

AG/RES. 2238 (XXXVI-O/06)

PROTECTING HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS  
WHILE COUNTERING TERRORISM

(Adopted at the fourth plenary session, held on June 6, 2006)

THE GENERAL ASSEMBLY,

RECALLING its resolutions AG/RES. 1840 (XXXII-O/02), AG/RES. 1906 (XXXII-O/02), AG/RES. 1931 (XXXIII-O/03), AG/RES. 2035 (XXXIV-O/04), and AG/RES. 2143 (XXXV-O/05), and the Report on Terrorism and Human Rights, prepared by the Inter-American Commission on Human Rights (IACHR) (OEA/Ser.L/V/II.116 - Doc.5 rev. 1);

REAFFIRMING the principles and purposes of the Charter of the Organization of American States and the Charter of the United Nations;

EMPHASIZING that all persons are born free and are entitled to the human rights and fundamental freedoms recognized in the Universal Declaration of Human Rights, without distinction of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or other status, and that this applies in all circumstances, in accordance with international law;

REITERATING that all persons are equal before the law and have the rights and duties established in the American Declaration of the Rights and Duties of Man, without distinction as to race, sex, language, creed, or any other factor;

CONSIDERING that terrorism poses a serious threat to the security, the institutions, and the democratic values of states and to the well-being of our peoples and impairs the full enjoyment and exercise of human rights;

TAKING INTO ACCOUNT:

That, in the Declaration of San Carlos on Hemispheric Cooperation for Comprehensive Action to Fight Terrorism, adopted on March 24, 2006, the member states reaffirmed that terrorism in all its forms and manifestations, whatever its origin or motivation, has no justification whatsoever, affects the full enjoyment and exercise of human rights, and constitutes a grave threat to international peace and security, the institutions and values of democracy, and the stability and prosperity of the countries of the region;

That, in the Declaration on Security in the Americas, the states of the Hemisphere renewed their commitment, reiterated in the Declaration of San Carlos, to fight terrorism and its financing, with full respect for the rule of law and international law, including international humanitarian law, international human rights law, and international refugee law; the Inter-American Convention against Terrorism; and United Nations Security Council resolution 1373 (2001); and

That, in the Declaration of Mar del Plata of the Fourth Summit of the Americas and the Declaration of Nuevo León of the Special Summit of the Americas, the Heads of State and Government agreed to take all necessary steps to prevent and counter terrorism and its financing,

in full compliance with their obligations under international law, including international human rights law, international refugee law, and international humanitarian law;

WELCOMING the fact that the Inter-American Convention against Terrorism came into force on July 10, 2003; that Antigua and Barbuda, Canada, Chile, Dominica, El Salvador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, and Venezuela became states parties to said Convention prior to 2005; and that Argentina, Brazil, Guatemala, Trinidad and Tobago, and the United States became states parties to the Convention in 2005 and 2006, which brings to 17 the number of countries that have ratified the Convention;

CONSIDERING the report of the Meeting of Government Experts to Exchange, from a Human Rights Perspective, Best Practices and National Experiences in Adopting Antiterrorism Measures, held on February 12 and 13, 2004 (CP/CAJP-2140/04);

HAVING RECEIVED the document entitled “Recommendations for the Protection of Human Rights by OAS Member States in the Fight against Terrorism” (CP/doc.4117/06), prepared by the Inter-American Commission on Human Rights;

REAFFIRMING that, in the fight against terrorism, any detained person presumed to be involved in a terrorist act will enjoy the rights and guarantees provided by applicable international law, in particular international human rights law and international humanitarian law;

REAFFIRMING ALSO that the means the state can use to protect its security or that of its citizens in the fight against terrorism should, under all circumstances, be consistent with applicable international law, in particular international human rights law, international humanitarian law, and international refugee law; and

RECALLING that, under Article 27 of the American Convention on Human Rights and Article 4 of the International Covenant on Civil and Political Rights, it is recognized that some rights are non-derogable under any circumstances, and that, with respect to rights that may be subject to derogation, states may take measures derogating from their obligations under these Conventions to the extent and, with respect to the American Convention, for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with the other rights and obligations prescribed under international law; and emphasizing that, in the inter-American system, the protection of non-derogable rights includes essential judicial guarantees for their protection,

RESOLVES:

1. To reaffirm that the fight against terrorism must be waged with full respect for the law, including compliance with due process and human rights comprised of civil, political, economic, social, and cultural rights, as well as for democratic institutions, so as to preserve the rule of law and democratic freedoms and values in the Hemisphere.

2. To reaffirm that all member states have a duty to ensure that all measures adopted to combat terrorism are in compliance with their obligations under international law, in particular international human rights law, international refugee law, and international humanitarian law.

3. To urge all member states, with a view to fulfilling the commitments undertaken in this resolution, to consider signing and ratifying, ratifying, or acceding to, as the case may be

and as soon as possible, the Inter-American Convention against Terrorism and the American Convention on Human Rights; and to urge the states parties to take appropriate steps to implement the provisions of those treaties.

4. To request the Inter-American Commission on Human Rights (IACHR) to continue promoting respect for and the defense of human rights and facilitating efforts by member states to comply appropriately with their international human rights commitments when developing and executing counterterrorist measures, including the rights of persons who might be at a disadvantage, subject to discrimination, or at risk as a result of terrorist violence or counterterrorist initiatives, and to report to the Permanent Council on the advisability of conducting a follow-up study.

5. To request that the Permanent Council, having received the document entitled "Recommendations for the Protection of Human Rights by OAS Member States in the Fight against Terrorism" (CP/doc.4117/06), prepared by the IACHR, hold consultations with the Inter-American Committee against Terrorism (CICTE) and with member states, so as to conclude the process provided for in resolution AG/RES. 2143 (XXXV-O/05), operative paragraph 5, for preparing recommendations.

6. On the basis of the Recommendations for the Protection of Human Rights by OAS Member States in the Fight against Terrorism, prepared by the IACHR, and the outcome of the consultations with CICTE and the member states, the Permanent Council may consider preparing draft common terms of reference for the protection of human rights and fundamental freedoms in the fight against terrorism, that would compile current international standards based on applicable international law, as well as best practices, for consideration by the General Assembly.

7. To reiterate the importance of intensifying dialogue among the CICTE, the IACHR, and other pertinent areas of the Organization, with a view to improving and strengthening their ongoing collaboration on the issue of protecting human rights and fundamental freedoms while countering terrorism.

8. To urge member states to respect, in accordance with their obligations, the human rights of all persons deprived of their liberty in high-security detention centers, particularly observance of due process.

9. To request the Permanent Council to present a report to the General Assembly at its thirty-seventh regular session on the implementation of this resolution, which will be carried out within the resources allocated in the program-budget of the Organization and other resources.