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**SPECIFIC HUMAN RIGHTS ISSUES:
NEW PRIORITIES, IN PARTICULAR TERRORISM AND COUNTER-TERRORISM**

**Written statement* submitted by International Educational Development, a non-
governmental organization on the Roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 July 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

New priorities, in particular terrorism and counter-terrorism

1. International Educational Development has followed the work of the Sub-Commission's Special Rapporteur on human rights and terrorism since the beginning of her mandate. We were especially pleased that, throughout this period the Sub-Commission consistently recognized the extreme importance of this topic as well as the fine work of its Special Rapporteur.

2. We were encouraged when the Sub-Commission, in its resolution 2003/15, proposed the development of guidelines on this topic, appointing the Special Rapporteur as coordinator of this effort. The development of guidelines or principles on topics of great human rights concern is a traditional task of the Sub-Commission, and we saw every reason to develop guidelines on the issue of protection of human rights while combating terrorism, especially since the Commission on Human Rights has declined to do so and because there have been so many allegations raised here and at the Commission about counter-terrorism measure that encroach far too seriously into long-accepted norms of human rights.

3. At the Sub-Commission's 2004 session, the Coordinator, aware of the urgency of the Sub-Commission and Commission to develop guidelines, submitted a working paper (E/CN.4/Sub.2/2004/47) containing a preliminary framework of guidelines on this topic. Seizing on that initiative, the Sub-Commission, in its decision 2004/109, decided to establish a sessional working group to work on guidelines, based on the Coordinator's preliminary draft. The Coordinator, to facilitate that process has now submitted a second working paper (E/CN.4/Sub.2/2005/39) containing an augmented framework draft with comments. Because of this, work towards guidelines has progressed significantly in a relatively short time. The comments are especially useful, themselves drawing on the Coordinator's work as Special Rapporteur and the many sources consulted and referred to in the course of her study.

4. The Sub-Commission has addressed the drafting of guidelines in different ways. Some guidelines, such as those on the right to water, the right to housing, the issue of impunity and the right to compensation, have been entrusted to Sub-Commission members to develop. Others, such as those relating to Indigenous populations, or the protection of the rights of the mentally ill, have developed through Sub-Commission working groups, and then moved to the Commission on Human Rights working groups or beyond for final adoption. Still others, such as the guidelines and principles relating to the environment, have been developed in the course of Sub-Commission studies to become a framework for the Commission's action on the topic without any further work on them. Most of these guidelines have been developed or reviewed in special seminars, on occasion organized by the Office of the High Commissioner, to which a wide range of experts in the relevant fields were invited and whose views were taken into consideration.

5. Due to the continued urgency to develop United Nations guidelines relating to terrorism, we recommend that the Sub-Commission consider treating the sessional working group to be held during the 57th session as a kind of preliminary expert seminar, with the Coordinator, of course, as chairperson. The Sub-Commission experts who attend should be prepared to offer concrete suggestions on both how to proceed as well as on the substance of the draft that the Coordinator has provided. Additionally, we most strongly urge that the working group and the Sub-Commission call on the High Commissioner to organize a seminar as the Coordinator proposes -- "as soon as is practical, and with as wide a range of participants as possible." (E/CN.4/Sub.2/2005/39, para. 21).

6. The development of guidelines at the United Nations level is vitally important. This is not to disregard the efforts, referred to by the Coordinator, at the regional level -- notably the Council of Europe and the Organization of American States.¹ These initiatives are indeed very useful and welcome. But many States, particularly in Asia, Oceania and Eastern Europe are not parties to a regional human rights body, so guidelines developed in Western Europe, the Americas and Africa will have little effect. Also, the treaty bodies, notably the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination, all have a mandate that would include review of national legislation on terrorism. While documents of regional organizations may be instructive to these treaty bodies, it would be of far greater utility to have clear, comprehensive and UN-oriented guidance.

7. Noting that at this stage the coordinator's draft is just that, a draft, we are nonetheless pleased with her intention that these guidelines be detailed rather than suggestive. It is our experience that States generally say they fully comply with human rights norms, but now use counter-terrorism to justify measures that severely curtail them. The many ways they do so must find expression in these guidelines. In some States, the abrogation of rights is at an extreme, and even legislators are on occasion unaware of their extensive reach. Vague, generalized guidelines would not help legislators to understand. For example, according to the "definition" of terrorism in the United States immigration laws, any armed conflict could be viewed as "terrorism," and any person who has sought to alleviate the situation of a war victim could be charged with aiding terrorists and therefore not eligible for asylum. The definition of terrorism used by the Department of Homeland Security undermines the right to self-determination and the right to use force, if necessary, to secure self-determination. Humanitarian law norms for wars, whether civil wars or international wars, governing the conduct of the combatants or the right to provide aid to victims of armed conflict, are annihilated.² Guidelines that do not address this type of situation, line by line, will be ineffective to avoid the grave injustices that result from this type of provision. Further, such "limited" or "specialized" definitions can spill over into other areas of law. For example, persons raising funds for hospitals in Iraq could be charged with engaging in terrorist acts. Legal efforts to challenge this type of aberration are difficult at best in most

¹ As the coordinator points out, only the Council of Europe has already adopted such guidelines. E/CN.4/Sub.2/2005/39, para. 15. The OAS and AU are in preliminary or preparatory stages.

² One immigration judge opined: "The current INS (Immigration and Naturalization Act) definition of terrorist activity includes military clashes with established governments, which, under international law, would be considered armed conflicts or justified struggles for the independence of peoples. INA §212(a)(3)(B); The Humanitarian Law Project, The Kashmiri War: Human Rights and Humanitarian Law, March 1996; Specific Human Rights Issues: New Priorities, in Particular Terrorism and Counter-Terrorism, U.N. ESCOR, 56th Sess., U.N. Doc. E/CN.4/Sub.2/2004/40 (2004). In this regard, the statutory definition is extremely broad and would equally condemn many U.S. actions around the world including support for the Nicaraguan Contras, overthrow of Saddam Hussein in Iraq and the American Revolutionary War, etc. Nevertheless, it is not this Court's role to judge the law, but to apply it as written. As written, it is an extremely broad law that includes as terrorist activity "the use of any . . . firearm or other weapons or dangerous device (other than for mere personal monetary gain), with the intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property." INA§212(a)(3)(B)(iii)(V). It is hard to imagine an armed conflict that would not fit this definition as it makes no distinction between combatants or non-combatants as targets. Thus, even if the JKLF, as Respondent has stated, did not target civilians for attack, kidnapping, etc. before 1994, it must have been engaged in terrorist activities as defined by this statute, simply by virtue of being in armed conflict with the government of India." In the matter of Khan, slip op., June 30, 2005 (copy available by contacting ied@igc.org). In this case, the Respondent, an applicant for asylum, had sought funds for the war-injured, widows and orphans of the conflict. The case is on appeal. We note that the Judge cited the Coordinator's Final report on terrorism and human rights.

countries where counter-terrorism measures are alleged to violate human rights, and advocates would be greatly assisted by guidelines.

8. Due the importance of this topic, fueled by the rapid erosion of rights in certain countries, the Sub-Commission should evaluate whether extremely short “sessional” working groups during future sessions are fruitful. Rather, the Sub-Commission might consider requesting its Coordinator to develop comprehensive guidelines, taking into consideration the results of a UN - sponsored seminar, so that the Coordinator can present a more finalized draft at the 58th session of the Sub-Commission

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