The Lawfulness of counter-terrorism measures depend on conformity with international human rights law and respect for the rule of law.

An obligation to protect citizens from terrorist attacks neither excuses nor justifies human rights violations, and it can never oust the application of non-derogable rights.

(IBA Task Force on Terrorism)
Where the law relating to terrorism confers discretionary powers upon public agencies, adequate safeguards, including judicial review, must exist for the purpose of ensuring that discretionary powers are not exercised arbitrarily or unreasonably.

Checks might also be implemented through internal and external supervision of agencies and public servants, as well as through the adoption and comprehensive implementation of codes of conduct.

The counter-terrorism laws of some States expressly recognize the application of the principle of legality, the rule of law and human rights to the countering of terrorism, which should be seen as an essential check on the implementation in practice of the obligation to comply with human rights while countering terrorism.
States undermine Human Rights in Counter-Terrorism

- Argue that Human Rights do not apply during armed conflicts linked to counter-terrorism
- Argue that Human Rights do not apply to areas outside a state’s territory where the state has effective control
- See UN Human Rights Committee Concluding Observations on Israel & Ireland, and UN Committee Against Torture Concluding Observations USA
UN Special Rapporteur on CT and HR Ben Emmerson
http://www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx
In the application and exercise of all functions under the law relating to terrorism, it is unlawful for any person to act in any way that is incompatible with the purposes and provisions of international human rights and refugee law that are binding upon the State. In this regard:

1. The exercise of functions and powers shall be based on clear provisions of law that exhaustively enumerate the powers in question.

2. The exercise of such functions and powers may never violate peremptory or non-derogable norms of international law, nor impair the essence of any human right.

3. Where the exercise of functions and powers involves a restriction upon a human right that is capable of limitation, any such restriction should be to the least intrusive means possible and shall:
   
   (a) Be necessary in a democratic society to pursue a defined legitimate aim, as permitted by international law; and

   (b) Be proportionate to the benefit obtained in achieving the legitimate aim in question.

4. If the State is involved, as a party, in an ongoing armed conflict, the above provisions shall apply also to securing compliance with principles and provisions of international humanitarian law, without prejudice to the obligation to comply with international human rights and refugee law.
Jus Cogens

- Prohibition of torture, slavery, genocide, racial discrimination and crimes against humanity
- Right of Self-Determination
- Non-discrimination
Non-Derogable Rights apply during war or public emergency ICCPR Art. 4

- Right to Life - prohibition of arbitrary deprivation of life
- Prohibition on Torture and Inhuman or Degrading Treatment
- Prohibition Against Slavery & Servitude
- Imprisonment for debt
- Freedom from retroactive criminal conviction and penalties
- Right to be recognized as a person before the law
- Freedom of thought, conscience and religion
Non Derogable UN Human Rights Committee General Comment 29

- Right of detainees to be treated with humanity and with respect for the inherent dignity of the human person
- Prohibition on abductions or unacknowledged detention
- Arbitrary deprivation of liberty (Look at pretrial procedures on bail, remand, detention, control orders, and compulsory hearings)
- Right to take proceedings before a Court to determine the lawfulness of detention (habeus corpus or amparo) Violations of due process rights (Look for restrictions to fair trial, presumption of innocence, trial by court of law, information of reason for detention, prompt notification of charges, right to be heard, access to legal counsel, effective oversight of detention by judicial officer, right to review by competent and independent mechanism, right to effective remedy)
Limitations

- In pursuit of national security, public order, and public safety

- Limitations must be prescribed by law, necessary in a democratic society, and proportionate to the aim in question
Permissible Derogations from Civil & Political Rights in Time of War or Public Emergency which Threaten the Life of the Nation

- Derogation must be **temporary** to suspend - Rare, Strictly Limited
- **Proportionate**: Limited to the extent strictly required by the exigencies of the situation
- Consistent with a state’s other international law obligations
- **Non-discriminatory**
- State of Emergency must be **officially proclaimed**
- Notice of derogation deposited w/ UN Secretary General
- Notice of withdrawal of the derogation at the end of the state of emergency must be deposited w/ UN Secretary General
Declaration of Derogation

- UK Derogation to Article 5 (1)(f) ECHR from 2001-2004
- Note verbale from UK to Council of Europe, see A and Others V. Secretary of State for the Home Department (2004)
Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR

- National Security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

- National Security should not be invoked as a reason to limit rights when the threat to law and order is ‘merely local or relatively isolated’

- National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be used when there exists adequate safeguards and effective remedies against abuse.

- The systematic violation of human rights undermines true national security and may jeopardise international peace and security.
Limitations of Human Rights

Freedom of Expression (prohibit incitement to terrorism, restrict access to phone/internet)

- Freedom of Association and Assembly (prevention of disorder and crime)
- Freedom of Movement (travel restrictions, residency restrictions, relocation, tracking devices, expulsion, denial of entry)
- Respect for One’s Private and Family Life (surveillance for National Security)
- ECHR also permits limitation on freedom of conscience and religion
- Limitation must meet standards of:
  - Equality & Non-Discrimination,
  - Prescribed by law,
  - In pursuance of specific, legitimate purpose/objective,
  - Necessary in a democratic society & proportionate (least intrusive means)
1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order (ordre public), or of public health or morals.
ICCPR Article 21 Freedom of Assembly

- The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.
1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.
ICCPR Article 12 Freedom of Movement

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.
ICCPR Article 17 Right to Privacy

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.
European Court of Human Rights Sunday Times v. UK, Restrictions

- Interference in a right corresponds to pressing social need
- Proportionate to the aim pursued (inquiry into the seriousness of the interference)
- The State gave relevant and sufficient reasons
- Necessity - high threshold, high burden of proof for State
Prescribed by law

- Law must be adequately accessible so that individuals understand how law limits their rights
- Law must be formulated with sufficient precision so that individuals can regulate their conduct
- Non-retroactive
In pursuit of a Legitimate Purpose

- National Security
- Public Safety
- Public Order
- Health
- Morals
- Human Rights and Freedoms of Others
Necessary in a democratic society

- Have a rational link between the limiting measure and the pursuit of the particular objective - Does the measure logically further the objective
- Proportional (least intrusive means)
International Covenant on Civil and Political Rights, Article 4

Derogations

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

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

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.
Public Emergency

1. Actual or imminent crisis or emergency
2. Exceptional, such that normal measures are inadequate
3. Threaten the continuance of the organized life of the community
4. Affect the entire population (or part) of the State taking measures

- Proclamation, Notice & Review
- Accountability of institutions
Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
Right to Life

- States cannot invoke war or public emergency to justify the arbitrary deprivation of life in counter-terrorism.

- ECHR - No violation where it results from the use of force which is no more than absolutely necessary:
  - A) Defence of any person from unlawful violence
  - B) In order to effect a lawful arrest or to prevent the escape of a person from unlawful violence
  - C) In action lawfully taken for the purpose of quelling a riot or insurrection

- Threshold no more than absolutely necessary

- McCann v. UK – Violation of Article 2 disproportionate use of force, questions over level of training received by the marksmen
McCann v. UK – ECTHR Violation of Art. 2

- Disproportionate use of force, questions over level of training received by the marksmen
- Use of force is not accompanied by the intention to kill
- Use of force is 'absolutely necessary'
- Strictly proportionate
- CT operations planned and controlled by the authorities so as to minimize, to the greatest extent possible, recourse to lethal force
- See also Ergi v. Turkey
Jean Charles de Menezes
Chechen terrorists took over 900 people as hostages in the Dubrovka theatre in Moscow on 23-26 October 2002, they were armed with machine guns, used booby traps and positioned 18 suicide bombers among the hostages. The Russian security forces released a narcotic gas that affected the brain through the ventilation system, knocking out the terrorists. 102 hostages died on the spot, during the faulty evacuation, or in the hospital due to lack of proper medical assistance (including shortage of antidote Nalaxone).

Court finds violations of Art. 2 on account of the inadequate planning and conduct of the rescue operation and the authorities’ failure to conduct an effective investigation into the rescue operation.
Massive use of indiscriminate weapons incompatible with the standard of care required for the use of lethal force by state agents

Military planes dropped explosives over convoy of internally displaced persons in Chechnya
UN Human Rights Committee
Guerrero v. Colombia (1982)

- Violation of Art 6
- Non-International Armed Conflict
- Colombian police opened fire on suspected rebels despite the fact that they had not taken hostages, disproportionate use of force, arrest could have been used
- See Body of Principles on the Use of Force and Firearms by Law Enforcement Officials
- Principles on the Effective Prevention and Investigation of Extra-Legal, Summary, and Arbitrary Executions
Right not to be arbitrarily deprived of one’s life is non derogable

States must take positive measures to protect individuals within their jurisdiction not only from unlawful killings by the state and its agents but also by non state actors

The circumstances in which the state may use force or firearms, particularly lethal force, are sharply limited and must be construed narrowly

CT operations which use force must be carefully planned and controlled to avoid the risk of arbitrary deprivation of life

Alleged unlawful killings must be investigated
Right to Liberty and Security of the Person
ICCPR Art. 9, ECHR Art. 5

- Prohibition on arbitrary arrest and detention
- Deprivation of liberty must be on such grounds and in accordance with such procedure as are established by law
- Requirement to inform individuals at the moment of arrest of the reasons for that arrest, and to be promptly informed of any charges against them
- Obligation to bring a detainee promptly before a judge or other officer authorized by law to exercise judicial power and the detainee’s entitlement to trial within a reasonable time or to release
- Provision that pre-trial detention not be the general rule
- The right to take proceedings before a court, in order that that court may decide without delay on the lawfulness of detention and order release if the detention is not lawful (habeas corpus or amparo)
- Enforceable right to compensation for victims of unlawful arrest or detention
Colombia-Police detain FARC
Isayeva v. Russia Art 2 ECTHR
Arbitrary Detention, Inhuman treatment, Liberty, Security of the Persons, Arts, 3, 5, 13, 38
Detention and Interrogation of David Miranda
States cannot invoke emergency relating to terrorism to justify suspension of right to liberty and security of the person.

Preventive detention for reasons of public security must not be arbitrary, must be based on grounds and procedures established by law, information of reasons must be given, court control of the detention must be available, compensation in the case of breach
UN Special Rapporteur Arrest & Interrogation of Terrorist Suspects

1. Any form of secret or unacknowledged detention is prohibited.

2. Every person has the right to contact a lawyer of his or her choice from the moment of arrest or detention. The scope of such choice may be restricted for genuine reasons of national security.

3. Any form of torture or other cruel, inhuman or degrading treatment or punishment is prohibited. Compliance with this prohibition shall be effectively monitored.

4. Information obtained through torture or other cruel, inhuman or degrading treatment or punishment, anywhere in the world, shall not be used in any proceedings and shall never be solicited or condoned.

5. Anyone arrested as a terrorist suspect who would face a real risk of torture or other cruel, inhuman or degrading treatment or punishment shall enjoy the right of nonrefoulement, and may not be extradited, expelled or otherwise formally or informally removed to a country or area if the foreseeable consequence of that measure is the person’s exposure to such a risk.
ECTHR Art. 5

- Lawful detention when it is reasonably considered necessary to prevent a detainee committing an offence
- No legal black hole - must have charge, trial, right to challenge lawfulness of detention before ct.
- Aksoy v. Turkey – violation due to 14 day detention prior to being brought before a judge, Ct states that this did not conform to the exigencies of the public emergency
- A and Others v. UK, Discriminatory and Disproportionate nature of detention regime
- See also Inter American Commission on Human Rights, precautionary measures relating to indefinite detention without charge or trial of detainees in Guantanamo (2002-2006)
When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty

When the deprivation of liberty results from the exercise of specifically enumerated rights or freedoms in the UDHR or ICCPR or

When the total or partial non-observance of the international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character (secret evidence, military commissions deprive right to challenge)
UN Working Group on Arbitrary Detention Principles

- (a) Terrorist activities carried out by individuals shall be considered as punishable criminal offences, which shall be sanctioned by applying current and relevant penal and criminal procedure laws according to the different legal systems;
- (b) Resort to administrative detention against suspects of such criminal activities is inadmissible;
- (c) The detention of persons who are suspected of terrorist activities shall be accompanied by concrete charges;
- (d) The persons detained under charges of terrorist acts shall be immediately informed of them, and shall be brought before a competent judicial authority, as soon as possible, and no later than within a reasonable time period;
- (e) The persons detained under charges of terrorist activities shall enjoy the effective right to habeas corpus following their detention;
- (f) The exercise of the right to habeas corpus does not impede on the obligation of the law enforcement authority responsible for the decision for detention or maintaining the detention, to present the detained person before a competent and independent judicial authority within a reasonable time period. Such person shall be brought before a competent and independent judicial authority, which then evaluates the accusations, the basis of the deprivation of liberty, and the continuation of the judicial process;
- (g) In the development of judgments against them, the persons accused of having engaged in terrorist activities shall have a right to enjoy the necessary guarantees of a fair trial, access to legal counsel and representation, as well as the ability to present exculpatory evidence and arguments under the same conditions as the prosecution, all of which should take place in an adversarial process;
- (h) The persons convicted by a court of having carried out terrorist activities shall have the right to appeal against their sentences.
Guantanamo
Use of special security courts or military commissions for prosecution of terrorism suspects

- Egypt
- Jordan
- Syria
- Turkey
- US
- UN Human Rights Committee, Mandani v. Algeria (2007)- Only exceptional circumstances that render it unavoidable for a civilian to be tried by a military ct. would be acceptable
Freedom of Expression

- Internet control
- Disproportionate criminal penalties
- Surek v. Turkey ECTHR (1999) owner of a newspaper convicted and fined due to publication of an editorial which supported the liberation of Kurdistan. The Court found that the editorial was capable of inciting violence and the owner was vicariously responsible.
- Journalists, academics, human rights defenders, lawyers, and judges harassed and targeted
Freedom of Expression

- Urper v. Turkey, European Court of Human Rights (2009)
- Newspapers were suspended from publication several weeks because they had allegedly published articles supporting terrorism.
- The Court found a violation noting that the State overstepped the narrow margin of appreciation and unjustifiably restricted the essential role of the press as a public watchdog in a democratic society. It was not necessary to restrict future publication of entire newspapers, the State could have confiscated particular issues or restricted specific articles.
Model offence of incitement to terrorism

It is an offence to intentionally and unlawfully distribute or otherwise make available a message to the public with the intent to incite the commission of a terrorist offence, where such conduct, whether or not expressly advocating terrorist offences, causes a danger that one or more such offences may be committed.

Intent + risk
The fact that an association calls for achieving ends that are contrary to the interest of the State is not sufficient to characterize an association as terrorist. It is only when the association engages in or calls for the use of deadly or otherwise serious violence against persons that it may be characterized as a terrorist group.

Does the group use terrorist means, which are fundamentally contrary to democracy and aim at its destruction.
The State must demonstrate that the prohibition of the association and the criminal prosecution of individuals for membership of such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.

State failed to explain precise nature of threat
Edward Snowden

"I intend to seek asylum in any country that believes in freedom of expression and oppose that global privacy is being victimized."
The Right to Privacy

- Stop and Search - racial, ethnic, national, religious profiling
- Use of biometric techniques - facial recognition, fingerprinting, iris-scanning
- Watch list monitoring
- Checkpoints and borders
- Communications surveillance, financial transaction surveillance, travel data
- Media, Human rights workers, government officials, peace activists, environmental protestors
Right to Private and Family Life

- Control order or assets freezing order is imposed
- UN HRC Nabil Sayadi & Patrick Vinck v. Belgium (2008) wrongful listing on terrorism sanctions list
- Deportation or transfer of terrorism suspects
- ECTHR Al-Nashif v. Bulgaria (2003) stateless Palestinian detained and deported from Bulgaria where he was legally resident with his wife and children to Syria. Prevented from challenging the lawfulness of detention and denied effective remedy.
European Court of Human Rights, Klass and others v. Germany (1978)

«Democratic societies nowadays find themselves threatened by highly sophisticated forms of espionage and by terrorism, with the result that the State must be able, in order effectively to counter such threats, to undertake the secret surveillance of subversive elements operating within its jurisdiction. The Court has therefore to accept that the existence of some legislation granting powers of secret surveillance over the mail, post and telecommunications is, under exceptional conditions, necessary in a democratic society in the interests of national security and/or for the prevention of disorder or crime.»

State (Executive) has some discretion but there needs to be adequate and effective guarantees against abuse (Judiciary preferred, but parliamentary body and commission ok). Here, law required measures to be renewed every three months, discontinued when no longer needed, and use of the material only for the stated purpose, not any other end.

Notification after end of surveillance not required because it may jeopardise the long term purpose of surveillance.
«The European Court will not look into the actual reasons for the secret surveillance, but rather will evaluate whether the legislation is precise enough, whether the grounds for supervision in the legislation are reasonable, and, most crucially, whether the actual measures are subject to supervision by a person or body other than the executive, preferably of a judicial character.»

See Malone v. United Kingdom ECTHR (1984) secret telephone tapping illegal because it was carried out entirely at the discretion of the executive.
There is not expectation of privacy for anything posted on a website or for communications in chat rooms.

Email- government needs probable cause and search warrant to intercept email.

Phone calls- when you dial digits you tell the phone company the digits you are dialing- is there an expectation of privacy?

The intelligence agencies install pen registers on the phone line and Internet Service Provider to record telephone numbers dialed and internet communications and views the headers of incoming and outgoing emails (but not content) and registers URL addresses of every website visited. If this is done without a judicial order is there a violation of privacy?
60. The Special Rapporteur recommends again that any interference with the right to privacy, family, home or correspondence should be authorized by provisions of law that are publicly accessible, particularly precise and proportionate to the security threat, and offer effective guarantees against abuse. States should ensure that the competent authorities apply less intrusive investigation methods if such methods enable a terrorist offence to be detected, prevented or prosecuted with adequate effectiveness. Decision-making authority should be structured so that the greater the invasion of privacy, the higher the level of authorization needed.

61. Adherence to international standards for privacy and human rights protection must be a tenet national law. Accordingly, a comprehensive data protection and privacy law is necessary to ensure that there are clear legal protections for individuals to prevent the excessive collection of personal information, that ensures measures are in place to ensure the accuracy of information, that creates limits on the use, storage, and sharing of the information, and which mandates that individuals are notified of how their information is used and that they have a right to access and redress, regardless of nationality and jurisdiction.
62. Strong independent oversight mandates must be established to review policies and practices, in order to ensure that there is strong oversight of the use of intrusive surveillance techniques and the processing of personal information. Therefore, there must be no secret surveillance system that is not under the review of an effective oversight body and all interferences must be authorized through an independent body.

63. All current and proposed counter-terrorism policies must include privacy impact assessments to review and communicate how the policy and technologies ensure that privacy risks are mitigated and privacy is considered at the earliest stages of policymaking.

64. The Special Rapporteur recommends that stronger safeguards be developed to ensure that the sharing of information between governments continues to protect the privacy of individuals.

65. The Special Rapporteur also recommends that stronger regulations are developed to limit Government access to information held by third parties, including reporting schemes, and to minimize the burden placed on third parties to collect additional information, and that constitutional and legal safeguards apply when third parties are acting on behalf of the State.
67. The Special Rapporteur urges Governments to articulate in detail how their surveillance policies uphold the principles of proportionality and necessity, in accordance with international human rights standards, and what measures have been taken to ensure against abuse.

68. The Special Rapporteur recommends open discussion and regular reporting on information-based surveillance programmes. Reports to legislative and oversight bodies, as well as independent reviews of practices will help inform future policymaking and deliberation on anti-terrorism policy.

69. Any watch list- or profile-based surveillance programme must include due process safeguards for all individuals, including rights to redress. The principle of transparency must be upheld so that individuals can be informed as to why and how they were added to watch lists or how their profile was developed, and of the mechanisms for appeal without undue burdens.

70. Given the inherent dangers of data mining, the Special Rapporteur recommends that any information-based counter-terrorism programme should be subjected to robust and independent oversight. The Special Rapporteur also recommends against the development and use of data-mining techniques for counterterrorism purposes.
UN Special Rapporteur Profiling

83. Terrorist-profiling practices that are based on “race” are incompatible with human rights. Profiling based on ethnicity, national origin and/or religion involves differential treatment of comparable groups of people. Such differential treatment is only compatible with the principle of non-discrimination if it is a proportionate means of countering terrorism. Profiling practices based on ethnicity, national origin and/or religion regularly fail to meet this demanding proportionality requirement: not only are they unsuitable and ineffective means of identifying potential terrorists, but they also entail considerable negative consequences that may render these measures counterproductive in the fight against terrorism.

84. The Special Rapporteur recommends either universal or random security checks as preferred alternatives, instead of measures based on profiling. Universal or random checks are non-discriminatory and at the same time impossible for terrorists to evade, and hence more effective than measures based on profiling.

85. To the extent that States are to rely on counter-terrorism efforts based on profiling, the Special Rapporteur recommends they be based on individual conduct, that is, behaviour rather than ethnic or religious characteristics.
1. Sanctions against the individual or entity are based on reasonable grounds to believe that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act (as properly defined pursuant to practice 7 above);

2. The listed individual or entity is promptly informed of the listing and its factual grounds, the consequences of such listing and the matters in items 3 to 6 below;

3. The listed individual or entity has the right to apply for de-listing or non-implementation of the sanctions, and has a right to court review of the decision resulting disclosure of the case against him, her or it, and such rules concerning the burden of proof that are commensurate with the severity of the sanctions;

4. The listed individual or entity has the right to make a fresh application for delisting or lifting of sanctions in the event of a material change of circumstances or the emergence of new evidence relevant to the listing;

5. The listing of an individual or entity, and the sanctions resulting from it, lapse automatically after 12 months, unless renewed through a determination that meets the requirements of items 1 to 3 above; and

6. Compensation is available for persons and entities wrongly affected, including third parties.
ICCPR Article 9 Right to Liberty

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
ICCPR Article 14 Fair Trial

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.
Right to Fair Trial

- Equality before the law
- Right to be informed promptly, in a language they understand, of the charges against them
- The right to adequate time and facilities for the preparation of a defence and the right to a lawyer of the defendant’s own choosing,
- The right to be informed of this right
- Right to the provision of free legal advice or representation for those who cannot afford it
- Right to trial by competent, independent and impartial tribunal established by law, within a reasonable time, and with the defendant present
- Presumption of innocence
- Right to call and examine witnesses
- Free assistance of an interpreter if necessary
- Not to be compelled to testify against oneself or to confess guilt
- Right to trial and judgment in public unless there are important competing interests
- Right to appeal criminal conviction, right to compensation for wrongful conviction following miscarriage of justice, prohibition on double jeopardy
The requirements of independence and impartiality of judges or other persons acting in a judicial capacity may not be limited in any context. Judicial officers must be free from any form of political influence in their decision-making.

The use of military courts should be resorted to only in respect of military persons for offences of a military nature, and any hearing before such courts must be in full conformity with article 14(1) of the International Covenant on Civil and Political Rights.

The use of special or specialized courts in terrorism cases should be avoided.
(e) As criminal offences, the prosecution of acts of terrorism should be undertaken with the same degree of respect for the established rigours of criminal law applicable to ordinary offences. The principle of the equality of arms furthermore requires the enjoyment of the same procedural rights by all parties unless distinctions are based on law and can be justified on objective and reasonable grounds, and so long as such distinctions do not entail actual disadvantage or other unfairness to one of the parties;

(f) All materials that the prosecution plans to offer in court against the accused, or that are exculpatory, must be subject to disclosure. The protection of national security may justify the redaction of information, so long as compensatory mechanisms are adopted to ensure that this does not prejudice the overall right to a fair hearing and to be aware of, and able to respond to, the case;

(g) Any delay or exclusion of legal representation on security grounds must not be permanent, must not prejudice the ability of the person to answer the case, and, in the case of a person held in custody, must not create a situation where the detained person is effectively held incommunicado. Measures taken to monitor the conduct of consultations between legal counsel and client must be accompanied by strict procedures to ensure that there can be no deliberate or inadvertent passing on of information subject to legal professional privilege;
Property and Movement: Freezing of Assets and Travel Restrictions

- UN Security Council Resolutions 1373 and 1624
- Travel and residence restrictions for suspected terrorists, or individuals/entities associated with them
- Freezing of funds, block access to economic resources
- Lists created, but initially there were no procedures to prevent mistakes, provide remedy, or remove names- risk of arbitrary practice resulting in refoulement and harm
- Later Resolutions 1452, 1526, 1617, 1730, 1735 and 1904 established basic expenses exception, verification of information, and delisting procedures
Freezing of assets

- Court noted that restriction of enjoyment of property was taken in the general interest of fighting threats to international peace and security posed by acts of terrorism, freezing funds were not inappropriate or disproportionate. The Court noted that Kadi received some access to funds on humanitarian grounds. Nevertheless, Kadi did not enjoy a procedural right to contest the measure before a competent authority, hence this posed a significant restriction on his property right which was unjustified and hence recognized as a violation.