

**STATEMENT BY THE SPECIAL RAPPORTEUR OF THE
COMMISSION ON HUMAN RIGHTS ON THE PROTECTION AND
PROMOTION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS WHILE COUNTERING TERRORISM**

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Mr. Chairman,

This is my first appearance before the General Assembly as the first holder of the mandate of Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering Terrorism. The long and ambitious title of my mandate calls for a degree of humbleness. I am deeply conscious of the destructive effect of terrorism on the enjoyment of human rights in various parts of the world. Numerous genuine challenges faced by Governments in their continuous efforts to conduct an effective fight against terrorism, while at the same time complying with international law including human rights law, must not be ignored by anybody, and in particular not by someone who has been entrusted with the mandate of promoting respect for human rights in the fight against terrorism.

At the outset, I wish to pay tribute to Professor Robert Goldman who within a very short time frame conducted tremendously helpful work in preparation of the new Special Rapporteur's mandate, in his capacity as Independent Expert on the protection of human rights and fundamental freedoms. His report to the 61st session of the Commission on Human Rights laid the foundation for the mandate I was later on entrusted with, including by outlining many of the special characteristics of this mandate.

Mr. Chairman, I am sure that you and the Delegates are anxious to hear about my approach in relation to Governments and their counter-terrorism measures. There are five methodological points I want to underline in that context.

First, Commission on Human Rights resolution 2005/80 establishing my mandate unequivocally condemns all acts, methods and practices of terrorism. Consequently, nothing that the Special Rapporteur does in respect of this mandate should be understood as showing the slightest degree of approval for acts of terrorism. My mandate is about supporting Governments and other actors in protecting and promoting human rights and fundamental freedoms while at the same time efficiently countering terrorism.

Secondly, the Commission resolution establishing my mandate, as well as numerous other resolutions by the General Assembly or the Security Council have emphasized the imperative of ensuring that any measures taken to combat terrorism comply with

international law, in particular human rights, refugee and humanitarian law. The Secretary-General in his report to the General Assembly (A/60/374) observed that “respect for human rights was not only compatible with a successful counter-terrorism strategy, but was an essential element of it”. Indeed, there could not be a greater victory for terrorists than to provoke Governments to engage in actions and methods that depart from their obligation to respect human rights and fundamental freedoms. The acts, methods and practices of terrorism aim at the destruction of human rights. It is a part of my mandate to remind Governments that their fight against terrorism should never play into the hands of terrorists themselves.

Thirdly, it is a dimension of the humbleness required in the exercise of this particular mandate that the task must be seen as a *complementary* one. I am mindful of the fact that in recent years many other Special Rapporteurs, other special procedures under the Commission, human rights treaty bodies and other actors have given, within their respective mandates, considerable attention to the human rights implications of counter-terrorism measures resorted to by Governments. In our world of today, nothing else would be compatible with their mandates. My job is to follow, in a spirit of loyalty, all actions by other actors that are geared towards promoting a human-rights-conform fight against terrorism, to engage in consultation and cooperation with the respective procedures, and to target my own interventions primarily into areas where gaps or lacunae can be identified. During the 80 days since my appointment, I have liaised with a number of Special Rapporteurs and other special procedures of the Commission on such issues as the right to a fair trial, due process and the prohibition against torture; met with the High Commissioner and various branches of her office; and initiated cooperation with two of the seven human rights treaty bodies, namely by meeting in the form of a lunch hour briefing with the Committee of the Rights of the Child and by providing input to the consideration of a State Party report by the Human Rights Committee, a body on which I had the privilege of serving for eight years as member.

Fourthly, let me emphasize that despite its complementary nature my mandate is not a mere substitute for other procedures when they prove insufficient. This is due to the *comprehensive* nature of my mandate. “Protection and promotion of human rights and fundamental freedoms while countering terrorism” is a vast area, within which any meaningful contribution must take as its point of departure the need to complement existing procedures while at the same time not losing sight of the totality. My goal is to look at the combined effect of various counter-terrorism measures in respect of the full range of human rights and the complex relationships of intersection that result. Towards this end, and as exemplified in paragraph 10 of my written report mentioning certain themes for some of the first thematic studies, I will identify areas of concern that are not covered by other existing mandates. On a more ambitious level, I want to underline that the notion of “protection and promotion of human rights and fundamental freedoms while countering terrorism” does not merely refer to the risk of human rights violations as a side-effect of concrete action in the fight against terrorism. Also issues such as sustainable strategies to *prevent* acts of terrorism, *inter alia* through addressing the root causes of terrorism and, and calling for effective protection to the human rights of *victims* of terrorism and their families are covered by the comprehensive remit of my mandate.

Fifthly and finally, I want to underline the *proactive* nature of my mandate. The CHR resolution establishing my mandate speaks of “advisory services”, “technical assistance”, “dialogue” and “best practices”. My approach is to take these notions seriously. I do not see myself primarily as a prosecutor or judge in respect of human rights violations by states but, rather, as a doctor or mechanic who helps to diagnose a problem and then to fix it. As far as possible, I hope to be engaged in respect of counter-terrorism measures under preparation or review on the national level, in order to assist in designing tools that are both effective in the fight against terrorism and at the same time in full conformity with human rights. As announced in paragraph 9 of my written report, I have the intention of producing a compilation of best practices of counter-terrorism measures that respect human rights and fundamental freedoms.

Mr. Chairman, much of the exercise of the mandate of any CHR Special Rapporteur consists of working with Governments. During the first 80 days of my mandate I have had meetings with several Permanent Missions to the United Nations in Geneva, engaged in correspondence or other interactions with a number of Governments in different parts of the world. Most often this has so far taken place in the form of letters by the Special Rapporteur that request clarification in one or more legal issues concerning the compatibility of existing or envisaged counter-terrorism measures with human rights. In these exchanges, I have tried to avoid duplication with the work done by other mandate-holders and, as far as possible, strived for a proactive approach by addressing legislation or other measures that are still under preparation.

Some of the ongoing exchanges with Governments will, in due course and with the consent of the Government concerned, lead to country visits by the Special Rapporteur. Although not even the first of my country visits has been scheduled so far, preparations are underway for either full-fledged visits or preparatory on-site consultations with a number of Governments. While information from victims, their families, non-governmental organizations, or other actors about human rights violations resulting from counter-terrorism measures will obviously be one of the criteria for identifying possible destinations for country visits, it follows from the special characteristics of my mandate that a number of other factors will also affect the choices. For instance, the fact that new legislation on counter-terrorism measures, or indications of the possibility to identify in a particular country best practices in the field of human-rights-conform counter-terrorism measures will also guide the selection of countries.

As a final point, Mr. Chairman, I wish to make clear that intervening in relation to individual human rights violations does form a part of my mandate. Although my emphasis during the first months of operation have been on systemic, or legislative, matters it is my intention also to raise with Governments concrete instances of human rights violations resulting from counter-terrorism measures. In fact, my first letters in relation to individual cases were transmitted to the respective Governments just last week.

Mr. Chairman, I look forward to a constructive dialogue with the Delegates.