

Committee: Legal Committee

Issue: Determining, facilitating and upholding the right of terrorists to a free trial

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Position: Co-chair

PERSONAL INTRODUCTION

Dear Delegates,

My name is Sofia Chavele-Dastamani and I will have the honor to serve as your co-chair in the Legal Committee of the 1st ACGMUN.

Firstly, it's my utmost delight to welcome you to the 1st American College of Greece Model United Nations and congratulate you on your participation. This conference will be a great opportunity for you to expand your knowledge of international relations, and directly address problems that concern the international community through feasible solutions. Considering this is the Legal Committee, you will have the chance to explore issues of major importance to the international legal community and the function of the UN as a legislative organ, such as the right of terrorists to a free trial and the issue of euthanasia.

This study guide aims to introduce you and guide your research on the second topic of the agenda, which concerns the terrorist's right to fair trial. Although this document will offer you an introduction to the topic, to be sufficiently prepared to participate in the workings of this year's Legal Committee it is required that you continue your research far beyond the study guide. I would also advise you to familiarize yourself with your country's policy not only on the topics at hand, but on a variety of major topics that may concern your country. That way, you will be able to gain an in-depth understanding of how a real diplomat would respond to various propositions that may rise in our committee. Overall, I can guarantee that this will be a wonderful experience for each and every one of you, as long as you all prepare thoroughly and actively participate.

If you have any questions regarding this topic or the rules of procedure, please don't hesitate to send me an email at s.chavele-dastamani@acg.edu.

Looking forward to a great conference!

Sincerely,

Sofia Chavele-Dastamani

TOPIC INTRODUCTION

Jus est ars boni et aequi- The law is the art of goodness and equity.

In the contemporary society we live in, terrorist attacks seem to have become the norm, yet the international legal framework that regulates the administration of justice in such cases is still not sufficient. The legislation differentiates from one country to another and there is not international orientation for the purpose of administering justice in cases of violation of human rights by terrorists, as well as in cases of threatening the integrity of sovereign states. In spite of the fact that terrorists are an immense threat to the global security, they are human beings and they have the fundamental and inalienable right to be recognized everywhere as people before the law as it is made clear by the Universal Declaration of Human Rights. Yet, several states do not voice such views and tend to punish terrorists without letting them be judged by a court, consequently UN has to take action and create the appropriate legal framework that would be both fair and impartial. Delegates need to bear in mind that terrorists' trials may require special courts, so it is at their jurisdiction to emphasize on how they are going to be created, as well as determine their function under the auspices of an international organization such as the UN. Last but not least, such a controversial issue requires sustainable and productive cooperation among the delegates in order to achieve a permanent and efficient solution that would bring about the optimum results concerning both human rights and equality under the rule of international law.

DEFINITION OF KEY TERMS

Terrorist

*"Terrorists are defined as people, usually members of a group, who use or advocate terrorism for the purpose of frightening or terrorizing others"*¹. The Federal Bureau of Investigation (FBI) defines international terrorism as the activities with the three following characteristics:

- Involve violent acts or acts dangerous to human life that violate federal or state law;
- Appear to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

¹Dictionary.com, *terrorist*, <<http://www.dictionary.com/browse/terrorist>>

- Occur primarily outside the territorial jurisdiction of the U.S., or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum².

Rights

The UN Human Rights Office of the High Commissioner specify human rights with the following definition: “Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible³”.

The Office also pertains to the fact that human rights ought to be expressed and guaranteed by the law and all states have to compromise their legal frameworks with the regulations of the international human rights law.

Free trial

The most reliable definition of the free trial is stemming from the Universal Declaration of Human Rights and is the following: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of any criminal charge against him⁴”.

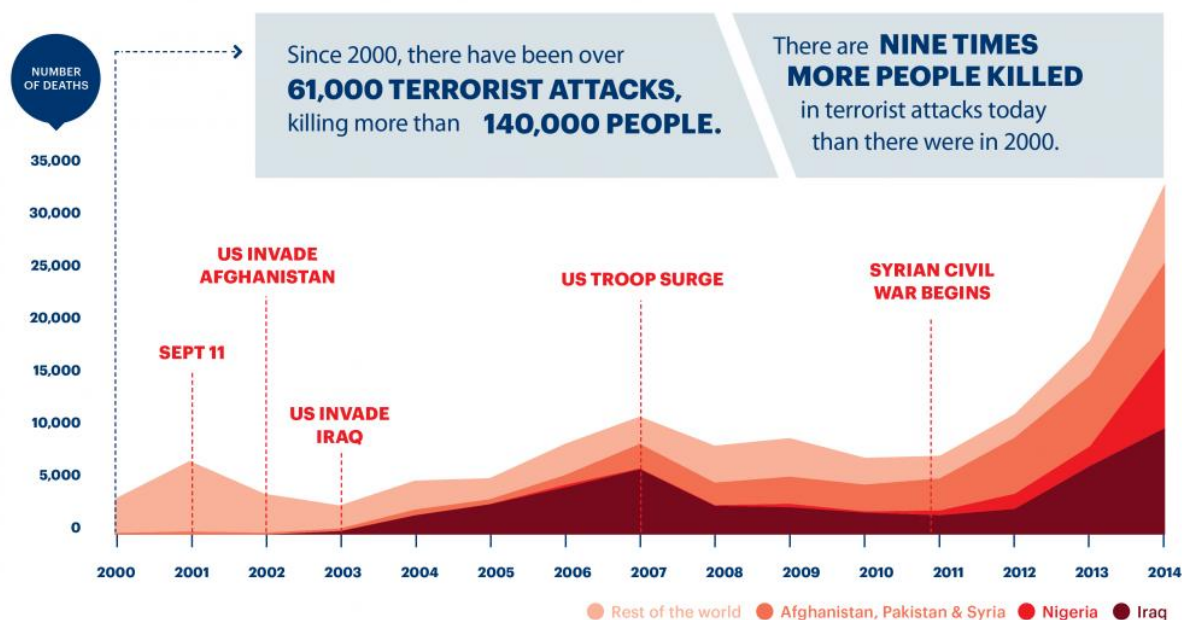
²FBI, *WHAT WE INVESTIGATE: Definitions of terrorism in U.S. law*

³ UN Human Rights Office of the High Commissioner, *What are human rights?*

⁴United Nations, *Universal Declaration of Human Rights*

BACKGROUND INFORMATION

In order to be easier for the delegates to understand the issue, as well as be capable of coming up with effective and productive solutions, it is imperative to bear in mind the background information.



#1: The increase of terrorists' attacks since 2000

The spread of terrorism

Terrorism is not a new phenomenon. From the very beginning of the western societies several people were susceptible to committing crimes against the mankind for the purpose of making terror and fear more widespread among the social structure. Yet, it is evident that the incidence and the rate of this overwhelming phenomenon have escalated over the past decades. According to the Institute for Economics and Peace⁵ more than 140,000 people have been killed due to terrorists' attacks since 2000. It is also specifically referred that the rise in terrorists' attacks since 2013 can be attributed to two groups: ISIS and Boko Haram. In recent years, the evolution of terrorist networks is more than obvious. The situation for them seems to be more favorable, as they are able to take advantage of porous borders and interconnected international systems such as finance, communications, and transit. Terrorist groups can reach every corner of the globe, consequently the purpose that they are serving is getting more feasible. While an important number of them remains focused on local or national political struggles and actions, the majority of them is committed to affecting the international community. Undoubtedly, the western world is dealing with an unprecedented tension of

⁵Institute for Economics and Peace Home Comments. N.p., n.d. Web. Winter 2017.

terrorists, meaning that immediate action ought to be taken in international level in order not only to restrict their inhumane actions, but also hold them accountable for their unethical goals to killing innocent people. The international legal community has the duty to impose strict sanctions and punishments, but at the same time ensure that such occurrences are totally in compliance with the fundamental human rights that have to be respected.

Trials aiming at convicting terrorists

Taking into account the seriousness of terrorists' crimes, the majority of the trials aiming at convicting terrorists are functioning under secrecy and there is not an international framework regulating the whole procedure. Many trials conducted in national level do not give the opportunity to evidence to be displayed in order to support the potential innocence of terrorists. In other words, terrorists do not have the chance to be defended by lawyers and support their positions which are arguably unfavorable, if we take into consideration the social outcry that occurs in such cases. In several other cases, such as the terrorists' trials in the UK, transparency tends to be ignored, therefore many doubts arise concerning open justice to everyone and the guarantee of the British courts to dispense justice based on the principles of equality. Surely, the trials concerning terrorists are undetermined and are held under unfavorable conditions for the accused, thus rendering their acquittal literally impossible.

The humanitarian approach of issue

In the developed society that we live, the prerequisite for the maintenance of social cohesion seems to be the expanded human rights that address to everyone irrespectively to their race, sex, sexual orientation, religion, and political views. In the light of the aforementioned, terrorists are deemed to be human beings and their rights ought to be respected, as it happens in cases of other common people. Consequently, they possess the right to a free and objective trial before their potential innocence or conviction. An international organization like the UN should be committed to promoting human rights even if they concern people who are prone to deviancy, criminality and generally unlawful behavior that is not in accordance with the principles and the ideals that it represents. What has happened until now makes clear that human rights do not exist for terrorists at all. Violations are really common and their representation in the courts by lawyers is totally rare. They are often convicted for crimes that are more serious than the actual crime due to which they were actually arrested. This obvious confusion and imprudence causes a spectrum which is inevitably subversive for both the terrorists and the legal framework which is trying to dispense justice. Subsequently, an international legal framework under the auspices of UN seems to be necessary in order to eliminate

such adverse situations that are not in accordance with the fundamental human rights, and especially the right to a free trial.

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

United States of America (U.S.A.)

The U.S.A. is one of the countries where a suspect of terrorism can be convicted directly. U.S. law criminalizes even a small step towards participating in organized terrorism, and convicts directly anyone who materially supports any terrorist organization. This practically means that U.S. law makes it far easier to convict jihadists than the law of any other country. For that reason, many countries such as Sweden and the UK outsource terrorism suspects to the USA when they can't prosecute them. It's also important to note that the U.S. has outlawed not only any support to a terrorist organization, but conspiracy to provide such support as well.

Turkey

In the few days following the coup attempt of July 15, more than 35,000 people were arrested, and more than 1,600 judges were jailed without even the pretence of a proper trial, or any evidence to support such prosecutions. President Erdogan announced that the government is considering reintroducing the death penalty in order to punish the ones at fault for the coup attempt. Meanwhile, Turkey suspended the European Convention on Human Rights, declaring an emergency state, and Amnesty International described instances of beatings and torture of detainees arrested after the coup.

United Kingdom

On June 2014, for the first time in British history, a trial was held entirely in secret. For reasons of national security, the UK decided not to disclose the identities of the accused and their alleged crimes, on a case regarding terrorism. Exactly because the evidence contained sensitive information, the trial was held in secrecy. While it was a very rare occasion, the incident was criticized as a threat to 'the constitutional principle of open justice', and 'the equally important principle of fairness and natural justice'.

United Nations Counter-Terrorism Implementation Task Force (CTITF)

The CTITF has for long worked on protecting human rights while fighting terrorism, through a series of expert regional symposiums aimed at securing the fundamental principles of a fair trial. The project's funds were secured by the governments of Sweden and the Netherlands.

Organization for Security and Co-operation in Europe (OSCE) Anti-Terrorism Unit

The OSCE contributes greatly to international efforts against terrorism led by the United Nations, especially by promoting and protecting human rights and fundamental freedoms in the context of counter-terrorism measures.

BLOCS EXPECTED

In favor of the terrorists' right to a free trial

The countries supporting the right to a free trial in the case of terrorism recognize it as a fundamental right which must be maintained at all cases. However, some might agree that special courts might be created, others that trials with sensitive evidence must be held in private, as in the case of the U.K., and others that all trials must be public. There's a variety of minor details that might differentiate one country's views from another's, and we expect to see some compromise between all opinions in order to create a common resolution.

Against the terrorists' right to a free trial

The countries against maintaining the terrorists' right to trial consider the war on terror as 'a *sui generis* category in international law'. This means that they consider war on terror and prosecution of terrorism a new, separate category of international law. Therefore, they deny the application of already existent international humanitarian law, considering it inadequate to respond to cases of terrorism. In these countries, the implementation of counter-terrorism measures limits access to the judicial process. Countries belonging to this bloc might include the U.S. and other countries with thorough anti-terrorism law, such as Turkey.

TIMELINE OF EVENTS

Date	Description of event
December 1948	Universal Declaration of Human Rights is signed.
December 1966	The International Covenant on Civil and Political Rights (ICCPR) is adopted by the United Nations General Assembly .
2002	Guantanamo Bay detention camp is established under George W. Bush's 'War on Terror'.
2002-2003	Suspected of terrorists of 9/11 are held in secret CIA prisons without trial, undergoing torture.

May 2007	UNHRC report about Guantanamo Bay is released, stating that it violates international law, judging that the Bush Administration could not try such prisoners in a military tribunal and could not deny them access to the evidence used against them.
December 2012	U.S. military judge issues an order maintaining secrecy over the terrorists' testimonies regarding 9/11.
June 2014	UK trial regarding terrorism is held entirely in secrecy.
June 2015	Tsarnaev, Boston marathon bomber, is sentenced to death penalty.
July 2016	Hundreds of alleged coup attempt terrorists are imprisoned and tortured in Turkey.

RELEVANT RESOLUTIONS, TREATIES AND EVENTS

Universal Declaration of Human Rights

The Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December⁶, declares that “everyone has the right to recognition everywhere as a person before the law”, “all are equal before the law”, and that “everyone is entitled in full equality to a fair and public hearing”. The declaration is universally recognized and acts as the foundation of international human rights law.

1949 Third Geneva Convention

The 1949 Third Geneva Convention intends to ensure humane treatment for captured legal combatants.

International Covenant on Civil and Political Rights (ICCPR)

Article 14 of the addresses the issue of the right to a free trial, declaring that every person shall be equal before the courts and tribunals, receive complementary legal assistance, and have the right to be ‘presumed innocent until proved guilty according to law’.

International Court of Justice (ICJ)

The International Court of Justice (ICJ) has ruled through numerous cases that if an armed conflict is found to exist, human rights law, and therefore the right to a free trial, does not cease to apply.

⁶United Nations, Universal Declaration of Human Rights

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

One attempt originated from the UN, through the United Nations Counter Terrorism Implementation Task Force (CTITF) Working Group. This group has initiated, as previously mentioned, numerous expert regional symposiums aiming at securing the fundamental principles of a fair trial in the context of countering terrorism. Furthermore, the International Committee of the Red Cross (ICRC) facilitates the task of identifying the judicial standards applicable in all armed conflicts. Other than these, very little legal action has been taken to prosecute member states that might violate international law when neglecting the terrorist's right to a free trial.

POSSIBLE SOLUTIONS

Defining a free and fair trial

There's a huge difference between saying that we should or shouldn't recognize the terrorists' right to a free trial and determining what makes a trial free and fair. Some basic characteristics of free and fair trial could include the public nature of hearings, the presumption of innocence, the trial within reasonable time and the right to have the free assistance of an interpreter. A universally accepted definition of a fair trial would promote greatly its importance as a human right. A new definition of free trial as applied to terrorism can also be introduced.

Creating special courts

For the countries in which the implementation of counter-terrorism measures limits access to the judicial process, special or specialized chambers within the ordinary courts or special courts to deal with terrorism-related cases can be established. These specialized organs however must operate with the standards of a fair trial.

Putting pressure on countries that violate this right

All countries, under the UN Charter, must respect their obligations under international law. When countries violate such obligations, it is up to the international community to condemn such actions and to put pressure to call for change. The UN requests that 'any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of terrorist acts is brought to justice, on the basis of the principle to extradite or prosecute, with due respect for human rights and fundamental freedoms'. Guaranteeing the rights of suspects is fundamental to maintaining the open and fair character of justice. It's

important to remember that the respect, protection and promotion of human rights contribute to an effective fight against terrorism.

Creating Special Legal Forces

It is clear that under certain circumstances and emergencies, for example under military conflict, some aspects of a free trial may be derogated. However, it is critical that the procedure must remain fair as whole, despite any disadvantageous circumstances. That could be achieved by the creation of a UN led Special Legal Force, composed of attorneys thoroughly trained on international law on terrorism, that would work in ensuring that trials under conflict remain fair and in supporting any terrorist suspects before the law, if they require such assistance and if they can't provide their own. This Special Force should also include specialized interpreters that could assist the accused if he cannot understand or speak the language used in court.

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