

Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism

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CTITF Working Group Membership:

- Protecting Human Rights While Countering Terrorism
- Supporting and Highlighting Victims of Terrorism

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism was appointed by the Commission on Human Rights in 2005 and upheld by the newly established Human Rights Council a year later. This role was created in response to an identified need to monitor and assist states in complying with their human rights obligations while countering the threat of terrorism. In particular, the Commission on Human Rights highlighted the need for a “special procedure with a multidimensional mandate to monitor states’ counter-terrorism measures and their compatibility with human rights law.”¹⁵⁸

Martin Scheinin, a Finnish law professor and a longstanding member of the UN Human Rights Committee,¹⁵⁹ was the first person appointed to this position, in 2007.¹⁶⁰ His responsibilities as Special Rapporteur included the identification, promotion, and exchange of

best practices relating to counterterrorism measures that are compliant with states' human rights obligations under international law. The Special Rapporteur also reports regularly on findings and recommendations to the Human Rights Council and the General Assembly. The mandate of the Special Rapporteur encourages the development of regular dialogue on possible areas of cooperation with governments, relevant United Nations entities and partners, as well as nongovernmental organizations and other regional or subregional institutions.

To these ends, the Special Rapporteur conducts country visits, with the host state's consent, to allow a closer examination of human rights compliance in states' counterterrorism practices. Despite budgetary constraints, which have limited the number and substance of consultations, the Special Rapporteur has conducted a number of state visits. Among the countries visited between 2005 and 2011 are Azerbaijan, Brazil, China, Denmark, Egypt, Equatorial Guinea, Georgia, Greece, Indonesia, Israel and the Occupied Palestinian Territories, Jamaica, Jordan, Kazakhstan, Moldova, Mongolia, Nepal, Nigeria, Paraguay, Spain, Sri Lanka, Togo, Tunisia, Turkey, Uruguay, USA, and Uzbekistan.

Reports from these visits have indicated that the current definition of terrorism is too vague, allowing some states to implement counterterrorism practices that have led to undue restrictions on freedoms of expression, religion, and association, for example.¹⁶¹ Consequently, the Special Rapporteur has highlighted the importance of a strict definition of terrorism, especially given its legal implications for states, individuals, and organizations.

The annual reports of the Special Rapporteur have highlighted a number of key issues where counterterrorism efforts impinge on fundamental rights and freedoms.¹⁶² For example, one report reflects on the impact of the "War on Terror" on freedom of association and peaceful assembly, privacy, and due process in the context of placing individuals or entities on terrorist lists at the UN and other international institutions.¹⁶³ Another report examines challenges to refugee law and asylum caused by global measures to counter terrorism, and the right to a fair trial in the context of prosecuting terrorist suspects, including the jurisdiction of military and special courts.¹⁶⁴

Professor Scheinin's August 2010 report reflected on the approaching tenth anniversary of the September 11th attacks and proposed putting Security Council Resolutions 1267, 1373, and 1624 under a single resolution to streamline states' reporting mechanisms under a single framework. Scheinin also argued that such a resolution should not fall under the legally binding Chapter VII of the UN Charter. He argued that the Security Council, in past counterterrorism resolutions, had provided an inadequate legal basis for the mandatory and permanent Security Council resolutions "of a quasi-legislative or quasi-judicial nature."¹⁶⁵ As with some of the other findings presented in the Special Rapporteur's reports, this conclusion did not meet with universal approbation among the UN membership, who questioned whether he had exceeded his mandate in examining the validity of the council's Chapter VII measures.¹⁶⁶

After the tenure of Professor Sheinin, Ben Emmerson began his appointed position as the Special Rapporteur on August 1, 2011. Mr. Emmerson was formerly the Special Adviser to the Prosecutor of the International Criminal Court and Special Adviser to the Appeals Chamber of the Extraordinary Chambers in the Courts of Cambodia, with twenty-five years practicing and publishing on international human rights and humanitarian law. Mr. Emmerson is continuing the work of his predecessor to ensure respect for human rights in states' counterterrorism policies, and has committed to paying proportionate attention to the rights of victims of terrorism during his tenure. This is reflective of the 2006 UN Global Counterterrorism Strategy, which counts among the "conditions conducive to the spread of terrorism," the "dehumanization of victims of terrorism in all its forms and manifestations, lack of rule of law and violations of human rights..."¹⁶⁷

The Special Rapporteur is a member of the CTITF, and a member of the Working Groups on Protecting Human Rights While Countering Terrorism as well as the Working Group on Supporting and Highlighting Victims of Terrorism. The former has published two Basic Human Rights Reference Guides on "Security Infrastructures" and on "Stopping and Searching of Persons" as part of a series of CTITF publications, launched at the International Peace Institute in September 2010. These guides are intended to assist states in

developing human rights-compliant measures in a number of areas relating to counterterrorism work, and to provide examples of good practices. They provide relevant reference materials, which might include human rights treaties and conventions, UN reports, legal norms, and references to comments, jurisprudence, and conclusions from human rights mechanisms.¹⁶⁸