

AGENDA

Opening Statement by Mr. Andrew Goledzinowski, Assistant to the High Commissioner for Human Rights (Geneva)

Election of Rapporteur

10.30 a.m. **“International Law and Terrorism”**

- Prof. Tom Hadden, Prof. of Law at Queens University, Belfast and Member of Northern Ireland Human Rights Commission

Q's and A's

“Terrorism and Human Rights Standards”

- Mr. Andrew Goledzinowski
Assistant to the High Commissioner for
Human Rights (Geneva)

Q's and A's

“Terrorism and the African Charter on Human and Peoples’ Rights”

- Dr.Chaloka Beyani, Senior Lecturer in International Law, Department of Law, London

Q's and A's

1.00 p.m. Lunch

"The Impact of Combating Terrorism and the Human Rights of Refugees"

- Mr. Thomas Albrecht, Head of Office,
UNHCR, Accra

Q's and A's

"The Impact of Combating Terrorism and the Human Rights of Migrants"

- Mr. Frarooq Azam, Regional

Representative, International
Organization for Migration.

Q's and A's (Round Table)

5.00 p.m.

Sum up by Mr. Andrew Goledzinowski, Assistant to the
High Commissioner for Human Rights (Geneva)

Closing Session

**STATEMENT OF AMBASSADOR DR. WAFIK Z. KAMIL, SECRETARY GENERAL, INTRODUCING
THE SPECIAL MEETING IN CONJUNCTION WITH THE 41ST SESSION OF THE AALCO WITH THE
ASSISTANCE OF OHCHR**

Mr. President, Hon'ble Ministers, Excellencies, Distinguished Prof. Tom Hadden, Prof. Chaloka Beyani and Mr. Andrew Goledzinowski from OHCHR, Mr. Farooq Azam from IOM and Mr. Thomas Albrecht from UNHCR, Ladies and Gentlemen.

Mr. President, at the outset I would like to thank you for affording me this opportunity to welcome you at this Special Meeting on Human Rights and Terrorism being held in conjunction with the 41st Session of the AALCO with the assistance of OHCHR. I would also like to thank the Panelists from International Organization for Migration (IOM) and UNHCR who have spared their valuable time and traveled long distances to be here with us to enlighten us on this very topical item.

Our direct association with the OHCHR began last year at the 40th Session when their representative attended the session and actively participated on the agenda items relating to human rights. Thereafter, he reported the matter to H. E. Madame Robinson High Commissioner for Human Rights, who wrote a personal letter to me wherein she acknowledged the keen interest that our organization was taking in matter related to human rights and suggested that we enter into a co-operation agreement. On the 12th of November 2001, a Memorandum of Understanding was signed between our two organizations and one of the tangible outcomes of that MOU is this one day Special Meeting.

The theme of the Special Meeting "Human Rights and Terrorism" was also proposed by Madame Robinson herself.

Terrorism constitutes a gross violation of human rights. It is a crime against humanity for which there can be no justification. This meeting is taking place in the shadow of what happened in many countries since then, as a direct or indirect consequences.

This is what we have to combat. We have to try to give everyone on this Mother Earth a reason to value their own rights, and to respect those of others. At the same time the primacy of the rule of law has to be reaffirmed, and the principle that certain acts are so evil that no cause, however, noble, can justify their use.

There is a hard core of terrorists whose minds are beyond our reach, and against whom we have no choice but to defend ourselves with vigilance. However, we should not lose sight to the fundamental principles as the presumption of innocence until guilt is proved. Even the guilty have certain basic human rights, such as those laid down in the Universal Declaration of Human Rights and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

At this juncture we welcome the historic milestone of coming into force of the Statute of the International Criminal Court, on the 1st of July and that by next year the Court should be operational. This will give all States a strong incentive to improve their standards of punishing war crimes and crimes against humanity and perhaps eventually crime of terrorism could be within the article of the Court's jurisdiction.

It is a well known principle that justice should not only be done, but also be clearly seen to be done. When criminals are punished, no one should be in doubt of the justice or conviction. The struggle against terrorism should not be a ground for suppression of opposition.

This meeting is essentially an opportunity for States to discuss this topic in detail. The agenda for today's meeting has tried to cover many diverse aspects namely (i) International Law and Terrorism; (ii) Terrorism and Human Rights Standards, (iii) Terrorism and the African Charter on Human and Peoples Rights; (iv) The Impact of Combating Terrorism and the Human Rights of Refugees", and (v) the Impact of Combating Terrorism and the Human Rights of Migrants. After each presentation by a panelist questions and answers would follow.

Now, I would like to give the floor to Prof. Tom Hadden from the OHCHR to introduce the subject and the speakers. I am sure that like our previous Special Meetings namely on Migration and Intellectual Property Rights, this one too will have very useful deliberations.

SUMMARY OF THE ONE DAY SPECIAL MEETING ON "HUMAN RIGHTS AND COMBATING TERRORISM" ORGANIZED BY AALCO IN CONJUNCTION WITH THE 41ST SESSION WITH THE ASSISTANCE OF OHCHR, ON WEDNESDAY 17 JULY 2002

1. **Mr. Andrew Goledzinowski** noted that there had been a very rich exchange of views and ideas. His brief summary would therefore, necessarily, be incomplete and he apologized in advance to those speakers whose thoughts may not be captured in their entirety.

2. The first panelist, Prof. Tom Hadden spoke on the subject: "Terrorism and International Law". He challenged us with the question – "what is terrorism?", and his answer took us well beyond September 11. He expressed the view that this phenomenon falls somewhere between war and crime, and he canvassed competing definitions. Prof. Hadden examined the various legal categories or classifications that can be applied to persons engaged in, or accused or being engaged in, terrorist activities. These categories depend upon whether the context is one of international armed conflict, internal armed conflict, a situation where rights have been officially derogated, or where there has been no derogation.

3. Prof. Hadden highlighted for us the difficulty of applying human rights standards to terrorist situations and pointed to some of the gaps that exist within current international legal structures.

4. Prof. Hadden's presentation elicited a large number of responses and questions from delegates. A number of questions dealt with the plight of the Palestinian people and focused on the human rights situation in Israel and the occupied Palestinian territories. Several speakers addressed the issue of root causes, including the need to address these in a comprehensive rather than a unilateral manner. Other delegates asked about tools for identifying the motives of terrorist actors, about European definitions of terrorism, and about the rights of victims in third states including the possible right to compensation.

5. In attempting to address these various matters, Prof. Hadden acknowledged the need for equal treatment of both sides in any conflict, particularly where there is an imbalance in the relative power of the two sides. In this regard he drew a relevant experience from the Irish context. He also added that, if necessary, this should include addressing the concept of state terrorism, although he noted the possible

difficulty of achieving agreement on this politically. He noted the need to develop stronger human rights sanctions against states, as well as non-state actors. Finally, he commented on European approaches to the question of definition.

6. At the conclusion of Prof. Haddens' responses to questions, the Secretary-General of AALCO intervened to propose an amendment to the working title of the Special Meeting. In order to focus better on the issues under consideration he proposed changing the title to: "Human Rights and Combating Terrorism". This was accepted by the meeting without discussion.

7. The representative of the High Commissioner for Human Rights, Mr. Andrew Goledzinowski, then spoke on the subject: "Terrorism and Human Rights Standards". In the course of his presentation, Mr. Goledzinowski outlined the wide range of human rights issues arising from the attacks of September 11. He noted the High Commissioner's judgment that this incident constituted a crime against humanity, which had important legal and political consequences.

8. Mr. Goledzinowski acknowledged the legitimate concerns of states to bring perpetrators to justice and to protect their populations against future acts of terrorism. However, the use of the language of war, rather than the language of criminal law, had led states along paths which caused some concern in human rights circles. This concern was over the possible erosion of international standards in the understandable pursuit of security considerations.

9. Mr. Goledzinowski outlined the applicable human rights law and the extensive body of jurisprudence which related to the issue of how states should respond to the threat of terrorism. He reviewed the concerns expressed by some UN mechanisms that the relevant standards were not being applied. Finally, he outlined the range of activities and responses being undertaken by various sections of the human rights system including the treaty bodies, the Special Rapporteurs of the Commission on Human Rights, and the office of the High Commissioner.

10. **Dr. Chaloka Beyani** then addressed the meeting on the subject of "Terrorism and the African Charter on Human and People's Rights". He challenged the notion that "the era of human rights is dead". In support of his view he discussed the development of the African Charter on Human and Peoples Rights, noting that one of its functions was to deal with the threats of subversion and terrorism.

11. In July 1999, the Convention on the Prevention and Combating of Terrorism was adopted, underscoring the importance given to terrorism amongst African States. This was followed by the Dakar Declaration, which condemned the attacks of September 11. Dr. Beyani referred to the role of sub-regional organs such as ECOWAS. The development of this role signaled an important shift from a doctrine of strict non-interference in the affairs of other sovereign states to one of closer scrutiny of human rights issues, amongst others.

12. Dr. Beyani informed delegates that in October 1999, the OIC adopted its own convention for combating terrorism and in 2002 followed this up in Kuala Lumpur with a plan of Action. He noted the parallels between the development of African and OIC thinking on this issue.

13. Dr. Beyani then canvassed developments associated with the African Union, which established for the first time an explicit right to intervene in the territory of a sovereign state where grave circumstances require such intervention. He speculated that the existence of a serious terrorist threat could constitute such grave circumstances. This new policy also deals with intervention arising from a request from a particular state.

14. The speaker considered the human rights provisions in the African Charter in more detail, noting that there was no provision for derogation in times of emergency, perhaps reflecting the fact that so many African States are ruled under effectively permanent states of emergency. Article 23 of the Charter makes a specific reference to terrorism and, in 1981, it was probably the first such instrument to do so.

15. Dr. Beyani drew the important linkage between security and development in the African context. He looked at the international human rights standards from the African perspective, including the right to life, torture, personal liberty, etc. and commented on how they would apply to suspected terrorists. He noted the absolute right to freedom of belief but also the constraints on how it may be expressed.

16. From the floor two questions were posed to Dr. Beyani. He was asked what role the new African Union could play in Somalia, perhaps in cooperation with the League of Arab States. He was also asked why international rules of conduct were applied to some states and not others.

17. In response to the first question, Dr. Beyani drew lessons from earlier multilateral interventions in Somalia and the need for the AU to pay careful attention to the clan system, which operates there. Apropos the question on selectivity, he noted that much depends upon the extent to which states have been prepared to submit themselves to the available international mechanisms.

18. **Mr. Thomas Albrecht**, representing the United Nations High Commissioner for Refugees spoke about the impact of counter-terrorism policies on refugees. He said that UNHCR had a serious concern that bona fide asylum seekers may be prejudiced in the current environment and that existing guarantees may be eroded. He contrasted this with UNHCR's overall view that current guidelines for refugee's determination remain relevant, though details of how they are applied may be reviewed.

19. Mr. Albrecht discussed areas of possible cooperation between agencies and government authorities. He rejected screening on the basis of race, ethnicity, religious belief, etc. but proposed that governments consider establishing "specialized exclusion units" within their systems. Such units would have the necessary specialist expertise and resources to help meet states' concerns about individual regarding whom there are legitimate doubts. It was explained to delegates that persons responsible for serious crimes are excluded from refugee status under the convention. Dr. Albrecht suggested that exclusion clauses should be incorporated into domestic legislation, covering offences such as war crimes, crimes against peace and crimes against humanity. He noted that Article 1(f) (b) of the Convention deals with serious non-political crimes committed outside the place of refugee and would also cover terrorism. The standard of proof required under these provisions reaches the level of "serious reasons....", which is substantially more than mere suspicion.

20. Mr. Albrecht explained that cancellation of refugee status can take place following evidence of fraud or misrepresentation. Expulsion, on the other hand, is linked to a finding that the refugee represents a danger to the security of the society in which he or she lives and requires very careful determination. Mr. Albrecht also explained the difference between exclusion and expulsion, reviewed extradition laws and examined criminal law issues, including the draft convention.

21. A participant asked Mr. Albrecht about the rights of refugees subject to extradition in the post September 11 period. Another participant questioned the role of UNHCR to make determinations that any particular act constitutes a crime against humanity.

22. Mr. Albrecht indicated that where refugees were subject to extradition, OHCHR would become involved, however, he was not aware of any such situation having taken place so far. He also confirmed that UNHCR did have a role in providing guidance on issues such as crimes against humanity, both to its own offices and for governments.

23. Another participant asked about the Australian governments' policies for processing asylum seekers on its offshore islands. Mr. Albrecht indicated that he did not have information on this specific situation but would be happy to assist the delegation to secure such information.

24. Mr. Farooq Azam, representing the International Organization for Migration (IOM), spoke on the situation of terrorism and migrants. He noted that, notwithstanding increases in migration flows, this increase as a proportion of the whole population was only slight – rising to a level of some 2-5 percent. Mr. Azam noted that migration flows would be reduced if global inequalities, which drive such flows, were

properly addressed. He also pointed out, however, that developed economies would continue to require migrant labour inflows and that these should be managed in a legal and orderly fashion.

25. Mr. Azam indicated that some things had changed since September 11 – notably in terms of attitude. In the face of security concerns biometric methods of screening were being introduced, with an increased danger of discrimination on the grounds of ethnicity. He also spoke of the vulnerability of irregular migrants and commended the steps taken in some countries such as Thailand, to regularize irregular migrants.

26. Mr. Azam said that some one million persons were smuggled across international borders each year. This industry, which prospered because of the weaker legal sanctions compared to other forms of illicit trade, was now worth \$7 billion each year. At the same time over 700,000 women and children were subjected to trafficking each year and these victims were still being criminalized in many countries. Finally Mr. Azam referred to some regional initiatives such as the ministerial meeting in Bali this year, which examined the situation of victims, the prosecution of perpetrators and improving intelligence exchanges amongst states.