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**SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE
COUNTERING TERRORISM**

Statement by Professor Martin Scheinin
to the Counter-Terrorism Committee of the Security Council

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New York



Mr. Chairman, distinguished delegates

This is already my third appearance before the Counter-Terrorism Committee of the Security Council in my capacity as the Special Rapporteur on human rights and counter-terrorism. In addition, member delegations and the CTED have in various ways been available for consultations during the three years of my mandate. Welcoming this spirit of cooperation, I extend my appreciation to the Committee for this renewed opportunity to engage in a dialogue on a number of issues that are of mutual interest to our respective mandates.

Since the adoption, a little more than two years ago, of the Global Counter-Terrorism Strategy, clear progress has been made in the inclusion of human rights into the framework of United Nations action against terrorism. There is wide consensus that any sustainable strategy for the effective combat of terrorism must include promotion and protection of human rights as an essential element – both as a pillar of its own and as an ingredient of all other pillars, to use a metaphor.

As to the role of the CTC, I note with appreciation that the CTC does now include human rights elements in its assessment of Member States' compliance with Resolution 1373 and in its technical assistance to Member States. The work that comes to the CTC under Resolution 1624, which reiterates the human rights clause of Resolution 1456, entrusts the CTC with a new mandate. This is a most welcome development as it makes it clear that respect for human rights will be an element of the CTC's assessment of compliance in accordance with Resolution 1624.

Speaking of resolutions as the legal basis for United Nations action against terrorism, it is worthwhile noting that the formulation of the so-called human rights clause has evolved since the days of Resolution 1456. Both Resolution 1822 by the Security Council and General Assembly Resolution 62/272 on the implementation of the Global Strategy, now also refer to the United Nations Charter when affirming the duty of all States to comply with international law, including human rights law, when combating terrorism, hence dismissing speculations about Charter obligations in the field of counter-terrorism possibly trumping States' human rights obligations. Furthermore, the respective clauses in the new resolutions just mentioned address not only implementing measures by individual Member States but also action by the United Nations itself, thereby recognizing that also United Nations action to counter-terrorism must

fully comply with international law, including human rights law, refugee law and international humanitarian law.

As my mandate is one of the entities participating in the Counter-Terrorism Implementation Task Force, I am pleased to affirm that the Task Force has moved from planning to action. One important dimension of its work in the coming months will be to demonstrate through the development of practical tools for the use by Member States, that terrorism can be effectively fought in full compliance with human rights.

Mr Chairman,

As highlighted in the brief activities section of my report (A/63/233), that will be presented to the Third Committee later this week, there have been two important visits undertaken by my mandate within the past year.

In December 2007 I visited Guantánamo Bay for the purpose of observing Military Commission hearings. While I regret that the United States retained its policy of not allowing United Nations Special Rapporteurs to visit persons detained of their liberty without any form of monitoring, I do thank the Government of the United States for their cooperation in facilitating the trial observation mission. As I have previously reported to the Human Rights Council, the visit confirmed my misgivings concerning the operation of the Military Commissions and I find it highly unlikely that they would be able to provide a trial that meets the standards of international human rights law concerning the right to a fair trial. My current report in front of you provides several examples of the problems in question. As you will note in paragraph 44 of my report, one of my concerns was confirmed by the United States Supreme Court which in *Boumediene v. Bush* found the Military Commissions Act unconstitutional for its denial of habeas corpus to Guantánamo detainees.

In May 2008 I conducted an official mission to Spain that included private interviews with domestic and foreign terrorist suspects and a visit to the Basque country. I wish to express my gratitude to the Spanish Government for its cooperation, and my regrets for the fact that for reasons beyond my control the mission report is not yet in the public domain. In the press statement issued at the end of the mission, I identified a number of areas of best practice in Spain's counter-terrorism efforts and commended Spain for its positive role in promoting a human rights conform response to terrorism on the international level. Nevertheless, I also identified matters of concern. Among the latter, the continued use of *incommunicado* detention for terrorism suspects, despite

recommendations to the contrary by a number of human rights bodies, is to be mentioned separately. In my press statement I called for the complete eradication of the institution of incommunicado detention, not the least because it would strengthen the credibility of counter-terrorism measures by the law enforcement bodies as a whole and would at the same time further assure that those falsely accused of ill-treatment of terrorism suspects could be cleared.

Drawing inspiration from my missions to Spain, Turkey and other countries but here refraining from any explicit legal comment, I would like to seek the support and cooperation of the CTC in making it clear to Member States that broad national law definitions of “terrorism” or of specific terrorist crimes, are often counterproductive in the crucially important task of countering international terrorism. If national law applies the stigma of terrorism in respect of a broad range of activities, it may dilute the message and also delegitimize the fight against terrorism in the eyes of the population or certain segments of it.

A number of requests for country visits by my mandate remain pending, including those communicated to Algeria, Egypt, Malaysia, Pakistan and the Philippines. It is a matter of concern to me that some of my requests for an invitation were made already three years ago. I welcome recent progress in consultations with some of these countries and the official invitation extended by the Government of Tunisia in June 2008. I have suggested a time frame for this country visit and look forward to receiving a reply from the Government so that this mission can be undertaken in the near future.

I would like to use this opportunity to discuss with the CTC the possibilities of cooperation in the field of country assessment. Being aware that the CTC has utilized the reports on my missions to Turkey and South Africa, I would be eager to hear reflections by the distinguished delegates of this experience. Further, as Governments are sometimes reluctant to open their doors to a human rights Special Rapporteur, I would seek the support and cooperation of the CTC which could facilitate my schedule for country visits in 2008-2011 to be planned in a more systematic way. I would also propose piloting a joint country mission by the CTC and my mandate, primarily to a country that is in the process of redrafting its counter-terrorism legislation.

Mr Chairman,

As you notice from paragraph 45 of my report to the General Assembly, I am applying the notion of “best practice” when identifying human-rights-conform ways of effectively combating terrorism. I want to take this opportunity to renew my willingness to cooperate with the CTC in identifying best practice.

Due to the human rights clause in resolution 1624, joint identification of best practice in the implementation of that resolution appears to me as a good pilot project that could build upon the work already done by your esteemed Committee.

I look forward to a constructive dialogue.