



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2004/50
23 January 2004

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixtieth session
Item 11 of the provisional agenda

CIVIL AND POLITICAL RIGHTS

Human rights and terrorism

Report of the Secretary-General*

* This document is submitted late so as to include the most up-to-date information possible.

Summary

The present report, submitted in accordance with Commission on Human Rights resolution 2003/37, reproduces the replies received to a note verbale sent by the Office of the United Nations High Commissioner for Human Rights seeking the views of member States on the implications of terrorism in all its forms and manifestations for the full enjoyment of all human rights and fundamental freedoms and on the possible establishment of a voluntary fund for the victims of terrorism, as well as on ways and means to rehabilitate those victims.

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Introduction

1. At its fifty-ninth session, in resolution 2003/37 on “Human rights and terrorism”, the Commission on Human Rights reiterated its unequivocal condemnation of the acts, methods and practices of terrorism, regardless of their motivation, in all their forms and manifestations, wherever, whenever and by whomever committed, as acts aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and the rule of law and having adverse consequences for the economic and social development of the States. The Commission expressed its solidarity with the victims of terrorism.
2. The Commission urged States to fulfil their obligations under the Charter of the United Nations in strict conformity with international law, including human rights standards and obligations and international humanitarian law, to prevent, combat and eliminate terrorism in all its forms and manifestations, wherever, whenever and by whomever committed, and called upon States to strengthen, where appropriate, their legislation to combat terrorism in all its forms and manifestations. It further urged all relevant human rights mechanisms and procedures, as appropriate, to address the consequences of the acts, methods and practices of terrorist groups in their forthcoming reports to the Commission.
3. The Commission on Human Rights invited the Secretary-General to continue to seek the views of member States on the implications of terrorism in all its forms and manifestations for the full enjoyment of all human rights and fundamental freedoms and on how the needs and concerns of the victims of terrorism might be addressed, including through the possible establishment of a voluntary fund for the victims of terrorism, as well as on ways and means to rehabilitate the victims of terrorism and to reintegrate them into society, with a view to incorporating his findings in his reports to the Commission and the General Assembly.
4. The present report reproduces the latest replies received from Governments to notes verbales sent by the Office of the High Commissioner for Human Rights to Member States in implementation of resolution 2003/37 and General Assembly resolution 56/160. It will be recalled that the views of other States on the subject of human rights and terrorism were most recently incorporated in the Secretary-General’s report on the subject to the General Assembly (A/58/533).

REPLIES RECEIVED FROM MEMBER STATES**Cuba**

1. The Government of Cuba expresses, once again, its utter rejection of all acts, methods and practices of terrorism, in all their forms and manifestations, wherever, by whomever and against whomever committed, and regardless of their motivations. Cuba reiterated that it has never permitted nor will it ever permit the use of its national territory for the commission, planning or financing of acts of terrorism against any other State. The Government stated that it has expressed its genuine commitment and political will to combat international terrorism through concrete steps, including the ratification of the 12 international conventions on the subject, as well as through the unanimous approval by its parliament of the “Law against Acts of Terrorism”, which established severe penalties for terrorist and terrorist-related acts, based on the relevant conventions adopted by the United Nations and the Penal Code currently in force. It said that terrorism is an unacceptable phenomenon whose existence has been condemned and fought against by the entire international community, in a spirit of close cooperation and with respect for the Charter of the United Nations, international law and international humanitarian law.
2. Cuba stated that it does not share the viewpoint defended by some Western, industrialized countries, as well as by non-governmental organizations from that region, to the effect that only States can violate human rights. In reality, individuals and groups of individuals are subject equally to rights and to duties and human responsibilities. The Government said that for Cuba, all terrorist acts are in essence violations of human rights, directed as they necessarily are against the enjoyment of fundamental human rights by others, in particular the rights to life and to physical security. It is within the responsibility of States to ensure the enforcement of law in their territory, and individuals and groups of individuals who violate the law by participating in terrorist acts of whatever nature will be above all criminals, and should be punished by the State in question. A State that fails in its obligation to punish such persons or groups of persons or, worse, incites their actions becomes an accomplice State or promoter of terrorism and, if this becomes its practice, will assume in fact a policy of State terrorism.
3. Cuba said that the United Nations has a fundamental role in the task of guiding and articulating an international campaign against terrorism. Independently from the role that might be taken by other organs, such as the Security Council, Cuba wishes to reiterate that the General Assembly is the organ with the mandate and the characteristics necessary to carry this work forward efficiently and to spur international cooperation, with the participation of all States, that a task of this scale requires.
4. The Government stated that the practice of State terrorism is equally deserving of condemnation and was rejected by the international community in the declaration entitled “Measures to eliminate international terrorism”, annexed to General Assembly resolution 49/60, that stipulates that States “must refrain from organizing, instigating, assisting or participating in terrorist acts in territories of other States, or from acquiescing in or encouraging activities within their territories directed towards the commission of such acts”. The Government stated that it rejects the manipulation by some States of the legal theory of inherent legitimate defence to

justify the commission of acts of terrorism invoking the supposed right to so-called “preventive defence”. The aim of such manipulation is none other than to attempt to legitimize aggression, interference in the internal affairs of other States, and State terrorism.

5. The Government said it has reiterated on innumerable occasions the necessity of adopting a comprehensive convention on international terrorism, that contains a clear and precise definition of the crime of terrorism, that includes all the types and forms that the phenomenon assumes, that foresees all the material and subjective elements that conform to the crime, and that imposes responsibility equally on persons as well as on legal entities (*personas jurídicas*). The absence of a definition of the crime of international terrorism in the related existing legal instruments has facilitated the manipulation and the use of politically motivated interpretations by certain States, at the same time that it has encouraged the selective application of such instruments.

6. Nevertheless, Cuba shares the call by a group of numerous developing countries demanding that any international convention that might be adopted on the subject establish the necessary distinction between terrorism and the right of peoples struggling against foreign occupation and control for the full realization of the right to free determination. The struggle against the terrorism phenomenon cannot be viewed nor carried forward on the basis of national interests and the foreign policy ambitions of any country in particular, but rather must be based on a foundation of unity of the international community in its entirety, in their efforts to eradicate this evil from the face of the earth.

7. Cuba stated that it emphatically rejects the unilateral practice of some States, contrary to the spirit of the Declaration and the principles of international law and of the Charter of the United Nations, to claim for themselves the right to issue “certifications” and “lists” of countries that supposedly support international terrorism. It considers this to be a spurious exercise, politically motivated and of corrupt origin. Those who elaborate such lists lack even the most minimal moral authority to present themselves as international arbiters on the subject of terrorism or any other subject. The absurd and arbitrary inclusion of Cuba on the list of States that supposedly support international terrorism, elaborated annually by the Government of the United States, stems from considerations of internal politics in that country, linked to narrow electoral motives in the State of Florida.

8. Cuba said that this is another of the pretexts that have been fabricated for 44 years by the Government of the United States of America to justify its aggressive policy against the Cuban people and their revolution and to try to undermine the prestige and moral authority of the Government of Cuba, while rejecting with irrational arguments and without any real substance the proposal to agree to a bilateral programme of struggle against terrorism, presented by Cuba to the Government of the United States in November 2001 and reiterated in December 2001, as well as in March and December 2002. Cuba said it is the Government of the United States that has for more than 40 years maintained a policy of support and tolerance for terrorism that has been committed from its territory against Cuba, with the aim of depriving the Cuban nation of the exercise of its right to free determination. It has been irrefutably shown that innumerable terrorist organizations operate from United States territory against Cuba with total impunity, and that on its streets circulate freely terrorists and admitted assassins, responsible for innumerable terrorist actions, in their great majority planned and organized from United States territory, with the sponsorship and financing of successive administrations of that country. As a result, a total

of 3,478 persons have died, while another 2,099 have received severe injuries. There has also been an extremely high economic cost paid by the Cuban nation as a consequence of the successive acts of sabotage, including biological aggression, to which it has been subject throughout more than four decades of defence of its sovereignty and self-determination.

9. The Government said that the tolerance and support for terrorism against Cuba and the benevolent treatment by the United States authorities of hijackers of Cuban ships and aircraft, perpetrators of crimes specified in international instruments on the subject of terrorism signed by the Government of the United States, have been the direct cause of innumerable terrorist acts committed in Cuba by unscrupulous individuals who have endangered human lives and who have committed murder, with the aim of hijacking ships or aircraft to take them to the United States. The fact that the Government of that country has not returned the authors of those crimes, sought by Cuban justice, nor the stolen ships or aircraft shows the lack of political will of the Government of the United States to punish the crime of terrorism that is committed against countries that maintain independent positions and do not submit themselves to its policies.

10. Cuba said that the level reached in developed countries is equally execrable, notably in the United States, of xenophobia, the satanization of Islam, Muslims and Arabs, the hardening of restrictive migration policies, the growth in discrimination against immigrants, as well as the draconian and arbitrary restrictions and violations of civil rights since the attacks of 11 September 2001, serving as a pretext for the struggle against terrorism. Especially deserving of condemnation has been the prolonged detention in the United States and at the illegal United States base in Guantánamo of hundreds of “suspects”, who remain in a legal limbo, without charges nor any guarantee of due process.

11. Cuba stated that it has advocated for the development of bilateral and multilateral cooperation in all its forms to confront international terrorism and contribute to the rehabilitation of its victims and their reintegration into society, on the basis of mutual respect and the sovereign equality of States. This cooperation could include, in addition to the voluntary fund: exchange of information, technical assistance, the adoption of measures to build confidence among State agencies responsible for maintaining order, and high-level political dialogues with the view to adopting a coordinated response against terrorist acts and phenomena and in favour of rehabilitation and reintegration into society. The Government stated that the solution to the grave problems facing the world today, such as poverty, inequality, lack of opportunity, illiteracy, injustice and foreign domination through force must be an integral element of the struggle against terrorism, in order to eliminate some of the causes and the propitious context that encourages persons disposed to commit terrorist acts.

Mauritius

1. The Government of Mauritius strongly shares the concerns of the international community with respect to the gross violations of human rights perpetrated by terrorist groups worldwide, and believes that terrorism is a major hurdle to the enjoyment of fundamental rights and freedoms. It said that terrorism violates the right to life, the most basic right of all. People are killed or maimed indiscriminately, and women, children and the elderly are not spared. As a result, people live in fear. The right of people to live in freedom from fear is rendered meaningless.

2. For the Government of Mauritius, the rights to liberty and security of the person and freedom from arbitrary arrest and detention are endangered by offences such as kidnapping, assault and the taking of hostages by terrorist groups. Freedom from torture and from cruel, inhuman and degrading treatment or punishment is also jeopardized. Robberies and extortion by terrorist groups violate the right to freedom from poverty.

3. Mauritius is aware of the negative aspects of terrorism on the rights and freedoms enshrined in its Constitution, and modelled on the Universal Declaration of Human Rights. In this respect, Mauritius has acted expeditiously after the September 2001 events to enact the Prevention of Terrorism Act (2002), the Prevention of Terrorism (Denial of Bail) Act (2002), the Prevention of Terrorism (Special Measures) Regulations (2003), and the Financial Intelligence and Anti-Money Laundering Act (2002). The efforts in this area shall continue.
