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COMMISSION ON HUMAN RIGHTS  
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**PROMOTION AND PROTECTION OF HUMAN RIGHTS**

**Argentina, Armenia, Austria\*, Belgium\*, Bolivia\*, Bosnia and Herzegovina\*, Bulgaria\*, Canada, Costa Rica, Croatia\*, Cyprus\*, Czech Republic\*, Chile\*, Denmark\*, Dominican Republic, Ecuador, El Salvador\*, Estonia\*, Finland, France, Germany, Greece\*, Guatemala, Hungary, Iceland\*, Ireland, Italy, Latvia\*, Liechtenstein\*, Lithuania\*, Luxembourg\*, Malta\*, Mexico, Netherlands, New Zealand\*, Norway\*, Paraguay, Poland\*, Portugal\*, Romania, Slovakia\*, Slovenia\*, Spain\*, Sweden\*, Switzerland\*, Ukraine\* and United Kingdom of Great Britain and Northern Ireland:  
draft resolution**

**2005/... Protection of human rights and fundamental  
freedoms while countering terrorism**

*The Commission on Human Rights,*

*Reaffirming* the purposes and principles of the Charter of the United Nations,

*Reaffirming also* the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law,

*Recalling* that States have the duty and are under the obligation to protect all human rights and fundamental freedoms of all persons,

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\* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

*Acknowledging* the important contribution of measures at all levels against terrorism, consistent with international law, in particular international human rights law and refugee and humanitarian law, for the functioning of democratic institutions, the maintenance of international peace and security and thereby to the full enjoyment of human rights,

*Deeply deploring* the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism,

*Recognizing* that the respect for human rights, democracy and the rule of law are interrelated and mutually reinforcing,

*Recalling* its resolution 2004/87 of 21 April 2004 and taking note of General Assembly resolution 59/191 of 20 December 2004,

*Welcoming* the various initiatives to strengthen the promotion and protection of human rights in the context of counter-terrorism adopted by the United Nations and regional intergovernmental bodies, as well as by States,

*Noting* the declarations, statements and recommendations by a number of human rights treaty monitoring bodies and special procedures on the question of the compatibility of counter-terrorism measures with human rights obligations, as well as the final report of the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights on terrorism and human rights (E/CN.4/Sub.2/2004/40),

*Reaffirming* that acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity and security of States and destabilizing legitimately constituted Governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism,<sup>1</sup>

*Taking note* of General Assembly resolution 59/195 of 20 December 2004 and recalling Commission resolution 2004/44 of 19 April 2004 on human rights and terrorism,

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<sup>1</sup> Paragraph 17 of section I of the Vienna Declaration and Programme of Action (A/CONF.157/23), adopted by the World Conference on Human Rights on 25 June 1993.

*Taking note also* of the declaration on the issue of combating terrorism contained in the annex to Security Council resolution 1456 (2003) of 20 January 2003, in particular the statement 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,

*Reaffirming* its unequivocal condemnation of all acts, methods and practices of terrorism, in all their forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable, and renewing its commitment to strengthen international cooperation to prevent and combat terrorism,

*Stressing* that everyone is entitled to all the rights and freedoms recognized in the Universal Declaration of Human Rights without distinction of any kind, including on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

1. *Reaffirms* that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;
2. *Deeply deplores* the suffering caused by terrorism to the victims and their families and expressing its profound solidarity with them;
3. *Recalls* that, in accordance with article 4 of the International Covenant on Civil and Political Rights, certain rights are recognized as non-derogable in any circumstances and that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlining the exceptional and temporary nature of any such derogations;<sup>2</sup>
4. *Calls upon* States to raise awareness of the importance of these obligations among national authorities involved in combating terrorism;

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<sup>2</sup> See, for example, general comment No. 29 (2001) on article 4 of the Covenant (derogations during a state of emergency) adopted by the Human Rights Committee.

5. *Reaffirms* that it is imperative that all States work to uphold and protect the dignity of individuals and their fundamental freedoms, as well as democratic practices and the rule of law, while countering terrorism, as stated in the report of the Secretary-General (E/CN.4/2004/91) submitted pursuant to General Assembly resolution 58/187 of 22 December 2003;

6. *Takes note with appreciation* of the study of the United Nations High Commissioner for Human Rights (A/59/428) submitted pursuant to General Assembly resolution 58/187, and notes that the United Nations has been unable to address the compatibility of national counter-terrorism measures with international human rights obligations in a comprehensive and integrated way;

7. *Also takes note with appreciation* of the report of the independent expert on the protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2005/103), and recognizes the need to take significant steps to strengthen human rights protection while countering terrorism, given the gaps in the monitoring system of the special procedures and treaty bodies;

8. *Further takes note with appreciation* of the report of the High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2005/100), submitted pursuant to Commission resolution 2004/87 and General Assembly resolution 59/191;

9. *Encourages* States to make available to relevant national authorities the “Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights while Countering Terrorism” and to take into account its content, and requests the High Commissioner to update and publish it periodically;

10. *Welcomes* the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encourages the Security Council

and its Committee to strengthen the links and to continue to develop the cooperation with relevant human rights bodies, in particular with the Office of the High Commissioner for Human Rights, giving due regard to the promotion and protection of human rights in the ongoing work pursuant to relevant Council resolutions relating to terrorism;

11. *Encourages* States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourages them to consider the recommendations of the special procedures and mechanisms of the Commission and the relevant comments and views of treaty bodies;

12. *Requests* the High Commissioner for Human Rights, making use of existing mechanisms, to continue:

(a) To examine the question of the protection of human rights and fundamental freedoms while countering terrorism, taking into account reliable information from all sources;

(b) To make general recommendations concerning the obligation of States to promote and protect human rights and fundamental freedoms while taking actions to counter terrorism;

(c) To provide assistance and advice to States, upon their request, on the protection of human rights and fundamental freedoms while countering terrorism, as well as to relevant United Nations bodies;

13. *Requests* the Chairperson of the Commission to appoint, for a period of three years, after consultations with other members of the Bureau, an individual of recognized international standing and demonstrable expertise in human rights law, as well as solid knowledge of international humanitarian law, criminal law and refugee law, as special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, with the following mandate:

(a) To make concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism, including, at the request of States, for the provision of advisory services or technical assistance on such matters;

(b) To gather, request, receive and exchange information and communications from and with all relevant sources, including Governments, the individuals concerned, their families, their representatives and their organizations, including through country visits, on alleged violations of human rights and fundamental freedoms while countering terrorism;

(c) To identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms;

(d) To bring to the attention of States concerned and, when appropriate, to the Commission on Human Rights or any other relevant United Nations body situations that could result in violations of human rights and fundamental freedoms while countering terrorism;

(e) To develop a regular dialogue and discuss possible areas of cooperation with all relevant actors, including Governments, relevant United Nations bodies, specialized agencies and programmes, in particular with the Counter-Terrorism Committee of the Security Council, the Office of the United Nations High Commissioner for Human Rights, the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime, human rights mandate holders and treaty bodies, the Sub-Commission for the Promotion and Protection of Human Rights, as well as non-governmental organizations and other regional or subregional international institutions;

(f) To report regularly to the Commission on Human Rights and to the General Assembly;

14. *Requests* all Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, to furnish all information requested and to react promptly to his/her urgent appeals,

15. *Calls upon* all Governments to give serious consideration to responding favourably to the Special Rapporteur's requests to visit their countries and urges them to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to his or her recommendations, so as to enable him or her to fulfil his or her mandate even more effectively;

16. *Requests* all relevant special procedures and mechanisms of the Commission, as well as the United Nations human rights treaty bodies to continue considering, when appropriate within their mandates, the protection of human rights and fundamental freedoms in the context of measures to combat terrorism and to coordinate their efforts with the mandate of the Special Rapporteur established by the present resolution in order to promote a consistent and complementary approach on this subject to avoid duplication of their work;

17. *Requests* the High Commissioner to report regularly on the implementation of the present resolution to the Commission on Human Rights and to the General Assembly;

18. *Recommends* the following draft decision to the Economic and Social Council for adoption:

“The Economic and Social Council, taking note of Commission on Human Rights resolution 2005/... of ... April 2005, approves the decision of the Commission to appoint a special rapporteur on the promotion and protection of human rights while countering terrorism for a period of three years with the mandate contained in that resolution. The Council also approves the request to the United Nations High Commissioner for Human Rights to report regularly on the implementation of the resolution to the Commission and to the General Assembly.”

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