

Remarks of Edward J. Flynn
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Thank you, Mr/Ms. Chairman.

I will not be long, as I believe it is important to hear the views of Member States and others present here today on the vital topic of this briefing. I would, however, like to set out some important human rights considerations that we believe are relevant to the topic of denying safe haven to those who finance, plan, support or commit terrorist acts, and those who incite acts of terrorism. I will not address issues related to international refugee law, since that will be covered by the Assistant High Commissioner for Protection of UNHCR at the second session of today's event.

There are several ways in which the principles and requirements of international human rights law are relevant to the topic of denying safe haven.

First, denying safe haven to those engaged in terrorist acts, like other aspects of counter-terrorism, can be seen *itself* as a human rights obligation of States.

Under human rights law, States have an obligation to safeguard the right to life and personal security of those subject to its jurisdiction. Providing safe haven to persons allegedly engaged in the commission of terrorist acts may violate that obligation. One can debate whether States have an obligation to take steps to safeguard the lives of persons in *other* States, but it arguably imperils the security of a State's *own* inhabitants if it provides suspected terrorists with safe haven. Meanwhile, for States whose inhabitants are perhaps more directly imperilled – the requesting States – they could be said to have a human rights obligation to undertake all efforts to prevent the commission of terrorist acts on their soil, including through obtaining effective criminal cooperation from other States. *All lawful* counter-terrorism measures are, in this fundamental sense,

human rights measures, since their goal is to safeguard the rights to life and to personal security. Effectively implementing the safe-haven aspects of relevant Security Council resolutions, including resolutions 1373 and 1624, may thus be seen as a form of human rights measure. Of course, the Security Council, General Assembly, and the Human Rights Council have stressed on many occasions that terrorism poses a serious threat to the enjoyment of human rights, and so steps must be taken to counter it.

Second, there is the question of the rights of victims of terrorism. While still unsettled, there is authority for the proposition that victims of grave international crimes have a right to justice. One reference in this respect is the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” adopted by the General Assembly in 2005. We should recall that the Special Rapporteur of the Human Rights Council has concluded that acts of terrorism, even if committed by non-State actors, can qualify as human rights violations and, of course, certain acts of terrorism are also prohibited under IHL. There may therefore be a human rights duty for States to take action to bring suspected terrorists to justice, on behalf of victims, at least in certain cases. This is, of course, closely linked to the need to prevent impunity for terrorist acts, which the Security Council highlighted just last week, in its resolution 2349 on the Lake Chad basin and the actions of Boko Haram.

Third, Mr. Chairman, human rights considerations are also relevant to denying safe haven, and to enhancing cooperation between States, because complying with human rights requirements greatly facilitates the achievement of these goals. I have described how effective counter-terrorism should be seen as a human rights obligation. Well, in addition, the Security Council and the General Assembly have also stressed on many occasions that counter-terrorism

measures must themselves be carried out in compliance with human rights obligations. As we know, regrettably, this requirement is often disregarded. The goal of denying safe haven will only be advanced if States take further steps to ensure respect for human rights in the way in which they seek to strengthen international cooperation.

One crucial issue in this respect is the criminalization of terrorist offenses. The Counter-Terrorism Committee and CTED have continually stressed the importance of compliance with the principle of legality – that is, ensuring that terrorist offenses are clearly and precisely defined in national laws. The international counter-terrorism conventions are a vital resource to States in this respect. They contain definitions of offenses that, if incorporated into domestic law, can help to ensure compliance with the principle of legality. And the more that States succeed in incorporating such provisions, the easier it will be for them to cooperate with one another, on the basis of dual criminality. The International Terrorist Financing Convention has, moreover, a general definition of terrorist offenses that appropriately incorporates the elements of both *intention*, and *acts of violence*.

The problem, regrettably, is that some States maintain definitions of terrorism in their laws that other States consider to be so broad as to include activity protected under international human rights law, such as non-violent acts of political or religious expression. As long as States are careful to incorporate internationally-agreed elements of terrorist acts into their legislation, without adopting vague or overbroad measures, international cooperation and denial of safe haven will be enhanced.

This is important, also, in the context of Security Council resolution 1624, on the threat of terrorist incitement. As the Committee has stressed, States need to strive for clarity and consistency in criminalizing incitement – that is, they

should criminalize acts of expression that are intended to, and that do in fact, create a danger of the commission of terrorist acts. At the same time, States must ensure that their counter-incitement measures safeguard the rights to freedom of expression and freedom of conscience. Other criminal concepts such as, for example, “support” to terrorism, similarly need to be defined in clear and precise terms, in order for international cooperation to succeed.

Finally, I would like to stress that compliance with human rights obligations is also necessary to ensure the effectiveness of the procedural steps attached to the denial of safe haven, so that international cooperation can proceed. As the international counter-terrorism conventions themselves provide, due process and fair treatment should be afforded to persons who are the subject of international proceedings. Such persons should be able to exercise all relevant legal rights of defense, as well as the right to seek asylum. And they should not be placed at risk of torture or ill-treatment in the requesting country. In this respect, universal compliance with the human rights-based prohibition on torture is a crucial consideration with respect to the denial of safe haven. It is worth recalling, in this context, the provision in Security Council resolution 2178, on foreign terrorist fighters, which notes that failing to respect human rights and the rule of law in countering terrorism can contribute to increased radicalisation and fosters a sense of impunity.

Mr. Chairman, to sum up:

A strengthened commitment by States to the obligation to deny safe haven to persons suspected of acts of terrorism may well be, in itself, a human rights obligation. At the same time, it will only be through enhanced compliance by States with their human rights obligations that we will see more effective and efficient cooperation among States in this field. CTED is committed to doing all it can to support Member States in this regard. These topics are an integral part

of our desk analysis and our assessment visits carried out on behalf of the Committee. They are addressed in detail in the CTED Technical Guide to implementation of the relevant Security Council resolutions, which is now being updated. And we work on these issues in the CTITF framework, including through our participation in the CTITF working groups. We look forward to continuing to support the Committee in making further progress on these issues in the time ahead.

Thank you.