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**PROMOTION AND PROTECTION OF HUMAN RIGHTS**

**Joint written statement\* submitted the Centre Europe-Third World Associations, a non-governmental organization with general consultative status, Nouveaux Droits de l'Homme, The National Federation of International Immigrant Women, the International League for Human Rights and the Liberation of Peoples and the France Libertés - Danielle Mitterrand Foundation, non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[9 February 2006]

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\*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

**We must not confuse the fight for democracy and the respect  
for human rights with “terrorism”**

To fight terrorism and to respect or promote human rights are all different aspects of a same protection system falling on the State.

With the tragic events of September 11, 2001 and the adoption by the Security Council of resolution 1373/2001, the United Nations, the international community and particularly the democratic countries similar to the international authorities faced an immense challenge: to fight the wave of terrorism on a world scale while trying to respecting the universal values of the human rights and to work for more promoting these same values. It acts, inter alia, not to confuse "terrorism" with the struggle for democracy and the respect of these universal values in which movements of opposed to tyrannical regimes are engaged.

Taking account of this distinction, the European Parliament shortly before the tragedy of 11 September, recalled that *'terrorist acts within the European Union must be considered as criminal acts whose aim is to alter political, economic, social and environmental structures in States governed by the rule of law by actually threatening to use violence or resorting to violence, as distinct from acts of resistance in third countries against state structures which themselves employ terrorist methods'*.<sup>1</sup>

This distinction was repeated on other occasions. In November 2001, Mr. Louis Michel, former Belgian Minister for the Foreign Affairs, had warned, *"All necessary measure have to be taken so as to not confuse the fight against terrorism with the fight against irritating oppositionists. The danger is a realistic one"*. He had cautioned that *"the war on terror should not in any way undermine our expectations concerning the quality of our democratic societies."*<sup>2</sup> In truth, the war on terror, accompanied with respect for human rights are common aspects of a protective system for which governments are responsible.

It as should be recalled as the adoption of Decision n° 2002/475 of the Council of the European Union which sets out the common legal regulations as regards the fight against terrorism, was accompanied by a declaration joined to the minutes of the negotiations, in which the Council of the Union declares that this decision *"concerns acts considered by all EU member States as serious violations of their criminal laws, committed by individuals whose objectives constitute a threat for their democratic societies which respect the State of law, and for the civilization on which these societies are founded. It is in this sense that it must be read and it cannot be construed, on the basis thereof, that the conduct of persons who have acted with the goal of preserving or restoring these democratic values, as was the case in particular of certain member States during the second World War, could be considered today as falling into the category of such 'terrorist' acts. Nor can it be used as basis for charging with terrorism persons exercising their fundamental right to express their opinion, even if, in doing so, they commit violations of the law"*<sup>3</sup>.

As such, it is advisable today to seriously wonder about the consequences of certain policies adopted in the name of the fight against terrorism because, since the adoption of the resolution 1373/2001, *"other regional bodies and numerous States have sanctioned*

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<sup>1</sup> "European Parliament recommendation on the role of the European Union in combating terrorism" (2001/2016 (INI)), paragraph (T), doc. No A5-0273/2001, adopted 5 September 2001.

<sup>2</sup> *La Libre Belgique*, 10 November 2001 (translated by us)

<sup>3</sup> Declaration n° 109/02, doc. No 11532/02 annex II, p. 19.

counter-terrorism measures which are inconsistent with internationally recognized human rights standards".<sup>4</sup> This situation caused United Nations special Rapporteurs and independent experts to adopt a joint statement at their annual meeting in Geneva in June 2003, in which they expressed "*profound concern at the multiplication of the policies, laws and practices increasingly being adopted by many countries in the struggle against terrorism, which in their view were negatively affecting the enjoyment of virtually the human rights*"<sup>5</sup>.

Among these measures, it is in particular necessary to underline those whose aim was to include the name of opposition movements to particularly repressive regimes, on "lists of terrorists" and as such pose serious problems as far as legal issues and the point of view of the fundamental rights recognized at the universal level, including in the European Convention on Human Rights, are concerned.

### **The example of Iranian opposition organization**

As an example, this is a situation created for a number of Iranian opposition organizations whose names have been included in the lists "persons, groups and entities" which have been described as "terrorist" like those established by the Council of the European Union in the form of "Common Position" or of "Common Decision". This action aroused strong reactions among the public opinion lawyers, members of Parliament and the members of the civil societies on the international level<sup>6</sup>.

This situation becomes even more alarming when such a measure falls within the scope of the political and commercial considerations or relates to the efforts made to persuade the Islamic Republic of Iran to suspend its nuclear activities. Indeed, a dispatch by Agence France Press on 21 October 2004, reporting on an agreement concluded between the European negotiators and the Iranian government, wrote, "*If Iran cooperates (in nuclear activities) [...], we (Member States of the European Union) will continue to regard the People's Mojahedin of Iran as a terrorist organization*"<sup>7</sup>.

This is thus an obvious misuse of the procedure of the "list" insofar as the latter is used as a diplomatic means of pressure or in the service of the political compromises and as an instrument of the war on terror.

Thus, one makes more sense of the position of the European Parliament which, in a resolution adopted in November 2002, considers it regrettable that "*measures that the Council (of the European Union) adopted on December 27, 2001 by written procedure: Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism 'constitute a legally complex construction, which appears designed to circumvent the*

<sup>4</sup> Note by the United Nations High Commissioner for Human Rights, doc. No E/CN.4/2005/103, February 7, 2005.

<sup>5</sup> See the United Nations, doc. No E/CN.4/2004/4, annex I.

<sup>6</sup> Thousands of personalities have until now, condemned this step requiring the withdrawal of People's Mujahidin Organization of Iran (PMOI) from the list of "terrorist organizations". Eminent lawyers (like Eric David, Lord Slynn of Hadley, Henri Labayle etc) also question the validity of this inscription and its incompatibility with standards of the international law of the human rights.

<sup>7</sup> See also *Le Monde*, October 22, 2004 (translated by us)

*democratic scrutiny of the European Parliament', and which 'the Council did not consult Parliament on the list of the terrorist organizations and that no provision was made for consulting Parliament on further regular updating of the list, which risks perpetuating and aggravating the lack of democratic oversight in this area.'* According to the European members of Parliament: *"the choice of a legal base which falls under the third pillar for the definition of the list of the terrorist organizations, [...] thereby excluding all consultation and effective scrutiny both by the national parliaments and the European Parliament, and also evading the jurisdiction of the Court of Justice"*<sup>8</sup>.

### **Consequences for the people concerned**

It is especially necessary to be indignant in the face of the scope of such a purely political designation and its tragic effects on the private life of each the members, militants or sympathizers of this movement because, following this classification, they are often regarded as "terrorists" without being directly mentioned in these lists, thus being subjected to serious injustices even in exile. Within European countries, there are many cases where officials or administrative authorities have cited this broad classification in order to deprive of the real persons of their most elementary rights such as the freedom of expression or the respect for their private life.

This situation is particularly problematic since *"States having measures containing widely divergent definitions of terrorism and terrorist offenses, not only draw up such lists [...] but commonly fail to provide for judicial review or right to appeal of initial inclusion decisions. In addition, questions have been raised about the reliability and accuracy of the information relied on by States in compiling these lists, which is often treated as classified material"*.<sup>9</sup> It thus should be noted that the interested parties are denied of any possibility of disputing the action of the State effectively insofar as they are unaware of the reasons which justified this decision. Thus, they are handicapped considerably when they decide to take up this matter in courts.

Should it be recalled that the European Court of Human Rights, which systematically reaffirms the importance of the fight against the terrorism and the legitimate right of democratic societies<sup>10</sup> to protect itself from such a current, even if under such a pretext accepted possible restrictions on the guaranteed rights, besides inalienable rights, does it refuse absolutely that a necessary conciliation between contradictory rights can lead to the complete disappearance of the rights of the individual?

However, the violations resulting from such a designation can in certain forms threaten seriously the exercise of these rights in particular by the absence of jurisdictional protection which is in practice characterized by the entirety of these measures.

This failure as regards due process and the right to jurisdictional protection guaranteed in the frameworks of human rights and international human rights law for those filing

<sup>8</sup> European Parliament resolution on the Council's decision of 27 December 2001 on "Measures to combat terrorism", paragraph 2 & 4, Official Journal of the EC, no. C284E/314, November 21, 2002.

<sup>9</sup> Note by the United Nations High Commissioner for Human Rights, doc. No E/CN.4/2005/103, February 7, 2005, p. 21.

<sup>10</sup> European Court of Human Rights (ECHR), September 6, 1978, Klass, ECHR, October 28, 1994, Murray 94, ECHR, November 25, 1997; c. Turquie, Recueil 1997 -VII, page 2548, 55; ECHR, Mattei c. France (December) no 40307/98, May 15, 2001.

for litigation, is added to other violations due to this classification. In practice, these include severe undermining of:

- the rights to defense. On this subject, certainly, jurisprudence accepts that the urgency or the circumstances related to the order and public safety can attenuate the weight of this obligation without leading to the deprivation of an individual of his right of recourse. The refusal to invoke this guarantee at the time of the inclusion in the "lists" goes beyond a simple restriction.<sup>11</sup> It deprives the interested party of an essential part of its judicial protection, on the one hand by leaving it in the unaware of the factual reasons justifying its inclusion; and, on the other, by preventing it from employing before the authorities concerned, a contrary argument
- with the right to have access to a judge. This right is part of a practical access to go to a court which must make it possible to the interested parties to have the grounds for appeal in order to be provided the right guaranteed in particular by the international instruments of the human rights; almost non-existent in the framework of the "lists".
- with the presumption of innocence. Because, this action is an obvious announcement of culpability in terrorist acts which, on the one hand, encourages the public to believe such an allegation and, on the other, prejudices, within the framework of an unjust and unjustifiable designation, appreciation of the "facts" not assessed by qualified judges.
- with the principle of legality. This principle stipulates that criminal law defines the elements of the infringement clearly. *"This condition is satisfied when the individual can know, starting from the wording of the relevant clause and, if need be, using its interpretation by the courts, which acts and omissions engage would burden him with responsibility"*.<sup>12</sup> This is far from the case at hand.

Under these conditions, it imperative and even urgent to take the measures necessary to question end this violation by resolving these problems and especially by removing from these "lists" any political movement whose objective is restoring in its country of origin democracy and a State respectful of universal human rights values.

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<sup>11</sup> As it is the case for PMOI.

<sup>12</sup> ECHR, May 25, 1993, Kokkinakis c. Greece, §52. See also ECHR, November 22 1995 SW and CR C United Kingdom, A/335-b §§33-35. In addition, in the document referred to above (footnote 9), the High-Commissioner is astonished that "no relevant Security Council resolution establishes precise legal standards governing the inclusion of persons and groups on these lists" (parag. 63).