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Protection of human rights and fundamental freedoms while countering terrorism

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, Martin Scheinin, submitted in accordance with Commission on Human Rights resolution 2005/80.

* A/61/150.

** The present report was submitted after the deadline so as to include the most updated information.

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Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Summary

Section II provides a summary of the activities of the Special Rapporteur since 15 December 2005. In section III the Special Rapporteur reflects upon the impact of the war on terror on the freedom of association and peaceful assembly and relevant international standards. Section IV contains brief reflections by the Special Rapporteur on some general issues relating to the mandate. The conclusions are contained in section V.

Contents

I. Introduction

1. This report is the second submitted to the General Assembly by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Commission on Human Rights resolution 2005/80, General Assembly resolutions 60/158 and 60/251 and Human Rights Council decision 2006/104. It includes an overview of his activities since 15 December 2005 and his views on selected issues of special concern.

2. The Special Rapporteur draws attention to his report to the sixty-second session of the Commission (E/CN.4/2006/98) and awaiting consideration by the Council. That report includes a summary of the activities of the Special Rapporteur undertaken between 8 August and 15 December 2005. It contains an overview of the communications sent by the Special Rapporteur and replies received thereto from Governments. Moreover, it discusses elements of an international definition of terrorism with regard to the relevance of this issue for human-rights-conform responses to terrorism. The report also contains an analysis of the role of human rights in the review of Member States' reports to the Counter-Terrorism Committee of the Security Council and sets out possible forms of cooperation between the Special Rapporteur and the Committee. Furthermore, it briefly raises certain issues of major importance such as the rights of victims of terrorism, "root causes" of terrorism and whether non-State actors can violate human rights.

3. Addendum 1 to document E/CN.4/2006/98 reflects, for the period 8 August to 15 December 2005, communications sent by the Special Rapporteur and the replies of Governments thereto regarding counter-terrorism issues at the systemic level such as current or draft legislation, as well as individual cases of persons detained, arrested or imprisoned for counter-terrorism-related offences.

4. Addendum 2 contains preliminary information on the fact-finding mission that the Special Rapporteur undertook to Turkey from 16 to 23 February 2006. Its main purpose was to gather first-hand information about initiatives in the area of counter-terrorism and how such measures affect human rights, and to begin a process of cooperation with the Government. He met with representatives of the Ministry of the Interior, the Ministry of Justice, the Ministry of Defence, the National Security Council, the Directorate of General Security of the Turkish National Police, the Jandarma General Command, the Coast Guard Command, the Prosecutor General, the National Intelligence Agency, the Human Rights Presidency of the Prime Minister's Office, the Parliamentary Human Rights Investigation Committee, members of the judiciary and non-governmental organizations (NGOs). He also met with individuals affected by counter-terrorism measures, as well as suspects charged with or convicted of offences relating to terrorism in the F type prison in Ankara and the D type pre trial detention facility/prison in Diyarbakir. In addition, the Special Rapporteur visited the detention facilities of the Jandarma and the counter-terrorism branch of the Security Directorate in Diyarbakir and observed a trial at Ankara Aggravated Felony Court. He also consulted with members of the United Nations country team and other international organizations. The Special Rapporteur expressed his appreciation to the Government of Turkey for extending its full cooperation to him. Acknowledging the significant progress achieved over the last years in terms of respect for human rights, the Special Rapporteur concluded that some challenges remain, in particular with regard to the broad definition of terrorism enshrined in the current legislation, the large number of prosecutions

relating to terrorism, persisting restrictions on the freedoms of association and expression, and impunity. He stressed that respect for social, economic and cultural rights is important as a means of preventing terrorism. He also commended some positive practices, such as the scheme for compensating victims of terrorism and counter-terrorism operations and the safeguards for suspects of terrorism introduced in recent years. He recommended a number of steps to be taken in order to ensure that legal and practical counter-terrorism measures comply fully with international human rights law.

II. Activities

5. The Special Rapporteur, in accordance with his mandate, undertook a number of activities during the period under review. He attended meetings and held discussions with important actors involved in the issues falling under his mandate. The regulations on the limitation of the length of documents prevents him from providing details here, but he wishes to advise the Assembly of three of the most important events.

6. In May the Special Rapporteur, following up on his visit to Turkey, met with the Chairperson of the Justice Committee of the Turkish Grand National Assembly in Ankara to discuss a government bill introducing amendments to the Anti-Terror Act. As agreed at this meeting the Special Rapporteur provided a legal opinion to the Justice Committee. After the Committee issued its report on the bill the opinion was also sent to the Government. The opinion raised the following points concerning the draft legislation:

(a) The Special Rapporteur regretted that the definition of terrorist offences contained in the draft law extended the scope of crimes currently covered by the notion in spite of his earlier comments and recommendations resulting from his country visit, which raised concerns in respect of the principle of legality as prescribed in article 15 of the International Covenant on Civil and Political Rights (ICCPR);

(b) He expressed concern that the terms relating to the question of incitement were vague and therefore appeared to be incompatible with the requirement of legality as enshrined in article 15 of ICCPR. Consequently, the limitations that resulted in respect of freedom of expression would not be confined to countering terrorism but could be used also in respect of non-violent expression of opinion;

(c) He also indicated that the new provisions on financing terrorism, while needed, would extend to an overly large number of activities and their funding;

(d) The Special Rapporteur regretted the overall intention to reduce the procedural safeguards for suspects of terrorist offences. He was troubled by the proposed clauses stipulating that a detained person’s access to a lawyer could be denied for a period of 24 hours; permitting an officer to be present at meetings between suspects and their lawyers if some — vaguely formulated — conditions were met; and seeking to restrict the number of counsel to one;

(e) The Special Rapporteur considered that the provision allowing for wide discretion with regard to the use of firearms by officials, and also former officials, if they claimed that they felt they had been attacked by terrorists might be abused and, consequently, violate the fundamental principles set forth in article 6 of ICCPR. He

noted that the same provisions gave rise to concern with regard to the impunity that they appeared to confer on officials involved in fighting terrorism. He also indicated that the provisions that would provide privileges or otherwise favourable treatment to officials or former officials called for careful scrutiny, not only because they might amount to or indirectly contribute to impunity, but also because they might weaken the legitimacy of the Anti-Terror Act in the eyes of the general public;

(f) He expressed concern about the provision excluding any possibility of release for certain persons sentenced to life imprisonment. In his opinion such provisions were always problematic in respect of article 10 of ICCPR, which defined the aim of imprisonment as rehabilitation and required that all detainees be treated with humanity, and article 7, which prohibited all forms of torture or other cruel, inhuman or degrading treatment.

7. On 21 June 2006, following the adoption by the United Kingdom of Great Britain and Northern Ireland of the Terrorism Act 2006, the Special Rapporteur wrote to the Government to thank it for the cooperation extended to him in the process towards the adoption of the law, notably for the meetings held in November 2005 and the responses sent to his written questions. He also wishes to express the following concerns:

(a) Regarding certain overly broad and vague terms and concepts such as "indirectly encouraging" acts of terrorism and "glorification", which was interpreted as including "any form of praise or celebration". While the Special Rapporteur commended the explicit inclusion of intent in some parts of the Act, he regretted that it was not always a necessary element of the offences and that, in particular, that is was possible that the offence of encouragement of terrorism and dissemination of terrorist publications could be committed through "recklessness". The Special Rapporteur considered that, by not clearly setting out the threshold for criminalization, the terms "glorification" and "indirect encouragement" of terrorism did not allow individuals to regulate their conduct appropriately. This was at variance with the provisions of article 15 of ICCPR and might amount to a disproportionate limitation to freedom of expression;

(b) He also addressed the issue of the extension of the length of detention without charge of terrorist suspects for up to 28 days. In this context, he referred to article 9 of ICCPR on the right to liberty, which the Human Rights Committee interpreted in its general comment No. 29 (2001) as being protected at all times, including during a state of emergency. Acknowledging that he appreciated that the right to habeas corpus was not affected by the extension of the maximum period of detention without charge, he remained of the opinion that the possibility of 28 days of detention without charge was too long unless there was a regular judicial review of all aspects of the detention, including the reasons for it and any arguments the detainee might wish to present to contest them.

8. From January to August 2006 the Special Rapporteur conducted a desktop study on human rights and counter-terrorism in Australia, in part to develop his methods of work regarding the proactive and consultative aspect of his mandate. The purpose was also to examine the law and policies of a State that has a regional and global impact on the war on terror with the intention of identifying common experiences and problems and potential examples of best practices regarding counter-terrorism. It is envisioned that this will be first of a series of country/regional-specific and thematic studies to be conducted during the Special

Rapporteur's mandate. This study was conducted with a series of letters to the Government containing extensive preliminary and follow up questions about Australia's laws and practices concerning counter-terrorism. The Special Rapporteur also invited comments from NGOs and the academic community. The Special Rapporteur is in the process of finalizing the study and a draft has already been shared with the Government.

III. Freedom of association and peaceful assembly and counter-terrorism

9. The right of peaceful assembly and the right to freedom of association are protected by articles 21 and 22 of ICCPR. The importance of both of these rights is to be found in the fact that they must be seen as a platform for the exercise of other rights, inter alia the right to freedom of expression, cultural rights and the right to political participation.[1] They are also crucial to the work of human rights defenders. They are exercised as the basis for the creation of NGOs and political parties, as well as to publicly and peacefully demonstrate disagreement with State policies and actions. As such, they are to be seen as one of the foundations of democratic society. At the same time, associations and organizations — whether formally created and registered or not — may also be used as means through which persons organize and carry out terrorist acts and transfer or use funds for terrorist actions, and thus be a means for the destruction of democracy. It is because of this dual nature that it is difficult to draw a line between too much limitation and appropriate restrictions.

10. The Special Rapporteur recognizes States' right and duty to protect individuals, both their citizens and others, from violence, including terrorist attacks. States therefore have an obligation to take effective counter-terrorism measures. At the same time, States must respect their international human rights obligations in all the measures that they take to counter terrorism. The Special Rapporteur would like to stress that these two requirements placed on States are not mutually exclusive. In human rights law, the extreme and difficult situations States may face are recognized by allowing for certain limitations and derogations in extraordinary circumstances.

11. It is undeniable that a successful counter-terrorism strategy includes a preventive dimension. As such, terrorist groups, organizations or entities which are involved in the planning or preparation of terrorist acts must be prevented from carrying them out and should be sanctioned even if a planned terrorist act is not committed or attempted. This implies that it is permissible to take measures such as criminalizing preparatory acts of terror planned by groups, which in turn implies the need to take measures that interfere with the freedom of peaceful assembly and the freedom of association. States must not, however, abuse the necessity of combating terrorism by resorting to measures that are unnecessarily restrictive of human rights. Clear safeguards must be put in place by the law, to prevent abuse (of the limitations) and, if abuses do occur, to ensure that remedies are provided. In his review of counter-terrorism legislation, the Special Rapporteur has seen numerous instances where limitations to the rights to freedom of association and assembly

[1] Article 22 of ICCPR does not distinguish between the different purposes of associations. This implies that the scope of application of the protection afforded by article 22 is wide and covers, inter alia, associations whose purposes are religious, political, labour related or cultural.

clearly went beyond the scope necessary to counter terrorism and could in actual fact be used to limit the rights of political parties, trade unions or human rights defenders.[2]

Derogations from articles 21 and 22 of ICCPR

12. Article 4 of ICCPR deals with derogations introduced by States from rights protected by the Covenant. While according to this article derogations may be made in respect of the rights to freedom of association and assembly in times of public emergency, a certain number of conditions elaborated upon by the Human Rights Committee in general comment No. 29 must be respected. Derogations under article 4 are exceptional and temporary measures, which can only be invoked when (i) the situation within a State amounts to a public emergency which threatens the life of the nation; and (ii) when the State party has officially declared a state of emergency. In addition, the principles of proportionality and of necessity must be respected concerning the duration and geographical and material scope of the state of emergency as well as all the measures of derogation resorted to because of the state of emergency. Furthermore, a State party to ICCPR must fully respect its other international obligations whenever it derogates from the Covenant.

13. The derogating measures must themselves also always be required by the exigencies of the situation, i.e. the principles of proportionality and of necessity must be respected. Before resorting to derogations, States must make a careful analysis of the situation, examine if and which derogating measures are necessary, and choose from among the different options the one that will be the least restrictive for the protection of the rights in question. The Special Rapporteur is of the opinion that, in principle, States should not need to resort to derogation measures with respect to the rights to freedom of assembly and association and that the measures limiting these rights provided for in ICCPR are sufficient to fight terrorism effectively.

14. Finally, the Special Rapporteur wishes to underline the principle of legality in criminal law which is expressly listed in article 4 as one of the principles that may not be derogated from even in times of public emergency. Also, the Human Rights Committee, in general comment No. 29, has stated that there are some rights or dimensions of rights which, although not expressly mentioned in the list of non-derogable rights in article 4, may nonetheless not be derogated from, even in a state of emergency. Specific to the issues discussed here are the principle of non-discrimination and the prohibition of war propaganda and advocacy of national, racial or religious hatred. In addition, the Human Rights Committee has stated that the principles of legality and of the rule of law require that the fundamental requirements of a fair trial must be respected during a state of emergency. Only a court of law may try and convict a person of a criminal offence, and the presumption of innocence must always be respected.

[2] See also A/59/401 and E/CN.4/2006/95 on human rights defenders.

Limitations to the rights to freedom of association and peaceful assembly

15. Both rights may be subject to limitations, according to certain conditions,[3] as provided for in the articles themselves. At the outset, the Special Rapporteur would like to recall that limitations may only be used when specific circumstances necessitating the restriction of the right(s) protected by the Covenant exist. The right must remain the rule and any restriction the exception.

16. **Legal basis of the limitation**. Article 22, which protects freedom of association, appears to place a stronger obligation on States than article 21 on freedom of assembly in that article 22 requires that the limitation must be prescribed by law, whereas article 21 simply states that the limitation must be in accordance with the law. However, the Special Rapporteur does not view this as a difference of substance.

17. As shown by the legislative reviews carried out by the Special Rapporteur, many States adopted or reviewed their counter-terrorism legislation in the wake of 11 September 2001. This was the result of (i) their need to respond to a heightened security threat; and (ii) the adoption of Security Council resolution 1373 (2001), which placed a certain number of requirements on States, inter alia concerning the criminalization of preparatory acts of terrorism, and specifically mentioned "entities involved in terrorist acts".[4] The Special Rapporteur recognizes such initiatives as important measures to fight terrorism. He is concerned, however, that the terms "terrorism" and "terrorist acts" are often vaguely or broadly defined beyond what the Special Rapporteur has set forth as necessary conditions for an act to be considered as "genuinely terrorist in nature" either at the international[5] or at the national level.

18. In some cases, peaceful actions to protect, inter alia, labour rights, minority rights or human rights may seemingly be covered by the national definition of terrorism. Therefore, groups whose aims are the protection of these or other rights could be designated as terrorist groups. The Special Rapporteur stresses that this is not satisfactory from the point of view of the rule of law. Rule of law requires that the laws authorizing the application of restrictions contain precise criteria and may not confer unfettered discretion on those charged with their execution.[6] In addition,

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[3] Although it has not adopted a general comment on the application of either one of these articles, the Human Rights Committee has expressed its view on permissible limitations in the context of its general comment No. 27 (1999) on freedom of movement, article 12 of ICCPR.

[4] According to Security Council resolution 1373 (2001), measures to be adopted by States include freezing the funds of entities owned or controlled directly or indirectly by persons who commit, or attempt to commit, terrorist acts (para. 1 (c)); prohibiting entities within their territories from making any funds available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts of entities owned or controlled, directly or indirectly, by such persons and associated entities (para. 1 (d)); refraining from providing any support to entities involved in terrorist acts, including suppressing recruitment of members of terrorist groups (para. 2 (a)); preventing the movement of terrorist groups (para. 2 (g)).

[5] See E/CN.4/2006/98, para. 42.

[6] The European Court of Human Rights has stated in several cases that "a law which confers a discretion is not in itself inconsistent with this requirement, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give the individual adequate protection against arbitrary interference".

the Special Rapporteur is aware of provisions dealing with the proscription of associations or limitations of their rights justified by the fight against terrorism which are included in more general laws dealing with State, national or public security, or laws concerning the press or non governmental organizations. Again, this may be at variance with the principle of the rule of law, in that the various regulations dealing with counter-terrorism are not easily accessible. The Special Rapporteur takes the view that specific counter-terrorism legislation should be enacted only following serious consideration of whether it is necessary, and cautions against the use of restrictive laws of more general application; invoking the notion of terrorism should not be used as a shortcut that bypasses case by case assessment. Finally, the Special Rapporteur would like to recall that the rule of law also prescribes that the laws restricting the rights to freedom of association and assembly must establish the conditions under which those rights can be limited. Restrictions which would be compatible neither with the law nor with the requirements set out in articles 21 and 22 themselves would be in violation of ICCPR.

19. The rights may be limited only to protect certain enumerated aims/purposes: national security, public order (*ordre public*), public health and morals and the rights and freedoms of others. The Special Rapporteur recalls that these aims/purposes are not to be interpreted loosely. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights[7] define public safety as "protection against danger to the safety of persons, to their life or physical integrity or serious damage to their property".[8] The same principles state that national security may be invoked by States to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or the threat of force.[9] National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order[10] or used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.[11] Public order (*ordre public*) is defined as "the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded".[12] Finally, limitations are permitted for the protection of the rights of others. This provision is to be read in the light of article 20, paragraph 2, of ICCPR, which prohibits any advocacy of national, racial or religious hatred, and article 5, which excludes from the protection of the Covenant activities or acts "aimed at the destruction of any of the rights and freedoms recognized" in the Covenant.[13]

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[7] These were developed in 1984 by a panel of 31 international experts who met at Siracusa, Italy, to adopt a uniform set of interpretations of the limitation clauses contained in ICCPR. While they do not have the force of law, they offer important, authoritative guidance as to the meaning of the terms contained in the Covenant, especially in areas not covered by a general comment of the Human Rights Committee. See E/CN.4/1985/4, annex.

[8] Ibid., para. 33.

[9] Ibid., para. 29.

[10] Ibid., para. 30 and M. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary,* 2nd ed. (Kehl/Strasbourg/Arlington, N. P. Engle, 2005), p. 506.

[11] Siracusa Principles (see footnote 9 above), para. 31.

[12] Ibid., para. 22.

[13] Ibid. See also communication No. 117/1981, *M.A.* v. *Italy, Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40* (A/39/40), annex XIV, para. 13.3, where, in relation to the reorganizing of the dissolved Italian fascist party, the Human Rights Committee

20. Proscribing associations which have as their aim the destruction of the State through terrorist means, or banning public demonstrations which call for the use of terrorist means to destroy the State may be covered by the limitation clauses of ICCPR. The Special Rapporteur underlines, however, that Governments must not use these aims/purposes as smokescreens for hiding the true purpose of the limitations. The systematic violation of human rights undermines true national security and may jeopardize international peace and security; therefore, a State shall not invoke national security as a justification for measures aimed at suppressing opposition or to justify repressive practices against its population.[14] The onus is on the Government to prove that a threat to one of the grounds for limitation exists and that the measures are taken to deal with the threat.[15]

21. In addition, the limitations must be necessary in a democratic society for attaining one of these defined purposes. This is an additional safeguard which places a burden on States to demonstrate that the limitations do not impair the democratic functioning of society. In practice, this means that the limitations must meet the test of necessity and the requirement of proportionality. The measures taken to limit the rights must be appropriate to achieve their protective function; it is not sufficient that they reach the purpose/aim — they must be necessary to protect them. They must also be the least restrictive instrument among those which might achieve the desired result.[16] Finally, a balance must be struck between the burden placed on the individual whose rights are limited and the interest of the general public in achieving the aim that is being protected.

22. The Special Rapporteur recognizes the need to control the existence of groups that are involved in acts of terrorism — either through carrying them out, planning them, recruiting for them or funding them. However, he recalls that associations and peaceful assemblies are platforms for the exercise of other rights and they are a means through which individuals express and pursue common interests. The Special Rapporteur notes with concern the increase of infringements upon the exercise of the right to freedom of assembly and association in the name of counter-terrorism. He stresses that the rights to freedom of association and peaceful assembly are fundamental in a democratic society; therefore, the limitations must be narrowly construed as to their objective, i.e. counter-terrorism. In this respect, several issues need to be highlighted.

23. The Special Rapporteur notes with concern that much of the recent counter-terrorism legislation provides for stricter regulation of the founding and status of associations. Vague and broad definitions of terrorism, or the absence of such a definition, inhibit the work of associations that do not pursue terrorist tactics. While

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stated: “the acts … were of a kind which are removed from the protection of the Covenant by article 5 thereof and which were in any event justifiably prohibited by Italian law having regard to the limitations and restrictions applicable to the rights in question under the provisions of articles 18 (3), 19 (3), 22 (2) and 25 of the Covenant.”

[14] Siracusa Principles (see footnote 9 above), para. 32.

[15] See *Report of the Human Rights Committee, Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40* (A/55/40), vol. II, sect. P, communication No. 780/1997, *Vladimir Petrovich Laptsevich* v. *Belarus*, Views adopted on 20 March 2000.

[16] On the principle of proportionality, which is also applied to other rights protected by the Covenant, such as freedom of expression, see *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40* (A/49/40), vol. II, sect. AA, communication No. 458/1991, *Womah Mukong* v. *Cameroon*, communication No. 458/1991, Views adopted on 21 July 1994.

some control over the existence and work of associations is necessary for the State, as a measure to prevent terror, the State must not disproportionately obstruct the work of all associations. The Special Rapporteur would like to recall that the Human Rights Committee has often expressed its concern about overly strict registration requirements for NGOs.[17] He also notes that this is a key issue addressed in the excellent work of the Special Representative of the Secretary General on human rights defenders, Hina Jilani.[18]

24. The fact that an association calls for achieving through peaceful means ends that are contrary to the interest of the State is not sufficient to characterize an association as terrorist. Pursuing minority rights protection or the recognition of the existence of a minority, or even calls for self-determination do not on their own amount to terrorist activities. It is only when the association engages in or calls for the use of deadly or otherwise serious violence against persons, i.e. the tactics of terrorism, that it may be characterized as a terrorist group and its rights or existence limited and possibly subjected to the application of criminal law.

25. **General measures** limiting the exercise of these rights would in most cases impair the essence of the right and therefore would be a violation thereof. For example, general bans on public demonstrations, including in certain specific areas, may be a violation of freedom of peaceful assembly. These very general measures are often used to prohibit peaceful calls for democracy or human rights and as such prevent political opposition from expressing itself. The Special Rapporteur fully agrees with the Special Representative of the Secretary-General on human rights defenders who has said that States must not adopt laws or practices that would make activities for the defence of human rights unlawful.[19]

26. **Proscription**. While the determination of whether an association may be characterized as terrorist needs to be carried out on a case by case basis, there are some general principles that must be respected by the State. First, unless the founding document of the group or association clearly states that it would use terrorist aims or means to achieve its goals, a determination of whether an association may be proscribed on the basis it is "terrorist" must be made on factual evidence of its activities. This implies that the State may not make the determination on the basis of presumptions, before the association has started to exercise its activities.[20] Second, the determination of whether the organization does qualify as terrorist and thus shall be proscribed must be made by an independent judicial body and there must always be a possibility to appeal a proscription decision to a judicial body. Third, States that decide to criminalize the individual belonging to a "terrorist organization" should only apply such provisions after the organization has been qualified as such by a judicial body. This, of course, does not affect individual criminal responsibility for the preparation of terrorist acts.

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[17] Concluding observations of the Human Rights Committee: Lithuania (CCPR/C/79/Add.87) and concluding observations of the Human Rights Committee: Belarus (CCPR/C/79/Add.86).

[18] See A/58/380, A/59/401 and E/CN.4/2006/95.

[19] A/58/380, paras. 24 and 25.

[20] European Court of Human Rights, *Sidiropoulos and Others* v. *Greece*, judgement of 10 July 1998, *Reports 1998-IV*, para. 46: "The Court does not rule out that, once founded, the association might, under cover of the aims mentioned in its memorandum of association, have engaged in activities incompatible with those aims. Such a possibility, which the national courts saw as a certainty, could hardly have been belied by any practical action as, having never existed, the association did not have time to take any action."

27. The Special Rapporteur stresses the important link between freedom of expression,[21] political rights[22] and freedom of association.[23] In this respect, political parties are crucial to the existence of a democratic society. Special care must be taken by States to prohibit entities that genuinely pursue their goals through the use of terrorist means. However, dissolving a political party should be a measure taken only in the most serious cases and only on the basis of fact. The sole fact that a political party promulgates opinions that are different or contradictory to that of the majority or of the ruling party must not be the basis for proscription. The Special Rapporteur reiterates that it is inherent to democracy to allow political parties to express different opinions, even if these call into question the current organization of the State or of the Government in power.[24] The determination that must be made

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[21] An illustrative example of the close link between these rights is communication No. 574/1994, *Kim* v. *Republic of Korea*. The complainant, a member of the National Coalition for Democratic Movement, was arrested after preparing documents which criticized the Government of the Republic of Korea and its foreign allies and appealed for reunification and distributing them and reading them out loud to approximately 4,000 people at a meeting. He was later sentenced on the basis of the National Security Law, which provided that (i) any person who assists an anti-State organization by praising or encouraging the activities of this organization, with the knowledge that it will endanger national security or survival or the free or democratic order, shall be punished; or (ii) any person who produces or distributes documents, drawings or any other material(s) to the benefit of an anti-State organization, with the knowledge that it will endanger national security or survival or the free or democratic order, shall be punished. The Human Rights Committee was asked to examine this case from the angle of freedom of expression. After finding that this offence was stated in broad and unspecific terms, the Committee found that the State party had "failed to justify the precise nature of the threat allegedly posed by the author's exercise of freedom of expression" and that the State party had not "provided specific justification as to why over and above prosecuting the author for contraventions of the Law on Assembly and Demonstration and the Law on Punishment of Violent Activities … it was necessary for national security, also to prosecute the author for the exercise of his freedom of expression". *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 40* (A/54/40), vol. II, annex XI, sect. A, para. 12.5.

[22] In the case *Jorge Landinelli Silva* et al. v. *Uruguay*, communication No. 34/1978, the Human Rights Committee stated, in relation to the derogation by the State of Uruguay to certain provisions of ICCPR that "even on the assumption that there exists a situation of emergency in Uruguay, the Human Rights Committee does not see what ground could be adduced to support the contention that, in order to restore peace and order, it was necessary to deprive all citizens, who as members of certain political groups had been candidates in the elections of 1966 and 1971, of any political right for a period as long as 15 years. This measure applies to everyone, without distinction as to whether he sought to promote his political opinions by peaceful means or by resorting to, or advocating the use of, violent means". *Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40* (A/36/40), annex XII, communication R.8/34, para. 8.4.

[23] European Court of Human Rights, *Case of Socialist Party and Others* v. *Turkey*, judgement (merits and just satisfaction) of 25 May 1998, *Reports 1998-III*, para. 41: "The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association … That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy."

[24] Ibid. In this case, while the Constitutional Court had noted "by distinguishing two nations … [the Party] had advocated the creation of minorities within Turkey … to the detriment of the unity of the Turkish nation and the territorial integrity of the State … Although different methods were used, the aim of the SP's political activity was similar to that of terrorist organizations. As the SP promoted separatism and revolt its dissolution was justified" (para. 43). Opposing this reasoning, the European Court stated that it "finds nothing in [the statements] that can be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles … [T]he Agent for the Government had stated that [the former Chairman

is whether the organization uses terrorist means, which are fundamentally contrary to democracy and aim at its destruction.

28. In particular, the Special Rapporteur would like briefly to address the issue of proscription of organizations for incitement to terrorism. Criminalizing incitement to terrorism as such is required by Security Council resolution 1624 (2005) and fully consistent with the obligation under article 20, paragraph 2, of ICCPR to prohibit the advocacy of national, racial and religious hatred constituting incitement to hostility or violence. However, such measures need to be carefully designed so as to comply with the right of freedom of expression (art. 19, para. 3), which may "be subject to certain restrictions, but these shall only be such as are provided by law and are necessary". The Special Rapporteur notes, however, that in order to ensure that there is no dilution of the moral message of condemning terrorism, the terms of the crime of incitement must be narrowly defined. As such, three conditions must be satisfied: first, that there is the intent to incite the commission of a terrorist offence; second, that this intent is not solely that of one or several individuals but that of the association, group or political party as a collective entity; and third, that there exists an actual risk that such an act will be committed. The Special Rapporteur would like to refer to article 5 of the Convention on the Prevention of Terrorism of the Council of Europe[25] as a best practice in combining the element of intent and the risk of the commission of a terrorist act.

29. **Judicial oversight of all measures to limit freedom of association and assembly**. As very clearly highlighted in the report of the independent expert on the protection of human rights and fundamental freedoms while countering terrorism, Robert K. Goldman,[26] "civilian courts must have jurisdiction to review the provisions and supervise the application of all counter-terrorist measures without any pressure or interference, particularly from the other branches of Government". This principle is fundamental in the context of counter-terrorism, where Governments can hide behind the banner of classified information to limit the rights of freedom of assembly or peaceful association based on confidential information which can neither be verified nor contested. The Special Rapporteur stresses that any decisions which limit human rights must be overseen by the judiciary, so that they remain lawful, proportionate and effective, in order to ensure that the Government is ultimately held responsible and accountable.

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of the Party] had 'justified the use of violent and terrorist methods' … While the Court accepts that these phrases were directed at citizens of Kurdish origin and constituted an invitation to them to rally together and assert certain political claims, it finds no trace of any incitement to use violence or infringe the rules of democracy" (para. 46). Therefore, the Court concluded, "It has not been established how, in spite of the fact that in making them their author declared attachment to democracy and expressed rejection of violence, the statements in issue could be considered to have been in any way responsible for the problems which terrorism poses in Turkey" (para. 52).

[25] Article 5 reads: "For the purposes of this Convention, 'public provocation to commit a terrorist offence' means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed."

[26] E/CN.4/2005/103, para. 15.

Specific issue: listing terrorist groups

30. **Placement on terrorist lists**. The Special Rapporteur welcomes the fact that the 2005 World Summit Outcome called upon "the Security Council, with the support of the Secretary-General, to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions"[27] and that the Secretary-General recalled this issue in his report "Uniting against terrorism: recommendations for a global counter-terrorism strategy".[28] "Terrorist" lists are a practice that has been adopted by the Security Council and by regional bodies and a certain number of States. Their objective is primarily to apply immediate sanctions to those groups that have been identified and placed on the list, so as to prevent the commission of terrorist acts. While the legal effects of the placement of a group on a "terrorist list", whether national or international, vary depending on the national or international document creating the list, the most common effect for groups, entities and associations that find themselves on the lists is the freezing of their funds. The Special Rapporteur recalls that the need for preventive action is an important aspect of the fight against terrorism and that the freezing of funds collected or used for terrorist purposes is an important aspect of these measures. To ensure that preventive measures are effective, the determination of what constitutes "terrorist groups" may be required as a matter of urgency.

31. However, the Special Rapporteur notes that this procedure infringes a number of human rights, some of which are particularly relevant for groups and organizations: the right to property, freedom of association, and possibly political rights.[29] NGOs may be affected, which may touch upon the rights of human rights defenders. The Special Rapporteur would like to highlight some basic principles and safeguards that should be respected and applied to ensure that the listing procedures are brought into line with generally accepted human rights standards. In addition, as a best practice, he would like to recall the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers of the Council of Europe in 2002, in particular those relating to the prohibition of arbitrariness,[30] the lawfulness of anti-terrorist measures[31] and legal proceedings.[32]

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[27] General Assembly resolution 60/1, para. 109.

[28] A/60/825, para. 117.

[29] See E/CN.4/2005/103, paras. 62-65.

[30] "Guideline II. Prohibition of arbitrariness: All measures taken by States to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision."

[31] "Guideline III. Lawfulness of anti-terrorist measures: 1. All measures taken by States to combat terrorism must be lawful. 2. When a measure restricts human rights, restrictions must be defined as precisely as possible and be necessary and proportionate to the aim pursued."

[32] "Guideline IX. Legal proceedings: 1. A person accused of terrorist activities has the right to a fair hearing, within a reasonable time, by an independent, impartial tribunal established by law. 2. A person accused of terrorist activities benefits from the presumption of innocence. 3. The imperatives of the fight against terrorism may nevertheless justify certain restrictions to the right of defence, in particular with regard to: (i) the arrangements for access to and contacts with counsel; (ii) the arrangements for access to the case-file; (iii) the use of anonymous testimony. 4. Such restrictions to the right of defence must be strictly proportionate to their purpose, and compensatory measures to protect the interests of the accused must be taken so as to maintain the fairness of the proceedings and to ensure that procedural rights are not drained of their substance."

32. First, the Special Rapporteur would like to highlight once again the need for the principle of legality and legal certainty to be respected whenever reference is made to terrorism or to terrorist groups. All international and national executive bodies in charge of including groups or entities on lists should be bound by a clear and precise definition of what constitutes terrorist acts and terrorist groups and entities. Regarding the definition of terrorism, the Special Rapporteur would like to recall that at the national level, a definition of terrorism should include three cumulative elements — the aim, the purpose and the means, with an emphasis on the last element, i.e. seeing terrorism as a choice of morally inexcusable tactics.[33] In addition, the need for precision and clarity in the definition also extends to the definition of the link between the group or entity and the terrorist act. In the absence of a definition, words or expressions that leave much leeway for interpretation, such as "supports", "involved in" or "is associated with", may be used to list groups or entities improperly. This is particularly problematic in the light of the absence of a universal definition of terrorism. It is the definition set forth by the States, if any, that will apply. This is not satisfactory in that neither the groups/entities themselves nor the States are able to determine with certainty which groups/entities should be subject to inclusion on terrorist lists, which may lead to the arbitrary inclusion of groups/entities on terrorist lists.

33. Second, the Special Rapporteur stresses that States must respect the principles of proportionality and of necessity. The sanctions imposed by the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al Qaida and the Taliban and associated individuals and entities (hereafter the "1267 Sanctions Committee") are basically "smart" sanctions in that they are intended to exert a certain amount of effective pressure on individuals (and groups) referred to by name, impacting as little as possible on the population of the country in question. Nevertheless, the Special Rapporteur believes that the principles of proportionality and of necessity require specific attention and do not preclude achieving the same result.

34. The Special Rapporteur notes that one of the main issues in this context is whether the practice of listing really is a temporary measure. In order to ensure that it is, and remains, so, after a reasonable amount of time, for example 6 or 12 months, the names on the lists must be reviewed. This would mean that for those groups or entities remaining on the list, the measure has been found still to be necessary and supported by evidence. Without these safeguards, the lists may become open-ended in duration, thereby making temporary sanctions such as the freezing of funds tantamount to the confiscation of funds, a permanent measure. The confiscation of funds is a very serious criminal sanction which calls for proper procedural safeguards.

35. In particular, the Special Rapporteur notes the question of whether the nature of the sanctions — civil or criminal — determine the procedural safeguards, including which standards of proof, shall apply. The Analytical Support and Sanctions Monitoring Team of the 1267 Sanctions Committee supports the idea that the Committee's Consolidated List is not a criminal list and that indictment by a court of law is not a precondition for inclusion on the list, because the sanctions do not impose a criminal punishment or procedure such as detention, arrest or

[33] See paras. 71 and 72 below.

extradition, but instead apply administrative measures.[34] However, it is generally accepted that the determination of whether the charges are criminal or civil depend on the seriousness of the sanction or punishment. If the sanctions linked to inclusion on the list are permanent, then no matter how they are qualified, they may fall within the scope of criminal sanctions for the purposes of international human rights law.

36. Another requirement is the obligation on States to bring to justice/prosecute[35] in order to proscribe those groups/entities which are on the lists and sanction those individuals who are members of those groups/entities which have links to terrorism. If such evidence exists — as should be the case for inclusion on the lists — then States should have an obligation to prosecute. This would clarify the status of these groups/entities. However, placement on the lists should not be considered as evidence for the legal proceedings in question. States would have to resort to normal rules and standards of proof. In addition, all of the procedural safeguards linked to fair trial should be respected.

37. The Special Rapporteur notes that evidence collected by intelligence agencies is directly used as a basis for inclusion on the list. This is why it is necessary that after implementation of the immediate and temporary listing procedure, States are obliged to transform the temporary measure into a more lasting measure through prosecution — which certainly takes more time — and transform intelligence into evidence to be used as a basis for prosecution in a court of law. The Special Rapporteur cautions that if those included on the lists are indeed terrorists, the application of this temporary measure does not fulfil a State's continued obligation to conduct a prosecution for terrorist acts.

38. The inclusion on the list must be subject to a certain number of procedural guarantees. First is the right to be informed. This right encompasses the right to be informed of inclusion on a list,[36] the right to be informed of a possible procedure for de listing, the right to be informed of the existence of humanitarian exemptions and how to obtain them, and the right to be informed of the reasons for inclusion on the list. The right to be informed of the grounds for inclusion is a precondition to a reasoned and argued contestation of the inclusion. As discussed above, the basis for inclusion will often be State intelligence, which is often considered secret or confidential. Access to evidence used is, however, a prerequisite for appeal against inclusion and as such, its limitation must be narrowly construed. Reference may be made to principle 11 of the Johannesburg Principles on National Security, Freedom

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[34] See S/2005/572, enclosure, paras. 40-43.

[35] See the progress report of the Special Rapporteur on terrorism and human rights of the Subcommission on the Promotion and Protection of Human Rights, Kalliopi Koufa (E/CN.4/Sub.2/2001/31), paras. 110-117.

[36] In relation to the right to be informed of placement on a list, there has been an evolution of the obligations placed on States by the 1267 Sanctions Committee: in its resolution 1526 (2004), paragraph 18, the Security Council "strongly encourage[d] States to inform, to the extent possible, individuals and entities included in the Committee's list of the measures imposed on them, and of the Committee's guidelines and resolution 1452 (2002)" (emphasis added). In Council resolution 1617 (2005), the Council *requested* States "to inform, to the extent possible and in writing, where possible, individuals and entities included in the Consolidated List of the measures imposed on them, the Committee's guidelines, and in particular, the listing and de-listing procedures and the provisions of resolution 1452 (2002)" (emphasis added). States have a stronger and wider obligation in the latter resolution. This is certainly a step in the right direction.

of Expression and Access to Information,[37] which states, "Everyone has the right to obtain information from public authorities, including information relating to national security. No restriction on this right may be imposed on the ground of national security unless the Government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest". Thus, at the very least, the onus must be on the State or the institution/body refusing access to justify any limitations on access to information used.

39. **The right to judicial review**. Placements on lists are often the result of political decisions taken by States' political representatives within political bodies, based on confidential evidence. Given that the effect of inclusion is the freezing of assets, the right to contest inclusion is a necessity. At the international level, these procedures do not at present exist.[38] They are present, in some instances, at the national level.[39] The Special Rapporteur is of the view that if there is no proper or adequate international review available, national review procedures — even for international lists — are necessary. These should be available in the States that apply the sanctions. In addition, in case the information is classified security information, consideration should be given to means through which a listed entity

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[37] See E/CN.4/1996/39, annex.

[38] Under the 1267 Sanctions Committee list, the procedure for removal is based on diplomatic representation, in that the listed body/individual may ask its State of citizenship or of residence to apply to the Committee for removal. The Special Rapporteur welcomes the suggestion made by the Analytical Support and Sanctions Monitoring Team to ask the Committee to review its de-listing procedures, in particular (i) to oblige States which receive de-listing petitions to transmit them to the Committee, thereby leaving the decision-making to the entire Committee as opposed to the petitioned State; and (iii) enlarging the number of States which may make de-listing petitions to the Committee. See third report of the Analytical Support and Sanctions Monitoring Team (S/2005/572, enclosure), paras. 52-57.

[39] In one case of the transposition of the 1267 Sanctions Committee list to another list, the Court of First Instance of the European Communities has stated that the non-existence of a remedy was the result of the fact that the Security Council did not set one up (*Kadi* v. *Council of the European Union and Commission of the European Communities*), case T-315/01, judgement of 21 September 2005: "In so far as the applicant appears to reproach the Community institutions for not having set up any review mechanism whatsoever, the Commission observes that the institutions were simply ensuring implementation of Security Council decisions which they were not in a position to alter" (para. 170). In a related case (*Ahmed Ali Yusuf and Al Barakaat International Foundation* v. *Council of the European Union and Commission of the European Communities*), case T-306/01, judgement of 21 September 2005, the Court found that: "it is not for the Court to review indirectly whether the Security Council's resolutions in question are themselves compatible with fundamental rights as protected by the Community legal order. Nor should it fall to the Court to verify that there has been no error of assessment of the facts and evidence relied on by the Security Council in support of the measures it has taken … without trespassing on the Security Council's prerogatives under Chapter VII of the Charter of the United Nations … [Therefore] there is no judicial remedy available to the applicant, the Security Council not having thought it advisable to establish an independent international court responsible for ruling, in law and on the facts, in actions brought against individual decisions by the Sanctions Committee." The Court did find that this was not a violation of jus cogens since the right of access to a court is not absolute: "In the circumstances of the case, the applicants' interest in having a court hear their case on its merits is not enough to outweigh the essential public interest in the maintenance of international peace and security in the face of a threat clearly identified by the Security Council in accordance with the Charter of the United Nations" (paras. 338-341 and 344).

can still challenge the evidence against it. In particular, vetted or security-cleared counsel could be envisaged.

40. **Right to a remedy**. For those organizations which have been wrongly placed on the lists, either because the intelligence on which the placement was based was incorrect or because the name on the list is an acronym or wrongly spelt, compensation or restitution needs to be made available, in line with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,[40] which provides that States should provide redress for victims of crimes and abuse of power.

41. **Humanitarian exemptions**. Finally, the Special Rapporteur would like to stress the absolute necessity of ensuring that exemptions from the sanctions — in particular the freezing of funds — exist on humanitarian grounds, to ensure that non-governmental organizations and other non-profit organizations which have projects for the protection of basic economic or social rights can continue to function.

IV. General issues

Comments on the Secretary General's report entitled "Uniting against terrorism: recommendations for a global counter-terrorism strategy"

42. The Special Rapporteur welcomes the Secretary General's report and in particular notes the comprehensive nature of this undertaking and its focus on the preventive dimension, such as denying terrorists access to weapons, targets, travel, etc., quality education, and religious and cultural tolerance. Section VI is devoted to "defending human rights in the context of terrorism and counter-terrorism". However, the Special Rapporteur is concerned about the references to denying access to the Internet and the idea of not allowing journalists to interview alleged terrorists. Both these measures are potentially serious restrictions of freedom of expression and therefore subject to human rights limitations clauses. In this regard, the Special Rapporteur reiterates his frequently expressed observation that, given that the definitions of terrorism are frequently not in compliance with the principle of legality as enshrined in article 15 of ICCPR, in many cases such measures carry the risk of being abused to restrict the activities of persons and groups that have nothing to do with terrorism as properly defined.

The definition of terrorism at the domestic level

43. In his report to the Commission on Human Rights (E/CN.4/2006/98), the Special Rapporteur reflected on the three cumulative characteristics of terrorist acts contained in Security Council resolution 1566 (2004) and recommended that they should serve as a yardstick for an international definition. One of them refers to acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

44. When it comes to the national level, there is a qualification to be made since the latter cumulative element — that "terrorist" conduct must comprise acts constituting offences within existing terrorism-related conventions — might turn out

[40] General Assembly resolution 40/34 of 29 November 1985, annex.

not to be appropriate to counter specific regional or domestic threats of terrorism. Where there is evidence that a State must respond to domestic or regional terrorist threats, it may therefore be required to proscribe acts that fall outside the scope of existing universal terrorism-related conventions. This is permissible, in the view of the Special Rapporteur, as long as it is strictly necessary and provided that the definition or proscription complies with the requirements of legality (accessibility, precision, applicability to counter-terrorism alone, non-discrimination and non-retroactivity).[41] Therefore, at the national level, the specificity of terrorist crimes is defined by the presence of three cumulative conditions: (i) the means used, which can be described as deadly, or otherwise serious violence against members of the general population or segments of it, or the taking of hostages; (ii) the intent, which is to cause fear among the population or the destruction of public order or to compel the Government or an international organization to do or refraining from doing something; and (iii) the aim, which is to further an underlying political or ideological goal. It is only when these three conditions are fulfilled that an act should be criminalized as terrorist; otherwise it loses its distinctive force in relation to ordinary crime.

The Human Rights Council and its ongoing review of mechanisms

45. Upon establishing the Human Rights Council by its resolution 60/251, the General Assembly decided that the Council shall assume all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights. The Council shall also review and, where necessary, improve and rationalize the mandates and mechanisms of the Commission. During its first session, held in June 2006, the Council adopted decision 2006/102 on extension by the Council of all mandates, mechanisms, functions and responsibilities of the Commission, as well as decision 2006/104 on the establishment of a working group to make concrete recommendations on the review of mechanisms.

46. Awaiting the results of the review of mechanisms by the Council, the Special Rapporteur will continue to carry out his mandate under the terms of Commission on Human Rights resolution 2005/80. In this context, he wishes to draw the attention of all interested parties to paragraph 14 (f) of the resolution, which mandates the Special Rapporteur to report *regularly* to the Commission on Human Rights and to the General Assembly (emphasis added). As the role of the Commission has now been assumed by the Human Rights Council, a body that meets more regularly throughout the year, the Special Rapporteur looks forward to developing a more regular framework for reporting to and interacting with the Council.

V. Conclusions

47. **Special Rapporteur continues to place great emphasis on the complementarity and proactive aspects of his mandate and will continue to work in a coordinated manner with the United Nations High Commissioner for Human Rights and other independent experts to engage with States on upholding human rights and fundamental freedoms in the course of enacting and implementing counter-terrorism legislation or practices.**

[41] See E/CN.4/2006/98, paras. 45-49.

48. **The Special Rapporteur welcomes the opportunity to continue to participate actively in the Counter-Terrorism Implementation Task Force and believes there is a genuine interest in and commitment to incorporating human rights elements into counter-terrorism strategies. He also wishes to build upon the existing links of cooperation with the Counter-Terrorism Committee and its Executive Directorate, including in the field of jointly identifying best practices in countering terrorism.**

49. **The Special Rapporteur welcomes the meetings with the Council of Europe, COTER and the African Union and wishes to have further engagement with regional organizations as human rights and counter-terrorism issues reach far beyond national boundaries and coordinated efforts are critical.**

50. **The Special Rapporteur has continued to engage in a dialogue with the Government of Turkey in follow-up to his visit to that country. Certain amendments to the Anti-Terror Act were adopted on 29 June 2006. The Special Rapporteur noted some improvements from the draft law; however, he continues to have a number of concerns, including: the broad and vague definition of terrorism and the consideration of offences to be "terrorist offences" which may be too remotely connected; the offence of incitement is still vague and appears to be incompatible with the requirement of legality as enshrined in article 15 of ICCPR; restrictions and limitations regarding detention and access to a lawyer; and the exclusion of the possibility that certain persons sentenced to life imprisonment may be released.**

51. **The Special Rapporteur hopes to follow up on the Australia study on human rights compliance while countering terrorism, in order to continue the positive cooperation that has been established in this regard.**

52. **The Special Rapporteur thanks those Governments that have provided substantive replies to his communications. However, he regrets the limited number of responses. The Special Rapporteur acknowledges that many of the issues addressed in his communications to Governments are complex legal matters. He nevertheless hopes that Governments will enter into a dialogue with him, and that their counter-terrorism laws can be debated and discussed with their own civil societies.**

53. **The Special Rapporteur calls for added attention to the rights to freedom of association and peaceful assembly in the context of ensuring that counter-terrorism measures conform to human rights standards. In his view, States should not need to resort to derogation measures in the area of freedom of assembly and association. Instead, limitation measures, as provided for in ICCPR, are sufficient in an effective fight against terrorism. Such limitations must always be demonstrated to be necessary and proportionate, and the Special Rapporteur stresses the importance of ensuring that all limitations are subject to judicial safeguards. The Special Rapporteur recommends that the Human Rights Committee adopt a general comment on the rights to freedom of association and peaceful assembly, including the question of their restriction in the fight against terrorism.**

54. **The Special Rapporteur will continue to carry out his mandate, assumed by the Human Rights Council, under the terms of Commission on Human Rights resolution 2005/80. As the Council is currently pursuing a review of mechanisms and as it meets regularly throughout the year, the Special Rapporteur looks forward to developing a more regular framework for reporting to and interacting with the Council, in line with paragraph 14 (f) of the Commission resolution.**