup>st</sup> Opt Protocol to the ICCPR	2 <sup>nd</sup> opt Protocol to the ICCPR	ICESCR	CEDAW	Optiona l Protocol to CEDAW	CRC	CERD	CSR	Protocol to CSR	CAT	ICC
<b>Algeria</b>	SP	SP		SP	SP		SP	SP	SP	SP	SP	Si
<b>Bahrain</b>							SP	SP			SP	Si
<b>Comoros</b>					SP		SP	Si			Si	Si
<b>Djibouti</b>					SP		SP		SP	SP		Si
<b>Egypt</b>	SP			SP	SP		SP	SP	SP	SP	SP	Si
<b>Iraq</b>	SP			SP	SP		SP	SP				
<b>Jordan</b>	SP			SP	SP		SP	SP			SP	Si
<b>Kuwait</b>	SP			SP	SP		SP	SP			SP	Si
<b>Lebanon</b>	SP			SP	SP		SP	SP			SP	
<b>Libya</b>	SP	SP		SP	SP		SP	SP			SP	
<b>Mauritania</b>							SP	SP	SP	SP		
<b>Morocco</b>	SP			SP	SP		SP	SP	SP	SP	SP	Si
<b>Oman</b>							SP					Si
<b>Palestine</b>												
<b>Qatar</b>							SP	SP			SP	
<b>Saudi Arabia</b>					SP		SP	SP			SP	
<b>Somalia</b>	SP	SP		SP				SP	SP	SP	SP	

<b>Sudan</b>	SP			SP			SP	SP	SP	SP	Si	Si
<b>Syria</b>	SP			SP			SP	SP				Si
<b>Tunisia</b>	SP			SP	SP		SP	SP	SP	SP	SP	
<b>United Arab Emirates</b>							SP	SP				Si
<b>Yemen</b>	SP			SP	SP		SP	SP	SP	SP	SP	Si

**Key for list of ratifications:**

SP: State Party

Si: Signed but not ratified.

<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>1st Opt Protocol to the ICCPR</b>	(first) Optional Protocol to the International Covenant on Civil and Political Rights
<b>2nd Opt Protocol to the ICCPR</b>	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women

<b>Opt Protocol to CEDAW</b>	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
<b>CRC</b>	Convention on the Rights of the Child
<b>CERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>CSR</b>	Convention relating to the Status of Refugees (1951)
<b>Protocol to CSR</b>	Protocol Relating to the Status of Refugees
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>ICC</b>	Rome Statute of the International Criminal Court

**Annex II**

**THE ARAB CONVENTION  
FOR THE SUPPRESSION OF TERRORISM**

Adopted by

the Council of Arab Ministers of the Interior

and the Council of Arab Ministers of Justice

Cairo, April 1998

(Translation into English as appears on the website of the League of Arab States:  
<http://www.leagueofarabstates.org>)

Translated from Arabic by the United Nations English translation service (Unofficial translation)



## **THE ARAB CONVENTION FOR THE SUPPRESSION OF TERRORISM**

### **League of Arab States**

#### **Preamble**

The Arab states signatory hereto,

Desiring to promote mutual cooperation in the suppression of terrorist offences, which pose a threat to the security and stability of the Arab Nation and endanger its vital interests,

Being committed to the highest moral and religious principles and, in particular, to the tenets of the Islamic Shari'a, as well as to the humanitarian heritage of an Arab Nation that rejects all forms of violence and terrorism and advocates the protection of human rights, with which precepts the principles of international law conform, based as they are on cooperation among peoples in the promotion of peace,

Being further committed to the Pact of the League of Arab States, the Charter of the United Nations and all the other international conventions and instruments to which the Contracting States to this Convention are parties,

Affirming the right of peoples to combat foreign occupation and aggression by whatever means, including armed struggle, in order to liberate their territories and secure their right to self-determination, and independence and to do so in such a manner as to preserve the territorial integrity of each Arab country, of the foregoing being in accordance with the purposes and principles of the Charter of the United Nations and with the Organization's resolutions.

Have agreed to conclude this convention and to invite any Arab State that did not participate in its conclusion to accede hereto.

## **PART ONE**

### **DEFINITIONS AND GENERAL PROVISIONS**

#### **Article 1**

Each of the following terms shall be understood in the light of the definition give;

1- Contracting State

Any member State of the League of Arab States that has ratified this Convention and that has deposited its instruments of ratification with the General Secretariat of the League.

2. Terrorism

Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resources.

3. Terrorist offence

Any offence or attempted offence committed in furtherance of a terrorist objective in any of the Contracting States, or against their nationals, property or interests, that is punishable by their domestic law. The offences stipulated in the following conventions, except where conventions have not been ratified by Contracting States or where offences have been excluded by their legislation, shall also be regarded as terrorist offences:

(a) The Tokyo Convention on offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1963;

(b) The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970;

(c) The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971, and the Protocol thereto of 10 May 1984;

- (d) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973;
- (e) The International Convention against the Taking of Hostages, of 17 December 1979;
- (f) The provisions of the United Nations Convention on the Law of the Sea, of 1982, relating to piracy on the high seas.

## **Article 2**

- (a) All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, in accordance with the principles of international law, shall not be regarded as an offence. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State.
- (b) None of the terrorist offences indicated in the preceding article shall be regarded as a political offence. In the application of this Convention, none of the following offences shall be regarded as a political offence, even if committed for political motives:
  - (i) Attacks on the kings, Heads of State or rulers of the contracting States or on their spouses and families;
  - (ii) Attacks on crown princes, vice-presidents, prime ministers or ministers in any of the Contracting States;
  - (iii) Attacks on persons enjoying diplomatic immunity, including ambassadors and diplomats serving in or accredited to the Contracting States;
  - (iv) Premeditated murder or theft accompanied by the use of force directed against individuals, the authorities or means of transport and communications;
  - (v) Acts of sabotage and destruction of public property and property assigned to a public service, even if owned by another Contracting State;
  - (vi) The manufacture, illicit trade in or possession of weapons, munitions or explosives, or other items that may be used to commit terrorist offences.

## **PART TWO**

### **PRINCIPLES OF ARAB COOPERATION FOR THE SUPPRESSION OF TERRORISM**

#### **CHAPTER I: THE SECURITY FIELD**

##### **SECTION I: Measures for the prevention and suppression of terrorist offences:**

##### **Article 3**

Contracting States undertake not to organize, finance or commit terrorist acts or to be accessories thereto in any manner whatsoever. In their commitment to the prevention and suppression of terrorist offence in accordance with their domestic laws and procedures, they shall endeavour:

##### **I- Preventive measure:**

- (1) To prevent the use of their territories as a base for planning, organizing, executing, attempting or taking part in terrorist crime in any manner whatsoever. This includes the prevention of terrorists; infiltration into, or residence in their territories either as individuals or groups, receiving or giving refuge to them, training, arming, financing, or providing any facilitation to them;
- (2) To cooperate and coordinate action among Contracting States, particularly neighbouring countries suffering from similar or common terrorist offences;
- (3) To develop and strengthen systems for the detection of the movement, importation, exportation, stockpiling and use of weapons, munitions and explosives and of other means of aggression, murder and destruction as well as procedures for monitoring their passage through customs and across borders in order to prevent their transfer from one Contracting State to another or to third-party States other than for lawful purposes;
- (4) To develop and strengthen systems concerned with surveillance procedures and the securing of borders and points of entry overland and by air in order to prevent illicit entry thereby;

- (5) To strengthen mechanisms for the security and protection of eminent persons, vital installations and means of public transportation,
- (6) To enhance the protection, security and safety of diplomatic and consular persons and missions and international and regional organizations accredited to Contracting States, in accordance with the relevant international agreements, which govern this subject;
- (7) To reinforce security-related information activities and to coordinate them with those of each State in accordance with its information policy, with a view to exposing the objectives of terrorist groups and organizations, thwarting their schemes and demonstrating the danger they pose to security and stability;
- (8) To establish, in each Contracting State, a database for the accumulation and analysis of information relating to terrorist elements, groups, movements and organizations and for the monitoring of developments with respect to the terrorist phenomenon and of successful experiences in counterterrorism, and to keep such information up to date and make it available to the competent authorities of Contracting States, within the limits established by the domestic laws and procedures of each State;

## **II. Measures of suppression**

- 1. To arrest the perpetrators of terrorist offences and to prosecute them in accordance with national law or extradite them in accordance with the provision's of this Convention or of any bilateral treaty between the requesting State and the requested State;
- 2. To provide effective protection for those working in the criminal justice field;
- 3. To provide effective protection for sources of information concerning terrorist offences and for witnesses thereof;
- 4. To extend necessary assistance to victims of terrorism;
- 5. To establish effective cooperation between the relevant agencies and the public in countering terrorism by, inter alia, establishing appropriate guarantees and incentives to encourage the reporting of terrorist acts, the provision of information to assist in their investigation, and cooperation in the arrest of perpetrators.

## **SECTION II: Arab cooperation for the prevention and suppression of terrorist offences**

### **Article 4**

Contracting States shall cooperate for the prevention and suppression of terrorist offences, in accordance with the domestic laws and regulations of each State, as set forth hereunder:

#### **I. Exchanging of information**

1. Contracting States shall undertake to promote the exchange of information between and among them concerning:

(a) The activities and crimes of terrorist groups and of their leaders and members; their headquarters and training; the means and sources by which they are funded and armed; the types of weapons, munitions and explosives used by them; and other means of aggression, murder and destruction;

(b) The means of communication and propaganda used by terrorist groups, their modus operandi; the movements of their leaders and members; and the travel documents that they use.

2. Each contracting State shall undertake to notify any other Contracting State in an expeditious manner of the information it has concerning any terrorist offence that takes place in its territory and is intended to harm the interests of that State or of its nationals and to include in such notification statements concerning the circumstances surrounding the offence, those who committed it, its victims, the losses occasioned by it and the devices and methods used in its perpetration, to the extent compatible with the requirements of the investigation and inquiry.

3. Contracting States shall undertake to cooperate with each other in the exchange of information for the suppression of terrorist offences and promptly to notify other Contracting States of all the information or data in their possession that may prevent the occurrence of terrorist offences in their territory, against their nationals or residents or against their interests.

4. Each Contracting State shall undertake to furnish any other Contracting State with any information or data in its possession that may:

(a) Assist in the arrest of a person or persons accused of committing a terrorist offence against the interests of that State or of being implicated in such an offence whether by aiding and abetting, collusion or incitement;

(b) Lead to the seizure of any weapons, munitions or explosives or any devices or funds used or intended for use to commit a terrorist offence.

5. Contracting States shall undertake to maintain the confidentiality of the information that they exchange among themselves and not to furnish it to any State that is not a Contracting State or any other party without the prior consent of the State that was the source of the information.

## **II. Investigations:**

Contracting States shall undertake to promote cooperation among themselves and to provide assistance with respect to measures for the investigation and arrest of fugitives suspected or convicted of terrorist offences in accordance with the laws and regulations of each state.

## **III. Exchange of expertise:**

1. Contracting States shall cooperate in the conduct and exchange of research studies for the suppression of terrorist offences and shall exchange expertise in the counterterrorism field.

2- Contracting States shall cooperate, within the limits of their resources, in providing all possible technical assistance for the formulation of programmes or the holding of joint training courses or training courses intended for one state or for a group of Contracting States, as required for the benefit of those working in counterterrorism with the aim of developing their scientific and practical abilities and enhancing their performance.

## **CHAPTER II: THE JUDICIAL FIELD**

### **SECTION I: Extradition of Offenders**

#### **Article 5**

Contracting States shall undertake to extradite those indicated for or convicted of terrorist offences whose extradition is requested by any of these states in accordance with the rules and conditions stipulated in this convention.

#### **Article 6**

Extradition shall not be permissible in any of the following circumstances:

- (a) If the offence for which extradition is requested is regarded under the laws in force in the requested State as an offence of a political nature;
- (b) If the offence for which extradition is requested relates solely to a dereliction of military duties;
- (c) If the offence for which extradition is requested was committed in the territory of the requested contracting State, except where the offence has harmed the interests of the requesting State and its laws provide for the prosecution and punishment for such offences and where the requested State has not initiated any investigation or prosecution;
- (d) If a final judgement having the force of *res judicata* has been rendered in respect of the offence in the requested Contracting State or in a third Contracting State;
- (e) If, on delivery of the request for extradition, proceedings have been terminated or punishment has, under the law of the requesting State, lapsed because of the passage of time;
- (f) If the offence was committed outside the territory of the requesting State by a person who is not a national of that State and the law of the requested State does not allow prosecution for the same category of offence when committed outside its territory by such a person;
- (g) If the requesting State has granted amnesty to perpetrators of offences that include the



offence in question;

(h) If the legal system of the requested State does not allow it to extradite its nationals. In this case, the requested State shall prosecute any such persons who commit in any of the other Contracting States a terrorist offence that is punishable in both States by deprivation of liberty for a period of at least one year or more. The nationality of the person whose extradition is sought shall be determined as at the date on which the offence in question was committed, and use shall be made in this regard of the investigation conducted by the requesting state.

### **Article 7**

Should the person whose extradition is sought be under investigation, on trial or already convicted for another offence in the

requested State, his concluded, the trial is completed or the sentence is imposed. The requested State may nevertheless extradite him on an interim basis for questioning or trial provided that he is returned to that State before serving the sentence imposed on him in the requesting State.

### **Article 8**

For purposes of the extradition of offenders under this Convention, no account shall be taken of any difference there may be in the domestic legislation of Contracting States in the legal designation of the offence as a felony or a misdemeanour or in the penalty assigned to it, provided that it is punishable under the laws of both States by deprivation of liberty for a period of at least one year or more.

## **SECTION II: Judicial Delegation**

### **Article 9**

Each Contracting State may request any other Contracting State to undertake in its territory and on its behalf any judicial procedure relating to an action arising out of a terrorist offence and, in particular:

(a) To hear the testimony of witnesses and take depositions as evidence;

- (b) To effect service of judicial documents;
- (c) To execute searches and seizures;
- (d) To examine and inspect evidence;
- (e) To obtain relevant documents and records or certified copies thereof.

### **Article 10**

Each of the Contracting States shall undertake to implement judicial delegations relating to terrorist offences, but such assistance may be refused in either of the two following cases:

- (a) Where the request relates to an offence that is subject to investigation or prosecution in the requested State;
- (b) Where granting the request might be prejudicial to the sovereignty, security or public order of the requested State.

### **Article 11**

The request for judicial delegation shall be granted promptly in accordance with the provisions of the domestic law of the requested State. The latter may postpone the execution of the request until such time as any ongoing investigation or prosecution involving the same matter are completed or any compelling reasons for postponement cease to exist, provided that the requesting State is notified of such postponement.

### **Article 12**

- (a) A measure that is undertaken by means of a judicial delegation, in accordance with the provisions of this Conventions, shall have the same legal effect as if it had been taken by the competent authority of the requesting State
- (b) The result of implementing the judicial delegation may be used only for the purpose for which the delegation is issued.

**SECTION III: Judicial cooperation****Article 13**

Each contracting State shall provide the other States with all possible and necessary assistance for investigations or prosecutions relating to terrorist offences.

**Article 14**

(a) Where one of the Contracting States has jurisdiction to prosecute a person suspected of a terrorist offence, it may request the State in which the suspect is present to take proceedings against him for that offence, subject to the agreement of that State and provided that the offence is punishable in the prosecuting State by deprivation of liberty for a period of at least one year or more. The requesting state shall, in this event, provide the requested state with all the investigation documents and evidence relating to the offence.

(b) The investigation or prosecution shall be conducted on the basis of the charge or charges made by the requesting state against the suspect, in accordance with the provisions and procedures of the law of the prosecuting state.

**Article 15**

The submission by the requesting state of a request for prosecution in accordance with paragraph (a) of the preceding article shall entail the suspension of the measures taken by it to pursue, investigate and prosecute the suspect whose prosecution is being requested, with the exception of those required for the purposes of the judicial cooperation and assistance, or the judicial delegation, sought by the State requested to conduct the prosecution.

**Article 16**

(a) The measures taken in either the requesting State or that in which the prosecution takes place shall be subject to the law of the State in which they are taken and they shall have the force accorded to them by that law.

(b) The requesting State may try or retry a person whose prosecution it has requested only if the requested State declines to prosecute him.

(c) The State requested to take proceedings shall in all cases undertake to notify the requesting State of what action it has taken with regard to the request and of the outcome of the investigation or prosecution.

#### **Article 17**

The State requested to take proceedings may take all the measures and steps established by its law with respect to the accused both before the request to take proceedings reaches it and subsequently.

#### **Article 18**

The transfer of competence for prosecution shall not prejudice the rights of the victim of the offence, who reserves the right to approach the courts of the requesting State or the prosecuting State with a view to claiming his civil-law rights as a result of the offence.

### **SECTION IV: Seizure of assets and proceeds derived from the offence**

#### **Article 19**

(a) If it is decided to extradite the requested person, any Contracting State shall undertake to seize and hand over to the requesting State the property used and proceeds derived from or relating to the terrorist offence, whether in the possession of the person whose extradition is sought or that of a third party.

(b) Once it has been established that they relate to the terrorist offence, the items indicated in the preceding paragraph shall be surrendered even if the person to be extradited is not handed over because he has absconded or died or for any other reason.

(c) The provisions of the two preceding paragraphs shall be without prejudice to the rights of any Contracting State or of bona fide third parties in the property or proceeds in question.

#### **Article 20**

The State requested to hand over property and proceeds may take all the precautionary measures necessary to discharge its obligation to hand them over. It may also

retain such property or proceeds on a temporary basis if they are required for pending criminal proceedings or may, for the same reason, hand them over to the requesting State on condition that they are returned.

## **SECTION V: Exchange of evidence**

### **Article 21**

Contracting States shall undertake to have the evidence of any terrorist offence committed in their territory against another Contracting State examined by their competent agencies, and they may seek the assistance of any other Contracting State in doing so. They shall take the necessary measures to preserve such evidence and ensure its legal validity. They alone shall examination to the State against whose interests the offence was committed, and the Contracting State or States whose assistance is sought shall not pass this information to any third party.

### **PART THREE**

## **MECHANISMS FOR IMPLEMENTING COOPERATION**

### **CHAPTER I: EXTRADITION PROCEDURES**

#### **Article 22**

Requests for extradition shall be made between the competent authorities in the Contracting States directly, through their ministries of justice or the equivalent or through the diplomatic channel.

#### **Article 23**

The request for extradition shall be made in writing and shall be accompanied by the following:

- (a) The original or an authenticated copy of the indictment or detention order or any other documents having the same effect and issued in accordance with the procedure laid down in the law of the requesting State;
- (b) A statement of the offences for which extradition is requested, showing the time and place of their commission, their legal designation and a reference to the legal provisions applicable thereto, together with a copy of the relevant provisions;
- (c) As accurate a description as possible of the person whose extradition is sought, together with any other information that may serve to establish his identity and nationality.

#### **Article 24**

1. The judicial authorities in the requesting State may apply to the requested State by any of the means of written communication for the provisional detention of the person being sought pending the presentation of the request for extradition.
2. In this case, the State from which extradition is requested may detain the person being sought on a provisional basis. If the request for extraction is not presented together with the

necessary documents specified in the preceding article, the person whose extradition is being sought may not be detained for more than 30 days from the date of his arrest.

### **Article 25**

The requesting State shall submit a request accompanied by the documents specified in article 23 of this Convention. If the requested State determines that the request is in order, its competent authorities shall grant the request in accordance with its own law and its decision shall be promptly communicated to the requesting State.

### **Article 26**

1. In all of the cases stipulated in the two preceding articles, the period of provisional detention shall not exceed 60 days from the date of arrest.
2. During the period specified in the preceding paragraph, the possibility of provisional release is not excluded provided that the State from which extradition is requested takes any measures it considers necessary to prevent the escape of the person sought.
3. Such release shall not prevent the re-arrest of the person concerned or his extradition if a request for extradition is received subsequently.

### **Article 27**

Should the requested State consider that it requires supplementary information in order to ascertain whether the conditions stipulated in this Chapter has been met, it shall notify the requesting State accordingly and a date for the provision of such information shall be established.

### **Article 28**

Should the requested State receive several requests for extradition from different States, either for the same offence or for different offences, it shall make its decision having regard to all the circumstances and, in particular, the possibility of subsequent extradition, the respective dates of when the requests were received, the relative seriousness of the offences and the place where the offences were committed.

## **CHAPTER II: PROCEDURES FOR JUDICIAL DELEGATION**

### **Article 29**

Request relating to judicial delegations shall contain the following information:

- (a) The authority presenting the request;
- (b) The subject of and reason for the request;
- (c) An exact statement, to the extent possible, of the identity and nationality of the person concerned;
- (d) A description of the offence in connection with which the request for a judicial delegation is being made, its legal designation, the penalty established for its commission, and as much information as possible on the circumstances so as to facilitate the proper functioning of the judicial delegation.

### **Article 30**

1. The request for a judicial delegation shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State and shall be returned through the same channel.
2. In case of urgency, the request for a judicial delegation shall be addressed by the judicial authorities of the requesting State directly to the judicial authorities of the requested State, and a copy of the request shall be sent at the same time to the Ministry of Justice of the requested State. The request, accompanied by the documents relating to its implementation, shall be returned through the channel stipulated in the preceding paragraph.
3. The request for a judicial delegation may be sent by the judicial authorities directly to the competent authority in the requested State, and replies may be forwarded directly through this authority.

### **Article 31**

Requests for judicial delegation and their accompanying documents must be signed and



must bear the seal of the competent authority or be authenticated by it. Such documents shall be exempt from all formalities that may be required by the legislation of the requested State.

### **Article 32**

Should an authority that receives a request for a judicial delegation not have the competence to deal with it, it shall automatically refer it to the competent authority in its State. In the event the request has been sent directly, it shall notify the requesting State in the same manner.

### **Article 33**

Every refusal of a request for a judicial delegation must be accompanied by a statement of the grounds for such refusal.

## **CHAPTER III: MEASURES FOR THE PROTECTION OF WITNESSES AND EXPERTS**

### **Article 34**

If, in the estimation of a requesting State, the appearance of a witness or expert before its judicial authority is of particular importance, it shall indicate this fact in its request. The request or summons to appear shall indicate the approximate amount of the allowances and the travel and subsistence expenses and shall include an undertaking to pay them. The requested State shall invite the witness or expert to appear and shall inform the requesting State of the response.

### **Article 35**

1. A witness or an expert who does not comply with a summons to appear shall not be subject to any penalty or coercive measure, notwithstanding any contrary statement in the summons.
2. Where a witness or an expert travels to the territory of the requesting State of his own accord, he should be summoned to appear in accordance with the provisions of the domestic legislation of that State.

### **Article 36**

1. A witness or an expert shall not be prosecuted, detained or subjected to any restrictions on his personal liberty in the territory of the requesting State in respect of any acts or convictions that preceded the person's departure from the requested State, regardless of his nationality, as long as his appearance before the judicial authorities of that State is in response to a summons.
2. No witness or expert, regardless of his nationality, who appears before the judicial authorities of a requesting State in response to a summons may be prosecuted, detained or subjected to any restriction on his personal liberty in the territory of that State in respect of any acts or convictions not specified in the summons and that preceded the person's departure from the territory of the requested State.
3. The immunity stipulated in this article shall lapse if the witness or expert sought, being free to leave, remains in the territory of the requesting State for a period of 30 consecutive days after his presence is not longer required by the judicial authorities or, having left the territory of the requesting State, has voluntarily returned.

### **Article 37**

1. The requesting State shall take all necessary measures to protect witnesses and experts from any publicity that might endanger them, their families or their property as a result of their provision of testimony or expertise and shall, in particular, guarantee confidentiality with respect to:
  - (a) The date, place and means of their arrival in the requesting state;
  - (b) Their place of residence, their movements and the places they frequent;
  - (c) Their testimony and the information they provide before the competent judicial authorities.
2. The requesting State shall undertake to provide the necessary protection for the security of witnesses and experts and of members of their families that is required by their situation, the circumstances of the case in connection with which they are sought and the types of risks that can be anticipated.

**Article 38**

1. Where a witness or expert whose appearance, is sought by a requesting State is in custody in the requested State, he may be temporarily transferred to the location of the hearing where he is requested to provide his testimony under conditions and at times to be determined by the requested State. Such transfer may be refused if:

- (a) The witness or expert in custody objects;
- (b) His presence is required for criminal proceedings in the territory of the requested State;
- (c) His transfer would prolong the term of his detention;
- (d) There are considerations militating against his transfer.

2. The witness or expert thus transferred shall continue to be held in custody in the territory of the requesting State until such time as he is returned to the requested State unless the latter State requests that he be released.

## **PART FOUR**

### **FINAL PROVISIONS**

#### **Article 39**

This Convention is subject to ratification, acceptance or approval by the signatory States, and instruments of ratification, acceptance or approval shall be deposited with the General Secretariat of the League of Arab States within 30 days of the date of such ratification, acceptance or approval. The General Secretariat shall notify member States of the deposit of each such instrument and of its date.

#### **Article 40**

- 1- This convention shall enter into force on the thirtieth day after the date as of which instruments of ratification, acceptance or approval have been deposited by seven Arab States.
2. This Convention shall enter into force for any other Arab State only after the instrument of ratification, acceptance or approval has been deposited and 30 days have elapsed from the date of that deposit.

#### **Article 41**

No Contracting State may make any reservation that explicitly or implicitly violates the provisions of this Convention or is incompatible with its objectives.

#### **Article 42**

A contracting State may denounce this Convention only by written request addressed to the Secretary-General of the League of Arab States.

Denunciation shall take effect six months from the date the request is addressed to the Secretary-General of the League of Arab States.

The provisions of this Convention shall remain in force in respect of requests submitted before this period expires.

DONE at Cairo, this twenty-second day of April 1998, in a single copy, which shall be deposited with the General Secretariat of the League of Arab States. A certified copy shall be kept at the General Secretariat of the Council of Arab Ministers of the Interior, and certified copies shall be transmitted to each of the parties that are signatories to this Convention or that accede hereto.

In witness whereof, the Arab Ministers of the Interior and Ministers of Justice have signed this Convention on behalf of their respective states.