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**Statement by Mr. Martin Scheinin
Special Rapporteur on the promotion and protection of human
rights while countering terrorism**

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

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Mr. Chairman,

This is my second appearance before the General Assembly as the first holder of the mandate of Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.

One of the main activities of the mandate during the year has been the “mainstreaming” of human rights concerns into the counter-terrorism work of the United Nations and other international organizations. Participation in the Secretary-General’s Counter-Terrorism Implementation Task Force (CTITF), including issues related to a comprehensive strategy against terrorism, has been a rewarding experience. There is growing support for the position that human rights are not a mandatory concession that compromises the effective fight against terrorism but, rather, a cornerstone of any successful strategy against terrorism. This approach is reflected in the Global Counter-Terrorism Strategy adopted by the General Assembly on 8 September this year. The Plan of Action encompassing the body of that strategy deals as its fourth main pillar with measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism. But respect for human rights is more than one of the four pillars – or cornerstones – of a sustainable strategy against terrorism. Human rights also figure as a component in all other pillars, and not the least the first pillar on measures to address the conditions conducive to the spread of terrorism. Violations of human rights; ethnic, national and religious discrimination; political exclusion and socio-economic marginalization are identified in the Plan of Action as conditions conducive to the spread of terrorism, while emphasizing that none of these conditions can excuse or justify acts of terrorism. Acts of terrorism are morally and legally inexcusable, whatever is the soil from which they grow and whatever is the cause they are claimed to further.

In passing and with reference to paragraph 42 of my report, I want to use this occasion to acknowledge that the adopted version of the Global Counter-Terrorism Strategy no longer gives rise to the concerns I expressed in relation to freedom of expression at an earlier stage.

Besides participation in the CTITF, there have been a number of visits and contacts with the Counter-Terrorism Committee of the Security Council and its Executive Directorate, the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime, the Commission of the African Union, Council of Europe and the European Union. It is my intention to continue and broaden the cooperation with international and regional organizations active in the fight against terrorism.

The main theme in my current report to the General Assembly is the impact of counter-terrorism measures on the right to freedom of association and peaceful assembly. The issue of listing and delisting terrorist groups is addressed in that context and meant as a contribution to the ongoing discussion on fair and clear procedures for placing individuals and entities on sanctions lists, and for removing them, as well as for granting humanitarian exemptions.

The right of peaceful assembly and the right to freedom of association are human rights protected by international treaties, including articles 21 and 22 of the International Covenant on Civil and Political Rights. The importance of these rights is to be found in the fact that they must be seen as a platform for the exercise of other rights, *inter alia* the right to freedom of expression, cultural rights and the right to political participation. They are also crucial to the work of human rights defenders. They are exercised as the basis for the creation of NGOs and political parties, as well as to publicly and peacefully express disagreement with State policies and actions. As such, they are to be seen as one of the foundations of democratic society. Nevertheless, associations and organizations—whether formally created and registered or not—are sometimes used as means through which persons organize and carry out terrorist acts and transfer or use funds for terrorist actions.

In my report, I call for increased attention to the rights to freedom of association and peaceful assembly in the context of ensuring that counter-terrorism measures conform to human rights standards. I defend the position that States, when fighting terrorism, should not resort to derogation from their human rights obligations in the area of freedom of assembly and association. Instead, limitation measures, as provided for in the ICCPR, are sufficient in an effective fight against terrorism. Such limitations must always be demonstrated to be necessary and proportionate, and my report stresses the importance of ensuring that all limitations are subject to judicial safeguards. In order to clarify the applicable legal standards, I recommend that the Human Rights Committee adopt a general comment on the rights to freedom of association and to peaceful assembly, including a discussion on the question of restrictions to these rights in the fight against terrorism.

As to the listing and delisting of entities as part of the sanctions regime against terrorism, my report once again emphasizes the need for clear and precise definitions of terrorism and terrorist acts on the international and national level. This is necessary in order to prevent the abuse of counter-terrorism measures to curtail organizations or movements that have not resorted to the tactics of terrorism. Further, my report emphasizes that the listing of entities as terrorist ones should be a temporary measure, in order not to amount

to a criminal sanction requiring the procedures and evidence necessary for conviction for a crime. Entities subject to listing and sanctions must have recourse to adequate safeguards, including judicial review. As it is primarily Member States that are responsible for the implementation of sanctions, it is their duty to arrange such judicial review that is needed to secure that the sanctions imposed as counter-terrorism measures are in conformity with international human rights law. The right to compensation and the possibility of humanitarian exemptions are also elements of a sanctions regime that is compatible with human rights. It is my firm conviction that sanction regimes that incorporate human rights guarantees are in the long run more efficient tools against terrorism than arrangements falling short of international standards.

Mr. Chairman,

I thank the many Governments that in various ways have expressed their support and have cooperated with my mandate. The role of this mandate is not limited to disclosing and addressing human rights violations in the fight against terrorism but encompasses also proactive and positive dimensions such as the identification, compilation and dissemination of best practices in the fight against terrorism while at the same time respecting human rights. Against that background I regret that the broad support of Governments to the mandate does not always immediately translate to rapid and full responses to my communications, or to invitations for a country visit.

Regarding country visits, I thank the Government of Turkey for the exemplary facilitation of my mission to that country (E/CN.4/2006/98Add.2) in February 2006. There are currently several outstanding requests to visit countries including Algeria, Egypt, Malaysia, Philippines, South Africa, Tunisia and the United States of America. While information from victims, their families, non-governmental organizations, or other actors about human rights violations resulting from counter-terrorism measures is one of the criteria for identifying possible destinations for country visits, there are also a number of other factors such as new or amended legislation on counter-terrorism measures, or indications of the possibility to identify best practices in the field of human-rights-conform counter-terrorism measures which may prompt the Special Rapporteur to seek a country visit.

Mr. Chairman, in closing let me inform the delegates that the thematic sections of my forthcoming main report to the Human Rights Council will deal with racial or ethnic profiling in the context of countering terrorism, and with suicide attacks as a specific challenge to human-rights-conform responses to terrorism. Future themes to be covered in my reports, reflecting the comprehensive and complementary nature of my mandate, are the promotion and protection of economic, social and cultural rights in the fight against terrorism, and the impact of counter-terrorism laws and measures on the right to privacy, specifically as a consequence of broadening powers of surveillance and the sharing of information between different authorities and States.

In the current world order, preventing and combating terrorism continues to be a necessary priority for all States. In response to this very real threat, many States have or

are planning to introduce new legislation and/or amend existing counter-terrorism legislation. The implementation of some of these laws may indeed violate the rule of law and undermine human rights and fundamental freedoms. For example, secret places of detention, rendition flights, racial profiling and the targeting of minorities, refugees and asylum seekers are just a few examples of the negative impact of counter-terrorism measures on human rights. In addition, the erosion of fair trial standards such as the right of judicial review of any form of detention, and the right to be tried within a reasonable time are under threat in many parts of the world and even under attack in certain Member States. I ask Governments, in this time of continued uncertainty, to welcome the proactive and cooperative elements of my mandate in order to work together to identify effective counter terrorism measures which reinforce and promote human rights of all persons, including the rights of victims of terrorism.

Mr. Chairman, I look forward to a constructive dialogue with the Delegates.