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## 1.- PRESENTATION: “VICTIMS OF TERRORISM FIND THEMSELVES TOTALLY NEGLECTED BY THE UN”.

**D.<sup>a</sup> CRISTINA CUESTA. DIRECTOR MIGUEL ÁNGEL BLANCO FOUNDATION.”**



Ms. Cristina Cuesta Gorostidi.  
Director Miguel Ángel Blanco  
Foundation

On March 9th 2011 the Miguel Ángel Blanco Foundation, with the support of the Permanent Mission of Spain to the UN in Geneva, organized the seminar: “Victims of Terrorism and Human Rights”. This event took place within the framework of the Human Rights Council of the United Nations for the second year running, on this occasion with the support of the Missions of Spain, Colombia, India and Turkey.

Participants included Deputy High Commissioner for Human Rights, Kyung-wha Kang, Natalie Prouvez, Chief of the Rule of Law and Democracy Section of the Office of the High Commissioner for Human Rights; Javier Garrigues, Ambassador, Permanent Representative to the United Nations in Geneva; Alicia Victoria Arango Olmos, Ambassador, Permanent Representative of Colombia to the United Nations; Oguz Demiralp, Permanent Representative of Turkey to the United Nations, Gopinathan Achamkulangare, Permanent Ambassador of India to the United Nations; Cristina Cuesta, Director of the Miguel Ángel Blanco Foundation; Carlos Fernández de Casadevante, professor of Public International Law at the Rey Juan Carlos University and Rianne Letschert, Professor of International Law and Victimology at the University of Tilburg.

All of the panellists agreed on two fundamental questions with regard to the need to take steps towards the consideration of the human rights of victims of terrorism: the urgent need for a common position with regard to the protection of those affected by terrorist criminality and the challenge states face to give a legal framework to the due process that the institution deems suitable in order to address the neglect that thousands of victims are presently suffering in more than sixty countries.

During his speech the Spanish Ambassador to the United Nations in Geneva, Javier Garrigues pointed out that the United Nations “has made a great deal of progress on combating terrorism, but we believe that one important aspect has been left to one side”. He added that there have been “a multitude of resolutions that focus on the perpetrators of terrorist acts while there has been only a passing mention of solidarity with the victims”.

This dossier includes full interventions of all participants.

Victims of terrorism find themselves completely neglected by the United Nations which does not even recognize or guarantee their rights; nor does it pay attention to violations of human rights carried out by anyone other than the state.

To try and change this unjust situation has been one of the fundamental objectives of the international activities of the Miguel Ángel Blanco Foundation at the United Nations over the last two years. Geneva was chosen as the appropriate stage on which to do this as it is the home of the Human Rights Council, a body whose primary objective is to consider situations where human rights are violated around the world and then to make recommendations regarding these violations. Because, unusual though it may seem, as it stands today victims of terrorism are not taken into

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consideration within the Human Rights mechanisms in Geneva. At the present time there are no means by which to denounce violations of human rights suffered by individual members of societies afflicted by terrorism within the United Nations Organization. The Human Rights Council cannot even consider them, let alone make appropriate recommendations.

In the last few years the indisputable priority on questions of terrorism and the promotion and protection of the human rights within the ambit of the United Nations has been the possible violation of human rights states may be liable to commit through the application of anti-terrorist measures. It is essential that the mechanisms of the United Nations for the protection of human rights require of states guarantees that the fight against terrorism be carried out with scrupulous respect for the principles of the rule of law and that the system ensures that no excesses are committed - and that any state should be prosecuted if this should occur. What is not understood, however, is why this should mean there is no recognition and guarantee of the human rights of victims of terrorism.

For this reason the Miguel Ángel Foundation decided to promote the debate in Geneva on whether the rights of victims of terrorism should also be viewed as "violations of human rights". And this decision has been backed up with the solid theoretical arguments.

In March 2010 the Foundation held its photographic exhibition "100 reflections out of sorrow. Terrorism: a crime against humanity" in Geneva, with the aim of giving a human face to victims of terrorism in a space from which they have traditionally been excluded. At the same time it was considered necessary to offer states new ways of theoretical reflection in order to provide arguments against those who categorically deny the conceptual possibility that victims of terrorism can suffer violations of their human rights and fundamental liberties. This is why the first seminar was organized as a parallel event at the Human Rights Council.

From a qualitative viewpoint, the Miguel Ángel Blanco Foundation's presence in Geneva in 2011 marked a notable advance on 2010. The Foundation has returned to the seat of the United Nations during a session of the Human Rights



25-07-97: Demonstration in protest at the death of Miguel Ángel Blanco.  
Photo: Rafa Rivas.

Council but on this occasion its proposal has been shared by the Spanish Government through its Mission in Geneva and has also received the support of Colombia, India and Turkey. These states have made statements concerning the desirability of providing victims of terrorism with a legal statute and protection of their rights.

We are aware that taking this proposal forward is a difficult task. But what we now have that we didn't have before, is a path stretching out before us. The member states of the United Nations Human Rights Council will sit down at the next session in June 2011 to discuss the need to take steps forward to protect the human rights of victims of terrorism under the coordination of the Office of the High Commissioner for Human Rights. From our side we will follow up the debate until the recognition of the rights of victims of terrorism, and the instruments to make them effective, are a reality within the ambit of the United Nations.

Text. Miguel Ángel Blanco Foundation



## 2.- SEMINARY: TO THE 16 TH REGULAR SESSION OF THE HUMAN RIGHTS COUNCIL.

### 2.1.- OPENING STATEMENT BY MS. KYUNG-WHA KANG, DEPUTY HIGH COMMISSIONER FOR HUMAN RIGHTS.

Last year, during the 13th session of the Human Rights Council, I had the honour to open the vernissage of the photo exhibition entitled “100 reflections out of sorrow” organized by the Miguel Ángel Blanco foundation in memory of victims of terrorist acts. It is a pleasure to be here with you again this year for this side event which forms part of our common efforts to place the victims of terrorism and their families at the center of the debate, a place they fully deserve.

The human cost of terrorism keeps being felt around the globe and victims of terrorism, their families and concerned communities continue to experience severe trauma. As you know, the United Nations family, including staff of the Office of the High Commissioner for Human Rights, has not been spared and has suffered the devastating consequences of violent terrorist acts. We therefore know all too well the terrible impact of such heinous acts, including long-term suffering involved for the victims of terrorism and their families.

While the harm caused can never come close to be fully repaired, assistance to the victims and their families should aim at lightening their burden and facilitating the normalization of their lives. Particular diligence is required when ensuring that an adequate and tailored response is provided to the needs for support to individuals and communities concerned.

The consequences of terrorism are devastating with regard to the most fundamental rights of the immediate victims as enshrined in the core international human rights instruments, such as their right to physical integrity, liberty and security and in the most extreme cases, their right to life. Let us also not forget the untold suffering entailed for the victims’ families and communities. Support for victims is therefore of paramount concern from a human rights perspective. Such support should include the provision of effective remedies to all victims of terrorism, including adequate and prompt reparation for the harm suffered. Of particular concern to the victims of terrorism and their families is to learn what actually happened and what steps have been taken to investigate, as many of them remain in the dark years after the occurrence of the terrorist act that has affected them. Granting them access to relevant information is of utmost importance for them to rebuild their lives.

Finally, the duty of States to prevent terrorism and to protect the security of individuals within their jurisdiction should be recalled. In this connection, and as repeatedly emphasised by the High Commissioner, including in her report to this session of the Council, I would like to reiterate that, while recognising the persistent challenges in this regard, States are under the obligation to ensure that all guarantees of due process are respected when persons suspected of terrorist activity are arrested, charged, detained, prosecuted and tried.

I thank you for your attention, and wish you a fruitful discussion.



Ms. Kyung-wha Kang, Deputy  
High Commissioner for Human  
Rights.

## 2.2.- PRESENTATION BY AMBASSADOR D. JAVIER GARRIGUES, PERMANENT REPRESENTATIVE OF SPAIN AT THE UNITED NATIONS IN GENEVA.



H.E. Mr. Javier Garrigues.  
Ambassador Permanent  
Representative of Spain at the  
United Nations in Geneva

Welcome everybody. It is a pleasure to be able to introduce this event on Human Rights and Victims of Terrorism, an exclusively Spanish initiative but one which has been able to count on cosponsorship by the Missions of Colombia, India and Turkey and this has given it a trans-regional character. For that reason we would like to thank the ambassadors of those countries for their presence and for all the support they have offered.

By the same token, we appreciate the co-sponsorship that the Colombian and Turkish missions are offering for the Decision Project for a Panel on Human Rights and Victims of Terrorism that Spain is going to put forward at this the sixteenth session of the Council, the aim being to set up a panel on this question at the seventeenth Council session.

Added to this we would like to thank the Office of the High Commissioner on Human Rights for its support and participation and in particular for the presence of the Deputy High Commissioner Kyung-wha Kang who will offer some opening words in the name of the High Commissioner and Mrs. Natalie Prouvez, Secretary of the Human Rights Committee of the Office of the High Commissioner.

Those who make up the rest of the panel are as follows: Rianne Letschert Professor of International Law and Victimology at the University of Tilburg; Carlos Fernández de Casadevante Román, Professor of Public Law and International Relations at the University Rey Juan Carlos and Cristina Cuesta, Director of the Miguel Ángel Blanco Foundation. Thank you to everyone present.

For Spain, the fight against terrorism in all its forms and manifestations can only take place if supported by the Rule of Law and with a guarantee of the protection of human rights. Our conviction is that there can be no short cuts in the fight against the blight of terrorism.

We do believe that considerable advances have been made concerning these questions at an international level, however Spain also believes that one very significant aspect has been left aside, namely the rights of the victims of terrorism themselves. What this has led to is a multitude of resolutions that focus only on the rights of the perpetrators of terrorist acts, while victims are rewarded with mere expressions of solidarity. Something as basic and apparently innocuous as the affirmation that terrorism destroys human rights has not been accepted in the resolutions adopted in Geneva relating to terrorism.

The subject of terrorism has been dealt with in several resolutions of the General Assembly, the Commission on Human Rights and the Human Rights Council, and the Sub-commission for the promotion and the protection of human rights initiated the mandate of special rapporteur Kalliopi K. Koufa to analyze the subject in depth. However in Geneva, especially since September 11th 2001, attention has focused primarily on the violations of human rights that the state may be liable to commit in its fight against terrorism, that is to say the violation of the rights of the supposed terrorists. This initiative we are starting does not aim to deny these rights, on the contrary, we hope that this strategy will continue and we recognize the efforts of the Council in the defence

of human rights in the fight against terrorism. But these advances will fall short if they are not complemented by an effort, inexistent up until now, to defend the rights of the victims of terrorist acts.

The connection between terrorism and human rights was established by the High Commissioner in the report to the General Assembly pursuant to resolution 48/141 "Human rights: A Uniting Framework4:" which stated, "terrorism is a threat to the most fundamental human right, the right to life" and "the essence of human rights is that human life and dignity must not be compromised and certain acts, whether carried out by State or non-State actors, are never justified no matter what the ends may be. "

However, it is regrettable that within the United Nations system there is no international norm protecting the rights of victims of terrorism. And this is why the mandate of the Special Rapporteur on the promotion and protection of human rights against terrorism does not include the human rights of the victims of terrorism.

Nevertheless, we do not consider that the absence of a definition of the crime of terrorism should impede, as some people have suggested it might, the progress towards the recognition of victims of terrorism and their specific rights and the mechanisms guaranteeing these rights.

Additionally it is necessary to stress the importance of the work done by victims of terrorist organizations, their important role in the fight against terrorism has already been recognized by the Security Council.

This is why we consider that now is an opportune moment to take steps towards the recognition of the condition of the victim, strengthening the debate and outlining practical concepts relating to social help, medical and psychological treatment, effective access to justice and fair and adequate compensation.

The objective that we are pursuing is in line with the United Nations Global Counter Terrorism Strategy and its revision of 2008 and September 2010 in which many states agreed to take measures to remedy the dehumanization of victims of terrorism and to explore the possibility of developing practical mechanisms to provide assistance to victims.

We are going to continue to support the efforts of this Council to ensure respect for human rights in the fight against terrorism, and at the same time we are going to take steps to assure that assistance is given to the victims, in the widest sense - which includes the recognition of the nature of the victims, the protection of their dignity, the defence of their rights and their legal status, and medical and economic assistance, and the solidarity shown to them.



## 2.3.- PRESENTATION: MS. ALICIA ARANGO OLMOS, AMBASSADOR PERMANENT REPRESENTATIVE OF COLOMBIA AT THE UNITED NATIONS IN GENEVA.

Colombia, together with Spain, Turkey and India as co-sponsors, welcomes you to this side event, the aim of which is to reflect upon and bring attention to the necessity of making greater efforts towards the recognition and implementation of human rights for victims of terrorism, a condition that has, unfortunately, affected millions of people around the world and which has brought particular suffering to my own country.

Although the United Nations system has addressed the subject of the fight against terrorism



Ms. Alicia Arango Olmos.  
Ambassador Permanent  
Representative of Colombia at  
the United Nations in Geneva.



9-04-07: Colombia. A woman is crying over the destruction wrought by a bomb that the FARC terrorist group had placed in Cali, killing a taxidriver and wounding 34 others. Photo: Carlos Julio Martínez/AFP.

through its different organs, the Security Council, the Human Rights Council and the United Nations Office on Crime and Drugs - we believe that it is essential to tackle the question in a more profound way from a human rights perspective centred on the attention given to victims, on reparations and on the restitution of their rights.

Since 2005 Colombia, with the adoption and implementation of the Law of Justice and Peace, has had recourse to the National Commission of Reconciliation and Reparation whose main function is to contribute to guaranteeing victims access to the truth, justice and comprehensive reparation, taking age sex, age or ethnic origin into consideration, and to ensure that the situation will not be repeated.

Recently, as a result of our interest in promoting international cooperation on this theme Colombia sponsored the Second Meeting of the Expert Group on the issue of Criminal Justice in support of victims of terrorism in January 2011. This event was coordinated by the Colombian Ministry of the Interior and Justice and the United Nations Office on Drugs and Crime. Experts from 15 countries took part, sharing information and opinions with the aim of strengthening national policies, strategies and mechanisms and support for the victims of terrorism.

The theme of assistance and reparations for the victims is a priority for the whole of the Colombian state and is considered an essential step towards securing the consolidation of peace and reconciliation between Colombians. For that reason, a legal project is under way at the present time, the aim of which will be to compensate those who have been victims of the violence in our country and to return land to those people who have been violently uprooted from it. The project will have a gender focus and provide assistance to particular communities affected, such as indigenous peoples and afro-Colombians.

The law which is to be applied over a period of 10 years will require an investment of around 25 thousand million dollars to provide compensation for a million families.

The fight against terrorism requires the maintaining and doubling of actions to prevent and eradicate impunity for the perpetrators of terrorist acts, but such actions will remain incomplete if their aims do not include the consideration of human rights and necessary attention and compensation for the victims.

For this reason we support and welcome with approval the proposal to promote a project decision which will allow a panel to be set up on the occasion of the seventeenth Period of Sessions of the Council on Human Rights.

We must not forget that respect and observance of human rights is what legitimizes the actions of the state in the fight against terrorism and for that reason the recognition of the rights of the victims must be at the forefront of all our efforts.



## **2.4.- PRESENTATION: H.E. MR. GOPINATHAN ACHAMKULANGARE, AMBASSADOR PERMANENT REPRESENTATIVE OF INDIA AT THE UNITED NATIONS IN GENEVA.**



H.E. Mr. Gopinathan Achamkulangare, Ambassador Permanent Representative of India at the United Nations in Geneva.

High Commissioner Pillay, Ambassador Javier Garrigues, Ambassador Alicia Olmos, Ambassador Oguz Demiralp, Ms Cristina Cuesta, Director of the Foundation Miguel Ángel Blanco, Distinguished panelists, Excellencies, Ladies and Gentlemen.

I would like to express our deep appreciation for the Permanent Missions of Colombia, Spain and Turkey and the Foundation Miguel Angel Blanco for having taken this initiative that India is very happy to co-sponsor.

It is an initiative that is not only timely but also overdue. It is an initiative that seeks to restore some of the balance and perspective that one often felt to be missing for quite sometime now, even though human rights do constitute one of the four pillars of the UN Global Counter-Terrorism Strategy. And this is highly ironic, given that the international community has been discussing terrorism for nearly 75 years now, going back to the Convention for the Prevention and Punishment of Terrorism adopted by the League of Nations in 1937. We seem to have spent bulk of this time debating the political and emotional content of the term “terrorism” in the backdrop of the broader political dynamic of the day. It is only relatively recently that we have progressed to using this term in a pejorative sense in general, as also stating unambiguously that, regardless of whether it is committed by State or non- State actors and irrespective of its motivations, any act of terrorism is a violation of human rights, the most important among them being the right to life, fundamental freedoms and democracy. It is, therefore, time that we started talking of the human rights of victims of terrorism in our broader discourse on terrorism, as distinct from restricting it mainly to the perpetrators of terrorism. In this context, we take positive note of the case often made by the victims of terrorism, as indeed from within the precincts of the International Criminal Court itself, for delegitimizing terrorism and making it a crime against humanity.

We are all aware of the debate on the Comprehensive Convention on International Terrorism. All of us are also conscious of the various concerns and motivations underpinning that debate. We believe that we should be equally mindful of how, even when a cause may be just, the use of terrorism as a means to achieve that cause often becomes self-sustaining owing to vested interests and ultimately fails the cause. Therefore, while we grapple with this issue in New York, we should not allow that to become an obstacle in addressing some genuine human rights concerns about the victims of terrorism. It is about time that we recognized violence for what it is worth and started moving beyond platitudes of solidarity for those affected by such violence.

In conclusion, Mr. Chair, we would like to pledge our support for continuing the work on broadening the international consensus on addressing the human rights of the victims of terrorism. I look forward to hearing the views of our panelists on this and related questions.

## 2.5.- PRESENTATION: H.E. OĞUZ DEMIRALP, PERMANENT REPRESENTATIVE OF TURKEY AT THE UNITED NATIONS IN GENEVA.

Ladies and gentlemen,

I am pleased to be here with you today as a co-host of this important side event.

Taking this opportunity, I would like to express our solidarity with all victims of terrorism around the world.

Unfortunately, Turkey has had a longstanding, direct experience with terrorism. This painful experience has taught us, among other things, the indispensable nature of international cooperation in combating this scourge. Indeed, terrorists operate across borders, exploit opportunities and use every available technology presented to them in today's globalized world. Efforts to counter this threat therefore need to be firm, coherent and adaptive.

The United Nations has a central role in laying the ground to make this possible. Indeed, through the adoption of a number of conventions, protocols and resolutions, the UN has provided the international community with a sound legal structure on counter-terrorism. Through these instruments, we have identified the relevant norms and necessary measures for preventing and suppressing terrorist acts, as well as for bringing to justice their perpetrators and facilitators.

However, there is still a regrettable, significant gap between the objectives behind these measures and the stark reality. Therefore, it is incumbent upon us to make a candid assessment of the nature of ongoing shortcomings and to search for remedies. This would constitute a vital first step to reenergize international efforts in counter-terrorism.

The issue of victims of terrorist acts is one of the issues on which many more steps need to be taken. Turkey is aware of this fact and has been actively trying to improve its legislation in this field.

One major step that Turkey has taken is the adoption of a law in July 2004 that directly concerns the victims of terrorist acts. This law is entitled the "Law on Compensation of Damages that occurred due to Terrorism and the Fight against Terrorism". It is usually referred to as Law No. 5233.

The objective of this law is to lay down the principles and procedures for the compensation of ma-



3-9-2008. Belfast (United Kingdom). - UVF unionist mural in Belfast, Northern Ireland. Photo: EFE PAUL MCERLANE

H.E. Mr. Oguz Demiralp,  
Ambassador Permanent  
Representative of Turkey at the  
United Nations in Geneva.

terial damages suffered by persons due to terrorist acts or activities undertaken during the fight against terror.

This law aims to swiftly and effectively compensate for the damages incurred by our citizens without making them have to resort to national and international judiciary organs.

The law compensates for the following:

- Damages incurred from death and injury,
- Damages to movable and immovable property,
- Agricultural damages,
- Damages resulting from the inability of citizens to access their assets as they immigrate due to terror.

A total of 51 Compensation Commissions that are charged with determining and giving the necessary compensation have been set up. 43 of these have completed their work. 75 % of the applications made to these Commissions from July 2004 to November 2010 have been finalized. 60% of these have been given compensation.

Before this law passed, the European Court of Human Rights used to accept cases against Turkey on these issues without trying to verify that all domestic remedies had been resorted to. After Law 5233 was adopted, the ECtHR adopted a decision stating that the provisions thereof were an effective domestic remedy and directed the applicants to the Compensation Commissions.

Ladies and Gentlemen,

Turkey, having suffered from various kinds of terrorism for the last forty years, has always been in the forefront in this fight. Terrorism is a major violation of one of the most fundamental human rights, the right to life. As terrorism grossly and systematically violates human rights, Turkey has always promoted the idea that terrorism should be regarded as a human rights violation. We will therefore continue to actively support UN endeavors in this field.



## 2.6.- INTERVENTION: MS. NATHALIE PROUEZ, CHIEF OF THE RULE OF LAW AND DEMOCRACY SECTION, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

I am very grateful to the Government of Spain and the Miguel Angel Blanco foundation for their invitation to participate in today's debate as a panelist. As emphasized by the Deputy High Commissioner in her opening remarks, the theme of this event is particularly important in view of the human cost of terrorism which keeps being felt around the globe.

I would first like to reflect on the steps taken so far by the United Nations to highlight the importance of the support required for victims of terrorism.

While in the immediate years following the 9/11 events, the issue of terrorism has been addressed with an almost exclusive focus on the suspected perpetrators, victims' rights have gradually moved to the center of the debate over the past half decade.

First, in the 2005 World Summit Outcome, the international community has emphasized "the importance of assisting victims of terrorism and of providing them and their families with support to cope with their loss and their grief."

One year later, Member States adopted unanimously the United Nations Global Counter-terrorism Strategy that stresses "the need to promote and protect the rights of victims of terrorism" and points to the dehumanization of victims of terrorism as one of the conditions conducive to the spread of terrorism. This Strategy was reaffirmed for the second time in a General Assembly review last September.

The Global Counter-terrorism Strategy also includes a pledge of all Member States to "consider putting in place, on a voluntary basis, national systems of assistance that would promote the needs of victims of terrorism and their families and facilitate the normalization of their lives."

In 2008, the Secretary General of the United Nations hosted a symposium on supporting victims that brought together victims of terrorist attacks from all over the world. In his opening address to this event, the Secretary-General stated: "By giving a human face to the painful consequences of terrorism, you help build a global culture against it. You deserve to have your needs addressed; you deserve to have your human rights defended; and you deserve justice." The 2008 event was followed in December last year by a second symposium co-organized by the UN Counter-terrorism Implementation Taskforce (CTITF) and the International Institute of Higher Studies in Criminal Science. One of the main objectives of this second symposium was to compile a compendium of best practices on supporting victims of acts of terrorism.

Finally, I would also like to recall that last year, both the Human Rights Council and the General Assembly have once again acknowledged the importance of providing victims of terrorism and their families with proper assistance.

The Office of the High Commissioner for Human Rights, as chair of the Working Group on Pro-



protecting Human Rights While Countering Terrorism of the Counter-terrorism Implementation Task Force (the CTITF) and as a member of the Working Group on Supporting and Highlighting Victims of Terrorism, is fully committed to ensuring recognition of, and respect for, the rights of victims of terrorist acts.

Victims of terrorist acts and their families experience particularly grievous trauma and States should ensure that they are very diligent when responding to the needs of the persons affected. Furthermore, measures taken should be tailored to the maximum extent possible to the specific needs of victims of terrorism.

A comprehensive scheme of support to victims would have to take into account the needs of both direct and indirect victims of terrorism. In most cases, terrorist incidents concern a large number of direct victims, whose most fundamental rights, such as their right to life, physical integrity, liberty and security are violated. In addition, terrorist attacks cause an even higher number of indirect victims, who equally suffer immense harm. Indirect victims may not only include the family or dependants of the direct victim, but also persons who have suffered harm when intervening to assist victims in distress or to prevent victimization. The communities from which the victims originate are also often affected.

Any scheme of support to victims of terrorism should first and foremost be designed while taking into account the rights of victims as reflected in existing standards and instruments. In this regard, I would like to draw attention in particular to the right of victims to an

effective access to justice and to a remedy, as provided not only in the International Covenant on Civil and Political Rights but also as it was expanded upon in other instruments, including in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law.



07-09-04. BESLAN, NORTH OSSETIA. A woman weeps in the local cemetery three days after the burials of hostages taken by Chechen terrorists at a school in Beslan. 335 people died as a result of the attack.  
Photo: EFE



Victims of terrorism should be given a face and a voice and be treated with compassion and respect for their dignity. In order to ensure an effective remedy for victims, equal and effective access to justice, including appropriate assistance throughout ensuing legal proceedings, is required. Through such a remedy, victims should benefit from adequate and prompt reparation for the harm suffered. I would like to recall, as emphasised by the Deputy High Commissioner, that regard to the rights of victims of terrorism also entails a duty of States to ensure accountability for perpetrators of terrorist acts. While doing so, however, domestic criminal justice systems must treat at all times the alleged perpetrator in accordance with international human rights standards. Furthermore, there should be a possibility for victims to participate in judicial proceedings and other mechanisms aiming at establishing accountability of the perpetrators and to have their views and concerns presented. Such participation will entail appropriate protection against intimidation and retaliation as well as the protection of victims' privacy.

Access to relevant information concerning the investigation, prosecution and trial of alleged perpetrators of a terrorist act is also of fundamental importance for the victims. Finally, concentrated efforts have to be made with a view to the recovery and social reintegration of the victims so as to enable them to rebuild their lives. In this regard, due consideration should also be paid to victims' needs for material, medical, psychological and social assistance and to access to a full range of support services.

Regard for victims of terrorism also entails efforts to deal with terrorism itself. I would also like to recall in this connection, that as stated by the High Commissioner in her 2009 speech to the Counter, Terrorism Committee, some measures taken to counter terrorism can pose grave challenges to the protection and promotion of human rights, and can be self-defeating. Measures that violate human rights risk undermining the very goals that States seek to achieve in countering terrorism, and can even increase radicalization. In contrast, upholding human rights creates a climate of trust between a State apparatus and those under its jurisdiction, such trust is at the very foundation of effective responses to terrorism. Effective counter-terrorism strategies must also be preventive and need to address a spectrum of conditions that are conducive to the spread of terrorism, such as ethnic, national and religious discrimination and socio-economic marginalization.

Ladies and Gentlemen,

I thank you for your attention, and wish you a fruitful discussion.

## 2.7.- INTERVENTION: CARLOS FERNÁNDEZ DE CASADEVANTE ROMANÍ PROF. OF PUBLIC INTERNATIONAL LAW AND INTERNATIONAL RELATIONS (UNIVERSITY REY JUAN CARLOS, MADRID, SPAIN)<sup>1</sup>



Mr. Carlos Fernández de Casadevante Romani. Prof. of Public International Law and International Relations (University Rey Juan Carlos, Madrid, Spain)



### 1. Terrorism is a serious and gross violation of human rights

It seems obvious but it must be said: terrorism is a violation of human rights. It is not an ordinary violation of human rights but a serious and gross violation of human rights, an international crime<sup>2</sup>. Despite it and on the contrary to other categories of victims both the UN and Member States do not yet neither promote nor adopted an international norm proclaiming the rights of victims of terrorism<sup>3</sup>.

On the contrary all statements they have done have been limited to expressions of mere courtesy deprived of any legal obligation. It is the case of the concern “at the gross violations of human rights perpetrated by terrorist groups”<sup>4</sup>, the statement 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”<sup>5</sup>, or this other “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”<sup>6</sup>.

Unfortunately these qualifications have not been accompanied by concrete measures in the field of Law. To this regard two measures are urgent. On the one hand the inclusion of the crime of terrorism among the crimes coming under the jurisdiction of the International Criminal Court 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<sup>7</sup>.

On the other hand the promotion and adoption of a catalogue of rights of victims finishing with the invisibility of victims of terrorism in the field of international law. What a paradox: victims of terrorism are innocent victims and at the same time they invisible victims for UN and Member States. What kind of victims are these to which rights are denied?

### 2. Victims of terrorism and human rights

It is paradoxical that on 10 December 1948 the General Assembly adopted the Universal Declaration of Human Rights<sup>8</sup> “whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people” and nevertheless, sixty years later, the same international organization does not yet adopted an international norm proclaiming the rights of victims of terrorism. Even being terrorism a clear and concrete case of barbarous acts which have outraged the conscience of mankind which have its origin in barbarous acts outraging the conscience of mankind which reduce the human being to a simple instrument because victims of terrorisms are used by terrorists with a political aim.

A political aim the Security Council has clearly specified. What is about the practice of terrorism is nothing other than “to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act”.<sup>9</sup>



11-09-01: New York: Al-Qaeda terrorist attack on the Twin Towers, New York, in which 2,973 people lost their lives. Photo: EFE

Nevertheless the situation once described and the objective terrorists pursued once specified neither the UN nor the Member States did not gone beyond. In other words they have forgotten victims of terrorism<sup>9</sup>. That is the most weak link in the chain.

How long will UN and Member States remain insensitive and deaf to the pleas for justice of victims of terrorism? During how much time more will UN and Member States leave their responsibilities before victims of terrorism? That is before innocent persons having seen their life, their freedom or their physical or psychological integrity severed because someone, somewhere, have decided to make them a concrete objective for their political aims.

We, victims of terrorism, are here today in the seat of the Council of Human Rights to demand it. To demand this international organization and Member States a concrete legal action on victims of terrorism. That is a legal action with the object of the promotion and adoption of a catalogue of rights of victims of terrorism. A task and an objective with regard to which another international organization the Council of Europe- has shown the way through its *Guidelines on the Protection of Victims of Terrorist Acts* adopted by the Com-

mittee of Ministers the 2 March 2005.

These Guidelines contain 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<sup>11</sup>.

Certainly it is not a difficult task because both the UN and Member States have already undertaken it with regard to other categories of victims. It is the case of the following five categories. First, *victims of crime* and *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*<sup>12</sup>.

Second, *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*<sup>13</sup>.

Finally, *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 Assembly<sup>14</sup>.

That means five categories of victims each one of it with its catalogue of rights. That is, its international statute recognized to it by UN and Member States through particular international norms.

Victims of terrorism do not deserve such a discriminatory and unjustifiable treatment. This is why we ask both this international organization and Member States to move from simple expressions of mere solidarity to action. An action in the field of international law of victims concretized in the promotion and adoption of a catalogue of rights of victims of terrorism built upon international law already in force. A catalogue containing the following rights recognized by international norms:

- the right to emergency and continuing assistance,
- the right to investigation of terrorist acts and to the prosecution of the offenders,
- the right to effective access to law and to justice,
- the right to administration of justice,
- the right to compensation and reparation,
- the right to the protection of the private and family life of victims of terrorist acts,
- the right to the protection of the dignity and the security of victims of terrorist acts,
- the right to information for victims of terrorist acts,
- the right to specific training for persons responsible for assisting victims of terrorist acts.



This catalogue would be closed by a clause usual in international law on human rights which concerns the possibility for States to increase protection of this category of victims. It is the responsibility of UN and Member States to effectively respond to this demand of victims of terrorism.

Geneva, the 9th March 2011

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<sup>2</sup> This is the qualification it receives from 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 (E/CN.4/2002/18, 27 February 2002).

<sup>3</sup> On this question see C. Fernández de Casadevante Romani, *El Derecho Internacional de las Víctimas*, Porrúa, México, 2011.

<sup>4</sup> 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/RES56/160).

<sup>5</sup> So the High Commissioner in paragraphs 2 and 5 of its report just quoted on footnote 2. With regard to the Commission on Human Rights see the reports of Special Rapporteur K. KOUFA, Sub-Commission on the Promotion and Protection of Human Rights 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).

<sup>6</sup> Ibid.

<sup>7</sup> 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" (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".

<sup>8</sup> Adopted through Resolution 217 A (III).

<sup>9</sup> Paragraph 3 of Resolution 1566 (2004) adopted on 8 October 2004 acting under Chapter VII of the Charter of the United Nations, in exercise of the Security Council's primary responsibility for the maintenance of international peace and security conferred upon it by Article 24 of the United Nations Charter. The complete text of this paragraph states: "3. Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, and all other acts which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature;"

<sup>10</sup> On the contrary its attention has been limited to expressions of mere courtesy deprived of any legal obligation. For example, showing the General Assembly's solidarity with victims of terrorism and requesting that the Secretary-General seek the views of Member States on the possible establishment of a United Nations voluntary fund for victims of terrorism. So for example both the Security Council (see 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) and the Commission on Human Rights (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).

<sup>11</sup> Council of Europe, Committee of Ministers-CM/Del/Dec(2005)917.

<sup>12</sup> Declaration 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.onu.org>).

<sup>13</sup> 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.

<sup>14</sup> 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.

## 2.8.- INTERVENTION: PROF. DR. RIANNE LETSCHERT INTERNATIONAL VICTIMOLOGY INSTITUTE TILBURG – THE NETHERLANDS

The fight against terrorism has received increased awareness due to worldwide large-scale terrorist acts. However, only limited attention has been directed specifically to victims of terrorism. Although terrorism has featured on the international agenda for many years now, attention for the plight of victims of terrorism has been conspicuous in its absence until fairly recently. The policy response to terrorism in most States was mainly restricted to adjusting police tactics and criminal procedural laws for organized crime to the new demands placed on law enforcement. Existing legal instruments of international bodies such as the United Nations, the European Union, and the Council of Europe concerning rights for victims of terrorism are relatively abstract or include victims of terrorism under the broader heading of victims of crime in general. In addition, policies and legislation relating to victims of crime or victims of terrorism vary widely on the domestic level.

Since the mid-1980s, several international instruments have been adopted defining basic minimum rights for victims of crime in the criminal justice system and beyond. To illustrate, in 1985 the UN General Assembly unanimously adopted the Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power. In 2001, the EU adopted the EU Council Framework Decision on the Standing of Victims in Criminal Proceedings and in 2006 the Council of Europe adopted Recommendation (2006)8 on Assistance to Crime Victims. Besides these general instruments, the international legal framework contains instruments that incorporate victims' rights for a specified group of victims. Increasingly, general victim of crime policies branch out into specialized policies and legislation for particular groups of victims. Amongst others there are instruments or policies for victims of trafficking adopted also at the UN level (see the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime). The UN has not yet adopted a specific instrument relating to victims of terrorism. Other regional organizations have done so, or consider doing so.

The European Union addressed the issue of victims of terrorism in its 2002 Framework Decision on Combating Terrorism, with its preamble stating that 'victims of terrorist offences are vulnerable, and therefore specific measures are necessary with regard to them', which is followed by the requirement that, in article 10.2, 'in addition to the measures laid down in the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, each Member State shall, if necessary, take all measures possible to ensure appropriate assistance for victims' families.'

The Council of Europe (CoE) addressed the issue of victims of terrorism in 2005, when it adopted guidelines that focus specifically on victims of terrorism.<sup>1</sup> The guidelines address the needs and concerns of victims of terrorist acts, in identifying the means to help them, and to protect their fundamental rights.<sup>2</sup>

Relating to the content of the more general victims' rights instruments compared to these specific guidelines, some minor differences can be identified. The CoE Guidelines contain a provision relating to continuing and emergency assistance and a provision on the possible negative effects of



12-03-2004:Madrid. The Madrid demonstration reaches Alcalá Street. Photo: Manuel Escalera

media exposure, which are not normally addressed in general victims of crime instruments. Overall, the main features are similar to other existing instruments, with the victims of terrorism guidelines containing classical victims' rights such as the right to information, the right to receive compensation and the right to participate in criminal proceedings.

In 2008, the EU asked a consortium of research groups to conduct a study into the needs of victims of terrorism. The results show that the legal position of victims of terrorism is mostly identical to that of victims of (violent) crime. Victims' rights are closely connected to their needs and in general it is safe to say that the needs of victims of terrorism do not differ as much from those of victims of crime. For instance, all victims need to be treated with respect and recognition, and may require financial, medical and psycho-social assistance.

However, this does not imply that, for instance, compensation schemes and assistance structures that suffice for meeting the needs of victims of crime will always suffice for victims of terrorism. The research showed that a number of countries do have a differing approach to State compensation to victims of terrorism than their policies towards victims of crime. In the study it was shown that the need for compensation may not be different *in kind* when comparing victims of terrorism and victims of crime. However, this does not rule out the possibility that the need may be different *in degree*, in other words, there is a more pressing or urgent need for compensation when it concerns victims of terrorism. Moreover, State compensation may also be an expression of the State's attempt to meet a different need, as State compensation is not only related to the mere need of victims to compensate the damages incurred, but is also an expression of State and societal acknowledgement for victims.<sup>3</sup> In varying ways the study has shown that this societal acknowledgement is an important consideration in the development of specific State compensation schemes for victims of terrorism. To give some examples, Spain and France developed such a scheme as an expression of solidarity with victims of terrorism, while Serbia and Macedonia have taken similar steps in the acknowledgement of the States' responsibility to prevent terrorist attacks from occurring.

Similar considerations apply to assistance structures for victims of terrorism. Again the need for support may not be different in kind compared to victims of crime, but more pressing or more complicated to meet. Our study shows that in particular for terrorist attacks resulting in mass victimization, additional measures may have to be implemented to meet the need for assistance and support inherent to an incident of this scale. Moreover, the differences are not measurable in terms of the types of support and assistance available, for example in psychological and medical assis-

tance but in the more precise form of these methods of meetings victims' needs and in the way they are implemented. This also relates to the possible added value of establishing and maintaining specialised centres for victims of mass-terrorist attacks.

On the basis of this study, the consortium drafted a set of recommendations containing guidelines for States on how to guarantee the rights of victims of terrorism. The proposed *EU Recommendation on Assistance to Victims of Acts of Terrorism* covers a more extensive approach (compared to other general victims of crime instruments) for the assistance to victims of terrorism, including, among other things, provisions relating to psycho-social assistance (both emergency and continuing assistance), access to justice, compensation, information strategies, and access for victims of terrorism to restorative justice practices and procedures.

As regards, for instance, emergency assistance, Member States should ensure that evidencebased and well-coordinated emergency assistance, including the provision of information and medical, psychological, social, and material support is available.

With regard to access to justice and administration of justice, particular focus was put on participatory rights for victims of terrorism and legal aid. In this respect, a more extensive approach than offered in the existing international legal instruments was incorporated in the standards. The compensation provision does not only focus on ensuring adequate financial compensation, but also calls upon States to consider other reparative measures such as commemorations and tributes to the victims.

On the basis of the study, it was concluded that it is desirable to differentiate between victims of terrorism and victims of violent crime in general at the political level. Victims of terrorism are different from victims of violent crime in that they may be seen as "instruments" used by terrorists in order to modify or intervene in the political process. This public dimension requires a public response which may be seen as solidarity.

This was also one of the conclusions following the global high-level expert symposium organised by the UN Secretary General and the Working Group on Supporting and Highlighting Victims of Terrorism in New York on 9 September 2008 on "Supporting Victims of Terrorism". The importance of ending the dehumanization of victims of terrorism in all its forms and manifestations was stressed. The report following the symposium contains a set of recommendations directed towards Governments that deserves to be followed up. Especially a strong request was made to strengthen legal instruments at both the international and national levels, providing victims of terrorism with legal status and protection of their rights. Also, a call was made to establish a UN voluntary fund for victims of terrorism.

The UN Special Rapporteur on the promotion and protection of human rights while countering terrorism has on various occasions stressed the importance of addressing the human rights of victims (and not only perpetrators), in particular their right to effective remedies.<sup>4</sup> In his latest report he specifically draws attention to the need for model provisions for reparations and assistance.<sup>5</sup>

I strongly recommend the UN Human Rights Council to study these recommendations, as well as those formulated in the draft EU recommendations and the CoE guidelines, in order to present a comprehensive set of provisions that may contribute to the re-humanization of victims of terrorism.

<sup>1</sup>See *Guidelines of the Committee of Ministers of the Council of Europe on the Protection of Victims of Terrorist Acts*, 2 March 2005. The CoE also adopted *Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and the Fight against Terrorism*, adopted by the Committee of Ministers at its 804th meeting (11 July 2002), which address victims compensation issues in paragraph 1VII.

<sup>2</sup> Preamble, para. h.

<sup>3</sup>This need for public acknowledgment is also explicitly included in the 'UN 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', of 16 December 2005. The document contains extensive forms of reparation, which goes much further than only financial compensation. The need for public acknowledgement is also included in the EU Recommendation in the form of commemorations.

<sup>4</sup>E/CN.4/2006/98, 28 December 2005, para. 66.

<sup>5</sup>Practice 6. Model provisions on reparations and assistance to victims: 1. Damage to natural or legal persons and their property resulting from an act of terrorism or acts committed in the name of countering terrorism shall be compensated through funds from the State budget, in accordance with international human rights law. 2. Natural persons who have suffered physical or other damage, or who have suffered violations of their human rights as a result of an act of terrorism or acts committed in the name of countering terrorism shall be provided with additional legal, medical, psychological and other assistance required for their social rehabilitation through funds from the State budget. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, *Ten areas of best practices in countering terrorism*, A/HRC/16/51, 22 December 2010.