

Check against delivery



**Statement by Mr. Martin Scheinin, Special Rapporteur on the
promotion and protection of human rights while countering
terrorism**

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Mr. President of the Human Rights Council, distinguished representatives, ladies and gentlemen,

I have the honour to address you on my activities pursuant to Resolution 2005/80, covering the period from the establishment of the mandate in August 2005 to March of this year. In August I also submitted a report to the General Assembly, to be presented in New York next month.

Before you are my general report (E/CN.4/2006/98), my report concerning communications with governments (E/CN.4/2006/98/Add.1) and my preliminary conclusions and recommendations following a February 2006 mission to Turkey (E/CN.4/2006/98/Add.2). Due to technical reasons, the final report on the mission to Turkey will be presented during the March 2007 session of the Human Rights Council.

Resolution 2005/80 requests the mandate holder, *inter alia*,

- to gather and exchange information from and with all relevant sources, on alleged violations of human rights and fundamental freedoms while countering terrorism, with special attention to areas not covered by existing mandate holders;
- to make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism,
- to cooperate with a number of other actors including United Nations bodies, governments, regional international institutions and non-governmental organizations, and
- to identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms.

Violations of human rights and fundamental freedoms while countering terrorism

In my interaction with governments and other pertinent actors, I have addressed a number of concerns related to real or potential human rights violations in the context of countering terrorism. A non-exhaustive list of substantive matters of concern is included in paragraph 56 of my report, based on my statement on 24 October 2005 before the Counter-Terrorism Committee of the Security Council. As five “current trends” in counter-terrorism measures that entail a risk of human rights violations, the following were identified:

- the well established trend of States resorting to the notion of “terrorism” to stigmatize political, ethnic, regional or other movements they simply do not like, and the recent trend of the international community risking to become indifferent to the abuse of the notion of terrorism and instead calling for effective measures against “terrorism” without defining the term,
- the most alarming trend of questioning or compromising the absolute prohibition of torture and of all forms of cruel, inhuman or degrading treatment,
- the trend of going beyond the criminalization of incitement to commit serious crime, by penalizing also the “glorification” or “apology” of terrorism, or the publication of information that “may be useful” in the commission of acts of terrorism,

- the trend of justifying tightening immigration controls by the risk of terrorism, including through racial, ethnic or religious profiling, through sharing of information between countries, through new forms of long-term or even indeterminate detention, and through the denial of procedural guarantees such as the suspensive effect of appeal against deportation, and
- the trend of terrorism largely replacing drug-related crime as the primary public justification for extending the powers of the police in the investigation or prevention of crime, coupled with the abandonment of many of the traditional safeguards.

Paragraphs 26-50 of my report deal quite extensively with the first trend; the abuse of the notion of terrorism. In particular, the report includes a warning, that calls by the international community to combat terrorism, without defining the term, can be understood as leaving it to individual States to define what is meant by the term. This carries the potential for unintended human rights abuses and even the deliberate misuse of the term (paragraph 27). As a solution, reference is made (paragraph 37) to Security Council resolution 1566 (2004) which not only calls upon all States to cooperate fully in the fight against terrorism but also defines terrorism as acts that have three cumulative characteristics:

- they are acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages; and
- they are committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act; and
- they constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

As to national definitions of terrorism, my report (paragraph 45) presents and defends the position that in the absence of a universal, comprehensive and precise definition of terrorism, human rights law and the rule of law impose certain requirements that help in countering the negative consequences of the lack of an agreed definition of terrorism. Article 15, paragraph 1, of the International Covenant on Civil and Political Rights, which covers a non-derogable right under the Covenant, is particularly instructive, as it requires all penal law provisions to meet the requirements of accessibility, non-retroactivity, precision in defining all elements of crime, and precision in defining the applicable penalty.

Concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism

In my country-specific work I have emphasized the proactive and comprehensive nature of my mandate by conducting analysis and assessment of the law and practice related to countering terrorism. In February this year I conducted my first country visit upon the invitation by Turkey. I wish to use this opportunity to thank the Government of Turkey for their exemplary facilitation of the mission, including pertinent discussions with high-ranking officials of several key institutions and unrestricted access to places of detention, including the possibility to conduct private interviews with persons charged or convicted of terrorist offences.

My recommendations following my country visit to Turkey can be found at paragraph 15 of Add.2 of my report and they relate, *inter alia*,

- to bringing the definitions of terrorism and terrorist crimes into harmony with international human rights standards,
- to establishing a rapid procedure for retrial, amnesty or pardon in cases where the convictions or charges for terrorist crimes result from evidence obtained by torture,
- to promoting economic, social and cultural rights as a part of a long-term strategy to eliminate the risk that individuals make the morally inexcusable decision to resort to terrorism, and
- specifically, to securing effective access to education by the Kurdish population through, at least, initial immersion in their mother tongue.

After the mission to Turkey, I have engaged in further dialogue by submitting a legal opinion on certain amendments to the Anti-Terror Act to the Grand National Assembly in May and to the Constitutional Court in August.

As to country-specific work in relation to other countries I want to refer to my communications with governments in Add.1 to my general report and to preliminary consultations with the Governments of the United Kingdom, South Africa and Kazakhstan, conducted when visiting these countries for other professional engagements. Furthermore, since January of this year I have been conducting a desktop study on the law and practice of Australia in countering terrorism. Once we have received the Government's comments on an extensive draft, the study, including concrete recommendations will be made public.

Mr. President, I cannot fail to mention with dissatisfaction that the overall response rate of governments has been low, both in respect to my letters addressing either legislative issues or individual cases, and my requests for an invitation to a country visit. Hopefully a certain wait-and-see mentality is temporary during the transition from the Commission to the Council, and that future dates of a number of country visits can soon be confirmed.

Cooperation with United Nations bodies, governments, regional international institutions and non-governmental organizations, and other actors

One of the main activities of the mandate during the first year has been the "mainstreaming" of human rights concerns into the counter-terrorism work of the United Nations and other international organizations. Participation in the Secretary-General's Counter-Terrorism Implementation Task Force (CTITF), including in issues related to a comprehensive strategy against terrorism, has been a rewarding experience. There is growing support for the position that human rights are not a mandatory concession that compromises the effective fight against terrorism but are in fact a cornerstone of any successful strategy against terrorism.

Besides participation in the CTITF, there have been a number of visits and contacts with the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime, the Commission of the African Union, Council of Europe and the

European Union. It is my intention to continue and broaden my cooperation with international and regional organizations active in the fight against terrorism.

In my report quite extensive coverage is given to the Counter-Terrorism Committee of the Security Council (paragraphs 57-63). This is partly for the purpose of assessing the track record of the CTC in taking into account human rights and fundamental freedoms while monitoring Member States' conduct in implementing Security Council resolution 1373 (2001) and other counter-terrorism measures. On the basis of going through some 640 reports by Member States to the CTC, the role of human rights concerns in the work of the CTC is assessed by highlighting examples of four different types of messages received by states from the CTC:

- “best practices”, i.e. cases where the CTC has been explicitly promoting responses to terrorism that are in conformity with human rights,
- situations where the CTC has been confronted with human-rights-based resistance to its recommendations, for instance when certain countries because of their authoritarian past are unwilling to reintroduce institutions that already were eradicated,
- instances of insensitivity from the side of the CTC in respect of the negative human rights implications of counter-terrorism measures, and
- a certain indifference from the side of the CTC in respect of national definitions of terrorism, despite the huge importance of those definitions for the human rights implications of counter-terrorism measures.

In my report, I propose further cooperation between my mandate and the CTC. Such cooperation may include joint missions to countries, and, in particular, joint identification and compilation of “best practices” in the field of effective and human rights compatible responses to terrorism.

Identifying, exchanging and promoting best practices

Both when liaising with UN bodies or other intergovernmental organizations, and in my country-specific work, I emphasize that the focus of my mandate is not only in disclosing and criticizing human rights violations. It is equally important to identify and make broadly known examples of best practice, i.e. legislative and practical solutions that manage to combine an effective fight against terrorism with the promotion and protection of human rights and fundamental freedoms. Such examples demonstrate to the world that terrorism must be fought, can be fought and is most efficiently fought when this does not happen at the expense of human rights.

In my reports, as well as when liaising with regional and other intergovernmental organizations to learn of their experience, I do my best to identify examples of best practice. This is true for the report on my first country visit to Turkey and will characterize my work in the future.

Conclusion and a look forward

Mr. President, in our world of today the threat of terrorism is evident, and States are continuing to confront this issue, including by introducing new legislation and/or amending existing counter-terrorism legislation. Issues such as secret places of

detention, rendition flights, targeting of minorities, racial profiling, restrictions on a number of human rights including freedom of expression, association and assembly, due process rights etc, are issues directly related to States' means of countering terrorism. The potential negative implications on human rights are very real. The cooperation and interaction with Governments, international agencies and organizations, and other actors referred to earlier are all interrelated to the overriding purpose my mandate to be pro-active and consultative.

In closing let me inform the Council that the thematic sections of my next main report to the Council will deal with racial or ethnic profiling in the context of countering terrorism and with suicide attacks as a specific challenge to human-rights-conform responses to terrorism. My report already submitted to the General Assembly, in turn, deals with the protection of freedom of association and peaceful assembly while countering terrorism and, in that context, the question of listing and delisting terrorist organizations.

Discussions regarding several country visits are underway and will be continued during this week here in Geneva. I continue to liaise with relevant United Nations entities and regional organizations in order to promote the systematic inclusion of human rights into counter-terrorism measures and strategies. In this respect, cooperation within the inter-agency Counter-Terrorism Implementation Task Force and with the Counter-Terrorism Committee and its Executive Directorate have a special place.

Mr. President, Resolution 2005/80 mandates me *to report regularly* on my activities. I am committed to cooperate with you and your colleagues in order to explore and utilize the great potentials for more regular interaction that are provided by the nature of the Human Rights Council as a standing body and by its ongoing review of mechanisms.