

Explanation of vote by Mr. A. Gopinathan, Deputy Permanent Representative in the Third Committee on November 28, 2003 on the draft resolution entitled 'Protection of human rights and fundamental freedoms while countering terrorism'

Mr. Chairman,

My delegation has sought the floor to explain our vote on the draft resolution contained in document A/C.3/58/L.71 as revised. At the outset, we would like to express our appreciation to the delegation of Mexico for taking the initiative again this year on the subject, and would like to recall the flexibility shown by them last year which had led to adoption of the resolution without a vote.

We find that the changes introduced in this year's text seek to take it away from the consensus that we all subscribed to in the resolution adopted last year, thus making it difficult for us to go along with the text.

For example, we do not find an adequate reflection of the idea that terrorism in many cases poses a severe challenge to democracy, civil society and the rule of law. There is also no reference to the gross violations of human rights perpetrated by the terrorists and their actions, in particular the negation of the most fundamental of human rights, namely the right to life. In this connection, we recall Article 30 of the Universal Declaration of Human Rights which states that nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein; in other words, terrorist groups could be held liable for gross violations of human rights. In this sense, the draft resolution is selective and incomplete.

Mr. Chairman,

We would like to reaffirm India's commitment to fully respect human rights while combating terrorism. This has been reiterated at the highest levels of our government.

Mr. Chairman,

Turning now to the specific ideas contained in operative paragraphs 10 & 11, we find that operative paragraph 9 already mandates the UN High Commissioner for Human Rights to examine the question of the protection of human rights and fundamental

freedoms while counter terrorism, to make general recommendations concerning the obligations of States to promote and protect human rights and fundamental freedoms while taking actions to counter terrorism and to provide assistance and advice to States upon their request in this regard.

The High Commissioner is therefore already seized of the gravity of the matter, and we look forward to the continuing work of the High Commissioner in this direction. The above three functions of examination, recommending, and assisting are comprehensive and adequate. The call in OP 10 is subsumed in what the High Commissioner has been asked to do in OP 9. The mandate to him has to be general enough so as to give him the needed flexibility to use his resources optimally.

More notably, the High Commissioner was mandated to perform the above-mentioned tasks only in General Assembly Resolution 57/219. We do not see any indication in his first report to this General Assembly which leads the General Assembly in the direction of asking for yet another specific study so soon in OP 10. Furthermore, the High Commissioner's study is yet to be considered in the Commission on Human Rights [CHR]. It is necessary for the CHR to first fully consider the entire issue. The General Assembly could thereafter look at it.

The resolution ignores the work being done already by the Special Rapporteur on Terrorism and Human Rights of the Sub-Commission on the Promotion and Protection of human rights, and the decision in its resolution 2003/15 to further study the compatibility of counter-terrorism measures with international human rights standards. In the first instance, this study requires the support of the High Commissioner before he is mandated to undertake a new study in the same area. Second, the Sub-Commission study should be presented for consideration to States, at the CHR. If, based on this study, the need is felt for a further study, we have no doubt that states will respond appropriately.

Further, the financial implications of the proposed study have not been established, especially when the OHCHR is faced with serious resource constraints, and is heavily dependent on voluntary contributions, even for its core activities. In our view, the most important activity of the Office must be the provision of technical cooperation and advisory services to requesting States. Moreover, national capacity-building should be at the forefront of the OHCHR's efforts, and nothing should be done which diverts its resources from what should be its highest priority.

With regard to OP 11, we have not been given any convincing reason or argument by the co-sponsors for an accelerated time-frame for consideration of the proposed study by the CHR at its 60th session, which is less than 4 months away. In our view, this is not practical or feasible. Moreover, the CHR is yet to receive the first report of the High Commissioner mandated by its resolution in the 59th session. OP 11 has the effect of marginalising and bypassing the CHR which should be the first body to which the High Commissioner should report, and creating new precedents on procedure which we cannot subscribe to.

Keeping in view the above-mentioned factors and the fact that the cosponsors have not been able to meet our concerns, and agree on a step-by-step way ahead which is line with existing UN practice and precedent, we are compelled to call for a vote on OP 10 and 11. India will vote against these paragraphs and abstain on the vote on the resolution as a whole.

Thank you, Mr. Chairman.

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