



INTERNATIONAL COMMISSION OF JURISTS

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Statement on the Report of the Special Rapporteur on Human Rights and Counterterrorism to the 20th session of the Human Rights Council

The International Commission of Jurists (ICJ) welcomes the special focus on the human rights of victims of terrorism by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, in his report to the 20th session of the Human Rights Council. The ICJ has long emphasized that acts of terrorism carry serious consequences towards the enjoyment of human rights by victims. In light of that understanding, the ICJ highlights the concurrence of the Special Rapporteur with the view that countering terrorism and protecting human rights are complementary, and not competing, objectives. As the ICJ pointed out in its 2004 Berlin Declaration on Upholding Human rights and the Rule of Law in Combating Terrorism: "There is no conflict between the duty of States to protect the rights of persons threatened by terrorism and their responsibility to ensure that protecting security does not undermine other rights. On the contrary, safeguarding persons from terrorist acts and respecting human rights both form part of a seamless web of protection incumbent upon the State."

The ICJ highly commends the analysis by the Special Rapporteur in respect of the legal obligation on States to protect the right to life, including its obligation to conduct independent and impartial investigations into acts of terrorism. The Special Rapporteur has cogently set out the requisite elements for the effectiveness of such an investigation. The Special Rapporteur has also rightly stressed that the capacity of victims to access an effective remedy and reparation is critical to achieving justice for those victims, and underlined that such reparation may take other forms aside from monetary compensation, in accordance with the needs of individual victims.

The ICJ is concerned at the conceptual framework adopted by the Special Rapporteur, wherein he advances an approach that partially conflates the legal regimes of State responsibility and individual responsibility. The ICJ considers that terrorists are criminals, responsible for gross abuses of human rights and that terrorists and terrorist organizations do not have, nor should they be accorded, either the identical privileges or responsibilities of States. The ICJ is concerned that the Special Rapporteur's framing of the question of responsibility in paragraphs 11-13 of his report, as well as in the discussion on reparations (section IIID of the report), may serve to blur this distinction between regimes. This is an issue involving important and intricate implications for the legal framework on responsibilities for violations of human rights and international law that warrant an elaborated and careful discussion. In addition, the categories of victims identified in the report (paragraph 16) seem overly expansive, taking in as they do any potential victims of terrorism. This broad characterization may undercut the purpose of clarifying who is a victim of terrorism and so fail to give guidance to States as to their legal responsibilities.

Finally, the ICJ underlines the recommendation by the Special Rapporteur that States should take steps towards the elaboration of a new international instrument addressing the human rights of victims of terrorism. The ICJ would welcome further discussion on this recommendation including at the UN Human Rights Council.