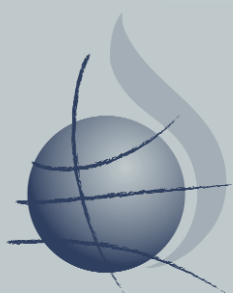


**ICJ EMINENT JURISTS PANEL**

**TERRORISM,  
COUNTER-TERRORISM  
AND HUMAN RIGHTS**



INTERNATIONAL  
COMMISSION  
OF JURISTS

# ICJ EMINENT JURISTS PANEL

## TERRORISM, COUNTER-TERRORISM AND HUMAN RIGHTS

There is presently no part of the world that is immune from terrorism. The threats are real and call for a firm response from states. The response should, however, be proportional to the danger involved and carefully tailored to address it, bearing in mind that the danger includes not only the harm done by terrorism, but also the harm done to the fabric of our societies by disproportionate responses that undermine democracy itself.

Arthur Chaskalson, ICJ President, South Africa  
Opening speech, ICJ Biennial Conference, Berlin 2004

### WHY A PANEL ON TERRORISM, COUNTER-TERRORISM AND HUMAN RIGHTS?

With continuing widespread fear of terrorist attacks and a security-dominated agenda, governments are redefining and seeking to bypass well-established human rights and rule of law principles. Terrorism itself puts human rights in peril and states have a duty to protect people from terrorist acts. However, new and old counter-terrorism measures worldwide threaten the rule of law and human rights.

The legal and human rights community is struggling to meet this global challenge in an effective and coordinated way. Policy-makers dismiss general statements of human rights principles as unrealistic and the public in many countries seems ready to accept an erosion of rights. Some states have faced cycles of terrorism and counter-terrorism for decades, yet policy-makers are not listening to the lessons of history. Despite signs of an emerging rhetorical acceptance by democratic states that their fight against terrorism should not jeopardize democratic values, there is still little agreement on what this means in practice for the work of the police, the military, anti-terror units and the courts.

There is a need to move from principle to a more sophisticated and detailed exploration of the issues. What are the acceptable limits of counter-terrorism measures? What is the nature of today's security threats and how different are they to past threats? Do these threats

justify changing existing rules of international human rights and humanitarian law? How should laws and policies change if they are both to confront terrorism effectively and respect human rights and the rule of law?

The legal community worldwide must now take a leadership role in articulating how the rule of law can be respected in addressing terrorism in its many complex global and local forms.

To meet this challenge, the ICJ has launched in October 2005 a major 18-month initiative: the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights.

### THE HUMAN RIGHTS PRICE OF EXCESSIVE COUNTER-TERRORISM MEASURES

- Detainees tortured to extract information and torture "outsourced"
- Suspects transferred to countries where they are at risk of torture
- Indefinite or secret detentions, often without charge or trial
- Protective reach of the courts cut down, detainees held without habeas corpus.
- Fair trial guarantees ignored, rights of defence cut down and rights of appeal removed
- Criminalization of political and social dissent
- Freedom of expression threatened
- Erosion of democratic checks and balances
- Discrimination against minority communities
- Vague definitions of terrorism misused

# WHO ARE THE EMIN

## **Arthur CHASKALSON**

**SOUTH AFRICA  
CHAIR OF THE PANEL**

Former Chief Justice of South Africa, Arthur Chaskalson has been a leading human rights lawyer during apartheid in his country, where he acted as counsel in key human rights cases such as the Rivonia Trial in 1963-64 when Nelson Mandela and other African National Congress members were convicted and sentenced to life imprisonment. In 1994, he was appointed first President of South Africa's new Constitutional Court where he served in this capacity until 2005.

## **Georges ABI-SAAB**

**EGYPT**

Professor Georges Abi-Saab is one of the world's leading scholars in public international law. During his career, he has served as a judge at the Appeals Chamber of the International Criminal Tribunals for the former Yugoslavia and for Rwanda and ad hoc judge at the International Court of Justice. He is currently a member of the WTO Appellate Body.

## **Robert K. GOLDMAN**

**UNITED STATES**

Professor of Law at American University's Washington College of Law, Robert K. Goldman recently served as the UN Human Rights Commission's expert on counter-terrorism and human rights. As a former member of the Inter-American Commission on Human Rights, he brings particular expertise on past counter-terrorism policies in Latin America.

## **Hina JILANI**

**PAKISTAN**

Lawyer of the Supreme Court of Pakistan, Hina Jilani is also the founder and current Vice Chairperson of the Human Rights Commission of Pakistan, a prominent NGO in that country. During her mandate as the first UN expert on human rights defenders, she had wide exposure to the impact of counter-terrorism measures on human rights defenders and their work.

## **WHAT IS THE EMINENT JURISTS PANEL ?**

The Eminent Jurists Panel is composed of eight internationally renowned jurists from all regions and legal traditions, chaired by Arthur Chaskalson, Former Chief Justice of South Africa and the first President of South Africa's new Constitutional Court. The Panel is considering the nature of today's terrorist threats and the impact of new and old counter-terrorism measures on human rights. It is also exploring how counter-terrorism laws and policies can be both effective and respect human rights and the rule of law. A small team in the ICJ Secretariat in Geneva is coordinating the work of the Panel.

*Our answer now must be a firm, well-thought-out and coherent response to current security concerns. A good start was made by the International Commission of Jurists, when, during its biennial conference at the end of August '04, 160 international lawyers from around the world adopted a Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism.*

Mary Robinson

"Connecting Human Rights, Human Development and Human Security", 10 September 2004

# EVENT JURISTS ?

## **Vitit MUNTARBHORN**

**THAILAND**

Vitit Muntarbhorn is a renowned Professor of Law at Chulalongkorn University in Bangkok and a Member of the Advisory Council of Jurists of the Asia-Pacific Forum. Former expert of the UN Commission on Human Rights on the Sale of Children, Child Prostitution and Child Pornography, he currently serves as the UN expert on human rights in North Korea.

## **Mary ROBINSON**

**IRELAND**

Former United Nations High Commissioner for Human Rights and the first woman President of Ireland, Mary Robinson is a prominent human rights advocate. She is now Head of the Ethical Globalization Initiative in New York and Vice-President of the Club de Madrid, organizer of the 2005 International Summit on Democracy, Terrorism and Security.

## **Stefan TRECHSEL**

**SWITZERLAND**

An expert in criminal law and criminal procedure, Stefan Trechsel served for more than 20 years as a member of the European Commission on Human Rights, including as its President. He also has expertise on legal and justice reforms in the former Soviet Union and Russian Federation countries.

## **E. Raúl ZAFFARONI**

**ARGENTINA**

E. Raúl Zaffaroni has served as a judge during twenty years. A widely respected jurist, he is the author of a number of reforms of criminal codes in his own country and in other Latin American countries. He has also served as Director of the UN Latin-American Institute on crime prevention (ILANUD). In 2003, he was appointed judge at the Supreme Court of Argentina.

## **OVER 18 MONTHS THE PANEL WILL:**

- Listen to past and present experiences of cycles of terrorism and counter-terrorism in a series of national and regional hearings in different parts of the world
- Meet three times in plenary
- Seek meetings with government and security officials who shape or implement counter-terrorism policies
- Invite submissions from non-governmental organizations, lawyers, judges, academics, national human rights institutions, governmental authorities and inter-governmental organizations
- Engage in discussions with ICJ's global network of judges, lawyers, prosecutors and human rights defenders
- Stimulate public debate on critical issues through the media in different languages
- Produce a final, detailed report with recommendations, which the ICJ will seek to have translated into French, Spanish, Arabic and Russian and which will guide ICJ advocacy for the next phase of its Global Security and Rule of Law Programme

**We speak about laws and policies. But we should never forget that this is about people, about families. Terrorism creates victims. Counter-terrorism is creating new victims.**

Nicholas Howen, ICJ Secretary-General  
ICJ Biennial Conference, Berlin 2004

## LEGAL AND POLICY ISSUES

- Should terrorism be fought by military means or should it be tackled through the criminal justice system?
- Do we need to have intrusive surveillance of public places and transports, data on travel, phone calls and Internet use in order to protect people from terrorism?
- How can we criminalize incitement to violence without eroding freedom of speech, the press and religion?
- How to increase security without discriminating, alienating and marginalizing minority communities?
- Does human rights law prevent effective international legal cooperation in fighting terrorism?
- Should suspected terrorists be tried by special, even military, courts and should trial procedures be relaxed?
- How can intelligence services both be effective and accountable? How can intelligence information be used fairly in court?
- What is the role of the Security Council in fighting terrorism? What due process should persons have when their names are put on international terrorist lists?
- Are targeted killings a legitimate act of a state?
- What are the rights of victims of counter-terrorism?

## THE NATIONAL AND REGIONAL HEARINGS

At the heart of the Eminent Jurists Panel initiative is a series of public hearings in countries and regions around the world (see list of proposed hearings below) that have in the past faced cycles of terrorism and counter-terrorism or still face threats today. Lawyers, judges, government officials, NGOs, human rights defenders, academics and victims will be approached to identify the lessons that today's policy-makers should learn from their experiences. They will be asked to identify problems with contemporary counter-terrorism measures in their countries and the most difficult unresolved legal and policy challenges. They will consider the impact in their region of the current "war on terror" and how to fight terrorism within the rule of law. They will reflect on the role of the legal and judicial communities in ensuring respect for the principles the ICJ laid down in 2004 in its Berlin Declaration.

The hearings will stimulate critical domestic debate and expand the Panel's source of first-hand information and legal and policy analysis. The hearings will be timed and organized to support local initiatives that seek to ensure counter-terrorism measures respect human rights and the rule of law. At some hearings participants may decide to adopt recommendations to support subsequent advocacy in their own country and region.

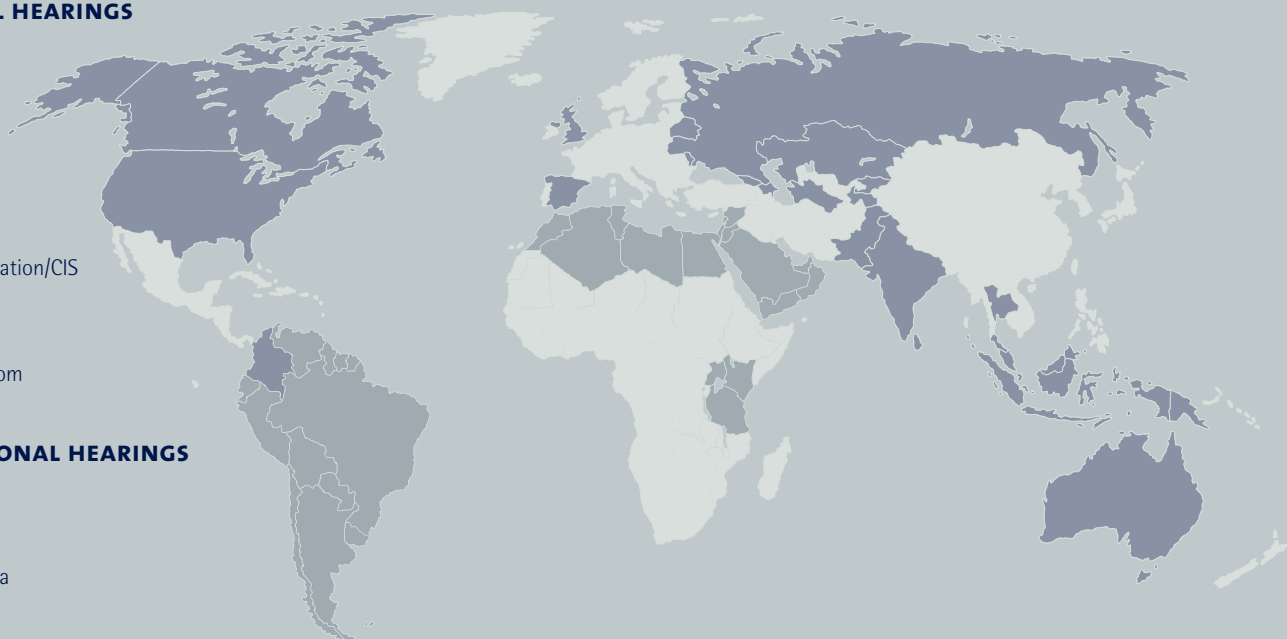
ICJ sections, affiliates or other legal and human rights organizations in each country are working with the ICJ Secretariat to organize these hearings. At least one member of the Panel will attend each hearing. Background papers will be prepared before each hearing and the organizers will submit a report of the hearing to the Panel.

### NATIONAL HEARINGS

Australia  
Canada  
Colombia  
India  
Indonesia  
Malaysia  
Pakistan  
Philippines  
Russian Federation/CIS  
Sri Lanka  
Spain  
Thailand  
United Kingdom  
United States

### SUB-REGIONAL HEARINGS

East Africa  
North Africa  
Middle East  
South America



## RECENT ICJ INITIATIVES ON TERRORISM, COUNTER-TERRORISM AND HUMAN RIGHTS

- Two-volume study on Terrorism and Human Rights
- Three-year advocacy leading to the establishment of a UN Special Rapporteur on counter-terrorism and human rights
- Global monitoring of counter-terrorism measures and interventions on domestic legislation, including Bahrain, Colombia, Nepal, Thailand and the United Kingdom
- Bi-monthly E-Bulletin on Counter-terrorism and human rights
- Preparation of a series of round-table policy dialogues

## WHY THE ICJ?

Founded in Berlin in 1952, the ICJ is a global network of judges, lawyers and human rights defenders united by international law and rule of law principles that advance human rights. Using our expertise in law, justice systems and advocacy, we work for victims to obtain remedies, for those responsible for abuses to be held accountable and for justice systems to be independent and active protectors of human rights. We work to change law and policy at the national and international levels when they do not adequately protect people from human rights violations.

The ICJ's greatest asset is its network of 60 Commissioners, 37 National Sections and 45 Affiliated Organizations. Having as its members many of the world's most prominent judges, lawyers and human rights defenders, the ICJ is able to mobilize authoritative and practical expertise on most rule of law and human rights issues. The ICJ network crosses linguistic, cultural and legal frontiers, spread across all regions of the world. It can command attention at the highest levels of the judiciary, legislature and executive.

## THE BERLIN DECLARATION: A COMMITMENT TO ACT

In August 2004, the ICJ brought together 160 jurists of all regions in the city of its birth, Berlin, and adopted the Berlin Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism. The Declaration sets out 11 principles that states should respect when countering terrorism.

In addressing today's rule of law challenges, judges and lawyers have a responsibility to play a critical leadership role. With its reliable legal approach to the protection and promotion of human rights and its strong network, the ICJ is in a unique position to inform and mobilize the legal community around the world and to act as a catalyst for change.



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## HOW TO GET INVOLVED

For more information about the Eminent Jurists Panel and how to get involved, please contact the ICJ Global Security and Rule of Law team: Gerald Staberock, Director ([staberock@icj.org](mailto:staberock@icj.org)) or Isabelle Heyer, Programme Officer ([heyer@icj.org](mailto:heyer@icj.org)).

The ICJ Global Security and Rule of Law Programme is supported by the Royal Norwegian Ministry of Foreign Affairs, the Spanish Ministry of Foreign Affairs and the Swiss Ministry of Foreign Affairs. If you are interested in supporting this initiative, please contact: Jonathan Wood, Institutional Development Officer ([wood@icj.org](mailto:wood@icj.org)).

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## CANADIAN HEARINGS

The Canadian national hearings of the Eminent Jurists Panel will take place in Spring 2007 in Toronto and Ottawa. The hearings will include both public submissions by interested groups and private meetings with government and other officials on anti-terrorism law in Canada. For more information on the Eminent Jurists process, see <http://ejp.icj.org/>.

Two Eminent Jurists will travel to Canada to conduct these hearings and attend these meetings:

### Robert K. GOLDMAN (United States)

Professor of Law at American University's Washington College of Law, Robert K. Goldman recently served as the UN Human Rights Commission's expert on counterterrorism and human rights. As a former member of the Inter-American Commission on Human Rights, he brings particular expertise on past counterterrorism policies in Latin America.

### Arthur CHASKALSON (South Africa)

#### Chair of the Panel

Former Chief Justice of South Africa, Arthur Chaskalson has been a leading human rights lawyer during apartheid in his country, where he acted as counsel in key human rights cases such as the Rivonia Trial in 1963-64 when Nelson Mandela and other African National Congress members were convicted and sentenced to life imprisonment. In 1994, he was appointed first President of South Africa's new Constitutional Court where he served in this capacity until 2005.

The public hearings in Ottawa will be hosted by the University of Ottawa, room TBA. The Toronto hearings will be hosted at Osgoode Hall Law School's Professional Development facility at 1 Dundas Street West, Suite 2602, Toronto. Detailed schedules will be posted at ICJ Canada's website.

Updates on the hearing locations and schedule will be posted on ICJ Canada's website: <http://www.icjcanada.org/en/home.htm>.

**EJP CANADIAN HEARINGS CONTACT:** Professor Craig Forcese, Faculty of Law, University of Ottawa. E-mail: [cforcese@uottawa.ca](mailto:cforcese@uottawa.ca).

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## DRAFT SCHEDULE OF PANEL EVENTS IN CANADA (as of 02.19.07)

Date	Item
Tuesday, April 24	Public hearings in Toronto
Wednesday, April 25	Public hearings in Ottawa
Thursday, April 26	Government meetings in Ottawa
Friday, April 27	Wrap up