

“Effects of Terrorism” & the resolution to renew the mandate of the Special Rapporteur on promotion & protection of human rights & fundamental freedoms while countering terrorism

Briefing Note, 19 March 2019

Concerning draft Human Rights Council resolution L.29 tabled by Mexico 15 March 2019

The International Commission of Jurists (ICJ) recognizes the obligations of States to take measures to prevent and respond to terrorism. As part of such obligations, the ICJ supports measures to respect, protect and fulfill the human rights of victims of terrorism.

The General Assembly has repeatedly and unanimously [reaffirmed](#) that "measures to ensure respect for human rights for all and the rule of law" are "the fundamental basis of the fight against terrorism" and that "States must ensure that any measures taken to combat terrorism comply with their obligations under international law, in particular human rights law, refugee law and international humanitarian law." It has specifically stressed "the need to promote and protect the rights of victims of terrorism" in this regard.

The ICJ firmly opposes any efforts to dilute, distort or distract the mandate of the Special Rapporteur from its current focus, which is on promotion and protection of human rights while countering terrorism and includes human rights of victims of terrorism. Accordingly:

- ICJ urges delegations not to accept any proposal to add references to “the effects of terrorism” in the operative paragraphs of the mandate renewal resolution as presented by Mexico on 15 March. Accepting such language would lay a foundation for dilution, distortion or distraction of the mandate’s established and appropriate focus in a way that would negatively affect the work of the mandate, as well as the overall UN counter-terrorism system.
- ICJ recommends that PP4 be clarified to better accord with the stated intentions of delegations in the informal consultations, to read as follows: “Expressing deep concern at the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism and recalling the need to respect, protect and fulfill the human rights of victims of terrorism.”

The following “Questions and Answers” further explain the reasons for these positions.

1. During the informal consultations, what reason was given by those delegations that wanted to refer to “the effect of terrorism on the enjoyment of human rights and fundamental freedoms” in a new operative paragraph (OP1bis)?

The main reason given was that the “effects of terrorism” language was intended to address the human rights of victims of terrorism, while stressing that the proposed new language was not meant to change the mandate of the Special Rapporteur.

2. What work has the mandate of the Special Rapporteur already done in addressing the human rights of victims of terrorism?

Mandate holders have already reported both to the Human Rights Council and General Assembly on human rights of victims of terrorism and it is currently already mainstreamed into the work of the mandate.

Former Special Rapporteur Ben Emmerson presented a full report on human rights of victims of terrorism, including proposed framework principles, in 2012 ([A/HRC/20/14](#)). Emmerson also dedicated a section in his 2016 annual report to the rights of victims of terrorism ([A/HRC/34/61](#)).

Previous Special Rapporteur Martin Scheinin developed principles for best practices on countering-terrorism which include model provisions on reparations and assistance to victims of terrorism and counter-terrorism measures, such as compensation and legal, medical, psychological and other assistance ([A/HRC/16/51](#)).

Human rights of victims were also addressed in reports on economic, social and cultural rights in the context of countering terrorism ([A/HRC/6/17](#)), on suicide attacks as form of terrorism ([A/HRC/4/26](#)), on the impact of counter-terrorism measures on the human rights of migrants and refugees ([A/71/384](#)), on a gender perspective on countering terrorism ([A/64/211](#)) among several other thematic and country visit reports.

The current Special Rapporteur Fionnuala Ní Aoláin has mainstreamed addressing the human rights of victims in her country visits reports ([A/HRC/40/52/Add.5](#); [A/HRC/40/52/Add.4](#)).

3. Given explanations given in the informals, why would Egypt reject the replacement of the “effects of terrorism” with “human rights of victims of terrorism” in the resolution text?

Egypt and perhaps other delegations appear in fact to mean for the language of “effects of terrorism” to refer to a range of issues beyond human rights of victims of terrorism, most or all of which have very little relation to the human rights focus of the Council.

Inserting this phrase into the resolution to renew the mandate of the Special Rapporteur therefore would lay a foundation for diluting, distorting or distracting the mandate from its established and appropriate focus.

Although the previous Egyptian-led thematic resolutions on “effects of terrorism” were similarly presented as victim-centered, the previous Mexico-alone thematic resolution already addressed human rights of victims of terrorism and the actual text of the Egyptian-led resolutions added little or nothing to what was already being done on the topic. In the Egyptian-led resolutions, there were only three references to victims in [A/HRC/RES/34/8](#) (OP3, OP16, OP17), two references in [A/HRC/RES/31/30](#) (OP13 and OP14), and three references in [A/HRC/RES/28/17](#) (OP12 and OP13).

The Egyptian-led resolutions on “effects of terrorism” appeared instead actually to be aimed at shifting the Council’s attention from focusing on the protection of human rights of individuals, to the protection of the “national security”, financial and other interests of the State.

The three Egyptian-led resolutions did not address the human rights of individuals beyond diffuse references to the right to life, liberty and security, despite existing work on rights of victims of terrorism already having addressed these and other rights in much more detail.

A more detailed hint of what Egypt may actually intend by “effects of terrorism” can be taken from a very recent Council Advisory Committee draft report on the topic ([A/HRC/AC/22/CRP.2](#), 12 Feb 2019) which had been requested by the last Egyptian-led resolution. The resolution itself specified that the report should particularly focus on effects arising from “diverting foreign direct investment, reducing capital inflows, destroying infrastructure, limiting foreign trade, disturbing financial markets, negatively affecting certain economic sectors and impeding economic growth” ([A/HRC/RES/34/8](#), OP20).

The draft [report](#) was prepared by Ms. Mona Omar, a [self-described](#) former Egyptian career diplomat.

The report focuses on the impacts of terrorism on economic, social and cultural rights, but unlike the earlier report on economic, social and cultural rights in the context of countering terrorism prepared by a previous Special Rapporteur, it mainly approaches these issues from the perspective of the impacts on the State rather than the individual holders of human rights:

- The draft report purports to offer a new definition of terrorism, which appears far broader in scope and less precise than almost any other currently in use (para 10).
- The draft report addresses the right to life and other civil and political rights in a single paragraph, essentially concluding in this regard only that States must take measures, in very general terms, to counter terrorism (para 11).
- Throughout the discussion of “economic rights”, “social rights”, and “cultural rights” in the main body of the draft report, the report makes almost no effort to link the topics it covers to specific internationally recognised human rights such as those in the International Covenant on Economic, Social and Cultural Rights.
- Under “economic rights” (paras 12-18), by far the longest section of the report, it mainly discusses: overall economy and GDP figures; financial costs to governments of counter-terrorism and other security measures and to replace damaged property; stock market impacts; economic costs to the country of “brain drain”; negative impacts on tourism industry; deterring financial investment; reduction in international trade; costs to businesses of technological investment; money-laundering.
- Under “social rights” (para 19), much of the discussion is on psychological impacts of terrorism on the general population, albeit without citing sources for the relatively broad observations, but placing specific emphasis on reduced “perception of confidence in the government and its policies”, and highlighting “costs on the state budget” several times.

- While the section under “cultural rights” (paras 20-23), perhaps the most coherent in the report, at least cites one international human rights standard and addresses destruction of cultural heritage and targeting of education facilities, it also wanders off into discussion of associated “financial losses”, the “national security” consequences of religious conflicts, and that “while States must step up efforts to protect those historical properties, they should respect principles of Sovereignty and Non-interference in others internal affairs”.
- The “Recommendations” section contains a range of points with little attempt to relate them to the content of the report. While a very few do reference human rights, these essentially echo prior recommendations of the Special Rapporteur in less detail, and without citing the source. Many others essentially repeat or promote particular counter-terrorism or security initiatives promulgated by the Security Council or individual governments.
- The report only briefly addresses the human rights of victims of terrorism. They are directly addressed only in 3 of the 34 recommendations in the report. The far more detailed previous work of the Special Rapporteur on this topic is not even cited or otherwise recognised in the report.

4. How could diluting, distorting or distracting the mandate and work of the Special Rapporteur negatively affect the overall work of the UN against terrorism?

The current mandate holds a uniquely important role in the overall UN Counter-Terrorism architecture. Almost all of the many other bodies and procedures within that architecture are aimed at ensuring States take comprehensive and rigorous measures to prevent and respond to acts of terrorism. Within this massive overall system, the Special Rapporteur is the only UN entity with the specific mandate to independently review, advise on and report (including publicly) on counter-terrorism measures from an exclusively human rights perspective.