



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/100
16 December 2004

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 17 of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS

Protection of human rights and fundamental freedoms while countering terrorism

Report of the High Commissioner for Human Rights

Summary

This report is submitted pursuant to Commission on Human Rights resolution 2004/87 and General Assembly resolution 59/191. It reviews action undertaken by the Office of the High Commissioner for Human Rights and the United Nations human rights system pursuant to the resolutions, in furtherance of the protection of human rights and fundamental freedoms while countering terrorism. The report notes that United Nations human rights mechanisms continue to express deep concern over counter-terrorism measures that jeopardize human rights and fundamental freedoms. It expresses the hope that strengthened action by the United Nations in this area will result in more consistent adherence by States to international human rights obligations in their efforts to counter terrorism.

Introduction

1. This report is submitted pursuant to Commission on Human Rights resolution 2004/87 and General Assembly resolution 59/191. Those resolutions reaffirm that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law. They further call upon States to raise awareness of the importance of these obligations among national authorities involved in combating terrorism. The report is mindful of Commission on Human Rights resolution 2004/44 and General Assembly resolution 59/195 on human rights and terrorism, which request the Office of the High Commissioner for Human Rights (OHCHR) to adopt “a comprehensive approach”, in particular, by giving full and equal attention to the issues raised in those resolutions with relation to the grave impact of terrorism on the enjoyment of human rights of individuals.

I. THE SECURITY COUNCIL AND THE COUNTER-TERRORISM COMMITTEE

2. Commission resolution 2004/87 and General Assembly resolution 59/191 welcome the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee (CTC) and the relevant bodies for the promotion and protection of human rights. They encourage the Security Council and CTC to continue to develop the cooperation with relevant human rights bodies, in particular with OHCHR, giving due regard to the promotion and protection of human rights in the ongoing work pursuant to relevant Security Council resolutions relating to terrorism.

3. In resolution 1566 (2004), the Security Council reminded States that they must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law. It further considered that “acts of terrorism seriously impair the enjoyment of human rights and threaten the social and economic development of all States and undermine global stability and prosperity”.

4. OHCHR has maintained its dialogue with CTC, including through meetings and exchanges of information between staff. On 26 July 2004 OHCHR staff met with the new Executive Director of the CTC Executive Directorate (CTED), established pursuant to Security Council resolution 1535 (2004). A meeting between the Executive Director and the High Commissioner for Human Rights was being arranged at the time of writing. As part of the revitalization of CTC proposed by the former CTC Chair (see S/2004/124, annex) and approved by the Security Council in resolution 1535 (2004), CTC is to “liaise with the Office of the United Nations High Commissioner for Human Rights and other human rights organizations in matters related to counter-terrorism”. In September 2004 CTED advised OHCHR of its decision to proceed with recruitment of a staff expert on human rights, humanitarian law and refugee law, which had been recommended by OHCHR as well as several States and non-governmental organizations.

5. With the support of the United Nations Office on Drugs and Crime (UNODC) and host Governments, OHCHR has participated in joint workshops with CTC, UNODC, and regional and subregional organizations on the formulation and implementation of counter-terrorism

measures at the national level. These included events at Khartoum from 14 to 18 January 2004 (with the Intergovernmental Authority on Development) and at San José from 5 to 7 October 2004 (co-organized by UNODC, CTC, the Inter-American Committee against Terrorism of the Organization of American States (OAS/CICTE), the United Nations Latin American Institute for the Prevention of Crime and the Treatment of the Offender (ILANUD) and the International Monetary Fund). From 29 November to 3 December 2004, OHCHR joined with UNODC and OAS/CICTE on a mission headed by CTC to Paraguay to provide advice on draft counter-terrorism legislation.

6. OHCHR participated in a follow-up conference on CTC cooperation with regional organizations, hosted by the Organization for Security and Cooperation in Europe (OSCE), in cooperation with UNODC, in Vienna on 11 and 12 March 2004. The Office also attended a meeting hosted by the Danish Ministry for Foreign Affairs and organized by the Fourth Freedom Forum and the Joan B. Kroc Institute for International Peace Studies in Copenhagen on 19 and 20 April 2004, on developing an action agenda for CTC.

II. SPECIAL PROCEDURES AND TREATY BODIES

7. Commission resolution 2004/87 and General Assembly resolution 59/191 reiterated the call on the relevant United Nations human rights mechanisms “to consider, within their mandates, the protection of human rights and fundamental freedoms in the context of measures to combat terrorism and to coordinate their efforts, as appropriate, in order to promote a consistent approach on this subject”. The human rights special procedures and treaty bodies have continued to pay close attention to the issue, within their relevant mandates and resources. In a joint statement (E/CN.4/2005/5, annex) issued on the occasion of their annual meeting, on 25 June 2004, the special rapporteurs and representatives, independent experts and chairpersons of the working groups of the special procedures reiterated their concerns expressed a year earlier over the serious impact that certain counter-terrorism measures may have on the enjoyment of human rights and fundamental freedoms.

8. Most recently, several of the special procedures addressed aspects of the protection of human rights and fundamental freedoms while countering terrorism in their reports to the fifty-ninth session of the General Assembly. These included the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/59/329 and A/59/330), the Special Rapporteur on the question of torture (A/59/324), the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/59/319), the Special Rapporteur on freedom of religion or belief (A/59/366), the Special Rapporteur on the question of the use of mercenaries (A/59/191), the independent expert on the situation of human rights in Afghanistan (A/59/370), the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967 (A/59/256), and the Special Representative of the Secretary-General on the situation of human rights defenders (A/59/401).

9. The human rights treaty bodies have also continued to consider the issue in their review of States parties' reports under the respective treaties and other actions. The issue has been addressed in several recent concluding observations of the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights.

III. DIGEST OF JURISPRUDENCE

10. In September 2003 OHCHR, together with the United Nations Department of Public Information, published the *Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights while Countering Terrorism*, bringing together relevant findings of United Nations human rights bodies and others of Europe, Africa and the Americas. Demand for the *Digest* has been high, and a second press run was planned for December 2004. In conformity with the calls of the Commission and the General Assembly, OHCHR plans to update the *Digest* in 2005.

IV. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

11. Commission resolution 2004/87 and General Assembly resolution 59/191 request the High Commissioner for Human Rights, making use of existing mechanisms, to continue: (a) to examine the question of the protection of human rights and fundamental freedoms while countering terrorism, taking into account reliable information from all sources; (b) to make general recommendations concerning the obligation of States to promote and protect human rights and fundamental freedoms while taking actions to counter terrorism; and (c) to provide assistance and advice to States, upon their request, on the protection of human rights and fundamental freedoms while countering terrorism, as well as to relevant United Nations bodies.

12. As noted in the Secretary-General's last report to the General Assembly (A/59/404), the High Commissioner for Human Rights, Louise Arbour, has stressed her view that counter-terrorism measures, while both urgent and necessary, must be taken within a context of strict respect for human rights obligations. In an address to the Biennial Conference of the International Commission of Jurists (ICJ) in Berlin on 27 August 2004, the High Commissioner said that over the long term, "a commitment to uphold respect for human rights and rule of law will be one of the keys to success in countering terrorism - not an impediment blocking our way."¹

13. In her speech, the High Commissioner said, "There is no doubt that States are obliged to protect their citizens from terrorist acts. The most important human right is the right to life. States not only have the right, but also the duty to secure this right by putting in place effective measures to prevent and deter the commission of acts of terrorism ... But counter-terrorism measures cannot be taken at any cost." She continued,

"In fact, human rights law makes ample provision for effective counter-terrorism action even in the most dire of circumstances. Article 4 of the International Covenant on Civil and Political Rights was crafted precisely to afford States the leeway they would need to deal with truly exceptional situations while remaining within a legal framework. Its provisions are for exceptional situations only, namely, those in which 'the life of the nation' is threatened. In such situations a State may take emergency measures, provided they are limited to the extent strictly required by the exigencies of the situation, are not inconsistent with the State's other international obligations, and do not discriminate on specified grounds. Certain rights are of course never subject to derogation, regardless of the nature of the emergency."

14. The High Commissioner emphasized the importance she attaches to the role of courts. She said, “[I]t is essential that measures taken in the context of counter-terrorism be subject to proper review. Counter terrorism initiatives are rarely submitted, in a real time environment, to public debate and the scrutiny of the media, except in an abstract and theoretical fashion. The only effective form of scrutiny for compliance with legal imperatives is in the form of judicial review.”

15. In addition to its work with CTC and others in the area of technical assistance, described above, OHCHR has continued its cooperation and exchange of information in this area with other partners, including the Council of Europe and OSCE. OHCHR is participating in the Council of Europe’s new round of meetings of the Group of Specialists on human rights and the fight against terrorism, aimed at developing guidelines for the protection of victims of terrorism. The Office has also assumed a central role in the framework for cooperation in confronting new challenges to international peace and security, including international terrorism, in the context of follow-up to the Fifth High-Level Meeting between the United Nations and Regional Organizations, which took place in New York on 29 and 30 July 2003.

16. The Office is providing support to the independent expert of the Commission on Human Rights on the protection of human rights while countering terrorism, who was appointed by the chairman of the Commission on 9 July 2004. It also continues to assist the Sub-Commission on the Promotion and Protection of Human Rights in its work in this area.

V. CONCLUSIONS

17. **Terrorism, counter-terrorism and their interrelationship with human rights remain subjects of great concern internationally. They were addressed, for example, in the report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*.² That report noted, “Terrorism attacks the values that lie at the heart of the Charter of the United Nations: respect for human rights; the rule of law; rules of war that protect civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Terrorism flourishes in environments of despair, humiliation, poverty, political oppression, extremism and human rights abuse; it also flourishes in contexts of regional conflict and foreign occupation; and it profits from weak State capacity to maintain law and order.”**

18. **The report of the High-Level Panel referred to “the imperative to develop a global strategy of fighting terrorism that addresses root causes and strengthens responsible States and the rule of law and fundamental human rights”. It continued, “What is required is a comprehensive strategy that incorporates but is broader than coercive measures.” The Panel recommended that such a comprehensive strategy should include, inter alia, development of better instruments for global counter-terrorism cooperation, all within a legal framework that is respectful of civil liberties and human rights.**

19. **Regrettably, and tragically, it must be said that acts of terrorism continue to be perpetrated with alarming frequency worldwide, with grave consequences for the human rights of their many victims. At the same time, OHCHR has found strong support for the**

view that terrorism can and must be dealt with effectively while fully respecting international human rights norms and upholding the rule of law. The United Nations human rights mechanisms continue to express deep concern over counter-terrorism measures that jeopardize human rights and fundamental freedoms. It is to be hoped that strengthened action by the United Nations in this area will result in more consistent adherence by States to international human rights obligations in their vital efforts to counter the scourge of terrorism.

Notes

¹ <http://www.unhcr.ch/hurricane/hurricane.nsf/NewsRoom?OpenFrameSet>.

² <http://www.un.org/secureworld/report2.pdf>.
