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Chair: Mr. Gunnarsson (Iceland)
Ms. Al-Temimi (Vice-Chair) (Qatar)

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The meeting was called to order at 10.05 a.m.

Agenda item 72: Promotion and protection of human rights (A/72/40 and A/C.3/72/9)

- (a) **Implementation of human rights instruments** (A/72/44, A/72/48, A/72/55, A/72/56, A/72/168, A/72/177, A/72/178, A/72/227, A/72/229, A/72/273 and A/72/278)
- (d) **Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action** (A/72/36)

1. **Mr. Gilmour** (Assistant Secretary-General for Human Rights, Head of the Office of the High Commissioner for Human Rights in New York), introducing the report of the Secretary-General on the Special Fund established by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (A/HRC/34/16), said that mechanisms such as the Special Fund needed to be adequately funded. He called on Governments, non-governmental organizations and other entities to sustain support for the Fund and provide further financial contributions to it.

2. Introducing the report of the Secretary-General on the United Nations Voluntary Fund for Victims of Torture (A/72/278), he said that the Fund had awarded \$7 million to 173 projects thus far in 2017. Two-thirds of the victims of torture assisted by the organizations supported by the Fund each year were migrants or refugees, highlighting the need for assistance to protect the rights of people on the move, especially in the current international context of increasing conflict and migration.

3. Introducing the report of the Secretary-General on the United Nations voluntary trust fund on contemporary forms of slavery (A/72/229), he said that the Fund was supporting 33 projects in 32 countries, which provided direct assistance to nearly 10,000 victims, particularly women and children. In the future the work of the Fund would be further linked to Target 7 of Sustainable Development Goal 8.

4. Despite the importance of the mandates of those three Funds and their impact on the ground, they suffered from a continuous lack of resources, and his Office called on donors to make generous contributions so that more beneficiaries could be helped.

5. Lastly, he introduced the report of the Secretary-General on the International Convention for the Protection of All Persons from Enforced Disappearance (A/72/280), which also concerned the implementation

of General Assembly resolution 70/160. The Secretary-General strongly encouraged all States that were not yet parties to the Convention to ratify that important instrument. All Governments were urged to reaffirm their commitment to the basic principle of human dignity that no one should be subjected to enforced disappearance or held in secret detention. The Secretary-General and the High Commissioner for Human Rights would continue their efforts to assist States in becoming parties to the Convention and in ensuring its full implementation.

6. **Ms. Bas** (Director of the Division for Social Policy and Development, Department of Economic and Social Affairs), introducing the report of the Secretary-General on the situation of women and girls with disabilities and the Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto (A/72/227), said that the specific recommendations it contained would help to ensure that no one would be left behind in the important agenda of women and girls with disabilities. Those recommendations included strengthening the normative and policy framework for equality and full participation of women and girls; promoting their empowerment and leadership roles; ensuring equal access to information, education, employment, financial and health services including sexual and reproductive health; increasing reliable data disaggregated by sex, age and disability; and advancing the coordination and accountability mechanism at all levels.

7. **Mr. Modvig** (Chair of the Committee against Torture) said that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was one of the strongest tools available in the global fight against torture. The most important partners of the Committee against Torture were the 162 States parties to the Convention, which had agreed to be accountable to the Committee in their implementation of its provisions. Those States had committed to actively prevent torture through legislation and the implementation of legal anti-torture frameworks. Victims of torture could safely file a complaint and be assured that it would be investigated promptly, impartially and thoroughly, with no risk of violent repercussions, threats or intimidation. In addition, procedures and arrangements for holding and treating people deprived of liberty had to be regularly reviewed by the State to ensure protection against torture. Fundamental legal safeguards were effective means to prevent torture, and in its work, the Committee focused on legal rights and their practical enjoyment. In the interests of shortening lists of issues

prior to reporting and State party reports and reducing overlap in the human rights treaty body system and thereby avoiding situations where States had to answer the same questions asked by multiple treaty bodies, the Committee needed to give even greater emphasis to the implementation of safeguards upon deprivation of liberty, access to complaint over law enforcement and excessive use of force, the obligation to impartially investigate allegations of torture, the obligation of judges to dismiss evidence obtained using torture, and the obligation to provide redress to victims.

8. The Committee had held constructive dialogues with a number of States parties to the Convention. However, 26 States had never submitted a report to the Committee and 38 had overdue periodic reports, which violated their obligations and prevented the Committee from fulfilling its monitoring mandate. The Committee had therefore decided to undertake reviews of States parties in the absence of an initial report, and consider the possibility of engaging directly with non- and late-reporting States. In that connection, the Committee benefited from the Convention against Torture Initiative, which encouraged non-reporting States to fulfil their obligations. He called upon all States that had not ratified the Convention to do so, and upon those that were already parties to it to accept all of the procedures of the Convention, report on time, and thus enable the Committee to fully carry out its mandate.

9. As part of the treaty body strengthening process, the 10 treaty bodies met to exchange best practices to streamline procedures. The process had significantly influenced the work of the Committee. In 2017, in addition to the close collaboration with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee had met with the Committee on the Elimination of Racial Discrimination and the Human Rights Committee. The simplified reporting procedure, which had been agreed to by 96 States parties to the Convention, had been designed by the Committee to ease reporting obligations, and he encouraged the long-overdue and non-reporting States parties that had been solicited to agree to that procedure. There was, however, a shortage of human resources and capacity in the secretariat preventing the broader implementation of the procedure, and he encouraged States to deal with that issue effectively.

10. During the reporting period the Committee had concluded a confidential inquiry in accordance with article 20 of the Convention, and a summary of the inquiry, which addressed systematic torture in Egypt, was included in the annual report of the Committee.

11. Following an update to the procedure of the Committee for follow-up to concluding observations, States parties were invited to submit to the Committee a plan for the implementation of the recommendations issued by the Committee; the intention was to strengthen implementation by enabling States parties to continue the constructive dialogue during the time between periodic reports. Several States parties had accepted that invitation and he encouraged others to follow that example.

12. Since 1989, the Committee had registered 843 individual complaints alleging violation of the Convention concerning 48 States parties. There was a backlog of 175 complaints pending before the Committee. It was therefore vitally important that the secretariat should be provided with additional staff resources to assist the Committee.

13. The Committee had issued general comments on articles 2, 3 and 14 of the Convention in order to provide detailed explanations on the interpretation of those articles and assist States parties in their implementation, and it was currently revising its general comment No. 1.

14. While States parties were the crucial partners of the Committee, it also relied on a close collaboration with civil society organizations, national human rights institutions, national preventive mechanisms and other actors to fulfil its mandate. It was therefore essential that all those cooperating with the Committee and contributing to the fight against torture, especially civil society actors, should be protected from reprisals.

15. The allocation of necessary resources was crucial to ensure the functioning of the treaty body system, including the effective processing of the backlog of cases and reports. Torture was arguably the cruellest and most brutal of all human rights violations, and the international community was obligated to prevent it from happening and provide redress to those who had been tortured because their State had failed to protect them.

16. **Ms. Wacker** (Observer for the European Union) noted the steady increase in the number of countries that had ratified the Convention over the past year and acknowledged the efforts of the Committee to share the expertise of its members by participating in various meetings and seminars, despite its increasing workload. Her delegation also welcomed the work of the Committee to revise general comment No. 1 and appreciated the inclusion of States parties in that process.

17. She asked how the Committee was coping with overdue State party reports and whether any further measures could be taken to ensure their timely submission. She also wondered how the Committee planned to address the increasing number of individual complaints.

18. **Ms. Oehri** (Liechtenstein) said that it would be useful to know whether the information available to the Committee in the absence of overdue State party reports had been adequate for the Committee to prepare its own reports, and what were the main reasons for non-reporting or late reporting. She also wished to know whether there was an opportunity for collaboration between the Committee against Torture and the Committee on the Elimination of Racial Discrimination.

19. **Ms. Hindley** (United Kingdom of Great Britain and Northern Ireland) said that her delegation fully supported the Committee against Torture and its mandate and was pleased that more countries were ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Her delegation also supported the call for States that had not yet ratified the Convention to do so, and encouraged States to join the Optional Protocol. She would welcome the views of the Committee regarding the main constraints and challenges to achieving universal ratification of the Convention and further implementation of its provisions.

20. **Mr. Kashaev** (Russian Federation) said that his delegation was troubled by the increasing tendency by the Committee to revise States parties' obligations under the Convention against Torture and the working methods of the Committee. The draft revision of the general comment on the implementation of article 3 of the Convention in the context of article 22 not only violated international law but also deformed States parties' obligations. General comments reflected the personal opinions of Committee members but did not impose obligations on States parties in addition to those which they had assumed when they had ratified the Convention. By wasting time on such issues, the Committee was neglecting to fulfil its mandate. Whereas it had not been behind in its consideration of reports on 31 December 2015, it currently had 150 individual communications to be considered, which constituted the second worst backlog of any human rights treaty body. The follow-up procedure, whereby experts spent valuable time corresponding with States parties about their implementation of concluding observations, was a further example of the unjustified increase in the workload of the Committee not provided for under the Convention.

21. **Ms. Hwang** Hyuni (Republic of Korea) said that the treaty bodies should work in harmony with the other parts of the international human rights system, and the Committee should continue to improve its working methods. It would be useful to have further details about how the Committee had cooperated with the relevant special procedures of the Human Rights Council.

22. **Mr. Higgins** (Ireland) said that his delegation strongly supported the Committee's practice of meeting with non-governmental organizations before the consideration of each State party report, as detailed in its report (A/72/44). Non-governmental organizations had a vital contribution to make by providing immediate and direct information. In that connection, his delegation welcomed the active participation of Irish civil society organizations and the Irish Human Rights and Equality Commission during the consideration of the country's second periodic report.

23. Ireland was concerned about the fact that civil society organizations were operating in an increasingly restrictive and dangerous environment. His delegation welcomed the Committee's efforts to improve the contribution and participation of national human rights institutions, national preventive mechanisms and non-governmental organizations in its sessions, including through the use of new communication technologies. In that connection, he would be interested to know what steps could be taken to ensure the full protection of national human rights institutions and civil society organizations that provided information to the Committee using such technologies.

24. **Ms. Kofoed** (Denmark) said that her country had consistently contributed to combating torture, and asked whether any trends had been observed regarding the extra-custodial use of force amounting to torture. The general comments prepared by the Committee were welcome.

25. **Mr. Moussa** (Egypt) said that his delegation commended the role of the treaty bodies and their indispensable contributions towards the full and effective implementation of human rights instruments and obligations. He wished to clarify that the origin of the false allegations contained in the Report of the Committee against Torture on its fifty-eighth, fifty-ninth and sixtieth sessions (A/72/44) was the Alkarama foundation, headed by Abdul Rahman al-Nuaimi, who was on the terrorist watch list of the United States of America. Though Egypt had relayed its concerns to the Committee about the impartiality, neutrality, objectivity and non-politicization of complaints filed,

the Committee had chosen to disregard the political nature of the claims made by Alkarama. His Government had nevertheless provided detailed and timely responses to the allegations and reviewed existing structures and measures to prevent impunity.

26. The Government had proposed sending a delegation for a comprehensive dialogue with the Committee concerning the allegations, but the Committee had insisted on making its visit to Egypt at a particular time. The original complaint related to events that had taken place around the time of the 25 January revolution, but the Committee had considered claims and reports relating to a later period without giving the Government the opportunity to comment on all of the allegations. Ultimately the report of the Committee did not accurately reflect the Government's positions on the recommendations and proposals. The Government had accepted many of the recommendations made by the Committee; it had not, however, refused to look into others but had alluded to existing national mechanisms to address them.

27. **Mr. Ríos Sánchez** (Mexico) said that his country recognized the challenges of combating torture and would strive to eradicate all related offences. In June 2017, the Government had promulgated a law on the prevention, investigation and punishment of torture offences, developed on the basis of broad consultations and in line with international standards. The new law would standardize the definition of torture and define the liability of persons in management positions who were aware of or involved in the commission of acts of torture. In August 2015, Mexico had approved the Protocol on the Investigation of the Crime of Torture and two months later had established a specialized unit for such investigations. The Ministry of Defence and the National Prosecutor's Office ran training courses for civil servants on, inter alia, the basic concepts of human rights, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Protocol on the Investigation of Torture Offences. Mexico would soon submit its seventh periodic report to the Committee against Torture.

28. **Mr. Modvig** (Chair of the Committee against Torture) said that the Committee was trying to promote the simplified reporting procedure, and offer it to non-reporting or overdue States, as a way to reduce the burden of reporting and establish a regular reporting cycle. All individual complaints presented by the secretariat had been addressed by the Committee. In the absence of a State party report, information provided had indeed been adequate for the Committee to prepare its own report, and the concluding

observations resulting from review by the Committee were publicly available and could be judged on their own merit. Subsequent follow-up reporting by States parties was less burdensome than initial reporting. There could be several reasons for non-reporting, and ways to facilitate reporting were being discussed with the States parties.

29. Racial discrimination could be considered one step below torture, and torture one step below genocide, so there was strong and practical collaboration with the Committee on the Elimination of Racial Discrimination.

30. With regard to the constraints to universal ratification, it would be useful to conduct an investigation and ask States parties directly what their reasons were for not ratifying the Convention. The Convention against Torture Initiative was useful for engaging with States parties on a peer-to-peer basis.

31. General comments should not increase State party obligations and were intended only as guidelines, formed on the basis of the jurisprudence of the Committee, for the implementation of the Convention. The work of follow-up procedures and interaction was not a great burden either for the Committee or for the State party, and the new feature — a plan for implementation of recommendations — was an invitation to a State party, not an obligation, though it was hoped that more States parties would accept it.

32. The Committee collaborated often with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and with the Special Rapporteur on the situation of human rights defenders in cases involving reprisals.

33. On the question of how the protection of partners interacting with the Committee would be ensured, particularly in connection with new communications technologies, answers would be provided at a later stage, following consideration by the Committee. The Committee was concerned by the safety of asylum seekers, particularly those who had been subjected to torture, since their status as victims of torture was not recognized.

34. On the subject of the confidential inquiry into Egypt, several sources of information had served as the basis for assessment by the Committee, and great efforts had been made to follow all procedures for hearing State parties and maintaining confidentiality. Egypt was encouraged to resume dialogue with the Committee and submit its periodic reports regularly.

35. **Sir Malcolm Evans** (Chair of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment), introducing the tenth annual report of the Subcommittee (CAT/C/60/3) and providing updates on its subsequent activities, said that the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been ratified by 84 countries, with Madagascar as the only State to have joined the system in 2017. The slow pace of ratification was disappointing and was not helped by the fact that the Optional Protocol currently received less attention than it should. It was incomprehensible that the General Assembly did not consider ratification of the Optional Protocol as a priority. A State which was genuinely committed to the prohibition of torture should not be reluctant to become party to a mechanism entirely focused on preventing torture on a cooperative and confidential basis.

36. In 2016, the Subcommittee had celebrated the tenth anniversary of the Optional Protocol system. Over the previous 10 years, the Subcommittee had visited thousands of places of detention and spoken with tens of thousands of detainees. It had also learned that the first and most important step in addressing torture and ill-treatment was commitment by Member States. The Subcommittee mainly focused on those States which had demonstrated their commitment to prevention by becoming a member of the Optional Protocol system. There were, however, a small number of States whose commitment to prevention was questionable, particularly because they had failed to establish a functional, independent and nationwide national preventive mechanism against torture several years beyond the expiry of their obligation to do so. In 2016, the Subcommittee had drawn up a list of States parties which were substantially in default and would review the list each session. Although it was prepared to help States on the list to establish a mechanism, some neglected to respond to reports or engage in any meaningful dialogue. It might soon be time to highlight that handful of States. The establishment of a national preventive mechanism was not, however, an end in itself; States must also make sure that the mechanism had the capacity to succeed.

37. The Optional Protocol system had made some tremendous achievements over the previous 10 years, including over 60 formal visits by the Subcommittee. National preventive mechanisms had been established in the overwhelming majority of States parties in a reasonably timely fashion, visits to places of detention had been routinely conducted and excellent recommendations produced. The large number of visits represented a triumph of human rights protection through prevention.

38. The Subcommittee took its commitment to work collaboratively and confidentially with States very seriously and would like States to do likewise. Unfortunately, not all States parties showed a full cooperative spirit in relation to visits. Some seemed to forget that the Optional Protocol permitted the Subcommittee to conduct visits at any time it wished, even though that point had been highlighted during the seventy-first session of the General Assembly. States were legally obliged to permit the visits, whether or not it was convenient. That aspect of the mandate was non-negotiable, since any compromise would undermine the integrity and effectiveness of the entire Optional Protocol system. The Subcommittee would reflect further on how best to act in situations in which cooperation was not forthcoming. Reprisals against persons who interacted with the Subcommittee were also a cause for concern.

39. The Subcommittee had conducted 10 visits in both 2015 and 2016, but the reduction in the size of the secretariat would make it unfeasible to maintain the same number of visits or the same intensity of work for much longer. Even if it could maintain 10 visits per year, given the large number of States parties to the Optional Protocol, countries would be visited on average only every eight years, which was insufficient. The Subcommittee should visit each State party with the same frequency as the reporting cycles of other treaty bodies, but that would require a doubling of the current level of activity. If States were serious about preventing torture, they should provide the support necessary for the effective operation of the system of prevention which they had created. The Subcommittee would also require additional meeting time, as the sessions in Geneva were currently too short and congested to conduct routine business with the thoroughness it deserved.

40. Standout progress had been made on two important fronts: first, face-to-face meetings with those responsible for running detention systems were increasingly being facilitated by other United Nations bodies working in the country; second, the new arrangements for the operation of the Special Fund of the Optional Protocol to the Convention were proving effective. The fact that so few States contributed to the Special Fund was, however, creating financial difficulties. It had only survived because of a strategic pause in its grant programme. Unless further donations were received, its future would be jeopardized and all the good work undermined. He called on States, whether or not they were party to the Optional Protocol, to assist in the fight against torture by making a donation to the Special Fund.

41. **Ms. Rasheed** (Maldives) said that the Subcommittee had first visited her country in 2007 and had conducted a follow-up visit in 2014. Its subsequent recommendations on improving detention conditions and strengthening detainees' human rights were very useful. The Maldives had received financial support from the Special Fund of the Optional Protocol to the Convention, including assistance for its national preventive mechanism and funding for a project to educate children deprived of liberty. Given the crucial role of the Fund in strengthening torture prevention mechanisms, especially in small and emerging democracies, the Maldives had made a nominal contribution in 2009.

42. **Ms. Ahmadou** (United Kingdom), welcoming the increase in the number of States parties to the Optional Protocol, said that they should take full advantage of the tools available in order to meet their obligations, which included maintaining a dialogue concerning implementation with the Subcommittee. She asked how State parties and non-State parties could help overcome obstacles to the ratification and effective implantation of the Optional Protocol.

43. **Ms. Wacker** (Observer for the European Union) said that the European Union encouraged all States to sign and ratify the Optional Protocol. Independent national preventive mechanisms were a particularly important tool, although the number of States parties that had not formally complied with their obligation to establish such a mechanism gave cause for concern. Sadly, no new national preventive mechanisms had been designated within the last year. She wished to know how successful the Subcommittee had been in its efforts to promote the establishment of national preventive mechanisms and how existing national preventive mechanisms could assist the Subcommittee in those efforts.

44. **Ms. Kirianoff Crimmins** (Switzerland) said that her delegation welcomed the growing number of States to have acceded to or ratified the Optional Protocol but was concerned that many had not set up an independent national preventive mechanism. Her delegation appreciated the creation of a list of States late in meeting that obligation. The establishment of the mechanism was necessary but not sufficient, since the body must also meet criteria stipulated in the Optional Protocol. She asked what obstacles prevented States from establishing independent and effective national preventive mechanisms and how States parties could help the Subcommittee to monitor the fulfilment of the obligation as set out in article 17 of the Optional Protocol.

45. **Ms. Kofoed** (Denmark) said that her delegation was grateful to the Committee for its collaboration with the Convention against Torture Initiative, which Denmark had co-launched in 2014, and was encouraged by the steady increase in the number of States parties to the Convention and its Optional Protocol. She called on all Member States to ratify the Optional Protocol as a matter of priority in the hope that universal ratification could be achieved by 2024. She asked what trends the Subcommittee had observed in the use of extra-custodial use of force and whether it had identified any gaps in that regard in Member States' implementation of the Convention and its Optional Protocol.

46. **Mr. Ríos Sánchez** (Mexico) said that in December 2016, the Subcommittee had visited 32 detention centres in 7 Mexican states. It had also met with high-level authorities and representatives of the national preventive mechanism, civil society and international organizations. The delegation's observations and recommendations would help the authorities to craft policies on the prevention of torture and cruel, inhuman or degrading treatment. His delegation reaffirmed the importance of collaborating with international human rights bodies, including the Subcommittee, in the fight against torture.

47. **Sir Malcolm Evans** (Chair of the Subcommittee on Prevention of Torture) said that the engagement of the Subcommittee with Maldives was an excellent example of the strong relationship that could be built with States parties. He appreciated the positive comments by the representative of the Maldives regarding the Special Fund and hoped that they might prompt other States parties to provide additional funding in the future.

48. The Subcommittee had worked with many national preventive mechanisms and was aware of the practical challenges they faced and the value of their work. Some States had held back from ratifying the Optional Protocol because they were unsure how to fulfil their obligations with regard to the national preventive mechanisms. Member States should contact the Subcommittee at an early stage, perhaps even before acceding to the Optional Protocol, to engage in a frank dialogue about the strengths and weaknesses of their latest plans. It was much more difficult to change a national preventive mechanism once it had already been established.

49. Networks of mutual support among national preventive mechanisms were very beneficial. Some regions had effective networks of peer-to-peer mechanisms through which national preventive

mechanisms shared their approaches and mutually supported each other. Some international organizations, including the European Union, provided support for such initiatives.

50. He agreed that the establishment of a national preventive mechanism was necessary but not sufficient. The Subcommittee provided recommendations and offered frank dialogue with States to boost their confidence in what they were doing. Nevertheless, once the mechanism had been established, it was the responsibility of the Member State to ensure its independence.

51. The Subcommittee fully supported the Convention against Torture Initiative and appreciated its excellent work and its appeal to Member States to prioritize the ratification of the Optional Protocol. The number of signatories of the Optional Protocol consistently stood at half the number of signatories of the Convention against Torture, although that number should be higher. He looked forward to working with as many Member States as possible to increase the number of ratifications.

52. The mandate of the Subcommittee and national preventive mechanisms provided for access not only to traditional places of detention within the formal criminal justice system, but also to places where people might unofficially be detained. One trend in extra-custodial use of force was that security forces illicitly detained suspects, subjecting them to questioning, ill-treatment or torture before entering them into the formal criminal justice system. Equally, individuals were sometimes removed from the formal system to unofficial places of detention. The Subcommittee was concerned by that trend and was studying the possibility that improvements in the safeguards of places of detention resulted in more ill-treatment occurring outside the formal criminal justice system. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment was also concerned by that matter and their cooperation in that regard was a good example of the complementarity of their respective mandates.

53. **Mr. Melzer** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that since January 2017, he had made 29 requests for country visits. To date, only Argentina, Serbia, Spain and Ukraine had responded positively. He had also transmitted some 100 urgent appeals to States on behalf of individuals at risk of torture, some of which had yielded positive results. However, as noted in his report to the Human Rights Council (A/HRC/34/54), the resources allocated to his mandate

from the regular budget were not sufficient. His mandate depended on extrabudgetary funding from individual States, including Switzerland and Norway, for basic activities such as responding to urgent appeals and conducting country visits and thematic consultations.

54. In its resolution 70/146, paragraph 37, the General Assembly had asked the Special Rapporteur to consider including in his reports information on the follow-up by States to his recommendations, visits and communications, including progress made and problems encountered. However, he was unable to do so because of the lack of resources. He urged the General Assembly and Member States to take measures to enable him to carry out his mandate effectively, including by providing funding for a third staff member.

55. Presenting his report on the extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (A/72/178), he said that the prohibition of torture also covered excessive police violence and ill-treatment of persons who had not been deprived of their liberty or taken into the custody of a State. He had conducted extensive research and consultations to assess whether the extra-custodial use of force by State agents amounted to torture, particularly in view of potential justifications such as law enforcement, public security, crowd control and self-defence. He had also examined the extent to which the use of certain weapons and riot control devices could be considered cruel, and the significance that would have for the development, acquisition, trade and use of weapons for law enforcement purposes.

56. Excessive, unnecessary or arbitrary use of force by State officials, even outside prison walls, was not just bad policy but also violated a fundamental norm of international law. The absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment would constitute one of the most fundamental achievements of humanity. In that connection, he urged Governments, civil society and national, regional and international anti-torture mechanisms to join forces and put an end to torture and all forms of ill-treatment.

57. *Ms. Al-Temimi (Qatar), Vice-Chair, took the Chair.*

58. **Mr. Claycomb** (United States of America) said that torture and other forms of cruel, inhuman or degrading treatment or punishment were categorically and legally prohibited always and everywhere. The United States had ratified the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment subject to several understandings, one of which was that the definition of torture in article 1 was intended to apply only to acts directed against persons in the offender's custody or physical control. His delegation disagreed, therefore, with the premise that the prohibition of torture in the Convention applied in extra-custodial situations and with the conclusions stemming from that premise.

59. In the United States, the matter of police use of force was largely controlled by the Constitution, national laws, interpretations of those laws by the Supreme Court and other judicial bodies, and police agency policies and procedures. His delegation had serious concerns about the reference to soft law instruments in the report of the Special Rapporteur; such instruments were not binding obligations, but rather voluntary standards and norms.

60. The United States strongly supported the work of the Special Rapporteur. The absolute prohibition of torture was a peremptory norm that was binding on all States and from which no derogation was permitted. In that connection, he asked what more could be done to promote accountability for the actions of rogue Governments such as the Democratic People's Republic of Korea, which had recently tortured and killed the young American student Otto Warmbier.

61. **Mr. Torbergson** (Norway) said that respect for the dignity and sanctity of life was fundamental in a society governed by law. Nothing could justify the use of torture, yet it remained widespread. Noting the need for political leadership, he said that it was important to address the underlying structural reasons for the use of torture, such as the malfunctioning of the police and justice system. The question of whether the extra-custodial use of force by State agents amounted to torture or other cruel, inhuman or degrading treatment or punishment had not been systematically examined and Norway therefore welcomed the report of the Special Rapporteur.

62. In his report, the Special Rapporteur noted the need to absolutely prohibit and prevent any extra-custodial use of force by State agents intentionally and purposefully inflicting pain or suffering on powerless persons, irrespective of considerations of lawful purpose, necessity or proportionality. His delegation would be interested to know why that was so crucial and what States could do to ensure that the recommendation was adhered to in practice.

63. **Ms. Wacker** (Observer for the European Union) said that the European Union was committed to ensuring respect for the universal and absolute

prohibition of torture. Noting that the report of the Special Rapporteur examined how the prohibition of torture applied to the development, acquisition, trade and use of weapons in law enforcement, she said that Argentina, Mongolia and the European Union had recently launched the Alliance for Torture-Free Trade, which was intended to end the trade in goods used for capital punishment and torture. In that connection, her delegation would be interested to hear about the possibilities for synergies between initiatives such as the Alliance and the work of the Special Rapporteur. She also asked to hear more about the design of effective systems for monitoring the use of force.

64. **Ms. Kofoed** (Denmark) said that the extra-custodial use of force by State agents was a highly relevant issue. The subject of the Special Rapporteur's report was interlinked with her Government's focus on torture prevention in the early stages of police custody. In that connection, her delegation would be interested to hear the Special Rapporteur's thoughts on possible overlaps and synergies between the efforts needed to prevent torture in extra-custodial contexts and in the early stages of police custody.

65. **Ms. Kirianoff Crimmins** (Switzerland) said that her delegation welcomed the fact that, in his report, the Special Rapporteur noted that the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment was universally recognized as having attained peremptory status (*jus cogens*). Her delegation agreed that the prohibition of torture was not confined to acts carried out against persons deprived of their liberty. The report clearly set out under which conditions the use of force was acceptable and when it constituted an act of torture or other ill-treatment. In that connection, she recalled the success of the "Resource book on the use of force and firearms in law enforcement", which had helped to prevent human rights violations.

66. Switzerland welcomed the Special Rapporteur's efforts to categorize certain weapons as involving a high risk of torture and other cruel, inhuman or degrading treatment or punishment. His explanations and examples would be useful in the context of arms regulation. Her delegation supported the call for the United Nations High Commissioner for Human Rights to convene an expert group to examine the application of the international human rights framework to less-lethal weapons and unmanned systems for law enforcement purposes. Her delegation would be interested to hear his thoughts on the magnitude of torture and other ill-treatment in custodial settings versus in extra-custodial settings, as well as his views

on the types of situations where the conclusions of his report would be most relevant.

67. **Ms. Přikrylová** (Czech Republic) said that her delegation was pleased that the number of States Parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol continued to rise. All States should cooperate fully with the Organization's anti-torture mechanisms and respond favourably and promptly to requests for country visits. She called on States to issue a general standing invitation to all special procedures mandate holders. Noting that many States refused to respond to the Special Rapporteur's requests for country visits and follow-up visits, she asked what could be done to improve cooperation. Lastly, her delegation agreed that the prohibition of torture applied to extra-custodial settings and welcomed the call for States to focus on training their agents and reviewing the use of weapons.

68. **Ms. Matlhako** (South Africa) said that her delegation agreed that the deprivation of liberty was not a prerequisite element of torture and that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment was also applicable in extra-custodial settings. The Constitution firmly entrenched the absolute right of everyone not to be tortured. The Prevention and Combating of Torture of Persons Act criminalized acts of torture and placed the victim at the core of the factors to be considered when sentencing the perpetrator of such acts.

69. While South Africa took note of the Special Rapporteur's analysis of the roles played by non-State actors in committing torture and other cruel, inhuman or degrading treatment or punishment and by States in violating their due diligence obligation to combat ill-treatment at the hands of non-State actors, her delegation would appreciate clarification on the intersectionality between female genital mutilation and domestic violence noted by the Special Rapporteur, given the definition of torture contained in article 1 of the Convention. In addition, in the light of the focus in the report on certain aspects of international humanitarian law, more information on how best to deal with torture committed by non-State actors in such contexts would be welcome.

70. **Ms. Righini** (United Kingdom) said that her Government condemned the use of torture, which was a violation of human rights and dignity. Torture continued to be committed with impunity in many parts of the world. The United Kingdom abided by its obligations under international law and expected all States to do the same. Human rights must be respected

regardless of the status of the individual concerned. Her delegation would be interested to know how the international community could best support the work of the Special Rapporteur.

71. **Ms. Rasheed** (Maldives) said that her Government attached significant importance to prohibiting torture and other cruel, inhuman or degrading treatment or punishment in all circumstances, including extra-custodial settings. The Anti-Torture Act of 2013 explicitly prohibited all acts of torture and other ill-treatment, provided an effective redress mechanism for victims of torture and outlined strict penalties for perpetrators.

72. Maldives had made significant progress in strengthening human rights protection mechanisms. Its legal framework was consistent with international standards, detention facilities had been considerably improved, and its law enforcement officials were guided by strict regulations. Noting the capacity limitations of developing countries and emerging democracies, she said that her delegation would be grateful if the Special Rapporteur could elaborate on best practices in terms of training law enforcement officials.

73. **Mr. Kashaev** (Russian Federation) said that torture during armed conflict was practised not only by terrorist groups like Islamic State in Iraq and the Levant (ISIL) but had also been recorded by non-governmental human rights organizations during the internal strife in Ukraine. Some States which claimed to support the rule of law and the integrity and independence of the judicial system denied access to justice and failed to bring to justice persons who had committed torture and other cruel, inhuman or degrading treatment. Indeed, two years had passed since the publication of the United States Senate Intelligence Committee Report on Torture and yet nothing had been done to punish those responsible in the United States or in European countries. He hoped that the Special Rapporteur would take up such matters.

74. The principle of extraterritoriality continued to be invoked as a reason for abducting people from third countries on trumped-up charges; such practices ran counter to international law and consular arrangements and often resulted in inhuman treatment. Konstantin Yaroshenko and Victor Bout, for example, had been denied the right to decent medical care. Lastly, he drew attention to the fact that the closure of Guantanamo prison had still not been finalized.

75. **Mr. Melzer** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

punishment) said that while he acknowledged the validity of the comments made by the representative of the United States regarding the definition of torture in article 1 of the Convention, it was important to remember that his mandate was not bound by a particular treaty definition. His role was to observe torture and other ill-treatment in the generic sense. The prohibition of torture was widely accepted to be a preemptory norm and a general principle of international jurisprudence. While there might be divergent views on the scope of the definition contained in the Convention, the general definition and understanding of torture was certainly not confined to custodial contexts.

76. In response to the questions regarding the extent of torture in extra-custodial settings and the importance of addressing the issue, he said that although custodial settings such as prisons and detention centres were high-risk environments, organizations such as the International Committee of the Red Cross visited detainees and prisoners of war and considerable efforts had been made to establish monitoring mechanisms. In extra-custodial settings, abuse was also a significant problem, yet it remained under the radar. For instance, people faced daily physical and sexual abuse and harassment at checkpoints and border crossings, while irregular migrants often had no access to the criminal justice system and were sometimes held in unofficial detention centres, away from the scrutiny of existing mechanisms.

77. With regard to possible synergies between his mandate and the Alliance for Torture-Free Trade, he said that he planned to develop criteria for determining which tools were inherently cruel, inhuman or degrading and therefore needed to be absolutely prohibited. Given his mandate's limited resources, that was as much as he could do currently, but he was eager to cooperate with other stakeholders and support their efforts.

78. With regard to torture in the extra-custodial context and in the early stages of custody, he noted that persons could be in the physical custody of State agents without having been formally arrested, which was a case of overlap between the custodial and extra-custodial settings. The more monitoring in custodial settings improved, the greater the risk that ill-treatment and abuse would move to the extra-custodial context. For example, threats could be made against persons before they were arrested, with a view to coercing them into cooperating.

79. Turning to the link between the prohibition of torture and domestic violence and female genital

mutilation, he said that it was important to recall that while the definition of torture and other cruel, inhuman or degrading treatment or punishment contained in the Convention made reference to State involvement, that involvement could be minimal, such as merely acquiescing to systematic abuse perpetrated in the private sphere. If States were complacent about domestic violence and female genital mutilation, that was not compatible with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Under international humanitarian law, torture was prohibited in situations of armed conflict. International humanitarian law complemented the human rights treaty system effectively. The prohibition of torture was a general principle of law that did not depend on a specific treaty definition. It was binding on all States in all circumstances, wherever they exercised their authority.

80. With regard to best practices for police training, he was not in a position to give specific advice, but he urged States to exchange best practices among themselves. States must make it clear to their officials that the definition of torture included acts of intimidation, punishment and discrimination.

81. Turning to the comments made by the representative of the Russian Federation, he agreed that accountability for acts of torture and other ill-treatment was of paramount importance. He planned to dedicate one of his thematic reports to the issue. Several delegations had also asked how violations of the prohibition of torture by States could be addressed and how States could be encouraged to allow country visits, but he was not in a position to make precise recommendations because those were political, rather than legal, issues. However, he urged States to cooperate with his mandate and stressed that his visits were not intended to be finger-pointing exercises.

82. **Ms. Wacker** (Observer for the European Union) speaking also on behalf of the candidate countries Albania, Montenegro, the former Yugoslav Republic of Macedonia; the stabilization and association process country Bosnia and Herzegovina; and in addition, Armenia, Georgia, the Republic of Moldova and Ukraine, said that her delegation wished to remind all participants in the World Conference on Human Rights, which had resulted in the Vienna Declaration and Programme of Action, of the importance of the Declaration for human rights. The European Union strongly supported the work of the United Nations High Commissioner for Human Rights and his Office, and would continue to defend their integrity, independence and effective functioning. States who refused to grant the Office and human rights

mechanisms access to their territories or specific regions were falling short of their respect for the principles contained in the Declaration. She called on all States to offer their full cooperation with the special procedures of the Human Rights Council and allow unhindered access to and contact with individuals and civil society.

83. Every participant at the Conference had accepted that it was legitimate for the international community to investigate and denounce abuses and violations of human rights, establish special procedures, appoint their mandate holders and seek accountability. Though national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, the international community was doing no more than its duty.

84. As the sentries promoting and defending human rights and fundamental freedoms around the world, human rights defenders were instrumental to the full implementation of the Programme and the realization of all human rights. The European Union was gravely concerned by violations committed against such persons and would continue to make every effort to protect civil society organizations and human rights defenders at a time when they faced increasing pressure, restrictions and persecution in many countries. The arbitrary arrest and detention of lawyers was used as a deterrent against human rights defenders in too many countries.

85. While development facilitated the enjoyment of all human rights, the lack of development could not be invoked by States to justify the abridgement of internationally recognized human rights. The European Union promoted a rights-based approach to development, and States held the primary responsibility for ensuring the right of their citizens to development as well as the obligations to fully implement human rights instruments they had ratified and to follow up on the Declaration and the Programme of Action.

86. In view of grave violations and abuses of human rights and the high number of forcibly displaced persons in 2016, the protection of civilians in conflict was an acute concern, and her delegation called on the international community to work more on early warning and conflict analysis. The responsibility to protect should be included in the formal agenda of the General Assembly. The European Union had long been involved in ending impunity, and called on all States to promote international criminal law and the universality of the Rome Statute of the International Criminal Court, and to support the work of the Court.

87. Minorities were particularly vulnerable to violence in conflicts, millions of people were persecuted for their religion, beliefs or ethnic identity, and such acts were often aggravated by State repression targeting minorities. States were obligated to ensure that such persons could fully and effectively exercise all human rights and fundamental freedoms, and more needed to be done to implement the pledge made by the adoption of the Declaration and the Programme.

88. **Ms. Nunoshiba** (Japan) said that human rights mechanisms such as the treaty bodies, the universal periodic review and the special procedures should be better coordinated and streamlined, in accordance with Human Rights Council Resolution 5/1. The simplified reporting procedure, readjustment of themes and the shortening of prolonged sessions would go a long way to improving efficiency. The universal periodic review was crucial to the promotion of dialogue and cooperation on human rights, while the submission of State party reports helped to ensure the implementation of human rights treaties. Since the last General Assembly session, Japan had submitted periodic reports to numerous treaty bodies. Following recommendations received during the universal periodic review and by the Committee on the Elimination of Discrimination against Women, the Government had expanded the definition of acts constituting rape, increased minimum punishments and removed provisions that required victims to make a formal complaint in order for charges to be brought.

89. **Ms. Al-Nussairy** (Iraq) said that her Government was continuing its efforts to restore security and stability, entrench democracy and promote human development in Iraq, and believed that strengthening respect for human rights was an essential part of that process. Within that context, Iraq had incorporated human rights principles in its national plans and policies. Iraq had also acceded to eight of the nine core international human rights instruments, signed the two Optional Protocols to the Convention on the Rights of the Child, and was amending the country's legislation to align it with its obligations under international human rights instruments. The principles of respect for human rights, the rule of law, justice, equality and non-aggression were enshrined in the Iraqi Constitution, in which particular attention was accorded to the rights of women, children and aged persons. The Constitution also provided for a culture of pluralism, freedom of expression and of the press, and safeguards for minorities.

90. Iraq had fulfilled its reporting requirements under the universal periodic review. Its reports had been

drafted by committees comprising members of relevant national authorities and civil society organizations, and those committees also monitored and oversaw implementation of the observations and recommendations of the human rights treaty bodies. In that connection, her country hoped to submit its next periodic report to the Committee on the Elimination of Discrimination against Women in early 2018.

91. Her country fully supported all international mechanisms to protect and promote human rights, and would continue to foster collaboration between those mechanisms and its independent and governmental human rights organizations in order to ensure full respect for human rights and promote human dignity.

92. **Ms. Rodríguez Camejo** (Cuba) said that her delegation was committed to working with all human rights treaty bodies that were non-discriminatory and universal in scope, in accordance with General Assembly resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system. However, that resolution should not result in the creation of new mechanisms that extended the mandate of the treaty bodies. Her delegation was eager to establish a dialogue on the basis of mutual respect, sovereign equality and recognition of the right of each country to choose its own political system and institutions. It was important to ensure that the treaty bodies did not create new legal obligations. They could not allow any manipulation or politicization of their work. There was also a need for equitable and genuinely diverse geographic representation in the treaty bodies.

93. Her delegation reaffirmed the validity of the Vienna Declaration and Programme of Action and had taken note of the annual report of the United Nations High Commissioner for Human Rights (A/HRC/34/3). She drew attention to the fact that the High Commissioner for Human Rights continued to apply principles and support initiatives that had not been examined in detail by States. In that connection, she recalled that any changes must be approved by the General Assembly, in accordance with resolution 66/257 on progress towards an accountability system in the United Nations Secretariat.

94. **Ms. Verstichel** (Belgium), speaking also on behalf of Albania, Australia, Austria, Bulgaria, Canada, Costa Rica, Croatia, Cyprus, Denmark, Estonia, Finland, the former Yugoslav Republic of Macedonia, Georgia, Germany, Greece, Hungary, Iceland, Iraq, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montenegro, Netherlands, New Zealand, Norway, Panama, Poland,

Slovenia, Slovakia, Sweden, Switzerland, Ukraine and the United Kingdom, said that the process of strengthening and enhancing the effective functioning of the human rights treaty body system, as set out in General Assembly resolution 68/268, should be based on the observance of key principles such as inclusion of all relevant stakeholders, transparency, objectivity and non-politicization.

95. She welcomed the report of the Chairs of the human rights treaty bodies on their twenty-ninth meeting and acknowledged their efforts to mainstream the implementation of resolution 68/268 and align their working methods. She noted with interest the four new work streams launched by the Chairs to further improve harmonization and welcomed the interest in strengthening coordination and cooperation with the Assistant Secretary-General for Human Rights in responding to reprisals against people cooperating with the United Nations and their recommendation that all treaty bodies should endorse and ensure the implementation of the San José Guidelines.

96. However, more should be done to align working methods, with a view to replicating good practices in a more systematic way. It was regrettable that the simplified reporting procedure continued to be implemented by a few treaty bodies on a pilot basis only and that the modalities of the simplified reporting procedure varied. Some treaty bodies had established certain limitations, while others had not set any conditions. Likewise, some treaty bodies limited the number of questions in the list of issues, while others did not. It was also important to consider establishing new and effective methods that would ensure that States' reporting obligations were more evenly distributed.

97. **Mr. Hassani Nejad Pirkouhi** (Islamic Republic of Iran) said that although the Vienna Declaration and Programme of Action underscored the universality, interdependence and indivisibility of human rights and the importance of a non-selective and non-politicized approach, some States pursued their own political ends under the guise of human rights. They overlooked human rights violations committed by themselves or their allies and abused human rights platforms to advance national interests, in flagrant violation of the principles of universality, objectivity and non-selectivity.

98. The same States continued to impose unilateral coercive measures, despite the fact that the Vienna Declaration and Programme of Action urged States to refrain from doing so. Such measures affected trade, relations among States and human rights, and were

illegal under international law. The right to development had also been questioned by those same States. Their wish to view it as an individual rather than a collective right contradicted their approach to other civil and political rights, which in their understanding were not only individual but also collective rights.

99. The promotion of dialogue and mutual understanding was essential in order to decelerate trends such as racism, racial discrimination, xenophobia and related intolerance. The international community must embrace national particularities and cultural diversity in the human rights discourse. The Non-Aligned Movement's Centre for Human Rights and Cultural Diversity, which was located in the Islamic Republic of Iran, was a forum for the promotion of dialogue and the sharing of views on a wide range of issues. The Centre would hold a high-level meeting in New York in November 2017.

100. The interpretation of human rights treaties was the sovereign right of States parties. No additional obligation beyond those explicitly expressed in the treaties should be expected from States parties. Treaty bodies and their relevant Committees were bound by the content of the treaties, not peripheral observations. Comments made by the Committees that exceeded such boundaries did not give rise to new obligations for State parties.

The meeting rose at 1.05 p.m.