HUMAN RIGHTS COUNCIL HOLDS INTERACTIVE DIALOGUE WITH SPECIAL RAPPORTEURS ON COUNTERING TERRORISM AND ON TORTURE

8 March 2010

Original Source:

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The Human Rights Council this morning heard presentations from Martin Scheinin, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, and Manfred Nowak, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, of their reports, and then held an interactive dialogue with them.

Mr. Scheinin, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, said the report before the Council today focused on the right to privacy and its erosion in the age of global terrorism, both through surveillance powers and new technologies that were used without adequate legal safeguards. He underscored that counter-terrorism work had focused too much on going after the “bad person”. Better results could be obtained by seeking less intrusive and non-discriminatory technological solutions and by detecting what should be detected, namely explosives. His mission to Egypt was a learning experience and an eye-opener; a second visit should follow and should include visits to detention facilities to interview private persons suspected of, prosecuted for, or convicted of terrorist crimes. On his visit to Tunisia, he was engaging with the Government to achieve real improvements and identifiable best practices.

Speaking as a concerned country, Egypt said the report chose to comment on speculation about future counter terrorism laws although it had been made clear to Mr. Scheinin that those had not been finalized yet. Egypt considered his visit as part of the ongoing debate within the country on the draft laws on counter terrorism.

Tunisia, also speaking as a concerned country, welcomed that the Special Rapporteur had taken good note of its approach to fight global terrorism, an approach which was based on several pillars, including social measures, teaching measures and non-discrimination measures.

Mr. Nowak, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, said although the Human Rights Council continued to avail itself of the expert services of Special Procedures, it seemed to be more concerned about supervising and censoring its own experts and about accusing them of having violated a newly-adopted Code of Conduct, rather than welcoming their voluntary work and implementing their recommendations. Concerning his visit to Equatorial Guinea, he found a systematic practice of torture, extremely inhuman conditions of detention in police detention and a certain lack of cooperation by the Government. In Uruguay and Jamaica, on the other hand, the cooperation of both Governments was excellent. In both countries, he found only isolated cases of torture, but surprisingly poor conditions of detention. While the conditions of detention were much better in Kazakhstan and had improved in recent years, the practice of torture certainly went beyond isolated cases, but was not widespread or systematic, and the Government had cooperated and provided the Special Rapporteur with further information.

Speaking as a concerned country, Uruguay noted that torture often remained hidden to the public, but Mr. Scheinin had contributed to make the population more aware of that issue. While torture was no longer a systematic practice since Uruguay’s independence, the Government recognised that torture continued to happen.

Kazakhstan, also speaking as a concerned country, said Mr. Nowak had acknowledged that the human rights situation in Kazakhstan was one of the best in post-Soviet countries, and that the country had made efforts to ensure that torture was neither endemic nor systematic.

Speaking as a concerned country, Equatorial Guinea said the Government denied statements categorically made by the Special Rapporteur. It regretted that he had made little efforts for cooperation.

During the interactive debate, speakers underscored that it was essential that the fear of terrorism did not override obligations to respect international law and international human rights. Terrorism was still a great challenge to the international community, and, in fighting this, countries should respect the United Nations Charter and the principles of international law, as well as the rights of citizens. Fighting terrorism depended on a broad set of cross cutting issues, such as protecting and promoting the right to life, freedom etc. Counter-terrorism policies and measures had in fact led to laws and practices that stifled dissent and opposition, especially against Muslims and other minorities which were not involved in any illegal activities whatsoever. The war against terror had opened the way for torture and forced disappearances and ongoing impunity, in clear violation of human rights laws. It was important to maintain a constructive atmosphere of engagement in the Council and it was essential to build on positive trends rather than creating further division. Special Procedures were important, but the principles of transparency and respect must be observed. On torture, speakers said the Special Rapporteur had said that torture remained a global phenomenon and this was very disturbing. They questioned what must be done to address this challenge.

Speaking in the context of the interactive dialogue were the representatives of Spain, Mexico, Denmark, Spain, France, Philippines, China, Brazil, Australia, Pakistan on behalf of the Organization of the Islamic Conference, Switzerland, Iran, United Kingdom, Cuba, Republic of Korea, Sri Lanka, Indonesia, Republic of Moldova, Norway, Nigeria, Colombia, Sweden, Australia, Malaysia, Turkey, Finland, New Zealand, Algeria, South Africa, Jamaica, Zimbabwe and Russia.

At 3 p.m. this afternoon, the Council will conclude its interactive dialogue with the Special Rapporteurs on counter terrorism and on torture. It will then hold an interactive dialogue with the Chairpersons-Rapporteur of the Working Groups on arbitrary detention and on disappearances, and the Representative of the Secretary-General on the human rights of internally displaced persons.

Documents

The report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/13/37) highlights concerns about an erosion of the right to privacy in the fight against terrorism, which takes place through the use of surveillance powers and new technologies without adequate legal safeguards. The Special Rapporteur identifies some of the legal safeguards that have emerged through policymaking, jurisprudence, policy reviews and good practice from around the world, and issues recommendations.

Communications to and from Governments (A/HRC/13/37/Add.1) contains summaries of communications transmitted to Governments as well as replies received between 1 January and 31 December 2009. It also covers press releases issued in 2009.

Mission to Egypt (A/HRC/13/37/Add.2) contains findings of the Special Rapporteur’s visit to Egypt in April 2009, which focus on an examination of the emergency law, criminal law provisions on terrorist crimes and amended article 179 of the Constitution, which provides the current legal framework to combat terrorism in Egypt. He analyses some of the key issues and challenges regarding the new anti-terrorism legislation under preparation by the Government and makes a number of recommendations.

In the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/13/39) the Special Rapporteur gives an overview of the mandate and his activities, and the main observations he has made over five years of fact-finding and research. He observes that torture remains a global phenomenon and is practised widely in many countries and maintains that, in practice, most States parties to the Convention against Torture have failed to fulfil their obligations.

Summary of information, including individual cases, transmitted to Governments and replies received (A/HRC/13/39/Add.1) contains, on a country-by-country basis, summaries of reliable and credible allegations of torture and other cruel, inhuman or degrading treatment or punishment that were brought to the attention of the Special Rapporteur, and were transmitted to the Governments concerned, from 15 December 2008 to 18 December 2009. It also contains replies from Governments received to 31 December 2009.

Mission to Uruguay (A/HRC/13/39/Add.2) presents the findings and recommendations of the Special Rapporteur on his mission to Uruguay in March 2009. The Special Rapporteur found few reports of torture; however, he received frequent allegations of ill-treatment in several detention facilities. He also found consistent allegations of beatings after arrest, as well as excessive use of force and collective punishments after riots and rebellions in detention facilities.

Mission to Kazakhstan (A/HRC/13/39/Add.3), the report of the Special Rapporteur’s visit to Kazakhstan in May 2009, finds that considerable efforts were made to prepare the various detention facilities and the detainees for his inspections, contradicting the very idea of independent fact-finding and unannounced visits. Another major issue of concern is that the hierarchy among prisoners appears to lead to discriminatory practices and, in some cases, to violence.

In Mission to Equatorial Guinea (A/HRC/13/39/Add.4), based on a visit to Equatorial Guinea in November 2008, the Special Rapporteur reports he found torture by the police to be systematic in the initial period after arrest and during interrogation. Moreover, neither safeguards against ill-treatment nor complaints mechanisms are effective and perpetrators of torture and ill-treatment are not prosecuted, with the exception of one case in 2007.

In his study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention (A/HRC/13/39/Add.5), the Special Rapporteur concludes that torture is a global phenomenon; that torture not only occurs in isolated cases, but is practised in a more regular, widespread or even systematic manner; and that most victims of torture are not political prisoners or suspected of having committed political “crimes”, but ordinary persons suspected of having committed criminal offences.

Follow-up to recommendations (A/HRC/13/39/Add.6) contains information supplied by States, as well as other stakeholders, relating to the follow-up measures to the recommendations of the Special Rapporteur and his predecessors made following country visits in Azerbaijan, Brazil, Cameroon, China, Denmark, Georgia, Indonesia, Jordan, Kenya, Mongolia, Nepal, Nigeria, Paraguay, the Republic of Moldova, Romania, Spain, Sri Lanka, Uzbekistan and Togo.

Presentation of Reports

Introducing his report, MARTIN SCHEININ, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, said his main report focused on the right to privacy and its erosion in the age of global terrorism. Among other reports, he had worked over the past year on a joint study prepared together with three Special Procedures, in line with the coordinating and supplementary nature of his mandate, on practices of secret detention in the name of countering terrorism, and it would be discussed in the Council in June. A year ago his main report had dealt with the role of intelligence agencies and their oversight in the fight against terrorism. Pursuant to the final recommendation of that report, the Council had adopted resolution 10/15 on the protection of human rights and fundamental freedoms while countering terrorism. That resolution requested Mr. Scheinin to compile good practices on legal and institutional frameworks as well as measures that ensured respect for human rights by intelligence agencies that countered terrorism. The Special Rapporteur had included that issue in his programme of work, but the language of Council resolution 10/15 was not strong enough to trigger a programme budget implication according to the Office of the High Commissioner, and therefore work needed to be pursued by starting from fundraising. In the meantime, a number of steps, including expert consultations with various stakeholders, had been undertaken in order to compile good practices. A public side event would be convened today in order to report on the substantive progress which had been achieved so far, as well as to discuss the next steps.

The report that was before the Council today focused on the right to privacy and its erosion in the age of global terrorism, both through surveillance powers and new technologies that were used without adequate legal safeguards. States had restricted the protection of the right to privacy by not extending pre-existing legal safeguards into their cooperation with third countries and private actors. Those measures had not only led to violations of the right to privacy – they also impacted on other human rights, including those to due process rights and the freedom of movement, and they could impinge on the freedom of association and the freedom of expression. The Special Rapporteur also highlighted that the proposed choice between protecting the security of people and that of protecting our common values, namely human rights, was false. Human rights did allow for permissible limitations and restrictions but these needed to be addressed within the law and not as a balance between the law and something else. The crux of the current report was that an analytically rigorous test for permissible limitations applied also to privacy rights. That document also encouraged the Council to produce a new General Comment on article 17 of the International Covenant on Civil and Political Rights. That General Comment should clearly spell out the elements of the permissible limitations test, including appropriate legislative basis for any interference, necessity and proportionality, also outlining the requirement of adequate safeguards to curtail discretion and abuse.

Mr. Scheinin underscored that counter-terrorism work had focused too much on going after the “bad person”. Better results could be obtained by seeking less intrusive and non-discriminatory technological solutions and by detecting what should be detected, namely explosives. Turning to the country visits he had conducted, the Special Rapporteur said that the mission to Egypt was not only important from the point of view of human rights and countering terrorism, but also as a start for more intense cooperation between Egypt and the Council’s Special Procedures. The mission to Egypt was also a learning experience and an eye-opener. Hopefully it also was a door opener; a second visit should follow and include visits to detention facilities to interview private persons suspected of, prosecuted for, or convicted of terrorist crimes. The Special Rapporteur had also conducted a visit to Tunisia, during which he had learned about the country’s strategy and role in the international fight against terrorism. He had highlighted at the end of his mission the existence of serious discrepancies between the law and what was reported to him as happening in reality. He was engaging with the Government to achieve real improvements and identifiable best practices.

MANFRED NOWAK, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, said as this was his last oral report to the Council, he had decided to present today more than a summary of his activities during the last year and his thoughts on a specific topic related to his mandate. He wished to use his experience of more than five years as Special Rapporteur as the basis for a global study on torture, other forms of ill-treatment, and conditions of detention. This global study was based, inter alia, on the findings during 16 official missions and several other visits to many countries in all regions of the world; three joint studies together with other Special Procedures; and extensive research on a variety of topics related to his mandate. It also reflected the experience during his most recent missions.

In Equatorial Guinea, he found a systematic practice of torture, extremely inhuman conditions of detention in police detention and a certain lack of cooperation by the Government. In Uruguay and Jamaica, on the other hand, the cooperation of both Governments was excellent. In both countries, he found only isolated cases of torture, but surprisingly poor conditions of detention. While the conditions of detention were much better in Kazakhstan and had improved in recent years, the practice of torture certainly went beyond isolated cases, but was not widespread or systematic, and the Government had cooperated and provided the Special Rapporteur with further information.

Unfortunately, some Governments who had invited him, including China, Jordan, Indonesia and more recently Equatorial Guinea and Kazakhstan, had put the Special Rapporteur under intense surveillance, and made various attempts to obstruct fact-finding. Other Governments, notably Denmark, and more recently Uruguay and Jamaica, made no attempts to interfere, and even encouraged the Special Rapporteur to be as critical as possible. Quite a number of Governments did not respond to his requests or failed to issue invitations to conduct missions. Some Governments issued an invitation but did not agree to the terms of reference, and/or postponed or cancelled the mission at the last minute. These included the United States, the Russian Federation, and Equatorial Guinea, which he was able to visit at a later stage. The Special Rapporteur's worst experience was in respect of Zimbabwe, which was only an extreme example of the growing disrespect of Special Procedure mandate holders.

Further, although the Human Rights Council continued to avail itself of the expert services of Special Procedures, it seemed to be more concerned about supervising and censoring its own experts and about accusing them of having violated a newly-adopted Code of Conduct, rather than welcoming their voluntary work and implementing their recommendations. If the Council continued to treat its own experts in such a way, it would lose credibility, and if it wished to retain its noble aim, it needed to overcome the current attitude of confrontation and mistrust between States as well as between States and independent experts, and between States and non-governmental organizations, and strive towards an attitude of mutual trust and respect and a common political will to serve the interests of human rights rather than purely political interests of Governments. The billions of human beings who suffered from poverty, violence and gross human rights violations in all regions of the world deserved a different commitment to human rights than the one prevailing presently in the Human Rights Council.

As the Special Rapporteur's global study showed, the reality in the majority of countries of the world was alarming and deserved the full attention of the Council. Only very few countries, such as Denmark, seemed to have managed to eradicate torture in practice. The main structural reason for the widespread practice of torture was the malfunctioning of the administration of criminal justice and corruption. An important reason for the widespread use of torture was the extraction of intelligence information in the context of the global fight against terrorism. The majority of the prisoners and detainees in the world had to spend their lives in inhuman and degrading conditions. In most countries visited by the Special Rapporteur, conditions in police lock-ups were simply appalling. In addition to various gender-specific violations of human rights by police, prison officials and other State actors, women in all countries suffered extreme forms of violence by private actors, including domestic violence, trafficking, and various traditional practices, such as female genital mutilation and honour crimes. The global report presented today reflected an alarming situation in the vast majority of United Nations Member States. Time had come to address these human rights violations in a much more effective manner than had been done in the past. With the necessary political will and the assistance of the international community, every Government would be able to eradicate torture and improve conditions of detention to at least a minimum standard of human decency.

Statements by Concerned Countries

HISHAM BADR (Egypt), speaking as a concerned country, said Egypt had arranged for Mr. Scheinin to meet with various high-level officials and ministers. His report had unfortunately not sufficiently reflected the dialogue and interaction that had taken place. The report chose instead to comment on speculation about future counter terrorism laws although it had been made clear to him that those had not been finalized yet. Therefore Egypt considered his visit as part of the ongoing debate within Egypt on the draft laws. A large portion of the report made unsubstantiated allegations. Egypt would have appreciated more information on their drafting of a new counter terrorism law instead of excessive critique on the state of emergency laws, which it was committed to ending. Egypt still faced persistent threats of terrorism against Coptic Christians and tourists. Those challenges still remained. The Government had pledged to use emergency laws only against terrorism and drugs. All those measures were subject to judicial oversight. Turning to comments on administrative detention, Egypt said that that would be done pursuant to emergency laws to protect citizens. Administrative detention did not detract from constitutional norms. It could be appealed before the Council of State. The President of Egypt had pledged to end emergency laws as soon as a counter terrorism law came into effect. An international-ministerial body had drafted a new terrorism bill. It had not been completed and was waiting for comments from the Human Rights Council. Overall, Egypt’s talks with Mr. Scheinin were frank and open.

LAURA DUPUY (Uruguay), speaking as a concerned country, thanked the Special Rapporteur on torture for his professionalism in the preparation and conduction of his country visit to Uruguay. That visit had followed an invitation by the Government which was well aware of the challenges Uruguay faced regarding that Special Rapporteur’s field of mandate. Torture often remained hidden to the public, but Mr. Scheinin had contributed to make the population more aware of that issue. While torture was no longer a systematic practice since Uruguay’s independence, the Government recognised that torture continued to happen. That was taken very seriously and tackled accordingly by the Government, as highlighted by the fact that the country’s President had acknowledged that much needed to be done to protect prisoners from torture in detention facilities. Uruguay underscored that the Government had not restricted the Special Rapporteur’s access to key stakeholders and prisoners, and that it had allowed access to the most problematic detention facilities. While the Government had taken measures to immediately reverse the problems identified by Mr. Scheinin, and an analysis was now in the hands of Parliament, major resources were needed to initiate the necessary reforms. As for cases of military personnel, these had all been dealt with and convicted persons served prison sentences of up to 25 years. Uruguay was thankful for all of the Special Rapporteur’s recommendations and conclusions, and it particularly took note that there was scope for improvement regarding article 22 of its law. The Government was also thankful that the United Nations assisted centers for young delinquents; that the European Union provided assistance to the penal reform; and that the Office of the High Commissioner for Human Rights intended to set up a National Human Rights Institution. That would be a matter for the new legislative body and would work as a national mechanism to tackle torture.

MARAT BEKETAYEV (Kazakhstan), speaking as a concerned country, said Kazakhstan had established modern democratic institutions, and a full-scale legal reform had been carried out. The country had introduced an indefinite moratorium on the death penalty, pending its full abolition, and was party to many international human rights treaties. The adoption of the Convention against Torture and its Optional Protocol highlighted the country's uncompromising position against torture. Kazakhstan appreciated the visit of the Special Rapporteur, at the Government's invitation, and his findings and recommendations. The Government had prepared additional information, expressing concern on certain issues in the report. These reservations were acknowledged, and understanding was reached on all issues. The Special Rapporteur would be making a follow-up visit, and the Government welcomed this fact. Mr. Nowak had acknowledged that the human rights situation in Kazakhstan was one of the best in post-Soviet countries, and that the country had made efforts to ensure that torture was neither endemic nor systematic. In 1991, Kazakhstan had the world's third largest inmate population. As a result of efforts to make the system more human, this had dropped to seventeenth place. Living conditions and the quality of medical care had improved, and the system of education of convicted persons was building up. The recommendations of the Committee against Torture had been studied and plans were underway for full implementation, as well as for the establishment of a national preventive mechanism. Kazakhstan had a zero tolerance policy with regard to torture, and was willing to continue its cooperative interaction with the Council.

GERMAN EKUA SINA (Equatorial Guinea) said Equatorial Guinea was signatory to various international instruments concerning respect for human rights. It was inspired by a constant desire to uphold human rights and thus invited the Special Rapporteur on torture to visit the country and to provide technical assistance. The visit had taken place with the support of government officials. The Special Rapporteur had had the opportunity to meet with inmates. The Government always showed itself to be cooperative. It was involved in a legal process to update its laws. As to the provision of food in prisons, a new budget in that regard had seen a substantial increase in funds. The Government would continue to work for rehabilitation of prisons and efforts would involve building new prisons other than where they were currently located. Illegal immigration and anything that took place in connection with undocumented foreigners, who were found in large numbers, was a cause for concern. Foreigners had rights and freedoms as recognized in international treaties. Those included the right to identification papers, freedom of movement, education, freedom of association and the right to health assistance. Recently, an act against torture had been promulgated, which provided punishment for criminals. The practice of torture could not be systematic in Equatorial Guinea since the Government had condemned and fully rejected it. Equatorial Guinea noted French cooperation through experts from the national police force and the judiciary. The Government reserved the right to reply to Mr. Nowak’s report. It was clear and its report was quite objective. Yet, the Government denied statements categorically made by him. It regretted that he had made little effort for cooperation. The Government highlighted the importance of bolstering national capacity and training to ensure respect for human rights.

ABDELWAHEB JEMAL (Tunisia), speaking as a concerned country, said Tunisia welcomed the Special Rapporteur’s mission which had allowed the mandate holder to investigate the reality in the fight against terrorism as well as the challenges Tunisia faced in that regard. Tunisia welcomed that the Special Rapporteur had taken good note of Tunisia’s approach to fight global terrorism, an approach which was based on several pillars, including social measures, teaching measures and non-discrimination measures. Tunisia also welcomed that Mr. Scheinin had acknowledged that he had been able to meet key stakeholders during his country visit, including Tunisian detainees and civil society representatives. The Government was pleased to exchange views with the Special Rapporteur in order to benefit from his long experience in this field and it remained committed to an open dialogue aimed at the protection of human rights.

Interactive Debate

NICOLE RECKINGER, Spain, speaking on behalf of the European Union, said the European Union looked forward to a continuing dialogue with the Special Rapporteur on terrorism, and called upon all States to extend full cooperation to him during his visits. The European Union was concerned that a number of States, including members of the Council, had not responded to his request for visits. The Special Rapporteur was encouraged to continue to work together with all United Nations bodies that were responsible for the fight against terrorism. This should provide him with a good overview of the situation of human rights in the fight against terrorism, and he should explain what his assessment was in this regard, both with regard to future opportunities as well as challenges. The issue of the right to privacy in the context of the fight against terrorism merited more attention.

With regard to the report of the Special Rapporteur on torture, Manfred Nowak, he had served with distinction, courage, devotion and determination. He should explain what were the main obstacles in the fulfilment of the mandate and how could the Council help to ensure that his successor would be enabled to live up to the purpose of the mandate; where did he see the main challenges in the fight against torture in coming years and how could they be overcome; and did he have any recommendations on how the Council and other States could assist in dealing with the serious problem of the number of outstanding visits.

ARTURO HERNANDEZ BASAVE (Mexico) said Mexico had intended to enter a dialogue with the Special Rapporteurs. Unfortunately, the Special Rapporteur on the promotion of human rights while countering terrorism, Martin Scheinin, had decided to refer to Mexico as to why he had not conformed to the Human Rights Council resolution, whose main sponsor was Mexico. Mexico’s position on Special Procedures was well known. It was disturbed to take the floor in that regard. Mr. Scheinin had not received a mandate from Mexico but from the Human Rights Council. It seemed important to notify the Council of circumstances preventing fulfilment of a mandate as entrusted by it. Perhaps he should have addressed the Bureau of the Council, not the Mexican delegation, which had nothing to do with that. Mexico was alarmed that the Secretariat had said that there was no budget because the text or language of the text had not been sufficiently strong. That was very worrying. If that were true, he would be pleased to hear the version of the Secretariat. When Mexico promoted other resolutions, they always consulted with the Secretariat. The need for private funds was unacceptable. He could not understand where resources would be found before June for the report. That was a source of great concern for his delegation. Mexico was fully supportive of the independent work done by Rapporteurs but unfortunately this Special Procedure involved his delegation. That was something they had to resolve properly.

ARNOLD SCHIBSTED (Denmark) said that the Special Rapporteur on torture, Manfred Nowak, had stated in his report that follow-up to country visits was not primarily the task of a Special Rapporteur. Yet, the mandate holder asked follow-up questions and commented on them; would the Special Rapporteur therefore see merit in establishing some sort of systematic follow-up mechanism to reports? Furthermore, Mr. Nowak had recommended the elaboration of a Convention on the Rights of Persons Deprived of their Liberty. What would be the added value of that undertaking, and how did the Special Rapporteur assess its chances of success? Would he prefer it to be negotiated in a human rights framework or within the crime prevention framework. Addressing the Special Rapporteur on countering terrorism, Martin Scheinin, Denmark underscored that it was essential that the fear of terrorism did not override obligations to respect international law and international human rights. Denmark also wished for the Special Rapporteur to elaborate on the practical terms of “critical assessment” regarding legitimate limitations to the right to privacy, asking which authority should best complete this work.

BORJA MONTESINO (Spain) said Spain was grateful to the Special Rapporteur against Torture, and recognized his excellent work. Addendum six to his report was worthy of particular attention. Spain was particularly grateful for the acknowledgement of the positive efforts to make to reform the protection of human rights in particular the recommendations on the prohibition of torture and ill-treatment. There was an absolute prohibition of torture in Spanish legislation. The eradication of torture was part of the external plan of human rights as well. As to his references to incommunicado detention, the position of the Government of Spain was well known in this respect - it had maximum legal and jurisdictional guarantees, and was only used in specific cases such as terrorism or organised crime. There was no undermining of the rights of the prisoner caused by the measure of dispersion.

JEAN-BAPTISTE MATTEI (France) said France fully supported the work of the Special Rapporteur on the promotion of human rights while countering terrorism, Martin Scheinin. The independence of Special Procedures was important for protecting human rights. Mr. Scheinin’s report studied the right to privacy without interference. Was that equivalent to interference in public life and what recommendations could he make in that regard? France congratulated the Special Rapporteur on torture, Manfred Nowak, for his remarkable work over the past five years, commending his professionalism and competence. Among the obstacles his report had mentioned was the absence of independent mechanisms to investigate allegations of torture committed by States. What role could the Human Rights Council play in creating or reinforcing such mechanisms? France highlighted that it shared his view that there was a fundamental contradiction between respecting human rights and maintaining a range of cruel punishment that was inhuman and degrading. France firmly condemned them and called for them to be abolished.

EVAN P. GARCIA (Philippines) said the Philippines was a State party to the Convention against Torture. In fulfillment of its obligations under that Convention, the Philippines had presented its last periodic report to the Committee on Torture in April 2009. It had also enacted a new anti-torture law in 2009, defining and criminalizing torture in full compliance with the Convention. Furthermore, the law provided for protection, assistance, compensation and rehabilitation of victims. The instrument of ratification of the Optional Protocol to the Convention had been transmitted to the Philippine Senate for its concurrence and consultations with the Philippine’s independent Commission on Human Rights and civil society groups had been held on the eventual implementation of the Optional Protocol and establishment of the national preventive mechanisms. In conclusion, it was important to maintain a constructive atmosphere of engagement in the Council and it was essential to build on positive trends rather than creating further division. Special Procedures were also important, but the principles of transparency and respect must be observed.

QI XIAOXIA (China) said as one of the earliest signatories of the Convention against Torture, China was deeply committed to fighting this phenomenon, and had put in place a fully-fledged mechanism to prevent, suppress and punish it. China also had a national plan on human rights for the first time, which contained provisions against torture, with more checks and balances being put on power in places of detention nationally. In 2005, the Special Rapporteur on torture had visited the country, and China did its utmost to cooperate with his mandate, and therefore China regretted the comment on this visit made during his presentation. His report made detailed analysis on the causes of torture, as well as recommendations, including the need for more resources, and the development of a national management system to ensure the impartiality of the judiciary. China concurred fully with this, but, in view of the underdeveloped status of many countries, developed countries should provide them with assistance in this regard.

Terrorism was still a great challenge to the international community, and, in fighting this, China maintained that it should respect the United Nations Charter and the principles of international law, as well as the rights of citizens. All countries should adopt law to support the right to privacy and family.

CIRO LEAL M. DA CUNHA (Brazil) shared the concerns which the Special Rapporteur on protecting human rights while countering terrorism, Martin Scheinin, expressed in his report, especially with regard to the need to respect article 17 of the International Covenant on Civil and Political Rights. The right to privacy was enshrined in Brazil’s Constitution. Respecting international human rights law was fundamental to combating terrorism effectively. Fighting terrorism depended on a broad set of cross cutting issues, such as protecting and promoting the right to life, freedom etc. The international community had to recognize and pay more attention to those challenges.

CHRISTIAN STROHAL (Austria) said Austria looked forward to discussing the joint study on secret detention with the Special Rapporteur on Torture, Manfred Nowak. The study which had been submitted by the Special Rapporteur made for very disturbing reading. As torture remained a global phenomenon, Austria asked what must be done to address this challenge. It was also of the view that every Government must first look at itself. Consequently, Austria had undertaken to introduce an explicit definition of torture into its Penal Code, to ratify the Optional Protocol to the Convention against Torture, as well as to establish national preventive mechanism legislation. Austria thanked the Special Rapporteur on torture for his clear recommendations and asked him to share with the Human Rights Council his ideas on how to strengthen that mandate. The Human Rights Council and States should respond to the currently witnessed and dismal situation. How could existing mechanisms be strengthened, and what should further be undertaken to reassert the absolute and non-derogable nature of the prohibition of torture?

MARGHOOB SALEEM BUTT (Pakistan), speaking on behalf of the Organization of the Islamic Conference, said the Organization of the Islamic Conference welcomed the report of the Special Rapporteur on terrorism, Martin Scheinin, and took note of the specific focus that brought to fore important elements concerning one of the contemporary issues of discussion in the fight against terrorism, namely the right to privacy and data protection. The Organization of the Islamic Conference agreed with the report on the significance of providing adequate legal safeguards in order to minimise risks of infringement of the right to privacy on account of policies and practices adopted by States in the context of countering terrorism. How did the Special Rapporteur see the development of the programme for the global capacity building on privacy protection as well as the process for a global declaration, the Organization of the Islamic Conference asked? With regard to the presentation of the Special Rapporteur on torture, Manfred Nowak, torture indeed remained a global phenomenon and new techniques and ways had been developed. The standard of due diligence was an extremely important obligation and must be upheld, and stronger judicial safeguards were, therefore, particularly important. However, there should have been a greater focus on the targeting of certain racial and religious communities. The remarks on the Code of Conduct were regretted - the Special Procedures were appointed by the Human Rights Council, and had to conform thereby, and could not sit as juries of their own conduct.

NATALIE KOHLI (Switzerland) thanked the Special Rapporteur on torture, Manfred Nowak, for his instructive report. Torture was mainly used because of dysfunctional judiciary systems. Switzerland supported his call for a more systematic criminalization of torture in line with international conventions. It shared his comments on the lack of follow up to his recommendations by States. How could States translate them from now on? Could he tell them more about his experiences with respect to States? On the right to privacy, some countries had set up data for the right to protecting privacy. To conclude Switzerland regretted that it had not been possible to get the study on secret detentions until now.

MOJTABA ALIBABAEE (Iran) said in his relatively comprehensive report the Special Rapporteur on countering terrorism, Martin Scheinin, had referred to the flexibility and ambiguity of laws, in particular article 17 of the International Covenant on Civil and Political Rights. In that regard, the Special Rapporteur had recommended that the Council amend that article, and that it provide guidance to States on appropriate safeguards. Iran recommended that the Special Rapporteur continue focusing on that issue and exchanging views with Governments with an aim to enrich the current discussion. Worrying elements in that regard were the discriminatory policies and practices that some countries had applied in countering terrorism. It was also regrettable that Muslims had suffered the consequences of anti-terrorism measures which were discriminatory in law and practice in the recent decade. Counter-terrorism policies and measures had in fact led to laws and practices that stifled dissent and opposition, especially against Muslims and other minorities which were not involved in any illegal activities whatsoever. In conclusion, Iran underscored that States had an obligation to ensure reparation of victims of discriminatory actions and unfair conduct, particularly those victims who had suffered attacks on their dignity and reputation.

BOB LAST (United Kingdom) said the United Kingdom wished to thank both Special Rapporteurs for their reports. With regard to the report on torture, the Special Rapporteur, Manfred Nowak, should explain what should be done to ensure credible and independent investigations into the large number of allegations of torture against Iran. The United Kingdom would also like to know if he had received any further information on these cases. His comments on the ratification of the Optional Protocol to the United Nations Convention against Torture were welcome, and it should be widely ratified and implemented in order to prevent torture and ill-treatment, and States should ensure their national preventive mechanisms under the Protocol were effective and independent. He had shown dedication and commitment throughout his mandate, and this was appreciated.

MARIA DEL CARMEN HERRERA CASEIRO (Cuba) said Cuba was grateful to the two Special Rapporteurs for submitting their reports. Cuba was opposed to the approach that in combating terrorism “anything goes”. In that regard it supported the view of the Special Rapporteur on the promotion of human rights while countering terrorism, Martin Scheinin, that anti terrorism mechanisms had a profoundly negative impact on the enjoyment of human rights and fundamental freedoms. The use of profiling facilitated considerable opportunity for arbitrariness. The war against terror had opened the way for torture and forced disappearances and ongoing impunity, in clear violation of human rights laws. It was in the context of combating terrorism that attempts were made to legitimize the practice, especially in relation with Guantanamo. Had the Special Rapporteur received all the information on these detention centres from the relevant States? Cuba wanted to know if the Special Rapporteur had carried out visits especially, to Guantanamo.

WIE-YOUNG HA (Republic of Korea) said the Republic of Korea appreciated the comprehensiveness of the report of the Special Rapporteur on torture, Manfred Nowak, that encompassed several important issues, including the concept of torture and other cruel, inhumane and degrading treatment. The Republic of Korea fully agreed with the Special Rapporteur that a properly functioning national justice system was essential to eradicate torture and other inhumane practices, but highlighted that many countries lacked the resources and expertise that were necessary to guarantee the proper functioning of a justice system. In that regard, could the Special Rapporteur further elaborate on his proposal regarding the establishment of a global fund for national human rights protection systems, which was an undertaking aimed at assisting States in their efforts? The Republic of Korea also appreciated that Mr. Nowak reminded the Council of the absolute nature of the principle of non-refoulement. As aptly noted in the Special Rapporteur’s report, States were obliged to uphold this principle, not only under the Refugee Convention, but also under the Convention against Torture and the International Covenant on Civil and Political Rights.

KSHENUKA SENEVIRATNE (Sri Lanka) said concerted efforts were being undertaken by the Government of Sri Lanka to implement the recommendations of the Special Rapporteur on torture. In this context, the National Action Plan on Human Rights had his recommendations incorporated and streamlined with the aim of their effective implementation, aiming to maintain synergy among a number of recommendations that had been made in the past by the relevant Special Procedure mechanisms, treaty bodies, and during the Universal Periodic Review process. With regard to the report on terrorism, on the specific case of Mr. J. S. Tissanayagam referred to, the matter was now before the competent legal authority, and therefore it would not be appropriate to venture an opinion with regard to the final outcome of the appeal. Mr. Tissanayagam had been at all times subject to procedures established by law.

DICKY KOMAR (Indonesia) said Indonesia was no stranger to the scourge of terrorism. In recent years, counter terrorism had thus become a pressing issue for the Government of Indonesia. It had to deal with the roots of terrorism and radicalism. Given its complex, transnational nature, all sectors of society, not only Government, were responsible for preventing and combating terrorism, including civil society, which could give voice to different groups and promote a culture of tolerance. Ways of defining terrorism and how States protected their citizens against it remained a complex debate.

CORINA CALUGARU (Republic of Moldova) commended the work of the Special Rapporteur on torture which, among others, had given the opportunity to elaborate the study on the phenomena of torture and related human rights inflictions. That work was also important to put forward a comprehensive view of threats in order to eliminate torture around the world. In that regard, could the Special Rapporteur further elaborate on the drafting of the United Nations Convention on the Rights of Detainees? The Republic of Moldova also highly appreciated the dialogue the Government had held with the Special Rapporteur since 2008, as well as the mandate holder’s recent visit to the country. The majority of recommendations resulting from that had been accepted by the Republic of Moldova which reported to the Special Rapporteur on the undertaken follow-up procedures. Nevertheless, the Government could regrettably not report on the respect of the recommendations in Transnistria – that would only be possible after the settlement of the Transnistria conflict through negotiation. The Republic of Moldova reiterated that the recommendations received remained a priority for the Government in its overall reform of the justice and human rights system.

BENTE ANGELL-HANSEN (Norway) said the observations, analysis and recommendations in the report on torture and the annexed comprehensive study were both timely and useful. Norway was deeply concerned about the lack of progress in eradicating torture. Of particular concern was the finding that in a vast majority of States, torture was practiced in a wide-spread, regular, or even systematic manner, and perpetrators were rarely brought to justice. A key measure in addressing this alarming reality was a stronger focus on improving the administration of justice, and the speaker asked whether key development actors like the World Bank and the United Nations Development Programme would benefit from a stronger focus on a human rights-based approach when designing and implementing programmes within the justice sector. The report on the fight against terrorism also dealt with the protection of privacy, and the Special Rapporteur's recommendations to legislative assemblies and Governments were timely. There was a need for greater awareness of the necessary safeguards for the protection of the individual's dignity, and the Human Rights Council should contribute in that regard. The Special Rapporteur should elaborate further on his views as to how he saw a process towards a global declaration on data protection and data privacy go forward, and how it should relate to relevant regional processes on the same issue.

OSITADINMA ANAEDU (Nigeria) commended the Special Rapporteur on the protection and promotion of human rights while countering terrorism, Martin Scheinin, applauding his focus on violence against women. The Special Rapporteur had indicated that he had worked on a joint study with three States. Nigeria welcomed the Special Rapporteur’s visit to Egypt and Tunisia on their invitation, signifying cooperation. That should be encouraged to ensure a legal framework for dealing with human rights and terrorism. The report of the Special Rapporteur on torture, Manfred Nowak, was worthy of serious consideration by the Council. It necessitated Nigeria’s invitation to him. It was crucial that the overall guidance of the Council should be key to the Special Rapporteur in carrying out his work. Nigeria commended Mr. Nowak for all the considerable work he had done over the years and wished him well.

ALVARO ENRIQUE AYALA MELENDEZ (Colombia) thanked both Special Rapporteurs for their reports and presentations. Colombia fully shared the view of the Special Rapporteur on countering terrorism, Martin Scheinin, regarding the importance that State agencies respect human rights in their activities. When it had recently been recognised in Colombia that intelligence agencies had illegally conducted espionage, the President had taken action to hold those involved responsibility, also curtailing the authority of the relevant agency, namely that to intercept telephone calls. In addition, the Government had established an office of human rights whose mission was to monitor the activities of intelligence agencies and ensure that they respected human rights. Colombia underscored that it had initiated an in-depth review of its laws, and that it had requested assistance of the Office of the High Commissioner for Human Rights in that regard. Colombia would continue to take all necessary measures to ensure that all Columbians would enjoy their human rights and fundamental freedoms.

CHRISTOFFER BERG (Sweden) said Sweden was deeply concerned with the Special Rapporteur on torture's observation that torture remained a widely-practised phenomenon. In his study, Special Rapporter Manfred Nowak emphasised the malfunctioning of the administration of justice and the consequent lack of respect for safeguards as the major structural reason for the wide-spread practice of torture. Sweden believed that the relation outlined was of great significance, not least since ensuring legal safeguards was an important objective in itself. The Special Rapporteur should elaborate on the relation highlighted in his study, namely how ensuring legal safeguards correlated with combating the practice of torture. Sweden supported his mandate and thanked him for the work he had carried out on behalf of the Council.

JEREMY NOYE (Australia) welcomed the reports of both Special Rapporteurs and said that it was crucial to develop mechanisms that sustained human rights. Australia had a long tradition of supporting human rights. It categorically opposed detention, torture and other forms of cruel treatment. Australia asked what roles non-governmental organizations could play in monitoring detainees and what States might do to support them.

JOHAN ARIFF ABDUL RAZAK (Malaysia) said Malaysia noted that the Special Rapporteur on countering terrorism had taken a candid approach in preparing his main report which, among others, appeared to be a stocktaking exercise. While appreciating the challenges faced by the Special Rapporteur, Malaysia reiterated the importance of ensuring that mandate holders closely adhered to the terms of reference the Human Rights Council had established for them. Such vigilance on the part of mandate holders could contribute to enhance cooperation with States. Malaysia also reaffirmed the importance of upholding the right to privacy in the context of efforts aimed at countering terrorism, also noting that expanded use of stop and search powers by States could give rise to concerns regarding racial profiling and discrimination. Finally, as there was no international consensus on the definition of terrorism, did the Special Rapporteur consider studying the possible correlation between identified root causes and the phenomenon of terrorism?

FAITH ULUSOY (Turkey) said torture constituted a direct attack on the personal integrity, dignity, and humanity of human beings, and continued today to be a practice in different parts of the world, and no country could claim to have a perfect human rights record. The first action to be taken in the fight against torture was to end impunity for perpetrators. The administration of justice was another crucial element in this fight. The recommendation by the Special Rapporteur that all States and the international community needed to provide the necessary resources to develop national systems for the administration of justice that ensured all human beings had equal access to justice and the right to a fair trial at all stages of criminal proceedings was appreciated. As part of a comprehensive reform process, Turkey continued its zero-tolerance policy against torture and ill-treatment. Turkey fully concurred with the Special Rapporteur that the main aim of correctional institutions should be the rehabilitation of offenders, and their reintegration into society.

HANNU HIMANEN (Finland) thanked the Special Rapporteur on the promotion of human rights while countering terrorism, Martin Scheinin, for his valuable work and his latest report. It agreed that the right to privacy must be protected when countering terrorism. The Special Rapporteur had recommended that the Council should initiate a process towards a global declaration on data protection and data privacy. It welcomed the establishment of an Ombudsman tasked with assisting the sanctions committee of the Security Council. It encouraged it and the Special Rapporteur to work closely together once it had been set up.

WENDY HINTON (New Zealand) expressed its appreciation for the work of both Special Rapporteurs. Addressing the report of the Special Rapporteur on torture, Manfred Nowak, New Zealand said its Government was a long-standing supporter of that specific mandate, also being a party to both the Convention against Torture and its Optional Protocol. New Zealand had also taken note with concern of the Special Rapporteur’s finding that torture remained a global phenomenon. To tackle that issue, the Special Rapporteur had recommended that judges, prosecutors, lawyers and other key personnel should be selected, educated and paid properly, and that effective measures should be taken to combat corruption in the administration of justice. New Zealand would be grateful if the Special Rapporteur could further elaborate on what, in his opinion, were the most effective measures to combat corruption in the administration of justice in order to prevent torture, as well as how the mandate of that particular Special Rapporteur could best contribute to that end.

IDRISS JAZAIRY (Algeria) said the report on torture was of great quality. The respect of private life was a constitutional principle of the Algerian Constitution. Faced by the terrorist criminal threats, every State had a duty to protect people and goods, and to preserve public order and the nation, in the context of the respect for the principles of legality, warning, non-retroactiveness of laws, non-discrimination, proportionality, and the inviolability of the fundamental rights consecrated by international law. The Special Rapporteur should explain how he saw the equilibrium between the respect for the individual right to private life, and the collective right to security and protection against terrorism. On the report on torture, this should have reflected and capitalised upon the dynamic of the rich interactive exchanges that had taken place during earlier meetings with the Council. The Special Procedures should take into account the observations of the Council Members, as this would entrench the culture of dialogue that was one of the fundamental values of the Council. On the elaboration of a convention on the rights of persons in detention, the existing legal framework provided the necessary guarantees for the protection of these persons. The rehabilitation and social reinsertion of detainees should be the priority.

JERRY MATTHEWS MATJILA (South Africa) said South Africa commended the Special Rapporteur on the protection of human rights while countering terrorism, Martin Scheinin, for his report. South Africa could identify with the suffering endured by those who had been subjected to erroneous profiling. It had advocated for the periodic review of such lists so that those listed could be de-listed. South Africa drew the Special Rapporteur’s attention to a resolution in which he was asked to present good practices for legal frameworks while countering terrorism. The legal safeguards identified by the Special Rapporteur were welcomed. Did he intend to convene other expert groups such as in Europe? The Government looked forward to developing international legal standards to ensure that communication and technology were not abused to violate human rights and fundamental freedoms.

ANDREA DUBIDAD-DIXON (Jamaica) said it was the understanding of Jamaica that the Special Rapporteur on torture would present the report on his mission to Jamaica at the Human Rights Council’s session in March 2011. Jamaica was therefore deeply concerned that the Special Rapporteur’s had made reference to his visit to Jamaica during his presentation at this session of the Council. In the view of Jamaica that was premature at this stage since consultations with the Government had not yet begun and because the Special Rapporteur would first make a preliminary presentation of the visit at the United Nations General Assembly in September 2010. Jamaica reiterated that it remained committed to protecting and promoting human rights, as was among other exemplified by the Government’s invitation to the Special Rapporteur and the facilitation of his visit. More detailed communication on the visit of the Special Rapporteur to Jamaica would be provided to the Human Rights Council in March 2011, when the report was to be formally considered.

ENOS MAFEMBA (Zimbabwe) said Zimbabwe thanked the Special Rapporteur on torture for his efforts to visit Zimbabwe, and it was regretted that his visit was aborted. However Zimbabwe would like to clarify some issues. First, the Special Rapporteur was invited by the Government of Zimbabwe and not by individual members of the Government, and the Government had informed him not to proceed with the visit as the situation was inopportune. He, however, insisted on visiting when information was communicated to him not to proceed. It was undesirable and unbecoming in any mandate holder to make political statements, and there was reference in his press statement to the Government of National Unity's power play and power structures, and this was a total breach of the Code of Conduct. He made statements on torture allegations which he claimed were credible and substantiated, showing that he had already had a script before he entered the country and had made observations. The Government remained open and committed to the protection and promotion of human rights and an invitation to the mandate holder would be extended at the earliest mutually accepted dates.

NATALIA ZOLOTOVA (Russian Federation) said the Russian Federation shared most of beliefs expressed by the Special Rapporteur on countering terrorism, Martin Scheinin, in his report on protecting the right to privacy. Those had become the norm. That phenomenon was most visible in countries of the so-called old democracy. Indeed many States no longer limited the issue of extreme surveillance for extreme cases but used it for practically any purposes. In his reports there was mention of increasing the protection of privacy to include the global protection of data. Would those deal with non-State entities? The Russian Federation was concerned by his statement on the lack of funding, which made it impossible to carry out a study mandated by the Council to the Special Rapporteur.

The report of the Special Rapporteur on torture, Manfred Nowak, contained contradictory issues. The Council had constantly drawn his attention that those issues did not come under his mandate. On establishing a global fund on national systems for the protection of human rights, it would best to use existing mechanisms on torture. With regard to the Special Rapporteur’s postponed visit to Russia, they would look for a solution in order for him or his successor to do so in conditions that would not contravene Russian law.