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The Special Rapporteur on the promotion and protection of human rights and
fundamental freedoms while countering terrorism¹

Mandate Holder

Martin Scheinin

Mandate

The issue of terrorism and human rights has long been a concern of the United Nations human rights program, but it has become more urgent following the attack of 11 September 2001 on the United States of America and the worldwide surge in measures to counter terrorism. The mandate was therefore established in 2005² as a reaction to the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism, and various initiatives to strengthen the promotion and protection of human rights adopted by the United Nations, regional organisations as well as by States. The aim of the mandate is to make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including at the request of States, for the provision of advisory services or technical assistance on such matters; to examine alleged violations of human rights and fundamental freedoms while countering terrorism, with special attention to areas not covered by existing mandate holders; and to identify, exchange and promote best practices in this area.

Activities

- The Special Rapporteur has made requests to carry out missions to Egypt, Malaysia, the Philippines, and Tunisia.
- The Special Rapporteur has met with representatives from the Office of the High Commissioner for Human Rights, including the High Commissioner; non-governmental organizations (NGOs); members of the diplomatic community; the Council of Europe; the Security Council's Counter-Terrorism Committee; the UN Counter-Terrorism Implementation Task Force; and the High Commissioner for Refugees;
- The Special Rapporteur gave a written legal opinion on a new Extradition Agreement between the European Union and the United States of America (USA);
- The Special Rapporteur presented his report to the General Assembly in October 2005;
- In December 2005, the Special Rapporteur, together with 32 human rights experts from the UN, issued a statement on the absolute prohibition of torture;
- The Special Rapporteur undertook a mission to Turkey from 16 to 23 February 2006;
- The Special Rapporteur has corresponded with 11 States.

Annual report³

Scope

The report summarises the activities of the Special Rapporteur since August 2005; provides an overview of communications with Governments between 15 August and 15 December 2005; examines elements of a definition of terrorism; analyses the role of human rights in the review of Member State reports to the Counter-Terrorism Committee of the Security Council; and reflects on issues of major importance.

¹ Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.

² Commission *Resolution 2005/80*.

³ E/CN.4/2006/98, 28 December 2005.

Summary and key conclusions

Communications

- Communications concerning **legislative developments** and **proposals in counter-terrorism** in Egypt, the Philippines, Tunisia and the United Kingdom of Great Britain and Northern Ireland (the UK)⁴;
- The Special Rapporteur has received allegations of **breaches of fundamental freedoms and human rights** in the fight against terrorism concerning Malaysia, Tajikistan, the USA, and Uzbekistan⁵;
- Communications on **treatment during detention** and **questioning** to Jordan, Indonesia, Yemen and the USA.
- A joint press release concerning trials against suspected terrorists in Uzbekistan;

Defining terrorism

- The international framework on counter-terrorism, through the principal conventions on anti-terrorism and resolutions of key UN bodies such as the Security Council and General Assembly, imposes obligations on States without there being a **comprehensive definition** of terrorism, which may give rise to adverse consequences for human rights;
- An Ad Hoc Committee set up by the General Assembly continues to work towards a draft comprehensive convention on international terrorism, containing a detailed definition;
- A number of documents use existing conventions on terrorism to ascertain **trigger-offences** in order to determine what conduct should be characterised as a terrorist act, but this approach is not sufficient to determine what conduct is truly terrorist in nature and may lead to a too broad definition of the term;
- The Security Council⁶ has adopted a useful **cumulative approach**, requiring the trigger-offence to be accompanied with the intention of causing death or serious bodily injury or the taking of hostages, and the purpose of provoking terror, intimidating a population or influencing a Government or international organisation;
- Human rights law and rule of law impose certain requirements that help in countering the negative consequences of the lack of an agreed definition. The *International Covenant on Civil and Political Rights* (ICCPR) provides that the prohibition of terrorist conduct must be undertaken by non-retroactive prescriptions of law, and respect the principles of non-discrimination and equality before the law;
- It is essential that offences created under counter-terrorist legislation be limited to countering terrorism to avoid using of the fight against terrorism as an excuse to unnecessarily extend the reach of criminal law.

The Counter-Terrorism Committee (CTC)

- The CTC was established after 11 September 2001 to monitor, notably by considering reports, Member States' compliance with a number of obligations identified by the Security Council in countering terrorism;
- The Special Rapporteur believes that the CTC has a **mandate to review the compliance of anti-terrorism measures with human rights obligations**⁷;
- The Special Rapporteur has discussed **cooperation with the CTC** regarding the consideration of State reports to the CTC, the identification of best practices, and the possibility of parallel recommendations;
- The Special Rapporteur highlighted a **number of trends** to the CTC: the international community has become rather indifferent to the abuse of the notion of terrorism; there is increased questioning or compromising of the absolute prohibition of torture and all forms of cruel, inhuman or degrading treatment; the criminalisation of the "glorification" or "apology" of terrorism; various forms of tightening of immigration controls; and the use of terrorism as the justification for extending the powers of the police in the investigation or prevention of crime;
- Examination by the Special Rapporteur of Member State reports to the CTC revealed that the message that States receive has not always been sufficiently clear. In some instances, States have understood the CTC as promoting measures of counter-terrorism irrespective of their adverse consequences for human rights;
- It also appears that the CTC has shown little interest in the **definition of terrorism at the national level**. This is problematic since States frequently apply definitions that do not meet the requirement of the ICCPR or that are designed in bad faith.

⁴ Only the UK has replied to the Special Rapporteur's communications.

⁵ The Special Rapporteur has had no response from the Governments of Malaysia and the USA.

⁶ In Security Council *Resolution 1566 (2004)*, available at: http://www.un.org/docs/sc/unsc_resolutions04.html.

⁷ Security Council *Resolution 1624 (2005)* makes references to the compliance of counter-terrorism measures with human rights and directs the CTC to take this into account in its dialogue with Member States.

Further issues

- The Special Rapporteur's mandate includes issues such as strategies to prevent acts of terrorism, notably by addressing the "**root causes**" of or "**conditions conducive**" to terrorism and the effective protection of the human rights of **victims of terrorism**;
- The question of whether **non-State actors** can commit human rights violations is also important. The Special Rapporteur, basing himself on the resolution establishing his mandate, considers all acts of terrorism aimed at the destruction of human rights instead of referring only to human rights violations, a term geared towards State obligations;
- The Special Rapporteur therefore intends to follow the work of the international community on fundamental standards of humanity and the creation of mechanisms for their effective implementation, also in respect of non-State actors.

Communications with Governments⁸

Scope

Summaries of communications, government replies, observations and follow-up relating to the Special Rapporteur's mandate.

Summary and key conclusions

- A letter to **Egypt**⁹ referring to the state of emergency in force since 1981. He requested more information on plans of adopting new anti-terrorism legislation that would replace the state of emergency regime;
- A joint letter to **Indonesia** calling attention to the case of a man who was allegedly ill-treated in Indonesian prisons. The Rapporteurs asked specific questions concerning the legal basis for the detention procedures and the applicable legal basis for measures referring to "terrorism", and requested a response by 14 January 2006;
- A joint letter to **Jordan** concerning the cases of two men who were allegedly tortured in Jordanian prisons. The Rapporteurs asked specific questions concerning the legislation in Jordan, and requested a response by 14 January 2006;
- A letter to **Malaysia*** concerning the Internal Security Act (ISA) 1960. The Rapporteur expressed concern that the ISA is not in accordance with international human rights standards, and asked for information on whether there are any proposals to significantly amend or repeal this legislation;
- A letter to the **Philippines*** concerning draft legislation on counter-terrorism currently under consideration, and seeking the Government's views on the draft consolidated Anti-Terrorism Bill and the Memorandum of Understanding on Counter-Terrorism with Australia signed in March 2005, for the purpose of ensuring that any new legislation would conform to international human rights norms;
- A communication to **Tajikistan** concerning the trial of an opposition politician, expressing concern at alleged irregularities, and asking for the excerpts of the relevant legislation, the definition of "terrorism", and the rules for listing organisations as "terrorist". A response has been received, and its summary will be reflected in the next report to the Commission;
- A letter to **Tunisia*** concerning terrorism legislation, asking it to send excerpts of existing terrorism legislation, as well as information on their implementation in order to verify their conformity with international human rights norms;
- A letter to the **United Kingdom of Great Britain and Northern Ireland**, in which he referred to the 12-point speech of Prime Minister Tony Blair concerned with new measures to combat terrorism. The Rapporteur also sent a letter to the Government concerning the introduction of the Draft Terrorism Bill 2005, indicating that some clauses might not be compliant with the International Covenant on Civil and Political Rights. The Home Secretary answered by stating that human rights need to be retained and strengthened while taking effective measures to tackle terrorism. He then described in more detail the clauses that were considered problematic by the Rapporteur, assuring him that appropriate safeguards were in place;
- A letter to the **United States of America*** indicating that he was closely following reports from various sources relating to the human rights impact of counter-terrorism measures taken by the USA within its territory and elsewhere. In another letter the Rapporteur drew attention to the case of two men who have allegedly been incarcerated in the USA for 20 and 18 months under irregular procedures. The Rapporteur requested an answer by 14 January 2006. In yet another letter the Rapporteur called attention to the alleged existence of secret detention centres under US authority in various parts of the

⁸ E/CN.4/2006/98/Add.1, 23 December 2005.

⁹ Countries marked with an asterisk have not replied to the communications.

world, asking for a complete list of these centres. The Rapporteur also questioned the Government on the issues of the legislative amendments and exclusions concerning counter-terrorism operations conducted abroad or by an element of the US government other than the department of defence;

- A joint urgent appeal to **Uzbekistan** concerning the trial of 15 men and 106 other people still in detention. The Permanent Mission of the Republic of Uzbekistan to the United Nations Office at Geneva criticised the Special Rapporteurs for making a public statement, and maintained that Uzbekistan was devoted to the norms of international law;
- A letter to the government of **Yemen** concerning the detainment of two men. The Rapporteurs asked specific question concerning the legislation in Yemen referring to "terrorism". A response was requested by 14 January 2006.

Preliminary note on the mission to Turkey¹⁰

Scope

The report contains a preliminary note concerning the country visit to Turkey from 16 to 23 February 2006, during which the Special Rapporteur met with representatives from the Government, the Turkish National Police, the judiciary, various national and local civil society groups, local branches of several non-governmental organisations, individuals affected by counter-terrorism measures, and suspects charged with or convicted of offences related to terrorism and held consultations with local offices of several UN agencies. The Special Rapporteur also visited detention facilities.

Summary and key conclusions

- The **definition of terrorism** as contained in Article 1 of the **Anti-Terror Act of 1991**, which defines terrorism based on its purpose or aims rather than referring to specific criminal acts, is formulated vaguely and in very broad terms and raises concerns in respect of the principle of legality prescribed in Article 15 of the *International Covenant on Civil and Political Rights*. The Anti-Terror Act of 1991 does not seem to be **up-to-date** as to the **requirements of international conventions** in the fight against terrorism and does not cover all specific forms of international terrorism;
- When the definition is applied in conjunction with other provisions of the Act, this definition of terrorism may result in prosecution and conviction in cases where the individual or organisation concerned is not personally linked to any terrorist acts properly defined;
- There is a **lack of transparency** regarding the **classification of organisations as terrorist ones**, and the procedure and consequences of such classification;
- The Government has undertaken many **efforts in the area of human rights**, such as intensified human rights training and a zero-tolerance policy vis-à-vis torture, which have led to significant progress, including a considerable **reduction in incidents related to torture and ill-treatment**;
- However, there is no independent, impartial, accessible and effective **investigation mechanism** in place with regard to allegations of torture and ill-treatment of terrorism suspects, and no functioning **monitoring system** for places of detention by independent human rights institutions;
- There have been measures over the last years to **improve the safeguards for persons suspected of having committed terrorist acts**, such as immediate access to a lawyer and the right to remain silent, but persons remain in detention on the basis of confessions allegedly obtained under torture in the 1990s;
- There have been at least two cases of **extrajudicial killings** in 2004 and 2005, allegedly carried out by members of security forces and related to counter-terrorism activities, but a parliamentary Commission has been set up to investigate one of those cases and legislative amendments stipulate that government officials suspected of crimes should no longer be automatically released pending trial;
- The Special Rapporteur commended the **Act on Compensation of Victims of Terrorism**, which extends to victims of counter-terrorism operations by the State, and should be seen as an example of best practice. However, the loss assessment commissions are ill-equipped to fulfil their tasks appropriately and loss assessment is confined to material damage;
- The **tensions in Eastern and South-Eastern Turkey** and the great **disparities in the socio-economic field** between the country average and the East and South-East need to be addressed to build an environment less conducive to support for terrorist groups and strategies.

¹⁰ E/CN.4/2006/98/Add.2, 24 March 2006.

Key recommendations

- The **definition of terrorist crimes** should be brought in line with international norms and standards and should benefit from full definitional clarity;
- The procedure for **designation as a terrorist organisation** should be transparent and objective and organisations should be able to appeal to an independent judicial body;
- An independent and impartial **investigation mechanism** to investigate allegations of torture or other ill-treatment should be created;
- Turkey should ratify the *Optional Protocol to the Convention against Torture* and the *Rome Statute of the International Criminal Court*;
- Measures should be taken to address **rehabilitative** and **other needs of victims** of violence related to terrorism and counter-terrorism;
- Persons belonging to different cultural and linguistic groups should enjoy **protection of their cultural, linguistic and religious rights**.