



Intervention by Ben Emmerson
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HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE
COUNTERING TERRORISM

Secretary-General's Symposium
on
International Counter-Terrorism Cooperation

19 September 2011
New York



Madam Chair, your Excellencies, it is an honour to be able to say a few words at this important and timely symposium in my capacity as newly elected Special Rapporteur on Counter Terrorism and Human Rights. I would like to take this opportunity to explain one or two particular aspects of my approach to the discharge of my mandate.

The protection of human rights is all too often seen as incompatible with effective counter-terrorism strategies. Over the last decade the international community has come to accept, at least formally, that the reverse is true, and that it is only by strict adherence to international human rights standards that counter-terrorism strategies can ultimately succeed. But the practice of States has not always followed their commitments. What makes this area so complex, and so difficult, is the ever-present danger that some States, including States with a proud record of respect for the rule of law, have been willing at times to abandon those core values on the pretext of defending them.

As a starting point for the discharge of my mandate I intend to adopt and build upon the areas of best practice identified by my predecessor Martin Scheinin in his 2011 annual report to the Human Rights Council. But I want to take this opportunity to make it clear that during my period of tenure I am committed to ensuring that proportionate attention is paid to the rights of victims of acts of terrorism. Thanks to the consistent efforts of the Secretary-General's office, the international community has come to recognise that any sound, sustainable, and comprehensive strategy for combating terrorism

requires the recognition of the suffering of victims of terrorist acts. States have important duties towards both actual victims and potential victims.

The first duty of any State is the duty to protect the lives of its citizens as well as of all individuals within its territory and subject to its jurisdiction. This includes the duty to take lawful and proportionate measures aimed at preventing a real and immediate threats to life from acts of terrorism; the duty to conduct thorough, independent and impartial investigations when it is plausibly alleged that this positive obligation has been violated; the duty to investigate and bring to justice the perpetrators of acts of terrorism in a manner consistent with international standards; and the duty to afford adequate reparation as well as medical and psycho-social support to victims of terrorism.

Madam Chair, the dehumanization of victims of terrorism is not confined to the indiscriminate crimes committed by terrorist groups. States too can dehumanise victims by reducing their plight to mere justification for tougher counter-terrorism measures that violate human rights. It is essential that the protection of the rights of the victims of terrorism is seen as a genuine legal duty resting primarily on States, and that it is not misused as a pretext for violating the human rights of those suspected of terrorism, for taking emergency measures which provide for excessive and disproportionate executive powers, or for other essentially political purposes.

Closely related to the protection of victims is the issue of prevention of terrorism. It is now widely accepted within the international community that

by promoting and protecting human rights Member States at the same time contribute to preventing terrorism by addressing the conditions conducive to its development. The UN Global Counter Terrorism Strategy places the promotion of human rights squarely at the centre of the fight against terrorism. Member States reaffirmed that States must ensure that any measures taken to combat terrorism comply with their obligations under international law, and in particular human rights law, refugee law and international humanitarian law. As many of the contributions today have recognised, this is not solely a question of legitimacy. It is also a question of effective prevention. Security Council resolution 1963 reiterates that violations of human rights are one of the conditions conducive to the spread of terrorism, and recognizes that terrorism will not be defeated by military force, law enforcement measures and intelligence operations alone. In the discharge of my mandate I intend to focus on this important principle – now internationally recognised.

Finally, I should make it clear that whilst I intend to pay appropriate attention to these important issues of victims rights and prevention of terrorism in the discharge of my mandate, this will not in any sense detract from my responsibility to investigate and report on issues of States' compliance with their human rights obligations in the investigation, prosecution and punishment of those alleged to have engaged in the preparation, instigation or commission of acts of terrorism.

These twin imperatives are complementary and form the dual foundations essential to the maintenance of effective, legitimate, human rights compliant, anti-terrorism initiatives. Both sets of obligations involve duties resting primarily on States. The essence of lawful State action in the context of anti-terrorism strategies is the striking of a fair and proportionate balance between two sets of duties. In the discharge of my mandate I will focus upon the manner in which States have sought to strike this difficult but vital balance.