

Human Rights Council  
Report of the Special Rapporteur on the Protection and  
Promotion of Human Rights and Fundamental Freedoms  
while Countering Terrorism  
December 12, 2007

Thank you, Mr. President.

I appreciate this opportunity to respond to Professor Scheinin's presentation on the United States.

During the Special Rapporteur's country visit to the United States from May 16th to 25th, my government was pleased to offer access to senior officials from many different United States government agencies, including the Departments of State, Justice, Defense, and Homeland Security, the Central Intelligence Agency, and the Office of the Director of National Intelligence, as well as the opportunity to attend the trial of Jose Padilla and others in Miami.

We were also pleased to offer the Special Rapporteur the opportunity just last week to visit Guantanamo Bay to observe proceedings in the military commission trial of Salim Hamdan for the war crimes of conspiracy and material support to terrorism. We appreciate the Special Rapporteur's observation that the military judge was doing his utmost to ensure fair and orderly proceedings. Given the complexity of the cases before military commissions and the fact that the commission is still in the process of determining whether it has jurisdiction over the proceedings, it is not surprising that there were certain logistical challenges, challenges that we believe could occur in any domestic criminal system in any country.

We further appreciate that during his visit, Professor Scheinin took advantage of the opportunity to receive a briefing from the detention facility command on the

measures in place to ensure that detainees at Guantanamo are treated humanely.

We were, however, disappointed that the Special Rapporteur declined an offer to tour the detention facility on the same terms as a number of international observers, including representatives from the parliaments of two members of this Council as well as the Parliamentary Assembly of the Organization for Security and Cooperation in Europe. We believe such a tour would have enabled him to provide the Council with a valuable perspective on the facility.

In addition, we regret that Mr. Scheinin's oral presentation about his Guantanamo visit is in part misleading about the facts of the process and revisits well-worn, ill-informed criticisms about military commissions

hearings rather than bringing to the Council's attention fresh information about the military commissions process.

As to the Special Rapporteur's report on his country visit, we appreciate that the report contains a number of positive aspects. For example, the report acknowledges United States leadership in the international fight against terrorism, and pays tribute to the respect for the rule of law and the system of self-correcting mechanisms that are the hallmark of our system of government.

We also note his identification of a number of best practices in United States counter-terrorism law and practice in such diverse areas as compensation of terrorism victims, community outreach, the rejection of racial profiling, and respect for freedom of the press.

In other ways, however, we were extremely disappointed at the report. The report missed a number of

opportunities to deepen the ongoing international discussion of how democracies might best deal with the current threats posed by armed combatant terrorist groups.

The unfortunate fact is that a large part of the report again repeats unfair and oversimplified criticisms of the United States. This is particularly true in the sections dealing with the legal framework for the armed conflict with Al Qaida. These sections simply catalogue well-known criticisms and fail even to acknowledge that there are multiple ways of approaching the difficult issues discussed, something that other international observers have highlighted.

This approach duplicates the work of other special procedures, in particular the 2006 report on Guantanamo by five mandate holders--the very duplication of work that this mandate was supposed to avoid.

My government has prepared a detailed response to this report that is now available on my Mission's website ([www.usmission.ch](http://www.usmission.ch)).

In conclusion, while the United States supports the extension of this mandate, we hope that in future work the Special Rapporteur proceeds differently. He should focus less on well-worn arguments under discussion elsewhere and more on practical solutions to common problems faced by the international community.

Thank you, Mr. President.