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1.0 INTRODUCTION

FUNDACIÓN MIGUEL ÁNGEL BLANCO DEMANDS BEFORE INTERNATIONAL ORGANISATIONS. A PRESENCE IN THE HUMAN RIGHTS COUNCIL

The Miguel Ángel Blanco Foundation is a Foundation for victims of terrorism that was constituted in 1997 with the aim of preserving the memory of the councillor Miguel Ángel Blanco and all other victims of terrorism. Miguel Ángel Blanco was kidnapped and murdered by ETA in July 1997 when he was 29 years old and working as a councillor in Ermua, a small town in the Basque Country in Spain.

The Miguel Ángel Blanco Foundation is a private, independent and plural entity that collaborates with public and private institutions in the common aim of working towards the Remembrance, Dignity, Truth and Justice for victims of terrorism the world over.

The Foundation actively participates in the promotion of policies related to its demands. At the present time it is also taking these demands to the most important international organisations with the following aims:

-To denounce the ideological base which underpins terrorism - the fanatical, exclusive and totalitarian attitudes which are the principal enemies of democratic societies. For the Miguel Ángel Blanco Foundation terrorism is the violent and totalitarian imposition of an ideological, political or religious objective. When terrorists cannot achieve their aims in a participative democratic manner they resort to violence - undermining systems, organisations, societies and states.

-To draw attention to the need **for victims of terrorism to play an active role**. The Foundation believes it is necessary to strengthen the role of the victims of terrorism around the world, to offer them solidarity, to recognize the sacrifice they have made and the dignity they have shown in the struggle for a world of peace and freedom. The victims of terrorism are those most qualified to highlight the horror that lies behind every attack, threat or attempt at extortion and to denounce the fear, complicity and absence of moral and legal criteria that, in many cases, surround and give protection to the crime of terrorism.

-To show up the **flagrant human rights violations committed by terrorist organisations**. Victims of terrorism are indisputable evidence of how the human rights have been violated. States must repudiate these violations and urge their representatives to eradicate them from a position that pays scrupulous respect to human rights and democratic law.

-To demand recognition for the status of the victim of terrorism and to approve **an International Statute for the Victims of Terrorism**. The absence of a definition for the crime of terrorism should not be used as an argument for a lack of progress in the recognition of the status of the victim of terrorist acts, of their specific rights and of the means that this recognition should guarantee within the United Nations.

-The recognition of **the crime of terrorism as an international crime** coming under the jurisdiction of the International Criminal Court. At the present time terrorism does not have this status due to the absence of a specific definition of it. However the possibility of such a consideration was put forward at the Conference of Rome, where the Court was established.

The Miguel Ángel Blanco Foundation is committed to the social and cultural diffusion of the experience that has been accumulated by Spanish victims of terrorism to the international community. In order to carry out this educational and awareness-raising policy it develops proposals, projects and activities based on the principals of Remembrance, Universal Justice and the bestowing of Dignity on the victims.

In 2010 the Miguel Ángel Blanco Foundation was able to take its exhibition 100 REFLECTIONS OUT OF SORROW. TERRORISM: A CRIME AGAINST HUMANITY to the halls of the United Nations in Geneva. It was displayed in the Palais des Nations, headquarters of the Human Rights Council, and consisted of a selection of fifty photos published by the Spanish press over the last forty years in which different facets of terrorism are depicted and where the point of view of the victim is given prominence. A seminar was organised in parallel to the exhibition with the aim of reinforcing its aims and objectives.

This event is part of our policy of working beyond our own borders in order to delegitimize terrorism, to denounce its fanatical, exclusive and totalitarian ideologies and to strengthen social and institutional responses to it within the framework of the Rule of Law.

By choosing the Palais des Nations our intention was to pay homage to victims of terrorism within the ambit of the United Nations and in this way take our demands ever closer to the headquarters of the Human Rights Council. It is necessary to widen the debate at the heart of international institutions in order that the rights of victims of terrorism may be recognized and protected at state level, as well as to promote an international statute for victims of terrorism - something which does not exist at present. In this way we can take the debate beyond mere declarations of solidarity. It is also a way of getting international actors interested in the debate concerning the recognition of terrorist organisations and actions as violations of human rights.

This first intervention by the Miguel Ángel Blanco Foundation in the United Nations, supported by the Ministry of Foreign Affairs and Cooperation, the representative bodies of the Spanish state at the United Nations and La Fundación de Víctimas del Terrorismo (the Victims of Terrorism Foundation), has proved extremely satisfying. We consider it a more than reasonable success that the headquarters of the United Nations agreed to house the exhibition at the same time that session which was relevant to it was in progress - meaning that a large number of delegates from member states were able to visit. We are grateful for the interest, the support and the direct participation of the highest representatives of the Office of the High Commissioner for Human Rights.

This success will encourage the Miguel Ángel Blanco Foundation not to give up in its struggle to make human rights for the victims of terrorism around the world a priority for the members and the organs of the United Nations.

2. Vernissage of Fundación Miguel Ángel Blanco photo exhibition on victims of terrorism, 100 REFLECTIONS OUT OF SORROW

2.1. Statement by United Nations Deputy High Commissioner for Human Rights,

Kyung-Wha Kang

Today we are here in order to remember the human cost of terrorism and to honour the memory of victims of terrorist acts through a photography exhibition in the halls of the Palais des Nations.

The human cost of terrorism has been felt in virtually every corner of the globe. The United Nations family has itself been victim to violent terrorist acts, most recently in Iraq and Algeria. Spain, too, has suffered terrorist attacks on numerous occasions. In November, as a first priority during her mission to Spain, the High Commissioner visited the memorial for the victims of the devastating terrorist attack which took place in Madrid in March 2004, and was moved by the tribute by the Government of Spain to their memory.

Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims, and untold suffering for their families and communities. From a human rights perspective, support for victims in the context of terrorism is of paramount concern.

As an active member of the UN Counter-Terrorism Implementation Task Force Working Group on Supporting and Highlighting Victims of Terrorism, our Office is deeply committed to ensuring accountability and respect for the rights of victims of terrorism, and to promoting international solidarity in support of victims, their families and communities. This exhibition is an important step towards achieving these ends.



Vernissage of photo exhibition 100 Reflections Out Of Sorrow, Palais des Nations. President of Miguel Ángel Blanco Foundation, María del Mar Blanco; First Vice-President of the Government of Spain, María Teresa Fernández de la Vega; United Nations Deputy High Commissioner for Human Rights, Kyung-Wha Kang; President of the Victims of Terrorism Foundation, Maite Pagazaurtundúa

2.2. Statement by First Vice-President of the Government of Spain, María Teresa Fernández de la Vega

I could not miss such an important occasion as the inauguration, in this house of human rights, of these 100 REFLECTIONS OUT OF SORROW which has so profoundly affected all of us. For this reason I would like to express my gratitude to you for having invited me to share this moment with you.

I know very well that what we have here is a symbol: the symbol of absolute humanity embodied by the victims of terrorism. In the words of Fernando Pessoa victims represent an attack against the world. So by extension we are all victims of terrorism.

For this reason, to dignify the victims is not just an obligation for a government or for various institutions: it is an ethical imperative for any society. Because by endowing the victims with the dignity that is their due we are dignifying ourselves as citizens.

We will never be able to repair completely the terrible personal pain that has been caused by those responsible for the violence. This I realise. But we can and we must keep alive and honour, here and now, the memory of those who have lost their lives through barbarism and injustice.

This is what this exhibition has been doing for five years now. Five years in which it has become a beacon, lighting up the memories of the victims and bearing witness to the repulsion and the active resistance of a society that has given and continues to give a resounding 'no' to violence, intolerance and fanaticism.

And above all we can and we must fight, as we are doing, with all the strength and the resources that Civil Society offers - because to end terrorism is the best tribute that can be made to the victims.

It is an objective that we are going to reach. Because our weapons are democratic and, as such, are far more powerful than those of the murderers.

They are the weapons of law, of justice and of an international cooperative effort which is more and more closely aligned and efficient as we have been able to see for ourselves over the last few days.

And they are the weapons which this exhibition reveals to us, those of the unshakable will of our citizens to end terrorism.

Armed with them there can be no doubt: we are going to reach our goal. Because every day, we make it more difficult for the terrorists. And it will be even more so with the new Penal Code - because terrorist crimes that result in death will no longer be subject to prescription; because those condemned for terrorism will be controlled and will not be able to approach their victims.

By the same token we are going to continue to weaken those who would use the freedoms and guarantees that democracy provides for non-democratic ends. We are going to keep on dismantling their house in order to shore up the only empire that a democracy allows - which is that of the rule of law and that of peaceful coexistence.

And of course we will carry on protecting, supporting and cooperating with the victims of terrorism and their associations. We will continue to offer them the recognition and the warmth which the whole of society wishes to give those who have paid such a high price for the freedoms we all enjoy.

I think that there is no better place to say this, than here in this particular corner of the United Nations which is dedicated to human rights.

Among these rights, that of the right to life is, of course the first and most fundamental, but among the others there are also the right to live in peace, the right to live without fear, without coercion and without being threatened.

These one hundred reflections out of sorrow give voice to the victims of terrorism in favour of these aforementioned rights and appeal to the solidarity and the unity of all governments, of all peoples, and of all citizens.

Maybe we are unable to eradicate the pain of all these memories and tears; that is something beyond our powers. But I can assure you that as long as tears are shed as the result of terrorist injustice, our work will not be over.

You can count on the support of the Spanish Government now and always.



The exhibition, 100 Reflections Out Of Sorrow, La Passerelle, Palais des Nations. Director of Miguel Ángel Blanco Foundation, Cristina Cuesta; First Vice-President of the Government of Spain, Maria Teresa Fernández de la Vega.

2.3 Statement by President of Miguel Ángel Blanco Foundation, Maria del Mar Blanco

It has fallen to me to inaugurate the International Exhibition 100 REFLECTIONS OUT OF SORROW. TERRORISM: A CRIME AGAINST HUMANITY here in the headquarters of the United Nations, on behalf of the Miguel Ángel Blanco Foundation of which I am honoured to be President.

One of the priorities of the of the Miguel Ángel Blanco Foundation in the international sphere, following on from the founding principles of the United Nations, which state, as I would like to remind you: “to bring all the nations of the world together in the struggle for peace and development based on the justice, dignity and well being of all peoples”, is to work in order that the nations of the world may come together in order to defeat terrorism - which is one of the greatest threats to freedom and international peace. At the same time we strive to give dignity to the victims throughout the world and to work for their material, moral and judicial wellbeing.

We hope, with all due humility, that this exhibition that we are inaugurating today offers a reflection on these aims in that it:

- Denounces terrorist crimes as an outrage against the very ideal of what it means to be human as well as being a violation of Human Rights.
- Appeals to states and international organisations to take steps in favour of the victims of terrorism throughout the world.
- Reveals the totalitarian nature of terrorism in its complete disregard for human lives, independent of particular circumstance or possible justification.
- Gives a leading role to the innocent victims and to their legacy in defence of democratic coexistence.

We believe that Spanish Society, after fifty years of suffering, has a great deal to bring to the question of recognising what it is to be a victim of terrorism and to the fight against terrorist crimes.

It is a great achievement for our Foundation that these photographs and texts are being exhibited here at the United Nations, in the headquarters of the Human Rights Council. We are grateful for the collaboration of the Spanish Government and the United Nations Organisation in having helped make this project a reality.

We offer these reflections on the victims of terrorism to all the conference attendees, state representatives, NGOs and all those working for this most praiseworthy of institutions in the hope of achieving a freer, more humane and more peaceful world.

To conclude I would like to quote the beautiful words of BAN Ki-moon, Secretary General of the United Nations on 9th September 2008: “By giving a human face to the painful consequences of terrorism, you help build a global culture against it.”

The exhibition, 100 Reflections Out Of Sorrow, La Passerelle, Palais des Nations. Director-General of the UN Office at Geneva, Sergei Ordzhonikidze.



3. VICTIMS OF TERRORISM AND STATE RESPONSIBILITY, side event to the 13th Special Session of the Human Rights Council

Presentation by Ambassador Javier Garrigues, Permanent Representative of Spain at the United Nations in Geneva

Today we are honoured to have with us an important delegation of Spanish victims of terrorism here in the headquarters of the Human Rights Council of the United Nations:

Maite Pagazaurtundúa, President of the Victims of Terrorism Foundation, an umbrella organisation which brings together all the victims of terrorism organisations in Spain.

Mar Blanco, President of the Miguel Ángel Blanco Foundation and President of the Commission on Human Rights in the Basque Parliament.

Cristina Cuesta, President of the Collective of Victims of Terrorism in the Basque Country.

As victims of terrorism they have made a personal and professional commitment to fighting for recognition for victims of terrorism in Spain in order to safeguard their memory and to achieve dignity and justice - and today they are hoping to widen their efforts by promoting a statute for victims of terrorism in the international sphere.

Also here with us today is Carlos Fernández de Casadevante, Professor of International Public Law at the University of Rey Juan Carlos and a specialist in the study and development of the legal frameworks which may help bring technical support to these claims at an international level.

We would also like to thank Mona Rishmawi from the Head of Office of the High Commissioner for Human Rights' Rule of Law and Democracy Unit for her participation.

There is no doubt that the international community, with the United Nations at its head, has made a commitment to stand up to terrorism. However they have paid scant attention to terrorist victims – in stark contrast to certain other categories of victims. Declarations have been limited to mere expressions of solidarity which do not carry any legal weight. Within the United Nations there is no international norm designed to uphold the rights of victims of terrorism.

After fifty years of terrorist activity Spanish society has much to offer the international community in regard to the recognition of the rights of victims of terrorism. The attitude of the victims of terrorism in Spain and the solidarity and support from civil society - especially following the assassination of Miguel Ángel Blanco in 1997 – were essential components in the development of an integrated legal framework which remained incomplete until complete and total recognition was given to the victims of terrorism themselves.

The Vienna Conference on Human Rights in 1993 recognised that acts of terrorism violate human rights – an assertion that has been repeated in several resolutions made by the General Assembly and the Commission on “Human Rights and Terrorism” It is necessary to highlight the invaluable work of ex-Special Rapporteur on human rights and terrorism, Kallipi Koufa³ in this context.

The international community has not agreed on a definition of the crime of terrorism at the present time. The lack of such a definition should not serve as an excuse for the absence of recognition, at an international level, of the character of the victim. Victims of terrorisms organisations have been requesting such a definition for some time and it seems opportune at this moment to take steps towards the mapping out of an “international statute for the victims of terrorism”, improving on present “declarations of solidarity” and outlining practical concepts in the following areas: the securing of material and social help, medical and psychological treatment, effective recourse to justice and fair and adequate compensation for victims.

If we are able to recognise that the victims of terrorism around the world have suffered a violation of their most basic human rights - the right to life, to security, to freedom of expression, association and participation - efforts aimed at creating a statute which recognises these rights should find their rightful place within the mandate, the mechanisms and the procedures of agencies for Human Rights at the United Nations in Geneva.



Side Event, Victims of Terrorism and State Responsibility. President of Miguel Ángel Blanco Foundation, Maria del Mar Blanco; Head of Office of the High Commissioner for Human Rights' Rule of Law and Democracy Unit, Mona Rishmawi; Ambassador Javier Garrigues, Permanent Representative of Spain at the United Nations in Geneva

3.1. VICTIMS' OF TERRORISM COMMITMENT AGAINST TERRORIST CRIMINALITY.

President of Miguel Ángel Blanco Foundation, Maria del Mar Blanco

Today is an important day for victims of terrorism around the world. With the support of the Spanish Government and the Permanent Mission in Geneva, the experiences of hurt, of social resistance and the exemplary behaviour of the Spanish victims of terrorism have found a voice in the UN here at the headquarters of the Human Rights Council, where the position of Human Rights in the World is presently being debated. And we are here because terrorism, one of the main threats to world peace and security, is a flagrant violation of basic human rights.

We are Spanish victims of terrorism.

My brother Miguel Ángel Blanco was kidnapped and murdered by ETA in July 1997. He was 29 years old and a town councillor in a small town in the Basque Country. Six million Spanish people went out onto the streets to protest and demand that he be set free. The terrorist group murdered him cruelly. But at that moment the perception of terrorism and of the victims of terrorism changed forever in Spain. Society had mobilized and come together like it had never done before in the face of terrorism - recognizing the innocence of this particular victim, innocent like all the other victims.



President of Miguel Ángel Blanco Foundation, Maria del Mar Blanco

It was then we realized that participation and raising social awareness on the subject of terrorism – which is always an attack on human dignity – was the way forward if we were to defeat the fanatics. And that there can be no bulwark built against terrorism that ignores its victims.

The response of Spanish society and its leaders has been to put legal, judicial and institutional mechanisms into place, squeezing the spaces left for impunity and giving more rights to the victims: a reduction of the moral, political and international space given to the perpetrators of violence and a greater dignity allowed for the victims.

We realized that the way forward was via the legitimate channels of Democracy and the Rule of Law and in the delegitimization of terrorism.

We realized that the complexity of terrorist criminality requires a legislative and judicial effort, based on scrupulous respect for human rights and for the democratic state, which at the same time responds efficiently to the mechanisms that sustain terrorist criminality and without which it could not survive: financing, political fronts, international links and indoctrination, among other elements.

As you well know Spanish society has suffered from terrorist activity for more than fifty years. We come from the Basque Country, a region geographically within Spain and Europe, where you can still find terrorists who are prepared to keep on killing, crazed with hate, steeped in sectarianism and totalitarianism. Spanish society is winning the fight against the last European terrorist group.

That is why we are here; to share the best of our accumulated experience gathered over so many years, to contribute to the prevention of the ideological doublethink on which all terrorism is based and to affirm that terrorism, all terrorism, is an assault on Freedom and Human Rights.

We have come here to appeal to each state for a committed effort towards the recognition of the rights of all of the victims of terrorism throughout the world.

As President of the Miguel Ángel Blanco Foundation and as President of the Commission on Human Rights of the Basque Parliament I would like to remind you and to make it clear that:

ETA is a terrorist organization that violates fundamental human rights in a systematic way and it continues to be active within a democratic society.

ETA is responsible for violations of basic rights ranging from the right to life, to security, freedom of expression, association and participation in public life through killing, wounding, threatening and extorting.

ETA was created in 1958. Violence soon became its main instrument. Paradoxically its violent activities multiplied exponentially after the death of the dictator Franco and the establishment of democracy in Spain. Between 1958 and 1977 (date of the first democratic elections) ETA killed 75 people. From 1978 to the present ETA has killed 823 people. Since the mid the nineties ETA's strategy has been to attack all those political and social representatives who are against the independence of the Basque Country and, in this way, to deny them a voice.

For many years Basque people like ourselves, who are considered by ETA and their sympathizers to hold dissident views, have suffered persecution and a great loss of liberty.

To this day there are councillors and representatives of legitimate parties who carry out their daily political lives accompanied by a bodyguard. ETA threatens businessmen, judges, public prosecutors, university professors, representatives of civic platforms, even the victims of terrorism themselves. Thousands of Basque citizens have had to flee the Basque Country to escape from the murder and exclusion.

ETA has developed a complex internal organizational set up that the Spanish justice system qualified in a sentence passed on 19th December 2007. As well as a clandestine military apparatus that orders and carries out terrorist attacks it has other specialist interests covering political and financial activities, international relations, youth, prisoner support and amnesty campaigns, sport, civil disobedience, business and the press.

It is simply not possible defend the legitimacy of political projects that feed on racism, xenophobia, genocide, extermination, discrimination, fascism, Nazism, any kind of totalitarianism or those which feed off or use terrorism to achieve their aims. Certain ideas and certain projects are incompatible with democracy. Faced with these kinds of attacks democratic States have the right and the obligation to defend themselves.

We are here today to bring dignity to the memory of the absent victims, to protect the survivors, and to ask for the support of states, international organisations and ONGs who have the capacity to act at an international level.

We ask that the situation of victims of terrorism be taken into account by the bodies and procedures relating to Human Rights within the United Nations. If the most basic human rights have been violated then the Human Rights Council in Geneva, with the assistance of the Office of the High Commissioner for Human Rights, should be the forum where any progress on this question takes place and where any mechanisms to make it effective are put into place.

3.2. PROPOSALS OF THE VICTIMS OF TERRORISM IN THE INTERNATIONAL SCENE

President COVITE, Collective of Victims of Terrorism in the Basque Country Cristina Cuesta

I am a victim of terrorism. My father was shot through the heart on March 26th 1982. His bodyguard was also killed. The terrorist group who murdered him justified their crime insulting and slandering the memory of my father, a company worker and a good man. The terrorist responsible was tried on 11th February 2010, after almost twenty-seven years, following a long and arduous judicial process and collaboration between states fighting for his extradition. This terrorist is implicated in five other killings to date, all of them subject to prescription except for that of my father and his bodyguard. I have been fighting for justice for the victims of terrorism for twenty-four years.



Director of Miguel Ángel Blanco Foundation, Cristina Cuesta

To share my experiences with you here in the headquarters of the Human Rights Council of the United Nations is a comfort to me and helps motivate me to keep working so that the UN can tackle the problem of terrorist crimes and the question of the position of the victims of terrorism with the necessary determination - given that we are talking about a worldwide phenomenon of continuous systematic violation of Human Rights: TERRORIST CRIME.

The victims who are here today and all those victims represented by the associations and foundations of Spanish victims feel united in the same cause:

Laura Dolci, victim of a terrorist bomb attack in Iraq (2003)

Osman Kaya, victim of a terrorist bomb attack in Turkey (2003)

Naomi Kerongo Monchari, victim of a terrorist bomb attack in Kenya (1998)

Henry Kessy, victim of a terrorist bomb attack in the United Republic of Tanzania (1989)

Françoise Rudetzki, victim of a terrorist bomb attack in France (1983)

Chris Cramer, taken hostage in the UK (1980)

Carie Lemack, victim of a terrorist attack in the United States (2001).

And a long list of thousands of people who for decades have suffered pain and impotence in solitude. We feel particular solidarity with the UN workers who have been victims of terrorist attacks in so many parts of the world.

We feel that the Symposium on support for the victims of terrorism which was held in New York at the behest of the Secretary General in September 2008 was an interesting first encounter in which conditions for the treatment of the victims of terrorism were put forward. However, and we say this with complete respect and admiration for the organisation which welcomes us today, the international measures, the mechanisms of control and the mandates for the creation of works directed towards attending to and dignifying victims of terrorism as victims of grave violations of Human Rights as set out by the Human Rights Council, seem to us to be wholly insufficient.

We are motivated and encouraged by the ultimate goal of working for the delegitimization of terrorism and for the remembrance, dignity and justice due to all victims of terrorism around the world.

Our work is focused on three areas at an international level.

That which is aimed at promoting an international declaration of terrorist organisations as violators of human rights.

That which is directed towards the recognition of terrorism as an international crime falling under the jurisdiction of the International Criminal Court

The promotion of an International Statute for the victims of terrorism

1. Terrorist Organisations as violators of human rights:

We are delighted by the recent changes in the traditional doctrine of human rights according to which only the state can violate human rights and as a consequence not terrorist organisations.

From the standpoint of the collective that I represent we are in agreement that - as was stated in the Vienna Conference on Human Rights in 1993 and in other resolutions of the General Assembly of the United Nations and by the Commission on "human rights and terrorism" - *"the 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"*.

While conscious of the controversial nature of this assertion we back the international declaration of non-state terrorism as a violation of human rights and in consequence the inclusion of terrorism within the mandate, mechanisms and procedures of the bodies in the United Nations that deal with Human Rights.

2. Terrorism as an international crime

Terrorism is not an international crime at the present time nor is it among the crimes that come under the jurisdiction of the International Criminal Court - owing to the lack of a specific definition for the crime of terrorism.

Nevertheless world-wide awareness of the "singularly reprehensible" nature of terrorism is being felt more and more in many areas of discussion and political decision-making.

Through the assassination of individuals, terrorists are able to spread fear and terror and a feeling of menace throughout a high percentage of the members of a given society. This leads to what many ex-

pers in Victimology call the process of “macrovictimisation”. This means the objective dehumanisation of the victim and of human life itself which then become the channels through which aims of a supposedly collective and superior character can be achieved. Terrorism seeks **the totalitarian imposition of its aims**. Terrorism wishes to undermine systems, organisations, societies and States from within - including those of a democratic nature. What the terrorists can not achieve by participative and democratic means they transform into a target for terror.

Numerous Spanish and European victims of terrorism associations under the leadership of the **Collective of Victims of Terrorism in the Basque Country**, of which I am honoured to be President, have proposed two solutions - based on specialist studies - for a definition of terrorism, following on from the proposal contained in Security Council Resolution 1566 of the 8th October 2004:

- To include terrorism as a subtype **of international crimes against humanity** in Article 7.
- To class terrorism as **a new international crime** of an independent nature alongside those previously considered – genocide, crimes against humanity, war and aggression.

3. An International Statute for the victims of terrorism:

The absence of a definition for the crime of terrorism continues to be a sticking point which brings highly significant practical consequences that are very disheartening for the victims’ organisations because it impedes the recognition of the nature of the victim and the endorsement of an International Statute for victims of terrorism.

It seems unlikely that the absence of such a definition is going to be resolved in the short or medium term. But although there is no such definition as yet, it is necessary to make progress towards such a recognition of the condition of the victims of terrorist acts and, subsequently, the endorsement of an International Statute for the victims of terrorism and of specific rights and means by which these may be guaranteed.

To identify what rights are to be recognized for victims of terrorism a suggestion for a working model is that which was carried out by the Council of Europe and that which was provided by the Spanish legislation on this question.

I will finish by insisting on the importance of the actions undertaken by civil society and victims associations. Civil Society, democracy and the rule of law are the alternatives to terrorism. This has been shown to be the case in Spain. Spain should lead a policy of Human Rights against terrorism by bringing to bear the weight of its experience: the application of legality and the Rule of Law to defeat terrorist criminality, unity when faced with a problem of state - of states - that affects the entire world, and the bestowing of dignity on the victims as an antidote to the legitimization of terrorism.

We appeal to the Human Rights Council of the UN for the commitment and the responsibility needed to support us in our claims which are aimed at promoting the notion that all human rights should be enjoyed by all people and in the development of new norms concerning human rights.

3.3 DEMOCRATIC SOCIETIES AND RESPONSES TO TERRORISM

President of the Victims of Terrorism Foundation, Maite Pagazaurtundúa Ruiz

In two small regions of democratic Europe, in the Basque Country and Navarre - regions in the kingdom of Spain - thousands of people have to live with a private or publicly provided bodyguard. They are university teachers, town councillors, journalists, the families of victims of terrorism who dare to challenge the law of silence imposed by the terrorist fanatics... They live under police protection - which causes enormous stress for them and their families - in an attempt to safeguard their right to freedom of expression and the right to life. Those who protect them and the representatives of State power also live under threat.



President of the Victims of Terrorism Foundation, Maite Pagazaurtundúa

Fortunately the senior members of European terrorist activity - ETA and their followers - are living through the end days of their totalitarian strategy. On the other hand however, the attention given to the victims by the country's institutions provides a perfect blueprint for society's collective insistence to democratically challenge the serious violations of human rights that the terrorists commit.

We, the Spanish victims of terrorism, know very well that the terrorists aspire to social, historical and legal and political impunity and openly and brazenly state that they feel no responsibility for the brutal violations of human rights that they commit. We know only too well that where they have the capacity to apply social pressure they are able to stigmatize their victims after death. Fortunately, in the case of Spanish terrorists, their strategy is in a phase of terminal decline.

The crime of terrorism is one that attacks the heart of the social system and there is no other kind of serious crime that can lead a democratic society and its socio-political representatives to ask if the victims themselves should conceivably be the ones who lose the right to justice for the sake of the common good - and that those responsible for terrible crimes do not go to trial or serve an appropriate sentence. It would never occur to us to treat other kinds of crimes in this way - murder, rape, domestic violence or child abuse.

Comparative experience tells us of cases of amnesties, of covert measures guaranteeing impunity and so on. But let us say loud and clear that the debate on ways to end terrorism places us in front of a mirror held up to the heart of the democratic system - a system in which 'equality' should mean nothing more than the equality of the law for everyone - and the right to justice for everyone - whatever crime may have been committed.

In Spain the victims of terrorism have centred their discourse on demands for justice but they have not fallen to the temptation of calling for vengeance. This has meant a clear moral and human victory over the fanatics who try to achieve political aims by violating the human rights of men, women and innocent children.

In a really advanced democratic system which operates the principles of equality before the law and the protection of its weakest members it should not be forgotten that this very equality is the heart of democracy: the same laws apply to everyone and nobody is above the law. The key words for the victims of terrorism are and will always be the words 'law' and 'justice'.

For this reason it is important that we do not stagnate, that we do not take past achievements for granted, that we explore different ways to advance a doctrine of human rights, that new projects in favour of Universal Human Rights and of victims of terrorism are allowed to blossom and that perpetrators of terrorist crimes are brought to justice so that we can counteract the strategies of terrorist fanatics, whatever the particular ideology or creed they represent.

In the chapter that deals with good practice we would like to see:

- The establishment of the crime of terrorism as a serious violation of human rights – this would be an undeniable step-forward.
- The inclusion of the crime of terrorism on the list of international crimes falling under the jurisdiction of the International Criminal Court - this would halt any state tempted to allow impunity concerning these kinds of crimes. Because judicial impunity does not resolve or address the essential nature of terrorism.

And it is necessary to address the essential nature of terrorist activity, to find what lies behind the attacks, their hidden, submerged character. It is essential to tackle the indoctrination of hate suffered by children. It is essential to delegitimize the subculture of violence. We say, like Albert Camus, that there are no ends that justify the means to achieve political or religious ideals. This is why Spanish victims work to promote the principles enshrined in the Universal Declaration of Human Rights.

We have placed our trust in the State to ensure justice is carried out but it is not unreasonable that there are also mechanisms of protection at supra-state level, taking into account the comparative experience of amnesties and other covert measures guaranteeing impunity that have been known to take place at state level.

The approval of a victims of terrorism Statute falling under the jurisdiction of the ICC would be a first rate instrument for the advancement of additional protection beyond democratic law - as necessary as the due process of the law – which would help to avoid any temptation States might have to offer complete or partial impunity for these kinds of crimes.

To sum up, we would like to see a guarantee of the “universal” rights of every victim of human rights violations whether they be the result of religious or ideological fanaticism, independent of the state in which the crime has been committed

The citizens of the future will judge us by the actions that we undertake today.

3.4. THE UN AND THE VICTIMS OF TERRORISM,

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1. Terrorism, a violation of human rights

Today it is indisputable that terrorism violates human rights. It has taken a long of time for this conclusion to be reached even within the UN. Proof of this is the fact that until the 1993 Vienna World Conference on Human Rights the relationship between terrorism and human rights did not hold its attention¹. Since 1994 the UN General Assembly's acts concerning terrorism have taken place under the title "human rights and terrorism". At the same time the resolutions adopted on the matter are characterized by the affirmation "that the most essential and basic human right is the right to life", as well as General Assembly's concern "at the gross violations of human rights perpetrated by terrorist groups"².



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From 1994 onwards the UN Human Rights Commission also began to adopt resolutions under the title "Human rights and terrorism"³. It also requested the Sub-Commission on the Promotion and Protection of Human Rights to undertake a study on the issue of terrorism and human rights in the context of its procedures. Special Rapporteur K. KOUFA was charged with this task. In its progress report Miss KOUFA states:

"102. Terrorist acts, whether committed by States or non-State actors, may affect the right to life, the right to freedom from torture and arbitrary detention, women's rights, children's rights, health, subsistence (food), democratic order, peace and security, the right to non-discrimination, and any number of other protected human rights norms. Actually, there is probably not a single human right exempt from the impact of terrorism"⁴.

The same connection between terrorism and human rights is made by the High Commissioner for Human Rights in its report to the General Assembly according to resolution 48/142 entitled *Human rights: a unity framework report*⁵. It states that terrorism "is a threat to the most fundamental human right, the right to life" and that "the essence of human rights is that human life and dignity must not be compromised and that certain acts, whether carried out by State or non-State actors, are never justified no matter what the ends"⁶.

Although it has been a long time coming, it can be concluded that the declaration that terrorism is a violation of human rights has found its place in the international arena in its political and legal fields and inside the UN, as well as other international organizations.

2. Terrorism is a serious and gross violation of human rights, an international crime

Terrorism is *not* an ordinary violation of human rights. On the contrary, it is an international crime⁷ with the consequences this qualification implies (one of the most important being that crimes against humanity cannot be prescribed). This is why it is necessary to include it among the crimes coming under the jurisdiction of the International Criminal Court (ICC) or, as another alternative, to judge its most serious aspects (murder, torture, enforced disappearance of persons, persecution and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health) as crimes against humanity. As underlined by the president of the ICC, “although the Statute of the ICC does not include terrorism among the crimes within the jurisdiction of the Court, this crime could be considered a crime against humanity of the type of those envisaged in Article 7 of the Statute of the ICC so that, *a priori*, nothing hinders the ICC to know about them if the other elements guiding the jurisdiction of this international court are present”⁸.

The fact of not dealing terrorism either as an independent crime or as type of a crime against humanity leads to impunity and denies victims of terrorism their effective right to justice when the state will not or can not guarantee it⁹.

It is evident that the UN can not remain deaf to the pleas for justice of victims of terrorism; victims who in most corners of our little planet do not have the most basic human rights¹⁰. Victims who, furthermore, have never called for revenge. On the contrary, they have placed their trust in the state to deliver the justice that is their due.

In consequence, it is the responsibility of the UN itself to urge and promote international norms recognising and guaranteeing victims of terrorism the effective enjoyment of their human rights. This is especially true of their effective right to justice and to redress. This is why victims of terrorism associations call for such actions¹¹. This is also what elementary considerations of justice demand.

3. Nevertheless, victims of terrorism have been forgotten by the UN

Although the Commission on Human Rights has reiterated “its unequivocal condemnation of all acts, methods and practices of terrorism, regardless of their motivation, in all their forms and manifestations, wherever, whenever and by whomever committed, as acts aimed at the *destruction of human rights, fundamental freedoms and democracy*”¹² and although bearing in mind that “the most essential and basic human right is the right to life”¹³, as well as “profoundly deploring the large number of civilians killed, massacred and maimed by terrorists in indiscriminate and random acts of violence and terror, which cannot be justified under any circumstances”¹⁴, the fact is that, unlike the Council of Europe, the UN has paid far less attention to victims of terrorism¹⁵ and that this attention has been limited to expressions of mere courtesy deprived of any legal obligation¹⁶.

This is the case, for example, with all resolutions adopted by the General Assembly since resolution 49/185 of 23 December, under the title “Human rights and terrorism”; resolutions all limited to show the General Assembly’s solidarity with victims of terrorism and to request that the Secretary-General seek the views of Member States on the possible establishment of a United Nations voluntary fund for victims of terrorism. This position is similar to the attitude of the Security Council¹⁷ and the Commission on Human Rights¹⁸.

So, although terrorism is an international crime that seriously violates human rights the paradox is that, unlike other categories of victims, no international norm on victims of terrorism and their rights has been yet adopted inside the UN. It is true that since 1985 both the General Assembly and the Commission on Human Rights have paid progressively more attention to several categories of victims; victims who are entitled to a certain statute of rights proclaimed by international norms.

This is the case for *victims of crime* and of *victims of abuse of power* both being the object of General Assembly Resolution 40/34 adopted on 29 November 1985, which contains the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. It is also the case for *victims of gross violations of international human rights law* and of *victims of serious violations of international humanitarian law* both envisaged by Resolution 2005/35 of 19 April 2005, adopted by the UN Commission on Human Rights, containing the *Basic principles and guidelines of the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*¹⁹.

It is also the case of *victims of enforced disappearance* that are the object of the *Declaration on the Protection of All Persons from Enforced Disappearance* adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992 as well as of the *International Convention for the Protection of All Persons from Enforced Disappearance* adopted on 20 December 2006 by resolution A/RES/61/177 of the General Assembly²⁰.

That means five categories of victims each one of it with its catalogue of rights. That is, its international statute.

This can be contrasted with the gap and the legal silence of the UN with regard to victims of terrorism, making demonstrations of solidarity unsatisfactory and insufficient because what victims of terrorism ask for is justice. At the same time they reject impunity.

In order to change this situation it is urgent that the UN, in line with the actions concerning the five categories of victims just quoted, and like the acts carried out by the Council of Europe promote an international norm affirming the international statute of victims of terrorism. That is to say, a statute made up of a catalogue of rights inherent to the condition of victim of terrorism based upon the effective right to justice and the prevention of impunity, connected to the jurisdiction of the ICC. It is the only way in which the “universal” right of each victim of terrorism to justice can be guaranteed independently of the state in the territory of which or under the jurisdiction of which victim has suffered the event causing its victimization²¹.

¹ From 1972 to 1991 the General Assembly examined this matter on the agenda of its meetings under the title: “Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes”.

² There are a lot of General Assembly resolutions qualifying terrorism as a violation of human rights (see *ad ex.* A/RES/48/122, A/RES/49/185, A/RES/50/186, A/RES/52/133, A/RES/54/164 and A/RES/56/160).

³ The UN Commission on Human Rights has also qualified terrorism as a violation of human rights (see resolutions 1994/46, 1995/43, 1996/47, 1997/42, 1998/47, 1999/27, 2000/30, 2001/37, 2002/35 and 2003/37). Also the Sub-Commission on the Promotion and Protection of Human Rights (see resolutions 1994/18, 1996/20 and 1997/39). In 1993 this Sub-Commission had even condemned “the violations of human rights by the terrorist groups Sendero Luminoso and Movimiento Revolucionario Tupac Amaru” in Peru (resolution 1993/23).

⁴ UN, Doc. E/CN.4/Sub.2/2001/31, p. 46. She drafted a preliminary report (E/CN.4/Sub.2/1999/27), a progress report (E/CN.4/Sub.2/2001/31), a second progress report (E/CN.4/Sub.2/2002/35), an additional progress report with two addenda (E/CN.4/Sub.2/2003/WP.1 and Add.1 and 2), and a final report (E/CN.4/Sub.2/2004/40). In fact, a lot of rights are concerned by terrorism: the right to liberty

and security, the right to family life, the right of movement, the right to information, the right to fair trial, etc.

⁵ E/CN.4/2002/18, 27 February 2002, pages 3 and 4.

⁶ *Ibid.*, paragraphs 2 and 5.

⁷ The High Commissioner on Human Rights states that terrorism is a crime against humanity in paragraph 4 of its report just quoted.

⁸ KIRSCH, Ph., « Terrorisme, crimes contre l'humanité et Cour pénale internationale », in S.O.S. ATTENTATS, *Livre Noir*, Paris, 2002, p. 111. Article 7 of the Statute of the ICC states: "1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collective on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health".

⁹ For example when the crime of terrorism has been amnestied or has been prescribed according to domestic law and prescription has taken place as a consequence of the passivity of the state in the investigation of the crime or in the instruction of the indictment. Also in cases of inexistence of the state or weakness of state's structures (failed states). The causes are many and all lead to impunity.

¹⁰ Among them, the effective right to justice or the right to redress. This is the case of situations described in the preceding footnote. They all lead, *de facto*, to deny victims of terrorism their effective right to justice and, as a consequence, their right to redress.

¹¹ See BOU FRANCH, V., and FERNANDEZ DE CASADEVANTE ROMANI, C., *La inclusión del terrorismo entre los crímenes internacionales previstos en el Estatuto de la Corte Penal Internacional. (Una propuesta del Colectivo de Víctimas del Terrorismo en el País Vasco, COVITE, para la Conferencia de Revisión del Estatuto de la Corte Penal Internacional)*, Valencia, 2009.

¹² Such as, for example, in resolutions 2002/35 and 2004/44 about "Human rights and terrorism" and in resolutions 2003/68 y 2004/87 about "Protection of human rights and fundamental freedoms while countering terrorism". The italics are mine.

¹³ Such as, for example, in resolutions 2002/35 and 2004/44 about "Human rights and terrorism".

¹⁴ *Ibid.*

The attention of the Council of Europe on victims of terrorism is specified in its Guidelines on the Protection of Victims of Terrorist Acts adopted by the Committee of Ministers the 2 March 2005. It contains measures and services that are granted independently of the identification, arrest, prosecution or conviction of the perpetrator of the terrorist act. They concern emergency and continuing assistance, investigation and prosecution, effective access to law and to justice, administration of justice, compensation, protection of the private and family life of victims of terrorist acts, protection of the dignity and the security of victims of terrorist acts, information for victims of terrorist acts, specific training for persons responsible for assisting victims of terrorist acts and the possibility for States to increase protection of this category of victims (Council of Europe, Committee of Ministers-CM/Del/Dec(2005)917).

¹⁵ Contrary to the silence of the UN with regard to victims of terrorism it has frequently –and cor-

rectly- pointed out the obligation on the charge of states of respecting human rights when combating terrorism. In this line the Commission on Human Rights “on 21 April 2005 appointed, for a period of three years, a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. The creation of the Special Rapporteur post is a clear and concrete endorsement by Member States of the need to make the importance of honouring human rights commitments an integral part of the international fight against terrorism” (<http://www.un.org/spanish/terrorism/terrorism-hr.shtml>). But about victims of terrorism no action or international norm has been done (the symposium on victims of terrorism hold in UN on 9 September 2008 is an anecdote).

¹⁶ See its resolution 1566 (2004), adopted on 8th October 2004 that considers the possibility of establishing an international fund to compensate victims of terrorist acts and their families. Also resolution 1624 (2005) of 14 September which reaffirms “its profound solidarity with the victims of terrorism and their families”; or resolutions 1611 (2005) of 7 July and 1618 (2005) of 4 August, in which it expresses “its deepest sympathy and condolences to the victims.... and their families” of the terrorist attacks that took place in London and Iraq respectively.

¹⁷ See resolution 2003/37 of the Commission on Human Rights adopted on 23 April 2003 and related to the establishing of an international fund to compensate victims of terrorist acts.

Which includes the following rights: the right to access to justice and fair treatment, which is linked to the reparation to victims as well as to the establishment and strengthening of judicial and administrative mechanisms to enable victims to obtain redress, and the rights to restitution, compensation and assistance (ONU, <http://www.un.org>).

¹⁸ Principles and guidelines that “do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms” (paragraph seven of its preamble). It was adopted by a recorded vote of 40 votes to none, with 13 abstentions.

¹⁹ It is, up to today, the only international treaty at the general or universal level related to a category of victims even if it is not yet in force. In the American system there is another treaty on the same matter: the Inter-American Convention on Forced Disappearance of Persons of 6 September 1994, in force since the 28 March 1996 (see its text in <http://www.oas.org/juridico/spanish/Tratados/a-60.html>).

The 1992 Declaration and the 2006 Convention contain the following catalogue of rights: right to justice (which includes the right to a prompt and effective judicial remedy); the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person; the right of access to all information concerning the person deprived of liberty; the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons; the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons; and, at least, the right to obtain reparation and prompt, fair and adequate compensation.

²⁰ Without the intervention of the ICC most victims of terrorism would lack, *de facto* – as is the situation today- their right to justice because its effective exercise depends upon the correct functioning of state structures and there are presently many states affected by terrorism that are either failed states or states in which the exercise of this effective right is impossible because of the weakness of state structures. In such conditions the right to redress is also impossible. As a consequence many victims of terrorism lack, *de facto*, their basic human rights.

3.5 VICTIMS OF TERRORISM AND STATE RESPONSIBILITY

Head of Office of the High Commissioner for Human Rights' Rule of Law and Democracy Unit,
Mona Rishmawi,

Earlier today, the Deputy High Commissioner attended the opening of a photography exhibition in the halls of the Palais des Nations, organized by the Government of Spain in honour of the memory of victims of terrorist acts. This impressive exhibition is an important reminder of the human costs of terrorism, and of the need to ensure full support to victims of terrorist acts.

I am extremely grateful to the Government of Spain and the Miguel Angel Blanco Foundation for the invitation to participate in today's panel. As the Deputy High Commissioner said earlier today, the United Nations family has itself been victim to violent terrorist acts. We have suffered the human cost of terrorism, just as it has been felt in Spain and virtually every corner of the globe.



Head of Office of the High Commissioner for Human Rights' Rule of Law and Democracy Unit, Mona Rishmawi

In the past, the international community has failed to give due consideration to the human rights of victims; attention instead has focused on suspected perpetrators of terrorist acts. Early post-9/11 Security Council resolutions addressing terrorism, for example, make no mention of its victims.

The situation today is different. The 2005 World Summit Outcome emphasizes “the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief.” Similarly, the United Nations Global Counter-Terrorism Strategy reflects the pledge by Member States to “promote international solidarity in support of victims and foster the involvement of civil society in a global campaign against terrorism and for its condemnation.”

Terrorism clearly can have a very real and direct impact on human rights, with devastating consequences for the enjoyment of life, liberty and physical integrity of victims, and untold suffering for their families and communities. Support for the human rights of victims in the context of terrorism is of paramount concern.

As Chair of the UN Counter-Terrorism Implementation Task Force Working Group on Protecting Human rights While Countering Terrorism, and an active member of the Working Group on Supporting and Highlighting Victims of Terrorism, our Office is committed to ensuring accountability and respect for the rights of victims of terrorism, and to promoting international solidarity in support of victims, their families and communities.

Today I would like to focus on five issues which I believe are of great importance to ensuring respect for the human rights of victims of terrorist acts:

1. Giving victims a face and a voice: too often, public discussions on terrorism focus on the perpetrators, with little attention to victims as individuals, or to their families and communities. The international community has a responsibility to give victims a voice and a face, with full respect for their human rights.
2. Safeguarding the dignity of victims: this must be done through a range of actions, from acknowledgement that a person and his or her family have been victimized, to ensuring that those killed in a terrorist attack are properly identified, to providing concrete support to victims. Protecting victims' dignity, not only in the immediate aftermath of an attack but also throughout the course of lengthy administrative and legal processes, is essential.
3. Giving victims legal status and defending their legal rights: one crucial way to support victims of terrorism is to ensure that victims have access to justice and ensure that perpetrators are held to account, in compliance with human rights and the rule of law. International and regional legal cooperation is essential in this regard.
4. Providing victims with psycho-social, medical and financial support: medical and psycho-social problems often persist for victims long after a terrorist attack. In addition to the physical and psychological injury they may suffer, victims may also lose their jobs and livelihood. Ensuring access to a full range of support services for victims therefore is essential.
5. Building solidarity with victims: awareness-raising and solidarity with victims through a range of measures at national and international levels is vital to ensuring respect for the human rights of victims and mitigating the consequences of terrorism.

States have a duty to prevent terrorism and protect the human rights of its victims, but this must be done within the rule of law and with full respect for human rights – otherwise we only further terrorist aims.