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# THE IMPACT OF ANTI - TERRORISM POLICIES IN THE OPERATION OF THE RIGHT OF ASYLUM: AN IMPLOSION IN THE REALIZATION OF HUMAN RIGHTS LAW

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## 1. INTERNATIONAL TERRORISM AND THE CLOSURE OF WESTERN STATES' BORDERS

In the last few years the Western world has generally experienced a drastic restraint in the national policies concerning asylum and refugee law, mainly

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due to the huge recrudescence of international terrorism. This dreadful phenomenon has had its peaks in the September 11, 2001 brutal assaults against United States and in the vicious attacks perpetrated in Bali, Madrid, Beslan, London, Sharm el Sheikh, the Russian city of Nalchik and New Delhi, respectively on October 12, 2002, March 11, 2004, September 1, 2004, July 7, 2005, July 23, 2005, October 13, 2005 and October 29, 2005. Since September 11, 2001, international terrorism has caused more than 4,300 casualties among innocent people.<sup>(1)</sup> As a result of these events, most countries constituting the potential target of terrorists have significantly restricted opportunities of access of foreigners into their territories – including refugees and asylum seekers – due to fear that under the mask of persons invoking protection activists of terrorist groups are disguised, ready to bring death and destruction in the country.

Following the events of September 11 a number of States have thus enacted new anti-terrorism legislation or reinforced pre-existing laws. The feeling of fear and insecurity triggered by the terrorist acts of September 11 strongly influenced such legislation, which generally kept in almost exclusive consideration the need to reinforce internal security, restricting (directly or not) national immigration and asylum policies.

This trend has not only been pursued at the legislative level, but it is complemented by the striking “security-oriented” interpretation of applicable domestic and international rules by the authorities concerned, which leads to further restricting the opportunities for refugees and asylum-seekers to be granted protection by the requested State. In 2001, for example, the British House of Lords provided a very broad interpretation of the concept of “risk to national security” contemplated by the *Anti-Terrorism Crime and Security Act 2001*,<sup>(2)</sup> according to which such a risk need not be the result of a direct threat to the country, but is even qualified, *inter alia*, by acts directed against foreign States that could indirectly affect the security of the United Kingdom or of its nationals.<sup>(3)</sup> This interpretations greatly expands the applicative scope of the Act, which allows the indefinite detention without trial of non-

British citizens – suspected of being involved in international terrorist activities – who cannot be deported by reason of the international legal obligations binding the United Kingdom or for practical reasons. Similarly, on April 17, 2003, the New York Attorney General used his barely limited competence of interpreting the concept of “threat to national security” by declaring Haitian asylum seekers arriving by sea as such, actually allowing immigration judges to indefinitely detain these individuals without leaving them any concrete chance to prove their detention unnecessary.<sup>(4)</sup> Last but not least, the relevant practice developed in most recent years seems to show a growing tendency of domestic courts to follow an interpretation of the provisions of the 1951 Geneva *Convention relating to the Status of Refugees* (Geneva Convention)<sup>(5)</sup> more restrictive than in the pre-September 11 times, leading to supplementary restraint of the opportunity of asylum-seekers to be granted protection in the territory of the requested State in order to flee persecution. This tendency, which is generally not blatant but somehow “creeping”, concerns especially the evaluation of the burden of proof that asylum seekers have to meet in order to demonstrate that they actually face persecution and, *a fortiori*, their eligibility for refugee status.

Even the international bodies having competences in the field of human rights have often not escaped the trap, especially in the immediate aftermath of September 11, of being a little easy in considering the operation of asylum and refugee law as a potential obstacle to the fight against international terrorism. For example, in its Resolution 2002/35 on “Human rights and terrorism”, the U.N. Commission on human rights called upon States to take appropriate measures,

*“before granting refugee status, with the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts, and to ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorists acts and that*

*claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists”.*<sup>(6)</sup>

What is surprising in this statement is not the statement in itself, but rather the fact that the Commission, a body devoted to the protection of human rights, did not do any reference to the opposite situation, *i.e.* the danger that States may unreasonably deny protection within their borders to innocent asylum-seekers subject to persecution, due to unfounded fear of terrorist attacks. While the pathos raised by the events of September 11 was still very intense when the resolution in object was drafted, this does not justify such an evident State-oriented digression in managing the delicate issue of human rights and terrorism. In some instances, however, this approach has been corrected, especially in most recent times. For example, in 2003, the participants to the tenth meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme (Geneva, June 23-27, 2003), deplored

*“the fact that, under the pretext of combating terrorism, human rights defenders are threatened and vulnerable groups are targeted and discriminated against on the basis of origin and socio-economic status, in particular migrants, refugees and asylum-seekers, indigenous peoples and people fighting for their land rights or against the negative effects of economic globalization policies”.*<sup>(7)</sup>

Similarly, in Resolution 1456(2003) the Security Council declared that

*“States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law”.*<sup>(8)</sup>

Last but not least, in its recent Resolution 61/171 of 19 December 2006, the General Assembly deeply deplored “the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism, as well as violations of international refugee law and international humanitarian law”,<sup>(9)</sup> and reaffirmed that “States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law”.<sup>(10)</sup> Furthermore, in the same Resolution the General Assembly tried to draw up an adequate formula to emphasize the need of contextually realizing the exigencies to combat terrorism and to ensure safeguarding of refugee rights; this was made through urging States

*“to fully respect non-refoulement obligations under international refugee and human rights law and, at the same time, to review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts, including terrorist acts, falling under the exclusion clauses under international refugee law”.*<sup>(11)</sup>

In any event, it is a fact that the restrictive immigration practices developed by Western countries after September 11 have produced serious detrimental effects with respect to the opportunity – for innocent asylum-seekers and refugees searching for protection against threat of persecution in their home countries – to enjoy the (internationally recognized)<sup>(12)</sup> right of asylum, despite they have nothing to do with terrorist militants.

The right of any State to protect itself from terrorist attacks is certainly unquestionable. However, when its operation presupposes arbitrary denial of protection for asylum-seekers and refugees, it raises questions about the legality of such practice, not only vis-à-vis the domestic law (especially as regards certain constitutional guarantees concerning fundamental human

rights),<sup>(13)</sup> but also with regard to international obligations arising from conventional and, possibly, customary international law, particularly in terms of consistency with State obligations in the field of human rights protection. It is thus opportune to investigate whether and – if the case – to what extent and pursuant to which conditions the terrorist attitude of an asylum-seeker may justify denial of protection by the requested State, resulting in the actual possibility that the person concerned may suffer violations of his/her internationally recognized human rights which are in principle not tolerated by the international community. In this respect, it is worth warning that any conclusion which will be drawn up in the present writing needs to be evaluated taking into account that, at present, there is no universally recognized definition of terrorism<sup>(14)</sup>. This concept is in fact very erratic, due to the diverse religious, philosophical, social and cultural visions influencing its conception in the different parts of the world. Such a diversity may be symbolically epitomized with the aphorism that “one person’s terrorist is another person’s freedom fighter”.<sup>(15)</sup> In light of this, the concept of terrorism used for the purposes of the present article is of “operative” nature, as including all criminal actions qualifying their perpetrator(s) – who face persecution in their home country for reason of such acts – as potentially ineligible, *prima facie*, to obtain asylum in a foreign State.<sup>(16)</sup> In any event, it is to be excluded *a priori* that – although in the mind of their perpetrators terrorist acts are often committed for political or even noble reasons – crimes of blood targeting civilians may be in whatever means considered, for extradition purposes, as political crimes. As affirmed by the House of Lords with respect to Article 1F(b) of the Geneva Convention,

*“[a] crime is a political crime [...] if, and only if: (1) it is committed for a political purpose, that is to say, with the object of overthrowing or subverting or changing the government of a state or inducing it to change its policy; and (2) there is a sufficiently close and direct link between the crime and the alleged political purpose. In determining whether such a link exists, the court will*

*bear in mind the means used to achieve the political end, and will have particular regard to whether the crime was aimed at a military or governmental target, on the one hand, or a civilian target on the other, and in either event whether it was likely to involve the indiscriminate killing or injuring of members of the public”.*<sup>(17)</sup>

## 2. STATE OBLIGATIONS TOWARD ASYLUM-SEEKERS

Contemporary international law is characterized by the existence of actual State obligations in the field of asylum law, both of conventional and customary nature.

At the conventional level, most governments of the world are today bound to respect the Geneva Convention on the status of refugees,<sup>(18)</sup> as amended by its Protocol adopted in 1967 in New York<sup>(19)</sup> (which removed the temporal limit to the applicability of the Convention, originally relating only to refugees having such status “[a]s a result of events occurring before 1 January 1951”<sup>(20)</sup>). This entails the obligation of recognizing refugee status – and *a fortiori*, the prerogatives contemplated by the Convention for those recognized of having such status – in favour of to any person who,

*“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence [...] is unable or, owing to such fear, is unwilling to return to it”.*<sup>(21)</sup>

In addition, Article 33 of the Geneva Convention incorporates the principle of *non-refoulement*, *i.e.* the prohibition for State parties of “expel[ling] or return[ing] (‘refouler’) a refugee in any manner whatsoever to the frontiers

of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”, save in the event – particularly relevant to the purposes of the present writing<sup>(22)</sup> – that there are reasonable grounds for regarding the refugee “as a danger to the security of the country in which he is, or [...] [as] a danger to the community of that country”.

The prohibition of *refoulement* has also evolved as a generally accepted principle of customary international law,<sup>(23)</sup> as confirmed by relevant practice.<sup>(24)</sup> It thus amounts to an obligation binding all governments irrespectively of their being or not part of the Geneva Convention. According to the most convincing interpretation of this rule, the obligation in point includes not only the prohibition of expelling persons already present within the territory of the acting State (provided, of course, that they are potential victims of persecution), but also the non-rejection at the frontier without a proper (jurisdictional) evaluation of the individual situation of the asylum-seeker concerned. This view is supported by the majority of scholars<sup>(25)</sup> and by pertinent practice,<sup>(26)</sup> and is also the most logical one, as corroborated by both textual<sup>(27)</sup> and rational<sup>(28)</sup> arguments.

As a consequence, under customary international law, the principle of *non-refoulement* presupposes a State obligation to protect asylum-seekers, at least temporarily (but in any case as long as the danger of persecution persists), from the peril of being persecuted threatening them. This protection is to be realized through allowing the asylum-seekers concerned to enter and reside in the national territory or, at least, to ensure that they obtain protection in a “safe third country”.<sup>(29)</sup> The obligation in point, which may be well considered as the modern characterization of the right of asylum, was well epitomized, in 1996, by a dictum of the Supreme Court of India (a State that, as of 1 August 2007, is not party to the Geneva Convention),<sup>(30)</sup> according to which “the state is bound to protect the life and personal liberty of every human being, be he a citizen or otherwise, and it can not permit [any person facing threats to his/her life or personal liberty

being forced] to leave the state [...]. No state government worth the name can tolerate such threats [...].<sup>(31)</sup>

### 3. IS THE PRINCIPLE OF NON-REFOULEMENT DEROGABLE?

The key question to be addressed in this writing is whether and to what extent the principle of *non-refoulement* is susceptible of derogation. From the perspective of treaty law, Article 1F of the Geneva Convention (substantially reproduced by Article I para. 5 of the *OAU Convention on the Specific Aspects of the Refugee Problems in Africa*) states that the provisions of the Convention

*“shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations”.*<sup>(32)</sup>

To a similar extent, as previously noted, Article 33 para. 2 of the Convention affirms that the benefits arising from the principle of *non-refoulement* may not “be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country”.

Both these provisions are in principle applicable with respect to proved or suspected terrorists, and it is hardly possible to set up limits to the freedom of the deciding government with respect to the evaluation of the existence of the “serious reasons” or “reasonable grounds” of dangerousness

(as contemplated, respectively, by Article 1F and Article 33 para. 2), as well as, *a fortiori*, to the decision whether the behaviour kept by the person concerned is of terrorist nature. What can be said is that the concrete applicability of these provisions should not be evaluated by means of formal criteria (*e.g.* on the basis of whether or not the person concerned has already served a sentence for a crime he/she has committed)<sup>(33)</sup>, but rather, given the purpose and object of the norm (*i.e.* to prevent that refugee protection may threaten the internal safety of the State concerned)<sup>(34)</sup>, basing on the nature and intrinsic characteristics of the past behaviour of the individual as evidence of his/her criminal attitude.<sup>(35)</sup> This approach would allow to (try to) evaluate whether the provisions at issue are to be applied or not on the basis of the potential threat to the State or its community determined by the possible presence of the asylum-seeker in its territory. It would in fact be inconsistent with the “relevant rules of international law applicable in the relations between the parties” – to be taken into account in the interpretation of an international treaty provision pursuant to Article 31(3)(c) of the *Vienna Convention on the Law of Treaties*<sup>(36)</sup> – to allow that the person concerned may be the object of treatment like torture or similar (which is firmly repudiated by the international community as a whole) in the absence of any concrete reason related to the safety of the State and/or its citizens. Otherwise, Article 1F and the second part of Article 33 para. 2 should be seen as sort of penalties, presupposing the subjugation of the individual to unacceptable forms of punishment like torture and similar treatment (irrespective of whether the person concerned is a terrorist or not)<sup>(37)</sup> even when it is not required by any safety-related need. This line of reasoning is clearly corroborated by the text of Article 33 para. 2, which implies that the principle of *non-refoulement* may only be derogated where there are reasonable grounds for regarding the individual as a danger to the security of the country or its community. Therefore, the application of these provisions requires the previous evaluation, *on an individual basis*,<sup>(38)</sup> of the criminal attitude of the person invoking protection and, *a fortiori*, of the actual

existence of a real threat to the State or its community resulting from the presence of such individual in its territory.

Another relevant issue – concerning both articles 1F and 33 para. 2 of the Geneva Convention – concerns the question whether or not the circumstance that the refugee has been found responsible of a particularly serious crime may be considered as a sufficient presumption, by itself, for declaring that the person concerned is dangerous to national safety and, *a foriori*, excluding him/her from protection. Although the answer to this question may appear to be positive pursuant to a strict literary interpretation of the provisions concerned, most recent practice is evolving toward a more human-rights-oriented approach. Such an approach presupposes that exclusion from protection is based on a punctual assessment of the effective risk arising from the presence of the asylum-seeker in the territory of the State which goes beyond the mere circumstance that he has been responsible of a serious crime, taking also into account any other element which may be relevant in the instant case. For example, with respect to the expulsion of an alien sentenced for a number of crimes in Italy in 2002 the Italian *Corte di Cassazione* (Supreme Court) declared that

*“it is not acceptable that [the determination that an alien belongs to the category of dangerous persons] be based on a mere consideration of probabilities [but instead] it is necessary that there be a rigorous assessment of the conditions on which the inclusion of an individual to the category of dangerous persons may be based [...] [T]he judicial assessment of the opposition against adopted measures of expulsion must ascertain the existence of the conditions for including the alien in one of [these] categories [...] [taking into account three criteria:] the necessity of the objective assessment, and not merely subjective, of the elements justifying suspects and presumptions [...]; the requisite that the danger is current [and] the necessity to globally evaluate*

*the whole personality of the individual as resulting from all social expressions of his life”.*<sup>(39)</sup>

According to such an approach, it would be necessary to perform an accurate comparative assessment of the presumed risk to the internal security arising from the presence of the asylum seeker in the territory of the State on one side, and the degree of the risk of persecution feared by the individual concerned in the event that he/she is excluded from protection – as well as the gravity of the treatment that could be used by persecutory agents – on the other. The need to draw this balance was emphasized, *inter alia*, by the Supreme Court of Canada, affirming that in applying Article 1F(b) of the Geneva Convention “the seriousness of the danger posed to Canadian society against the danger of persecution upon *refoulement* [is to be weighted]”.<sup>(40)</sup> The absolute intolerability – shared by the international community as a whole – of human rights abuses that are usually perpetrated in cases of persecution of asylum-seekers is also to be duly taken into account. As a consequence, deportation should only be ordered in exceptional cases, *i.e.* when the threat to national security determined by the presence of the asylum-seekers in the State territory would override the risk that he/she is actually persecuted in the country of origin. In 2002, in the renowned *Suresh* case, the Supreme Court of Canada, with regard to the possible extradition of an alien to a country where he could be subjected to torture, consistently declared that

*“[e]xtraditing a person to face torture would be inconsistent with fundamental justice [...] There are [...] compelling indicia that the prohibition of torture by the international community is a peremptory norm [...]. International law rejects deportation to torture, even where national security interests are at stake. Barring extraordinary circumstances, then, deportation to torture will generally violate the principles of fundamental justice [...]. Whether the risk to national security is sufficient to justify the*

*appellant's deportation is a question of evaluation and judgement. It is necessary to take into account the degree of probability of prejudice to national security, the importance of the security interest at stake and the serious consequences of deportation for the deportee. The Minister should generally decline to deport refugees where, on the evidence, there is a substantial risk of torture".*<sup>(41)</sup>

This approach is also shared by the Handbook, which states that Article 33 para. 2 of the Geneva Convention should be applied only “in extreme cases”,<sup>(42)</sup> adding that:

*[i]n applying this exclusion clause, it is also necessary to strike a balance between the nature of the offence presumed to have been committed by the applicant and the degree of persecution feared. If a person has well-founded fear of very severe persecution, e.g. persecution endangering his life or freedom, a crime must be very grave in order to exclude him [...].*<sup>(43)</sup>

In sum, the applicability *in concreto* of the provisions at issue is constrained by the conditions just described. However, even following such a restrictive interpretation, the suspect that these provisions are to be considered void and inapplicable – as a matter of evolutionary interpretation – could arise. They could in fact be seen as conflicting with a peremptory norm of international law, on account of the *jus cogens* nature of the prohibition of torture. This would in fact fall within the scope of Article 64 of the Vienna Convention on the law of treaties, according to which “[i]f a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates”. Although the possible *jus cogens* nature of the prohibition of *refoulement* is today highly controversial,<sup>(44)</sup> it is a fact that this construction is apparently in line with the practice of the most important international judicial and supervisory bodies instituted by universal or regional human rights treaties, according to

which a State which *refoulers* a person to a country where he/she may be the object of torture or inhuman or degrading treatment is itself responsible of such treatment, for the sole reason of having facilitated its perpetration through sending the person concerned back to the country where the treatment in point is materially concretized. This doctrine, often referred to with the name of the first case in which it was proclaimed – the *Soering* case – was initiated by the European Court of Human Rights (ECtHR) in 1989.<sup>(45)</sup> It has then been followed by the other main international competent bodies, especially by the Human Rights Committee (HRC)<sup>(46)</sup> and the Committee Against Torture (CAT).<sup>(47)</sup> In addition, in the view of the ECtHR, the fact that an alien has committed serious crimes and it is thus to be considered as a danger to the internal security of a State cannot overwhelm the obligation to protect the individual against the threat to face torture and similar treatment, irrespective of the degree of risk caused by his/her presence in the territory of such country:

*[the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] enshrines one of the fundamental values of democratic societies [...] prohibit[ing] in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct [...] Accordingly, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration”.*<sup>(48)</sup>

Consistently, in *Chahal v. the United Kingdom*,<sup>(49)</sup> the case of a *Sikh* dissident who was supposed to be involved in terrorist activities in India and previously been tortured there, the ECtHR declared that the prohibition of torture is of absolute nature, being thus non-derogable even in the event that the person concerned represents a threat to the safety of the State to which he/she invokes protection. Laying on this reasoning, the Court even stressed that Chahal's presumed involvement in terrorist activities reinforced the necessity of granting him protection, since the threat of persecution had

increased by reason of such involvement.<sup>(50)</sup> This position has constantly been followed by the Court;<sup>(51)</sup> in particular, in the Chechen case of *Khashiyev and Akayeva v. Russia*, decided in 2005, the Court explicitly affirmed that “[e]ven in the most difficult circumstances, such as the *fight against terrorism* and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment”.<sup>(52)</sup> The practice of States parties to the European Convention on human rights<sup>(53)</sup> is also consistent with the Court’s viewpoint, even in cases of particular danger. For example, in August 2005, in the immediate aftermath of the terrorist attacks in the London underground of 7 July of the same year, the government of the United Kingdom extradited ten foreign citizens suspected of having been involved in those attacks only *after* having obtained insurance by their national governments that they would not be subjected to torture of similar treatment.<sup>(54)</sup>

Whereas this approach could be considered as corresponding to a dictate of customary international law, then it should be excluded *tout court* that a State could *refouler* a person to a country where he/she may be the object of persecution involving intolerable treatment as torture or similar, irrespective of his/her degree of dangerousness for internal safety. However, as seen in this Section, it does not seem that a uniform practice of the international community’s members exists supporting the view that *refoulement* to torture and similar treatment is *absolutely* prohibited even when the very safety of the State is at stake, especially outside the territorial scope of the European Convention on human rights.<sup>(55)</sup> However, it is at least uniformly accepted (as a rule of customary international law) that a State cannot *in principle* expel or extradite a person to a country where he/she may be victim of such a treatment. This means that, *as a minimum*, denial of protection of an asylum-seeker – even for safety reasons – has necessarily to be grounded on an imperative reason concerning the security of the State or its community that must be well-demonstrated through a specific assessment of the concrete situation relating to the specific case. In other words, the requested asylum

should be denied only when a fundamental interest of the State is in danger and there is no alternative for preventing such danger than *refouling* the person concerned, since the consequences that he/she would face in such event amount to an infringement of a value (*i.e.* the integrity of the dignity of the human person) that is perceived as fundamental and – in principle – inherently non-derogable by the international community as a whole.

The rule just mentioned is undoubtedly applicable with respect to persons who have committed terrorist acts or are suspected of being terrorists. In this respect, it may be useful to try to clarify a further problem, *i.e.* whether the mere membership in a terrorist group may justify the exclusion from protection of an asylum-seeker, even in the event that he/she has never been personally involved in planning or executing or otherwise committing a terrorist act. At the level of the Geneva Convention, an objective interpretation of Article 1F shows that it may be applied only when there are serious reasons for considering that the concerned individual “*has [personally] committed a serious non-political crime*” (this solution is also coherent with general principles of criminal law).<sup>(56)</sup> As for customary international law, once one supports the view expressed above, according to which exclusion from protection of an asylum-seeker is to be based on the actual threat that his/her presence may cause to national security, in principle it is not possible to exclude *a priori* that this danger may exist on the sole account of one’s membership to a terrorist group, irrespective of the fact that the individual concerned has been personally involved or not in any terrorist act perpetrated by the aforementioned group. The circumstance that the person concerned has (yet) never personally performed a terrorist act may not be considered, itself alone, evidence that he/she is not willing to initiate terrorist activities in the host State, where cogent and irrefutable elements of proof demonstrate such a hostile willingness.

In light of the preceding considerations, it seems proper to assert the following: on account of the development of customary international law as just described, an evolutionary interpretation of articles 1F and 33 para. 2 of

the Geneva Convention – pursuant to the general principle enshrined by Article 31(3)(c) of the Vienna Convention on the Law of Treaties<sup>(57)</sup> – suggests that these provisions, within the context of their conventional application, are to be interpreted coherently with the customary dictate. They should therefore be interpreted in the sense that the mere fact that an asylum-seeker has committed a serious crime is not sufficient for justifying him/her to be excluded from protection, a punctual assessment of his/her actual dangerousness and of the nature of the persecution feared by the person concerned in the instant case – demonstrating that no alternative exists to his/her *refoulement* in order to preserve national safety – being also necessary.

In sum, according to the approach followed in this Section, the most reasonable answer to the question whether the principle of *non-refoulement* is susceptible of derogation is that it may be derogated only in *extremely exceptional* cases, when there is no other way than *refouling* an asylum-seeker for preventing a *serious* danger to the internal safety of the country concerned. In practical terms, however, it is quite unlikely that this situation may occur in the real world, since there will always be a way for making a foreigner objectively unable to harm the national community other than *refouling* him/her to a country where he/she may face torture or similar intolerable treatment. For instance, it is highly improbable that a person detained in prison under strict surveillance may still represent a danger for the territorial State. This could only happen when the person concerned is seen as a highly charismatic leader by a significant section of the population, so that the sole consciousness that he/she is in prison may represent a fuse triggering terrorist activities. Nevertheless, this situation is extremely unlikely to occur with respect to foreigners, who in general cannot have with a State different than their own such intense ties so as to represent a point of reference for the national population (except in the event that a significant portion of such a population is represented by a foreign minority originating in the same State from which the asylum-seeker deemed as dangerous has come).

#### 4. CONCLUSION: DOES THE FIGHT AGAINST TERRORISM NECESSARILY REQUIRE A PRICE TO BE PAID IN TERMS OF INFRINGEMENT OF FUNDAMENTAL HUMAN RIGHTS?

As emphasized *sub* Section 1, the right of States to protect their territory and citizens from terrorist attacks is indisputable, from both the moral and legal perspective. Contemporary terrorist activities are operated through the perpetration of awful crimes which – involving shedding of innocent blood – are absolutely intolerable and unjustifiable under any cultural or religious ideology and irrespective of how right and noble would be the reasons for which they are committed. This reflection is to be considered as a cornerstone of any reasoning which may be developed with respect to the subject-matter of the present writing. Nevertheless, it is to be avoided that the victims become hangmen themselves, especially when this is not absolutely indispensable in order to self-defend their own safety. It is visible to anybody how, unfortunately, some of the methods used by Western countries for defending themselves against terrorism – like the institution of the Guantanamo Bay detention camp by the United States<sup>(58)</sup> or the awful practice of extraordinary renditions<sup>(59)</sup> – are not only *inherently intolerable*, but probably also factually useless or, at least, not-indispensable. The fact that a (self-styled) civil nation, for instance, uses torture or similar treatment in order to extort information from persons allegedly involved in terrorist activities – even when this is done for preventing bloody criminal assaults – brings the society back of at least two centuries and vanishes the whole philosophical and social evolution that, approximately since the rising of the Age of Enlightenment, eventually led to the affirmation at the universal level of the sacredness of basic human rights. The situation is even worst – if possible – when other means which do not require internationally recognized human rights to be infringed are available in order to achieve the same purpose.

The discourse concerning the interaction between right of asylum and terrorism does not escape this logic. Denial of asylum and *non-refoulement*

of persons who are likely to be subjected to torture or similar treatment if returned to their country of origin is in principle intolerable, since it entails the infringement of values (*i.e.* the integrity of human dignity) which are considered as absolutely non-derogable by the international community as a whole. This notwithstanding, an objective assessment of this matter shows that, according to relevant practice, it is impossible to maintain that States are absolutely precluded *a priori* from practicing *refoulement* of persons whose presence in the national territory would put under threat the very safety of the country and/or of its citizens, provided that there is no other possibility for preventing such threat than *refouling* the person concerned. Nevertheless, it appears highly unlikely that this may really be the case in the real world, since in virtually all cases it will be possible to prevent the potential danger arising from the presence of a terrorist (whether certain or presumed) in the national territory through adopting measures which do not necessarily presuppose the person concerned to face the mortification of his/her fundamental rights and dignity, as *refoulement* actually implies. ❖

## NOTES:

1. See “Major terrorist attacks since September 11, 2001”, available at <[http://news.monstersandcritics.com/northamerica/article\\_1200077.php/Major\\_terrorist\\_attacks\\_since\\_September\\_11\\_2001](http://news.monstersandcritics.com/northamerica/article_1200077.php/Major_terrorist_attacks_since_September_11_2001)> (last visited on July 30, 2007).
2. The text of the Act is available at <<http://www.opsi.gov.uk/ACTS/acts2001/20010024.htm>> (last visited on July 30, 2007).
3. See *Secretary of State for the Home Department v. Rehman*, 2001, 1 *The Law England Law Reports Annotated*, 2002, p. 122, commented by D. BONNER, “Managing Terrorism While Respecting Human Rights? European Aspects of the Anti-Terrorism Crime and Security Act 2001”, 8 *European Public Law*, 2002, 497, p. 509 f.
4. See human rights *first*, “Attorney General Ashcroft Calls for Blanket Detentions of Haitian Asylum Seekers”, April 25, 2003, available at <[http://www.lchr.org/media/2003\\_alerts/0425.htm](http://www.lchr.org/media/2003_alerts/0425.htm)> (last visited on July 30, 2007).
5. 189 *UNTS* 150.
6. See Commission on Human Rights resolution 2002/35 of April 22, 2002, para. 8. See also resolution 2003/37 of April 23, 2003, para. 8.
7. See U.N. Doc. E/CN.4/2004/4 of August 5, 2003, p. 22, Annex I (emphasis added).
8. See Annex, para. 6.
9. See U.N. Doc. A/RES./61/171 of March 1, 2007, Preamble, 6<sup>th</sup> Sentence.
10. *Ibid.*, para. 1.
11. *Ibid.*, para. 6. On the concept of *non-refoulement* see *infra*, sub Section 2.
12. See the next Section with respect to the extent to which the individual right of asylum produces State obligations pursuant to applicable international law.
13. For example, Article 10 para. 3 of the Italian Constitution states that “the foreigner who is denied in his own country the actual exercise of the democratic liberties guaranteed by the Italian Constitution has the right of asylum in the territory of the Republic, in accordance with the conditions established by law” (translation provided by Federico Lenzerini). According to the predominant jurisprudence, developed by the Supreme Court, this provision is automatically applicable, even in the absence of a law implementing the constitutional

dictate; see, e.g., *Corte di Cassazione (Sez. Un.)*, *Jaber Allen c. Ministero interno*, 12 December 1996, in 2 *RCGI*, 1999, p. 187; *Tribunale of Rome*, *Oçalan c. Presidenza Consiglio ministri e Ministero interno*, October 1, 1999, in 83 *Rivista di Diritto Internazionale*, 2000, p. 241 (commented by E. ZANIBONI, in IX *Italian Yearbook of International Law*, 2000, p. 161 ff.).

14. See, however, the *Declaration on Measures to Eliminate International Terrorism*, adopted by the U.N. General Assembly in Annex to Resolution 49/60 (see U.N. Doc. A/RES/49/60 of December 9, 1994). According to this Declaration, terrorism includes all “[c]riminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes” which are “in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them” (see para. I.3).

15. See T. MARAUHN, “Terrorism”, in *Encyclopedia of Public International Law*, volume 4, 2000, 845, p. 846.

16. For a more comprehensive enquiry on the definition of terrorism in the context of the subject matter of the present writing see F. LENZERINI, “Witch Hunting: The Influence of the Fear of Terrorism in the Implementation of Asylum Law”, in XII *Italian Yearbook of International Law*, 2002, 95, p. 102 ff.

17. See *T. v. Secretary of State for the Home Department*, House of Lords, 1996, AC 742, p. 786 f.

18. At the time of writing the Convention was ratified by 140 States; see <<http://www.unhchr.ch/html/menu3/b/treaty2ref.htm>> (last visited on August 1, 2007).

19. *Protocol relating to the Status of Refugees*, 1967, 606 UNTS 267. At the time of writing 138 States were parties to the Protocol; see <<http://www.unhchr.ch/html/menu3/b/treaty5.htm>> (last visited on August 1, 2007).

20. See Article 1(2) of the Geneva Convention.

21. See Article 1(A)(2) of the Geneva Convention.

22. See next Section.

23. See D. GRIEG, “The Protection of Refugees and Customary International Law”, 8 *Australian Yearbook of International Law*, 1984, 108, p. 133 f.; T. MERON, *Human Rights and Humanitarian Norms as Customary Law*, Oxford, 1989, p. 23; G. STENBERG, *Non Expulsion and Non Refoulement*, Uppsala, 1989, *passim*; P. MATHEW, “Sovereignty and the Right to Seek Asylum: The Case of Cambodian Asylum-Seekers in Australia”, 15 *Australian YBIL*, 1994, p. 56; S. CHOWDHURY, “A Response to the Refugee Problems in Post Cold War Era: Some Existing and Emerging Norms of International Law”, 7 *International Journal of*

*Refugee Law*, 1995, 101, p. 103 ff.; K.M. KELLER, “A Comparative and International Law Perspective on the United States (Non)Compliance with its Duty of Non-Refoulement”, 2 *Yale Human Rights and Development Law Journal*, 1999, found on line at <[http://www.yale.edu/yhrdlj/vol02/keller\\_kathleen\\_note.htm](http://www.yale.edu/yhrdlj/vol02/keller_kathleen_note.htm)> (last visited on June 10, 2003); R. PISILLO MAZZESCHI, “Il diritto di asilo 50 anni dopo la Dichiarazione Universale dei Diritti dell’Uomo”, 12 *Rivista Internazionale dei Diritti dell’Uomo*, 1999, 694, p. 700; J. ALLAIN, “The *jus cogens* Nature of *non-refoulement*”, 13 *International Journal of Refugee Law*, 2001, 533, p. 538; G. S. GOODWIN-GILL and J. MCADAM, *The Refugee in International Law*, Oxford, Third ed., Oxford, 2007, p. 345 ff. See also the Summary Conclusions on “The Principle of *Non-Refoulement*” of the Cambridge Round Table of July 9-10, 2001 organised by the UNHCR and the Lauterpacht Research Centre for International Law, para. 1, available at <[http://www.unhcr.bg/global\\_consult/principe\\_non\\_refoulement\\_en.pdf](http://www.unhcr.bg/global_consult/principe_non_refoulement_en.pdf)> (last visited on August 1, 2007).

24. See GOODWIN-GILL and MCADAM, *cit.*, note 23, p. 346 f.

25. See, *inter alia*, P. WEIS, “Legal Aspects of the Convention of 25 July 1951 Relating to the Status of Refugees”, 30 *British Yearbook of International Law*, 1953, 478, p. 482 s.; *Ibid.*, “Territorial Asylum”, 6 *Indian Journal of International Law*, 1966, 173, p. 183; F. SCHNYDER, “Les aspects juridiques actuels du problème des réfugiés”, 114 *Recueil des Cours*, 1965, vol. I, 335, p. 381; F. KRENZ, “The Refugee as a Subject of International Law”, 15 *International and Comparative Law Quarterly*, 1966, 90, p. 104; GRIEG, *cit.*, note 23, p. 134; K. HAILBRONNER, “*Non-Refoulement* and Humanitarian Refugees: Customary International Law or Wishful Legal Thinking?”, 26 *Virginia Journal of International Law*, 1986, 857, p. 862; R. PLENDER, “The Present State of Research Carried Out by the English-Speaking Section of the Centre for Studies and Research”, *ACADÉMIE DE DROIT INTERNATIONAL DE LA HAYE – Centre d’Etude et de Recherche de Droit International et de Relations Internationales, 1989 – Le Droit d’Asile / The Right of Asylum*, Dordrecht/Boston/London, 1990, 63, p. 89; G. CARELLA, “Esodi di massa e diritto internazionale”, 75 *Rivista di Diritto Internazionale*, 1992, 903, p. 909; R. CHOLEWINSKI, “Enforced Destitution of Asylum Seekers in the United Kingdom: The Denial of Fundamental Human Rights”, 10 *International Journal of Refugee Law*, 1998, 462, p.475; GOODWIN-GILL and MCADAM, *cit.*, note 23, p. 206 ff.

26. All international instruments adopted after the Geneva Convention dealing with the principle at object – *with no exception* – expressly include in the prohibition of *refoulement* the ban of the rejection at the frontier. See Article 3(1) of the U.N. *Declaration on Territorial Asylum*, G. A. Res. 2312(XXII) of December 14, 1967; Article 3 para. 3 of the Asian-African Legal Consultative Committee (AALCC), *Principles Concerning Treatment of Refugees*,

Bangkok, 1966, in AALCC, *The Rights of Refugees: Report of the Committee and Backgrounds Materials*, New Delhi, 1966, p. 207 ff.; Article II para. 3 of the *OAU Convention on the Specific Aspects of the Refugee Problems in Africa*, 1969, 1000 UNTS 46; n. II para. 5 of the *Cartagena Declaration on Refugees*, 1984, available at <<http://www1.umn.edu/humanrts/instreet/cartagena1984.html>> (last visited on August 1, 2007). See also, consistently, *Khaboka v. Secretary of State for the Home Department*, United Kingdom Court of Appeal, 1993, *U.K. Immigration Appeals Reports*, 1993, 484, p. 487; Finally, see, *inter alia*, U.N. Commission of Human Rights, “A preliminary framework draft of principles and guidelines concerning human rights and terrorism”, Working paper prepared by Ms. Kalliopi Koufa, Special Rapporteur on terrorism and human rights, U.N. Doc. E/CN.4/Sub.2/2004/47 of August 11, 2004, according to which [a]ll national policies involving asylum and extradition must conform to international and national law. In particular, there must be full respect for the principle of “non-refoulement” and full regard to laws relating to the death penalty” (see para. E.17); consequently, “[e]xtradition requests should not be granted when there is reasonable cause to believe that such a request is motivated by prejudice, discrimination or other impermissible bias” (see para. E.19).

27. See LENZERINI, *cit.*, note 16, p. 108 f. In particular, the position supported in the text is upheld by the literal meaning of the term *refoulement*, which means “reject”, and by the fact that it is associated, in the pertinent conventional provisions (see, in addition to Article 33 of the Geneva Convention, Article II para. 3 of the *OAU Convention on the Specific Aspects of the Refugee Problems in Africa*) with the word “expel”, which already covers the situation of driving back persons already present within the territory of the State, thus presupposing a different situation than expulsion.

28. *Ibid.*, p. 109. The *rationale* of the principle of *non-refoulement* is to safeguard the personal integrity of the asylum-seeker; given the fundamental character of the protected value, it is thus to be interpreted extensively. Also, in concrete terms, when an alien has entered the frontier post, port or airport of a given State, he/she is already, physically, within the territory of such State (and so within its jurisdiction), and his/her rejection is thus to be considered as a case of driving back a person from the said territory; see, on this point, GOODWIN-GILL and MCADAM, *cit.*, note 23, p. 207.

29. On the concept of “safe third country” see, *inter alia*, B. LEIMSIDOR, “The Concept of Safe Third Country in Asylum Legislation, Regulation, and Practice: Political, Humanitarian, and Practical Considerations”, in L. ZAGATO (ed.), *Verso una disciplina commune europea del diritto d’asilo*, Padova, 2006, p. 39 ff.

30. See *supra*, note 18.

31. See *National Human Rights Commission v. State of Arunachal Pradesh*, 1996, *India – The Supreme Court Cases*, 1996, vol. 1, p. 742.

32. For a detailed analysis on the criteria for the application of such provision see W. KÄLIN & J. KÜNZLI, “Article 1F(b): Freedom Fighters, Terrorists, and the Notion of Serious Non-Political Crimes”, 12 *International Journal of Refugee Law*, 2000, Special Supplementary Issue, Exclusion from Protection, p. 46 ff.

33. The position that the fact of having served a sentence for the crime committed should exclude applicability of Article 1F is supported by UNHCR (see *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol relating to the Status of Refugees*, available at <<http://www.unhcr.org/home/PUBL/3d58e13b4.pdf>> (last visited on August 1, 2007) [hereinafter “Handbook”], para. 157). See also, consistently, *Canada (Attorney General) v. Ward*, Supreme Court of Canada, 1993, 2 *Canada Supreme Court Reports*, 1993, p. 689.

34. This purpose is also shared by Article 32 para. 1 of the Geneva Convention, which, although prohibiting State parties to expel a refugee “lawfully in their territory”, allows them to derogate from this provision “on grounds of national security or public order”.

35. See, e.g., GOODWIN-GILL and MCADAM, *cit.*, note 23, p. 183 f.

36. 1155 *UNTS* 331.

37. The idea according to which the enjoyment of basic human rights must be guaranteed also in favour of criminals is today generally shared and undisputed. With regard to terrorists see, e.g., *Svazas v. Secretary of State for the Home Department*, Court of Appeal of the United Kingdom, January 31, 2002, *Weekly Law Reports*, vol. 1, 2002, p. 1891, para. 25 (“[e]ven in cases of suspected terrorism, more than four days’ detention without judicial authority violates the requirement that the state bring the suspect promptly before a judge”).

38. This is an inescapable effect of the well-established rule that any application for asylum or recognition of refugee status is to be evaluated by the competent national authorities on a strictly individual basis.

39. See *Corte di Cassazione, Prima Sezione civile, judgement n. 12721* of August 31, 2002, partially reproduced in “Cassazione: una condanna non giustifica l’espulsione”, <<http://www.stranieriinitalia.it/news/cassazione2set.htm>> (last visited on August 1, 2007; text translated by Federico Lenzerini).

40. See *Pushpanathan v. Minister of Citizenship and Immigration*, judgement of June 4, 1998, [1998] 1 *Supreme Court Reports* 982, para. 73. According to the Court, “[t]his approach reflects the intention of the signatory states [to the Geneva Convention] to create a humanitarian balance between the individual in fear of persecution on the one hand, and the

legitimate concern of states to sanction criminal activity on the other” (*ibid.*). See, similarly, *Secretary of State for the Home Department v. AA (Palestine)*, U.K. Asylum and Immigration Tribunal, May 18, 2005, available at <[http://www.refugeecaselaw.org/cases\\_files/United%20Kingdom%20%28AIT%20%20QBD%29/case\\_889\\_1.pdf](http://www.refugeecaselaw.org/cases_files/United%20Kingdom%20%28AIT%20%20QBD%29/case_889_1.pdf)> (last visited on August 19, 2007); in particular, according to the Tribunal, in applying Article 1F(b) and (c) of the Geneva Convention, the principle of “[p]roportionality, ie the balance between the potentially exclusionary acts and the consequences of a refusal of asylum [is] also relevant, consistently with international human rights law”.

41. See *Suresh v. Minister of Citizenship and Immigration*, judgement of January 11, 2002, available at <<http://scc.lexum.umontreal.ca/en/2002/2002scc1/2002scc1.html>> (last visited on August 1, 2007), p. 2.

42. See Handbook, para. 154.

43. *Ibid.*, para. 156.

44. See, in favour of the *jus cogens* nature of the principle of *non-refoulement*, ALLAIN, *cit.*, note 23, *passim*.

45. See *Soering v. The United Kingdom*, July 7, 1989, Ser. A, n. 161, 11 *Human Rights Law Journal*, 1990, p. 335.

46. See, e.g., *General Comment n. 15(1986) (Position of Aliens)*, U.N. doc. A/41/40, 1986, Annex VI, para. 5; *Chitat N.G. v. Canada*, Communication n. 469/1991, September 25, 1991, 1-2 *International Human Rights Reports*, 1994, p. 161, para. 14.2; *General Comment n. 20(44) (article 7)*, U.N. doc. CCPR/C/21/Rev.1/Add.3 of April 7, 1992, para. 9; *Kindler v. Canada*, Communication n. 470/1991, July 30, 1993, U.N. doc. CCPR/C/48/D/470/1991 of November 11, 1993, available at <<http://www1.umn.edu/humanrts/undocs/html/dec470.htm>> (last visited on August 1, 2007).

47. See, *inter alia*, *Mutombo v. Switzerland*, Communication n. 13/1993, April 27, 1994, 15 *Human Rights Law Journal*, 1994, p. 164; *Thair Hussain Khan v. Canada*, Communication 15/1994, November 15, 1994, 15 *Human Rights Law Journal*, 1994, p. 426; *Aemei v. Switzerland*, Communication n. 34/1995, October 26, 1995, available at <<http://www1.umn.edu/humanrts/cat/decisions/34-1995.htm>>; *Ismail Alan v. Switzerland*, Communication n. 21/1995, May 8, 1996, 8 *International Journal of Refugee Law*, 1996, p. 440; *X v. The Netherlands*, Communication n. 36/1995, May 8, 1996, available at <<http://www1.umn.edu/humanrts/cat/decisions/CATVWS21.htm>> (last visited on August 1, 2007); *Pauline Muzonzo Paku Kioski v. Sweden*, Communication n. 41/1996, May 8, 1996, 8 *International Journal of Refugee Law*, 1996, p. 651, 4 *International Human Rights Reports*,

1997, p. 83; *Kaveh Yarag Tala v. Sweden*, Communication n. 43/1996, November 15, 1996, U.N. Doc. CAT/C/17/D/43/1996, 5 *International Human Rights Reports*, 1998, p. 119; *Tapia Paez v. Sweden*, Communication n. 39/1996, May 7, 1997, 5 *International Human Rights Reports*, 1998, p. 318; *Orhan Ayas v. Sweden*, Communication n. 97/1997, November 12, 1998, 11 *International Journal of Refugee Law*, 1999, p. 202, para. 7; *A. v. The Netherlands*, Communication n. 91/1997, November 13, 1998, 11 *International Journal of Refugee Law*, 1999, p. 217; *Avedes Hamayak Korban v. Sweden*, Communication n. 88/1997, November 16, 1998, 11 *International Journal of Refugee Law*, 1999, p. 210; *Halil Haydin v. Sweden*, Communication n. 101/1997, November 20, 1998, 6 *International Human Rights Reports*, 1999, p. 677; *A.S. v. Sweden*, Communication n. 149/1999, November 24, 2000, 13 *International Journal of Refugee Law*, 2001, p. 638.

48. See *Ahmed v. Austria*, judgement of December 17, 1996, 9 *International Journal of Refugee Law*, 1997, p. 279, para. 40 f.

49. See *Chahal v. the United Kingdom*, judgement of November 15, 1996, 9 *International Journal of Refugee Law*, 1997, p. 86.

50. See, on this point, C. WARBRICK, “The Principles of the European Convention on Human Rights and the Response of States to Terrorism”, *European Human Rights Law Review*, 2002, 287, p. 297.

51. See, *inter alia*, *Cruz Varas and Others v. Sweden*, judgement of March 20, 1991, 12 *Human Rights Law Journal*, 1991, p. 142, para. 70; *Vilvarajah v. the United Kingdom*, judgement of October 30, 1991, 12 *Human Rights Law Journal*, 1991, p. 432, para. 103; *Chahal v. the United Kingdom* (European Commission of Human Rights) Appl. n. 22414/93, Report of June 27, 1995, 18 *European Human Rights Reports*, 1994, CD193; *Ahmed v. Austria*, *cit.*, note 48, para. 39; *Abdurrahim Incedursun v. The Netherlands*, judgement of June 9, 1999, 12 *International Journal of Refugee Law* 2000, p. 108, para. 27; *Jabari v. Turkey*, judgement of July 11, 2000, 12 *International Journal of Refugee Law*, 2000, p. 597, para. 38. The ECtHR has based the obligation of *non-refoulement* not only upon the right to be protected against torture and similar treatment, but also on other rights recognized by the European Convention on human rights, especially right to life, right to a fair trial, and right to respect for private and family life; see, comprehensively, N. MOLE, *Asylum and the European Convention on Human Rights*, Council of Europe, Strasbourg, 2000.

52. See *Khashiyev and Akayeva v. Russia*, cases No. 57942/00 and 57945/00, judgment of February 24, 2005, para. 170 (emphasis added).

53. *Convention for the Protection of Human Rights and Fundamental Freedoms*, 1950, CETS No. 5.

54. See L. OFFEDDU, “Arrestato Bakri, il predicatore dell’odio”, in *Corriere della Sera*, August 12, 2005, p. 11.

55. See, in particular, the *Suresh* case, *supra*, note 41 and corresponding text.

56. See the text of Article 1F(b) of the Geneva Convention (*emphasis added*). See, *inter alia*, S. D. AMARASINHA and M. ISENBECKER, “Terrorism and the Right to Asylum under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees – A Contradiction in Terms or Do Opposite Attracts?”, 65 *Nordic Journal of International Law*, 1996, 223, p. 228 f. The solution proposed in the text, however, is not universally accepted; *contra*, see, e.g., *Secretary of State for the Home Department v. AA (Palestine)*, *cit.*, note 40, para. 48 (“[a]lthough Article 1F(b) is not to be equated with a simple anti-terrorist provision, largely because of the difficulties inherent in such language and in its application to particular cases, membership of a particular organisation may itself suffice for exclusion if that organisation’s activities are ‘predominantly terrorist’”; *emphasis in the original text*).

57. See *supra*, text corresponding to note 36.

58. See “Guantanamo Bay detention camp”, *Wikipedia*, available at <[http://en.wikipedia.org/wiki/Guantanamo\\_Bay\\_detainment\\_camp](http://en.wikipedia.org/wiki/Guantanamo_Bay_detainment_camp)> (last visited on August 1, 2007).

59. See “Extraordinary rendition”, *Wikipedia*, available at <[http://en.wikipedia.org/wiki/Extraordinary\\_rendition](http://en.wikipedia.org/wiki/Extraordinary_rendition)> (last visited on August 1, 2007).