



INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

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CHECK AGAINST DELIVERY

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Oral Intervention **of the International Commission of Jurists**

HUMAN RIGHTS AND THE FIGHT AGAINST TERRORISM

Mr Chairman,

The International Commission of Jurists congratulates the expert Mme Koufa on her expanded working paper (E/CN.4/Sub.2/2005/39) with the preliminary framework for draft principles and guidelines on human rights and terrorism. The principles constitute an invaluable compilation of human rights standards applicable in this area. They also address certain areas of human rights that have not been explored in detail and warrant further discussion by the Sub-Commission, such as privacy rights or victims' rights.

Mr Chairman

United Nations and regional bodies and mechanisms have considered a number of counter-terrorism measures to be incompatible with international legal obligations. Such jurisprudence, doctrine and recommendations are essential. They indicate which counter-terrorism measures are consistent with the rule of law and human rights. Yet, jurisprudence is necessarily *ad hoc* and scattered, and cannot provide comprehensive normative guidance on the application of human rights to counter-terrorism measures. As Mme Koufa has stated in her expanded working paper, a framework of principles and guidelines, if they are to be useful, would have to be comprehensive.¹ This cannot be achieved through jurisprudence, doctrine and recommendations alone.

¹ E/CN.4/Sub.2/2005/39, paragraph 8.

The need for clear and detailed guidelines of the United Nations to help states balance the imperative to protect human rights and the duty to combat terrorism is now urgent. [Such an instrument would complement the appeal made by the General Assembly, the Security Council and the Commission on Human Rights that “States 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”.²

Regional organizations have acted. The Committee of Ministers of the Council of Europe adopted “Guidelines on human rights and the fight against terrorism” in 2002.³ Last March 2005, the Committee adopted “Guidelines on the Protection of Victims of Terrorist Acts”.

Last June, the General Assembly of the Organization of American States asked the Inter-American Commission on Human Rights to elaborate recommendations for member states on human rights and counter-terrorism so that the Permanent Council may consider drafting terms of reference compiling current international standards.⁴

The African Commission on Human and Peoples’ Rights is expected to endorse the elaboration of guidelines at its next session in autumn this year.

So far, Mr Chairman, there are no guidelines on human rights and counter-terrorism at the universal level. Yet, a compilation of principles at universal level would serve as guidance for all states based on a common standard. As the Secretary-General has stated, “[h]uman rights law makes ample provision for strong counter-terrorist action, even in the most exceptional circumstances.”⁵ However, while it may be clear to experts how international human rights and humanitarian law apply to counter-terrorism measures, it is not so readily accessible to all those who are tasked to carry them out. And, as Mme Koufa has stated, some areas, such as intelligence gathering through new technologies, warrant special attention as human rights have to be interpreted to address evolving circumstances and possibilities. An elaboration of clear and practical guidelines along which states can orient themselves when adopting counter-terrorism measures will help to ensure that counter-terrorism policies take account of human rights to prevent violations.

The International Commission of Jurists considers that the Sub-Commission should take on this responsibility, as it falls neither in the mandate of the Special Rapporteur of the Commission on Human Rights nor the Security Council’s Counter-Terrorism Committee. As a collegial body of

² See General Assembly Resolutions 57/219 of 18 December 2002, 58/187 of 22 December 2003, 59/195 of 22 December 2004; Security Council Resolution 1456 of (2003); Commission on Human Rights Resolutions 2004/91 of 21 April 2004; 2005/80 of 21 April 2005.

³ Available at:

http://www.coe.int/T/F/Communication_et_Recherche/Presse/Dossiers_th%E9matiques/Terrorisme/CM_LignesDirectrices_20020628.asp#TopOfPage.

⁴ AG/RES. 2143 (XXXV-05) Protecting Human Rights and Fundamental Freedoms While Countering Terrorism, adopted on 7 June 2005.

⁵ *Ibid.*

independent experts with a traditional standard-setting role, it is best placed to recall and elaborate on basic principles of human rights in this area.

We look forward to a constructive and high level expert discussion in the Working Group on Terrorism and to collaborating further with the Sub-Commission on this issue.

Thank you, Mr Chairman.