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### HUMAN RIGHTS COUNCIL

Fourth session

#### SUMMARY RECORD OF THE 24th MEETING

Held at the Palais des Nations, Geneva,  
on Tuesday, 27 March 2007, at 9 a.m.

President: Mr. DE ALBA (Mexico)

#### CONTENTS

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF  
15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL” (continued)

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The meeting was called to order at 9.05 a.m.

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF  
15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL” (agenda item 2) (continued)

Interactive dialogue on:

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (continued) (A/HRC/4/26 and Add.1-3; A/HRC/4/G/4);

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (continued) (A/HRC/4/33 and Add.1-3)

1. Mr. REYES RODRÍGUEZ (Cuba) said that the reports of both Special Rapporteurs raised important issues. The report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/4/26 and Add. 1-3) rightly questioned the use of ethnic, national or religious profiling in the fight against terrorism. Such profiling was not only inherently racist but, as the Special Rapporteur had acknowledged, was also unsuitable and ineffective. That could be seen from an analysis of the anti-Cuban terrorist groups based in the territory of the United States of America: most of those terrorists were white and their religion, to the extent they could be said to have one, had nothing to do with Islam. Similarly, the ethnic profile of the five young Cubans unjustly imprisoned in the United States for seeking to counteract the criminal activities of the aforementioned groups was neither Arab nor Asian but was clearly Western.
2. He invited the Special Rapporteur, once he was finally able to visit the United States, to look into the activities of the anti-Cuban terrorist organizations operating in Miami and into the violations of the rights of the five Cuban anti-terrorist heroes being held in arbitrary detention. In that connection, it should be noted that many of the human rights violations perpetrated by the super-Power under the guise of combating terrorism took place outside its borders at the Guantánamo naval base in illegally occupied Cuban territory, in secret detention centres, some of which were in Europe, and onboard Central Intelligence Agency (CIA) flights.
3. His delegation would also like to hear the opinion of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding the methods of interrogation provided for in the Military Commissions Act of 2006 and the power conferred on the President of the United States to arbitrarily label a person an illegal enemy combatant. It would likewise be interesting to learn what action the Special Rapporteur intended to take in the wake of the United States authorities' refusal to allow him and other special procedures mandate-holders to visit the detention and torture centres at the Guantánamo naval base.
4. Mr. CHUMAREV (Russian Federation) said that the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism made some significant points about current trends in the struggle against terrorism. Acts of terrorism, including suicide bombings, should be prosecuted, as they were flagrant violations of the right to life. Counter-terrorism operations should not, however, result in discrimination or mass violations of human rights. In that connection, the Special Rapporteur's

ideas concerning racial profiling were very interesting; however, while it might not be possible to link international terrorists to a specific race or religion, it should be recalled that the perpetrators of terrorist acts generally had specific characteristics insofar as ideological or political beliefs were concerned.

5. In his report, the Special Rapporteur had focused largely on ensuring respect for human rights while countering terrorism. It was to be hoped that, in the future, he would look at the need to protect the rights of victims of terrorism. A closely related question deserving consideration was the responsibility of non-State actors, including terrorist groups, who were in de facto control of territory.

6. His delegation was in favour of maintaining and extending the Special Rapporteur's mandate.

7. Turning to the report of the Special Rapporteur on the question of torture, he said that, unfortunately, the Special Rapporteur's interpretation of Russian legislation insofar as the modalities for country visits were concerned was not consonant with that of the Russian authorities. Respect for the law was essential when conducting a dialogue, and he hoped that his country's dialogue with the Special Rapporteur would continue.

8. Mr. MAHOUE (Cameroon) said that the excellent report of the Special Rapporteur on the question of torture was a timely reminder to States that international law allowed them to exercise extraterritorial jurisdiction over international crimes such as torture. The institutional and legal framework put in place by the Government of Cameroon following its ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment met the concerns expressed by the Special Rapporteur after his visit to the country (A/HRC/4/33/Add.2). Cameroon refused to be a haven for the perpetrators of crimes against the human conscience.

9. The human and financial resources of the National Commission on Human Rights had been increased. The Commission had prepared textbooks for human rights instruction at all levels of education. The Ministry of Justice had set up a human rights directorate which, with the assistance of civil society, had prepared a report on the situation of human rights in the country. The Ministry was also doing its utmost to improve conditions of detention and the working conditions of prison guards.

10. The new Code of Criminal Procedure, which had entered into force on 1 January 2007, protected the rights of criminal defendants in that it reflected the standards for a fair trial established in the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. Pretrial detention was strictly regulated and numerous safeguards had been introduced. The Code had been supplemented by a law on the administration of justice promulgated in December 2006. The Ministry of Justice had set up an Observatory to monitor the application of both texts.

11. Mr. LOULICHKI (Morocco) said that the new law against torture which had entered into force in Morocco in February 2006 sought to make torture a crime and bring national legislation into line with the country's international obligations. The definition of torture contained in the law was the same as that contained in the Convention against Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment, and it made the crime of torture punishable by prison sentences of up to 20 years, and in certain serious cases life, and by heavy fines. His Government had withdrawn its reservations to articles 20 and 21 of the Convention and had made the declaration recognizing the competence of the Committee against Torture to receive and consider communications. The Government was also pursuing a policy of promoting human rights education and training for law enforcement officers.

12. The Equity and Reconciliation Commission had made it possible to turn the page on past human rights violations, including torture, in Morocco. The Commission had examined some 16,000 files, granted substantial financial compensation and recommended medical rehabilitation and the regularization of the occupational, administrative and financial situation of victims. The authorities had already begun to implement those recommendations. His Government planned to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the near future; once it had done so, it would have acceded to all international instruments dealing with the crime of torture.

13. Mr. THIAM (Senegal) drew attention to the section of the report of the Special Rapporteur on the question of torture dealing with the Hissène Habré case (A/HRC/4/33, paras. 43-47) and said that a number of steps had been taken by the Senegalese Government with a view to bringing Mr. Habré to trial. Two new laws amending the Criminal Code and the Code of Criminal Procedure had filled a legal void and removed the obstacles that had prevented Senegalese courts from hearing the case. Their adoption in early 2007 had followed Senegal's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

14. Measures had likewise been taken to carry out the mandate which the African Union had conferred on Senegalese courts to prosecute and try Mr. Habré on behalf of Africa. They included the establishment of a working group to study the legal, judicial, diplomatic, security and financial implications of holding such a trial and ensuring that it was fair. The working group had concluded that special judicial arrangements were necessary to ensure compliance with the highest standards of due process. At the diplomatic level, cooperation would be needed between Senegal, Chad, Belgium, international courts and institutions and the States of the African Union. As far as security was concerned, judges, witnesses and victims would have to be assured maximum protection. As Senegal would not by itself be able to mobilize the substantial financial resources required for the holding of such a trial, the international community must provide the necessary support. The African Union Summit held in Addis Ababa in January 2007 had commended the Senegalese Government for the work it had done on the Habré case thus far and had invited member States, international partners and the international community as a whole to assist it in that task.

15. Ms. BELLAL (Switzerland) asked the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to describe the practice of "targeted killings", to which he had referred in paragraph 77 of his report (A/HRC/4/26). She asked also how he would reply to the argument sometimes put forward by States that, since international human rights law did not apply extraterritorially, certain targeted killings by a State outside its territory were not prohibited.

16. She then asked the Special Rapporteur on the question of torture why States seemed reluctant to exercise their rights under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to exercise universal jurisdiction over the crime of torture. She wondered what could be done to strengthen the obligation to take all necessary legislative, executive and judicial measures to establish universal jurisdiction over that crime. Lastly, she wished to know whether the Special Rapporteur thought that the principle of non-refoulement applied also to the transfer of persons held by the army or other State officials to the authorities of another State within borders of the first State.

17. Ms. NOLAN (Observer for Australia) said that impunity was one of the primary reasons that torture was still widespread around the world. Punishing the perpetrators of that crime was therefore not only a moral imperative but an essential deterrent to the worst sorts of international behaviour.

18. The work of the International Criminal Court was central to preventing the most egregious international crimes and would enhance the stability of fragile States. Accordingly, all States, particularly those in the Asia-Pacific region, should ratify the Rome Statute. Her delegation also urged the Governments of Sri Lanka, Zimbabwe and Fiji to facilitate the forthcoming visits of the Special Rapporteur on the question of torture to those countries.

19. Mr. CHANDER (India) said that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism had raised some issues in his report which were extremely pertinent in the context of collective efforts to counter terrorism. While States had a responsibility to protect innocent citizens from terrorist acts, counter-terrorism measures must be firmly rooted in legal provisions and consistent with human rights norms. Terrorists had no religion or faith, and for that reason no community or religion should be blamed for the irresponsible acts of a few of its members or followers. Rather than being based on ethnic or religious profiling, national counter-terrorism efforts should focus on patterns of individual conduct.

20. Since a strong response to terrorism required broad-based international cooperation, it was to be hoped that the United Nations Global Counter-Terrorism Strategy would provide the impetus for uniting the international community in its fight against terrorism. Finalization of a comprehensive convention against international terrorism would provide the requisite legal framework for the implementation of a counter-terrorism strategy.

21. Ms. KONRAD (Germany), speaking on behalf of the European Union, asked the Special Rapporteur on the question of torture to outline developments with respect to his proposed visit to Sri Lanka. She wondered whether he was satisfied with the follow-up to the recommendations he had made to Jordan, Paraguay and Nigeria and whether there was anything States and the United Nations could do to provide assistance in that respect. The European Union also wished to know what developments had taken place in Iraq since the Special Rapporteur's meeting with Iraqi torture victims and NGOs in Amman in July 2006. Lastly, she asked whether he had received an invitation to visit Zimbabwe and whether he would seek to expedite his visit to Zimbabwe in the light of current events. If so, she hoped that he would be able to report on his findings of that visit to the Council at its sixth session.

22. The implementation of counter-terrorism measures must always be fully consistent with international law, in particular international human rights law, refugee law and international humanitarian law. Human rights could be curtailed only to the extent permitted by the relevant international instruments, the content and wording of which adequately covered any security concerns, for it was necessary to ensure that democratic and legal institutions were not undermined during the struggle against terrorism. She invited the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism to provide updated information on the outstanding visit requests he had mentioned in his report and on his cooperation with other United Nations bodies and regional organizations.

23. Mr. PETRANTO (Indonesia) said that although his country had been a victim of terrorism, his Government attached the highest importance to respect for human rights and the rule of law in the context of counter-terrorism operations. Noting that the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism had established that racial, ethnic or religious profiling was incompatible with human rights standards, he asked the Special Rapporteur to elaborate further on his contention that profiling was permissible in certain specific circumstances so long as applicable national laws provided strict safeguards. Could he give some examples of circumstances in which profiling would be permissible and could be used effectively without violating fundamental human rights?

24. The numerous activities undertaken by the Special Rapporteur on the question of torture to heighten awareness of existing international norms with a view to abolishing the practice of torture should be firmly encouraged. In general, it was crucial for special rapporteurs to seek the cooperation of countries under review in order to secure the participation of all the relevant stakeholders and promote confidence in the processes of what was a very important mechanism of the Human Rights Council. His Government looked forward to the Special Rapporteur's visit to Indonesia later that year, as it would afford an opportunity for dialogue on ways of applying stricter safeguards against torture. In that connection, he wished to know what the best method of helping countries to combat torture without infringing their national sovereignty was.

25. Ms. TOMASHVILI (Observer for Georgia) said that her Government had recently adopted a variety of measures to tackle the problem of torture and the excessive use of force. Far-reaching reforms had been introduced to combat impunity and ensure the prosecution of any instances of torture or inhuman or degrading treatment, and several people had been indicted for such acts at the beginning of the year. Information about those cases could be obtained on the Prosecution Service of Georgia website.

26. Strengthening legal safeguards in accordance with international and regional standards was another national priority. Particular emphasis was being placed on the formulation of a code of ethics for the police and for prosecutors. A police manual on the use of force was being drafted in order to promote proportional responses to actual situations. Conditions of detention were being improved and steps were being taken to reduce overcrowding in prisons and develop a mechanism for the early release of prisoners. The Government was trying to lay a solid foundation for the establishment of transparent monitoring mechanisms within law enforcement agencies and independent oversight bodies.

27. As Georgia sought to comply with its obligations under international law, the Government was contemplating the enactment of provisions to ensure compliance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Monitoring mechanisms in various countries were being studied in an effort to identify the model that was most suitable for Georgia and at the same time fully met the requirements of the Optional Protocol.

28. Mr. MONTUPDI (South Africa) thanked the Special Rapporteur on the promotion and protection of human rights while countering terrorism for his constructive and balanced report. The South African Government strongly believed that basic human rights should be observed while countering terrorism and was concerned that certain racial and religious groups had been targeted and their human rights violated on the pretext of waging the “war on terror”. Such racial and religious profiling was dehumanizing and an affront to human dignity and equality, and his delegation agreed with the Special Rapporteur’s recommendations in that regard.

29. The Special Rapporteur would be visiting South Africa in April 2007 in response to the open invitation that the Government had extended to all thematic procedures of the Council. The Government looked forward to an open and contractive dialogue and was confident that the country would benefit from the Special Rapporteur’s vast experience and the best practices he had gleaned from his visits to other countries.

30. Mr. HEINES (Observer for Norway) welcomed the analysis of profiling as a counterterrorist strategy carried out by the Special Rapporteur on the promotion and protection of human rights while countering terrorism. While such measures might be necessary and permissible, there was sometimes a fine line between well-grounded definitions and broad characterizations resulting in de facto discrimination. The Special Rapporteur’s analysis demonstrated the interface between his and other mandates, including that of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. He asked whether there was scope for enhanced cooperation among mandate-holders to improve coherence and whether the Coordination Committee could be of assistance in that regard.

31. In connection with the problem of impunity, the Special Rapporteur on the question of torture had referred to article 5, paragraph 2, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concerning universal jurisdiction in respect of torture, and to article 7, concerning the principle of *aut dedere aut judicare*. In the light of his recommendation to States to exercise universal jurisdiction, he asked the Special Rapporteur to comment on the applicability of those clauses to acts of torture committed by nationals of States that were not parties to the Convention.

32. Mr. PAUDYAL (Observer for Nepal) said that his Government had cooperated fully with the Special Rapporteur on the question of torture during the latter’s visit to the country in September 2005 and had acted on his recommendations to the best of its ability. It continued to provide information on follow-up and was fully committed to ending torture and degrading treatment.

33. While the Special Rapporteur had acknowledged the improvement in the overall human rights situation in Nepal in the new political context, most of the references in his report were unfortunately either predicated on unverified information or based on isolated incidents that had occurred in the past. The presentation of partial or incomplete data made the report ambiguous. It was important to cross-check factual information and references before including them in such an important report.

34. His Government did not condone torture under any circumstances, nor did it allow perpetrators to enjoy impunity. Allegations of torture were taken seriously and action had been taken against both police and army officers. In some cases the courts had awarded compensation to victims of torture. No cases of torture had been reported since the political change in Nepal in April 2006; the comprehensive peace agreement categorically prohibited arbitrary detention, torture and ill-treatment and expressed a commitment to end impunity. The national Human Rights Commission, the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Committee of the Red Cross (ICRC) were given unhindered access to prisons and places of detention. Security personnel had been trained to uphold human rights and humanitarian law in the discharge of their duties. Punitive action was taken against all offenders.

35. Ms. HILL (Observer for New Zealand) said that her delegation shared the view of the Special Rapporteur on the question of torture that monitoring was a fundamental aspect of prevention. She was therefore pleased to announce that New Zealand had recently become the thirty-third State party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She asked how the Special Rapporteur could cooperate with and complement the work of the Subcommittee on Prevention established under the Optional Protocol.

36. Ms. ESKO (Finland) recalled that under the United Nations Global Counter-Terrorism Strategy the States Members of the United Nations had committed themselves to undertake measures aimed at addressing the conditions conducive to the spread of terrorism. Under the plan of action for the Strategy, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism was asked to continue to support the efforts of States and to offer concrete advice. She asked the Special Rapporteur how he approached the issue of “conditions conducive to the spread of terrorism” from the standpoint of the promotion and protection of human rights.

37. Mr. AZIZ (Observer for Iraq) said that Iraq had been one of the prime victims of terrorism, which caused tragedy and destruction around the world. Terrorists were ruthless and often indifferent to their own survival. United international action was thus needed to address that challenge and to stem the flow of resources to terrorists.

38. While the situation in southern Iraq was less serious than that in the centre and west of the country, the situation in Kurdistan was stable because the rule of law and human rights were guaranteed and an ongoing process of institution-building ensured peace and stability. Rather



than fighting terrorism with terrorism, Kurdistan had engaged in a constructive dialogue that had culminated in the enactment of counter-terrorism legislation by the Parliament of Iraqi Kurdistan in the second half of 2006. The new law dealt with all aspects of terrorism, and anyone who was wrongly charged with terrorist acts was entitled to compensation. Kurdistan could therefore serve as an example for the rest of Iraq.

39. Ms. DE GROOT (Netherlands) welcomed the examples of regional mechanisms cited by the Special Rapporteur on the question of torture in his report. She supported the suggestion that the Council should emphasize the importance of regional cooperation with the Special Rapporteur's mandate in its future resolutions on torture and asked the Special Rapporteur to indicate what he considered should be the main areas for cooperation. She also asked the Special Rapporteur whether he could explain States' reluctance to exercise universal jurisdiction under the Convention against Torture and whether he could suggest any ways of persuading them to take action.

40. Mr. GUEVARA (Mexico) expressed concern about the practice of profiling, especially racial profiling, in the fight against terrorism. He asked the Special Rapporteur on the promotion and protection of human rights while countering terrorism to give examples of good practices that could serve as an alternative to such profiling and that were consistent with human rights standards such as the right to personal freedom and privacy and the presumption of innocence.

41. In his report (A/HRC/4/26, para. 88), the Special Rapporteur urged States to establish systems of transparent and independent oversight of law enforcement agencies that would monitor and ensure compliance of counter-terrorism practices with human rights standards and operational guidelines. Some examples of good practice in that area would be useful.

42. Mexico had provided the Special Rapporteur on the question of torture with information on its follow-up to the recommendations he had made after his visit to the country. It was also committed to establishing the preventive mechanism required by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to implementation of the Istanbul Protocol.

43. With regard to the Special Rapporteur's comment on States' failure to exercise universal jurisdiction under article 5, paragraph 2, of the Convention, he asked how the Council might promote compliance with that provision and the exercise of universal jurisdiction with respect to other international crimes.

44. Mr. SAIDOV (Observer for Uzbekistan) said that Uzbekistan had been the first member of the Commonwealth of Independent States to invite the Special Rapporteur on the question of torture to visit the country. His visit and the subsequent adoption by Uzbekistan of a National Plan of Action to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and all 22 of the Special Rapporteur's recommendations demonstrated the Government's political will to prevent and eradicate torture. Article 235 of the Criminal Code had been brought into line with article 1 of the Convention, reports of torture were investigated by the law enforcement agencies and offenders were dealt with severely.

In 2004, the Supreme Court had ruled that confessions obtained through torture or other illegal methods were inadmissible as evidence. Uzbekistan's prison system was open to national and international NGOs, and places of detention had been visited by representatives of the European Union and ICRC, diplomats from a large number of countries and representatives of the world's media.

45. Uzbekistan cooperated closely with the United Nations special procedures and regularly provided exhaustive information regarding the human rights situation in the country, including replies to all communications transmitted by the Special Rapporteur on the question of torture. He regretted that the Special Rapporteur had not given sufficient attention in his report to the information provided and asked what criteria he used in deciding whether systematic, general or individual acts of torture had taken place. He also asked who was authorized to define torture and on the basis of which international instrument they did so.

46. Mr. SCHEININ (Special Rapporteur on the promotion and protection of human rights while countering terrorism), replying to questions raised, commended the exemplary cooperation displayed by the authorities of Turkey during his visit to that country and welcomed their undertaking to continue cooperating. With regard to the Compensation Act designed to compensate victims of terrorism and counter-terrorist measures by the State, he said that while there were elements of best practice in Turkey's implementation of the Act, he was concerned about uneven application in different parts of the country. International monitoring of the process was thus still necessary.

47. He agreed that an interdisciplinary approach to the issue of the "root causes" of terrorism was required in order to identify conditions conducive to the spread of terrorism or recruitment to terrorism. He took issue, however, with the notion of "root causes", which he felt was misleading. Moreover, attempts to analyse conditions conducive to terrorism in no way implied approval or condonement of acts of terrorism, which always involved a decision to resort to action that was morally unacceptable.

48. He did not agree with the observer for Turkey that "root causes", conditions conducive to terrorism and the prevention of terrorism were outside the scope of his mandate and referred in that regard to the terms of the United Nations Global Counter-Terrorism Strategy. Countering terrorism could not be reduced to mere law enforcement operations following acts of terrorism or to intelligence operations aimed at preventing individual acts. A far broader approach involving preventive and proactive measures was required for a sustainable counter-terrorist strategy. Situations that might create conditions conducive to the development of terrorism needed to be analysed. That was the terminology used in the United Nations Strategy, and it rightly identified economic or other forms of marginalization, rifts in society, lack of rule of law and violations of human rights as types of conditions conducive to terrorism. He took the view that the promotion of human rights, including economic, social and cultural rights, was an essential ingredient of any sustainable strategy and therefore considered those dimensions in his country-specific work. While it was certainly for the Council to decide on the parameters of his mandate, the need to address the conditions he had mentioned seemed to be a natural concomitant of the idea of promoting human rights.

49. The representative of the Russian Federation had suggested that more attention should be paid to the victims of terrorism and the commission of terrorist acts by non-State actors, especially when they controlled territory. He drew attention to the report he had submitted to the Commission on Human Rights at its sixty-second session (E/CN.4/2006/98), in which he had set out a methodology for dealing with victims and non-State actors that he always followed in his country-specific work.

50. In reply to the representative of Cuba, who had enquired about his forthcoming visit to the United States of America, he said that he had received an official invitation and planned to visit the country in the second half of May 2007; the persons and places to be visited were still being discussed. He took note with interest of that speaker's observations and would consider them carefully.

51. In reply to the questions from the representative of Switzerland about the practice of targeted killings, he said that existing international human rights standards governing the use of firearms covered even the most complex situations. There was thus no justification for a shoot-to-kill policy, even in the case of suicide attacks, since instruments such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were sufficiently flexible and sufficiently protective of human rights to provide adequate guidance even in the most extreme cases. Not all intentional deaths resulting from the use of firearms by law enforcement officials involved arbitrary deprivation of life, especially in situations that were truly the equivalent of an armed conflict. In such cases, human rights law must defer to the application of international humanitarian law as the *lex specialis*. For the laws of war to be applicable in the case of a targeted assassination, the circumstances must amount to an armed conflict and the person targeted must be actively participating in the hostilities.

52. With regard to the extraterritorial effect of human rights and humanitarian law, the latter was applicable by definition when countries resorted to armed force outside their territory. Customary human rights norms were universally applicable. Some human rights treaties referred to territory or jurisdiction in their general provisions regarding State obligations, and those provisions required careful scrutiny. The Human Rights Committee, for example, had consistently held that the International Covenant on Civil and Political Rights was applicable extraterritorially to acts of States that amounted to a human rights violation. The International Court of Justice had recently supported the Committee's position in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. He also supported that position, but wished to point out that even in situations where some elements of a human rights treaty might not be applicable extraterritorially, customary human rights law would continue to apply.

53. In reply to the representative of Germany, he said that the list of country visits contained in paragraph 5 of his report was complete.

54. His report covered cooperation with United Nations and regional intergovernmental organizations until 8 December 2006. Since then he had attended a hearing before the European Parliament regarding follow-up to an investigation into the practice of renditions and secret places of detention in Europe. He had also attended a session of the United Nations

Counter-Terrorism Implementation Task Force, an inter-agency body, that was currently participating in the implementation of the Global Counter-Terrorism Strategy through small thematic groups. During his visit to South Africa in April 2007 and in conjunction with his visit to the United States in May 2007, he intended to open up new avenues of cooperation with the African Union and the Organization of American States.

55. The observer for Norway had enquired about coordination among special procedures mandate-holders. His own mandate had been established to bridge a protection gap; it was thus both comprehensive and complementary and involved a considerable degree of cooperation. In particular, he endeavoured to avoid duplicating the work of the Special Rapporteur on the question of torture. The Coordination Committee allowed across-the-board exchanges among all mandate-holders but made allowances for the particular aspects of each mandate.

56. In reply to the question from the representative of Mexico regarding best practices in the area of terrorist profiling, he said that customs authorities had developed considerable expertise in identifying behaviour patterns that indicated that a person was in the process of committing a crime. That type of expertise could also be used in countering terrorism. In his report, he recommended either universal measures, such as universal searches and security checks, or randomly implemented security searches, which must be genuinely random so that they could not be circumvented by persons who were aware of the patterns used.

57. With regard to the reference in paragraph 88 of his report to oversight of counter-terrorism activities by law enforcement agencies, he said that intelligence agencies often escaped oversight and that a combination of parliamentary, judicial and other independent oversight mechanisms was necessary in order to ensure that oversight was effective.

58. Ms. VADIATI (Observer for the Islamic Republic of Iran) said that racial, ethnic or religious profiling in the context of countering terrorism affected thousands of innocent persons in countries such as the United States of America, the United Kingdom and Germany. In paragraph 53 of his report (A/HRC/4/26) the Special Rapporteur on the promotion and protection of human rights while countering terrorism had expressed concern about the widespread and ethnically disproportionate use of stop-and-search powers in the United Kingdom, which had produced few results in terms of countering terrorism. He had added that a communication sent to the Government of the United Kingdom in connection with the 2006 Terrorism Act had remained without a response. She therefore wished to know whether he intended to raise the issue again and whether he planned to visit the United Kingdom to investigate the matter.

59. As certain European countries reportedly served as safe havens for terrorist groups, it would be useful to broaden the Special Rapporteur's mandate to encompass that issue. In the meantime, the Special Rapporteur might wish to consider discussing the problem with the countries concerned, especially France. She invited both the Special Rapporteur on the promotion and protection of human rights while countering terrorism and the Special Rapporteur on the question of torture to brief the Council on recent developments with regard to the alleged use of the territory of States members of the European Union for the illegal transfer, detention and possible torture of prisoners by the CIA.

60. Mr. VARELA QUIRÓS (Observer for Costa Rica) noted with concern that, according to the report of the Special Rapporteur on the question of torture (A/HRC/4/33), detainees continued to be subjected to degrading treatment while perpetrators continued to invoke all kinds of arguments to justify their conduct. Every Government should recognize that torture was unacceptable under any circumstances and must be abolished. Costa Rica would continue to oppose it vigorously in all forums in which it could make its voice heard and to support non-governmental organizations (NGOs) such as the Association for the Prevention of Torture.

61. The Special Rapporteur had emphasized the need for cooperation between the United Nations system and regional organizations in the fight against torture. Costa Rica had been among the first 20 States to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the first State in the Latin American region to establish the national preventive mechanism required by the Protocol. He asked the Special Rapporteur to indicate what areas of complementary and separate responsibility he had identified in his recent consultations on methods of work with the Subcommittee on Prevention.

62. Ms. OVERVAD (Observer for Denmark), referring to the proposals of the Special Rapporteur on the question of torture concerning accountability and economic responsibility for torture rehabilitation (A/HRC/4/33, para. 68), requested clarification of the relationship between the personal criminal and economic responsibility of the perpetrator and the duty of States to protect their citizens from human rights violations and ensure rehabilitation for torture victims. Endorsing the views set out in paragraph 13 of the report regarding unannounced visits and private interviews with detainees by special procedures and other independent monitoring institutions, she asked the Special Rapporteur to propose remedial measures in situations where Governments objected to visits under such conditions.

63. Ms. DIALL (Mali) said that the report of the Special Rapporteur on the question of torture had rightly emphasized the right of torture victims to compensation. The progress made in Africa in the establishment of mechanisms to combat torture was visible also in Mali. Measures had been taken to implement relevant legislation with the involvement of civil society organizations and the national human rights commission, which also carried out regular inspections of prisons and police stations to monitor respect for human rights and prohibit torture.

64. The Special Rapporteur had also spoken of beatings of detainees in certain countries. Regrettably, migrants were often subject to hostility and were thus particularly vulnerable to such abuse. She appealed to the collective conscience of the international community to ensure full respect for human rights under all circumstances. Her delegation believed that greater emphasis should be placed on prevention in the fight against torture and consequently placed high hopes on the recently established Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

65. Ms. NZOMO (Observer for Kenya) said that while the development of counter-terrorism legislation was crucial, efforts must be made to ensure that such legislation was consistent with the obligations flowing from international human rights instruments. In Kenya, an extensive

national debate was taking place on the compatibility of counter-terrorist legislation with human rights and fundamental freedoms. In the light of that debate, adoption of the draft Anti-terrorism Bill 2006 mentioned in the Special Rapporteur's report (A/HRC/4/26/Add.1, para. 37) had been deferred. It should also be noted that Kenya was a multiracial society and did not engage in profiling on the basis of race, ethnicity or religion.

66. A civilian police oversight body had been established in Kenya to ensure impartial and independent investigations of complaints brought against members of the police force, including allegations of torture. Far-reaching police and prison reforms were under way to enhance respect for human rights and close gaps in the existing complaints procedure. The Kenya National Commission on Human Rights established in 2003 was competent to investigate allegations of human rights violations, including torture, and to carry out unannounced on-site inspections of detention facilities. Reforms undertaken within the Department of Public Prosecutions included the development of special prosecution units to deal with new international crimes, and legislation had been enacted to promote the use of non-custodial sentences. A detailed report on Kenya's response to the recommendations of the Special Rapporteur would be submitted in due course.

67. Mr. TICHENOR (Observer for the United States of America) said that it was important for countries to implement their obligations under article 5 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish jurisdiction over torture offences committed in their territory. He enquired whether any progress had been made with regard to the visit of the Special Rapporteur on the question of torture to Zimbabwe.

68. In paragraph 76 of his report (A/HRC/4/26) the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism had referred to the USA Patriot Act in the context of shoot-to-kill policies. He wished to point out that that Act contained no shoot-to-kill provisions, and the clear limits on the use of deadly force by law enforcement officials established in the United States Constitution had remained unchanged in the aftermath of the September 11 attacks.

69. Mr. KIM Pil-woo (Republic of Korea) welcomed the proposal of the Special Rapporteur on the question of torture for the establishment of mechanisms that would require States engaging in systematic or widespread torture to contribute to funds such as the United Nations Voluntary Fund for Victims of Torture. However, he wished to know whether such States would be required to make "voluntary" contributions to the Fund or would be obliged to pay a "fine". Given the difficulties in eliciting cooperation from States engaged in systematic or widespread torture, it might not be realistic to expect such contributions.

70. States' legitimate efforts to counter terrorism should not involve profiling on the basis of stereotypes. The Special Rapporteur on the promotion and protection of human rights while countering terrorism had explained that such practices were ineffective, counterproductive and incompatible with human rights standards. Profiling based on accurate intelligence would be ideal, but difficult to achieve. Random security checks were a feasible alternative only if accompanied by adequate human rights training and supervision of law enforcement officials.

71. Mr. CONCHA (Observer for Colombia) said that Colombian legislation prohibited and criminalized torture and cruel, inhuman or degrading treatment or punishment, and efforts were being made to ensure compliance with those provisions by State actors. An independent study had been conducted with the assistance of OHCHR on training in international human rights law and international humanitarian law for members of the armed forces. Members of the armed forces were trained in human rights, and a recent report by the Ombudsman had highlighted the reduction in the number of complaints of violations attributed to members of the armed forces as a result.

72. Prison staff throughout Colombia also received training in human rights standards, and international standards relating to the rights of detainees had been incorporated into internal prison directives. A system had been introduced whereby elected prisoner representatives informed the prison authorities of situations that infringed detainees' rights. In addition, prison authorities, the Office of the Ombudsman and the OHCHR Office in Colombia conducted joint visits with a view to improving the human rights situation in places of detention.

73. Mr. CORMIER (Canada) commended the Special Rapporteur on the question of torture for his proposals regarding the economic responsibility of perpetrators and States for torture rehabilitation. The Special Rapporteur should identify obstacles to the institution of civil proceedings against individual perpetrators, their superiors and the authorities directly responsible for acts of torture. He should further describe the action taken by States to follow up recommendations he had made in the context of country visits, as well as the main reasons given for non-compliance.

74. Mr. GAUTO VIELMAN (Observer for Paraguay) said that the Special Rapporteur on the question of torture had visited Paraguay in November 2006. During his visit, he had participated in a workshop on the prevention and eradication of torture organized by the Government and civil society. He had further visited places of detention and engaged in dialogue with government officials, NGO representatives and international civil servants. Unfortunately, since the report of the Special Rapporteur on his mission to Paraguay (A/HRC/4/33/Add.4) had not yet been issued in Spanish, the institutions concerned had not been able to submit their observations. He would therefore desist from commenting on the conclusions contained in the report.

75. Transparency and cooperation with NGOs in human rights matters was crucial. Paraguay had ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, had issued a standing invitation to all special rapporteurs, and was open to cooperation with OHCHR and other relevant bodies.

76. Mr. VIEIRA KOMNISKI (Brazil) said that while States had a duty to protect their nationals and others against terrorist attacks and bring the perpetrators to justice, it was equally necessary to safeguard human rights while countering terrorism. He thanked the Special Rapporteur on the promotion and protection of human rights while countering terrorism for drawing attention to the potential dangers of racial, religious, national or ethnic profiling. Anti-terrorist measures based on such stereotypes jeopardized the basic principles of non-discrimination and the rule of law and exposed certain groups of immigrants to discrimination. The proportionality between effective measures to prevent terrorism and respect for human rights must be assessed.

77. In order to prevent torture and ill-treatment, Brazil had adopted a comprehensive plan of action and established a national committee for the prevention of torture, which was responsible for implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Government cooperated closely with non-governmental actors in the development and implementation of preventive policies. In partnership with the Association for the Prevention of Torture (APT), it had developed a capacity-building strategy comprising the translation into Portuguese of APT manuals and training sessions for prison and law enforcement officials.

78. Mr. CHIHUAILAF (Observer for Chile) said that his delegation had taken note of the section of the report of the Special Rapporteur on the question of torture dealing with Chile's follow-up to his recommendations (A/HRC/4/33/Add.2, paras. 60-118). He wished to assure the Special Rapporteur of Chile's ongoing commitment to cooperate with the latter's mandate.

79. The mandate of the Special Rapporteur on the promotion and protection of human rights while countering terrorism was highly relevant to the international community's efforts to combat terrorism while safeguarding human rights. The Special Rapporteur's analysis of the practice of racial profiling and suicide attacks was of particular interest in that regard. While States needed to develop new mechanisms to address unconventional threats, those mechanisms must be compatible with the exercise of human rights. The Chilean President had in fact stressed the importance of upholding democratic principles in the fight against terrorism in her address to the General Assembly.

80. Mr. JAZAÏRY (Algeria) said that while his delegation agreed with the Special Rapporteur on the promotion and protection of human rights while countering terrorism that racial, ethnic or religious profiling was contrary to the principle of non-discrimination, it objected to the contention in paragraph 83 of his report (A/HRC/4/26) that such differential treatment was compatible with the principle of non-discrimination if it constituted a proportionate means of countering terrorism. Such a statement was easily misinterpreted and might be used to justify such deplorable practices.

81. It was crucial to address the conditions conducive to the spread of terrorism listed in paragraph 82 of the report. When devising counter-terrorism strategies, States should not mistake legitimate resistance to occupation for terrorism. Even if such resistance efforts occasionally involved ethically unacceptable practices, occupation by its very nature constituted a violation of human rights and freedoms.

82. Combating terrorism while at the same time safeguarding human rights required international cooperation. It would be useful for the international community to agree on a definition of terrorism with a view to drafting a convention on the matter. Freedom and security must be reconciled, even in situations of conflict or terrorist attack. Upholding human rights was the best long-term strategy for combating those phenomena.

83. Mr. ISOH (Nigeria) thanked the Special Rapporteur on the question of torture for the recommendations he had made following his visit to Nigeria. During that visit he had engaged in dialogue with senior Government officials, including the President. The Government had therefore been somewhat disappointed to learn that the Special Rapporteur had shared some of his findings with the press prior to the formal presentation of his report to the Council.



84. It was untrue that torture was carried out with impunity in Nigeria. Rather than condone any degradation of the human person, the Government sought to foster attitudinal changes among law enforcement officials and provided ongoing human rights training for active police officers and new recruits. Through the Duty Solicitors Scheme introduced in cooperation with a local NGO, free legal advice was provided to detainees and victims of human rights abuses at police stations, thus reducing the number of arbitrary detentions. Police lawyers were competent to investigate alleged violations of detainees' rights by members of the police force, and a number of officers found guilty of such offences had been reprimanded or prosecuted. All acts of torture committed by members of the police were subject to expeditious investigation and punishment.

85. His Government welcomed the Special Rapporteur's recognition of its commitment to the promotion of human rights and his appreciation of the challenges posed by Nigeria's size and diversity. Despite the Government's good intentions, however, misconduct on the part of law enforcement officials could not be ruled out. Consequently, the authorities worked diligently to create an environment conducive to the enjoyment of human rights, to monitor regularly the observance of the due process and to take prompt action to deal with any untoward behaviour.

86. Mr. BUTT (Pakistan), speaking on behalf of the Organization of the Islamic Conference (OIC), said that the practice of racial, ethnic or religious profiling in the context of countering terrorism was a clear violation of human rights and the principle of non-discrimination. It had proved ineffective in combating terrorism, and OIC shared the Special Rapporteur's concerns about its adverse affects, including the emotional toll it took on the victims, the sense of alienation created among targeted groups and its negative impact on community relations. Profiling undermined human dignity and the equal enjoyment of human rights by all persons. Moreover, a clear distinction should be drawn between terrorism and a people's legitimate resistance against foreign occupation.

87. Mr. AHMED (Bangladesh) said that law enforcement agencies that engaged in profiling in the context of countering terrorism systematically relied on a set of stereotyped associations that were not necessarily linked to a specific offence. Since the attacks on 11 September 2001, profiling had been consistently used to identify a particular race, ethnicity or religion, thereby giving rise to feelings of hostility and xenophobia. Public trust in law enforcement agencies was crucial to cooperation in counter-terrorism efforts. If law enforcement agencies targeted particular countries or communities, cooperation with the targeted group would not be forthcoming.

88. The report of the Special Rapporteur served as a basis for further consideration of the issue. While universal or random checks might constitute a feasible alternative to profiling, provided that clear guidelines on search criteria were developed, there was no universal agreement on such practices. Moreover, it was unclear how persistent stereotypes could be eliminated. In any event, any profiling practices used for counter-terrorism purposes must be fully compatible with the relevant provisions of the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

89. Ms. KAISER (Consultative Council of Jewish Organizations) said that the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism clearly established that profiling based on perceived ethnic, national or religious origin was ineffective and deeply problematic. Jewish organizations were particularly disturbed by any move to stereotype people and groups on such a basis. Racial profiling alienated and radicalized minority communities. It was surely more important to build bridges to such communities. She asked the Special Rapporteur what his views on the efficacy of such a policy were. Given the evidence that psychological profiling was a reliable, effective and non-discriminatory method of identifying terrorists, she urged the Special Rapporteur to do further research into the development and implementation of that procedure.

90. Ms. PARKER (International Educational Development) welcomed the discussion which the Special Rapporteur on the question of torture had initiated on the legal obligation of States parties to the Convention to exercise universal jurisdiction over persons alleged to have ordered or committed torture. The Geneva Conventions of 1949 also required universal jurisdiction for such offences.

91. It was thus regrettable that the Special Rapporteur's mission to Sri Lanka had been postponed. Much of the torture of Tamils in Sri Lanka occurred in the context of the current armed conflict and was therefore actionable as a war crime. The Sri Lankan authorities had unfortunately denied the Working Group on Enforced or Involuntary Disappearances permission to assess the Tamil crisis situation on site, on the pretext that two other mandate-holders were planning visits. There was no reason why the three could not undertake a joint mission, perhaps also involving the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, inasmuch as the authorities' continual anti-Tamil rhetoric contributed heavily to the genocidal situation. All mandate-holders should insist on having access to the Tamil-controlled areas. She asked the Special Rapporteur what plans were being made for his visit and what steps he thought he could take to ensure he was granted unfettered access to all areas of the country.

92. Ms. HANOWSKY (Human Rights Advocates), speaking also on behalf of the National Association of Criminal Defense Lawyers, said that, 94 per cent of all executions carried out in the world took place in only four countries; the United States of America, China, Saudi Arabia and the Islamic Republic of Iran. Abolition should thus remain a priority for the United Nations. Where capital punishment was retained, States must abide by certain limitations. The length of time a prisoner waited for execution - 10 years on average, but sometimes as many as 20, 30 or 40 years - in itself amounted to torture. Such prisoners experienced severe mental deterioration, known as the "death-row phenomenon", which manifested itself in mental incompetence, self-mutilation or delusions. Hasty executions that ignored due process were obviously undesirable, but due process should be accomplished within a reasonable period of time. Otherwise, the prisoner suffered two sentences: that of prolonged psychological torture and that of death.

93. Mr. STABEROCK (International Commission of Jurists) urged States to follow the guidance of the Special Rapporteur on the promotion and protection of human rights while countering terrorism with regard to profiling, a practice that increasingly had extended from "terrorist profiles" to even more problematic profiles used to identify "radicalization" and "extremism". His organization received persistent reports of an erosion of human rights and the

most fundamental principles of the rule of law in the fight against terrorism around the world. Such human rights violations, frequently involving intelligence services, were shrouded in a culture of secrecy that ensured impunity. He welcomed the invitation extended to the Special Rapporteur by the United States of America and urged the Government of that country to provide unhindered access to persons under detention and to terrorism-related legal proceedings, if requested. The acknowledgement of secret detentions by the United States and evidence of its policy of extraordinary renditions required the Council's urgent attention. Those detained had no contact with relatives, lawyers or consulates and had no means of mounting a legal challenge to their detention or treatment. Such a practice amounted to enforced disappearance as defined under customary international law. Moreover, such detentions were not isolated cases but the result of a planned Government policy. The Council should send a clear message that the detention centre at Guantánamo Bay should be closed. Secret detention, enforced disappearances and torture were morally and legally unacceptable. They should not be justified in the name of national security or fighting terrorism.

94. Ms. SHARFELDDIN (International Organization for the Elimination of All Forms of Racial Discrimination) said that a major form of terrorism was foreign occupation, which subjected the rights of the people to the whim of the occupier, who sought to suppress any attempt at resistance. Yet such resistance was an expression of the historically recognized right to self-defence. Thus it was lawful for Palestinians and Iraqis to resist the foreign occupation of their countries. Yet some States seemed to believe that they had a God-given right to occupy the homelands of others and that resistance was unacceptable. Those States should ask themselves why they had been the targets of individual acts of terrorism while other States had not. Her question was in no way intended to condone the killing of innocent civilians, but it was very relevant to the issue of terrorism.

95. Ms. D'ALOISIO (Defence for Children International) said it was unfortunate that the otherwise excellent report of the Special Rapporteur on the question of torture did not specifically address the plight of children deprived of their liberty, who were subjected to many of the same forms of torture as adults, including physical, sexual and psychological abuse. Moreover, they were often harassed, threatened and beaten into confessing to crimes while in custody. As stated in general comment No. 10 of the Committee on the Rights of the Child, torture of children, for whom the consequences were particularly severe and lasting, was wholly unacceptable. She therefore asked what steps the Special Rapporteur would take to address the question and what recommendations he would make to States to investigate and prosecute cases of torture against children more effectively.

96. Ms. ADRIAANSEN-SMIT (Foundation of Japanese Honorary Debts) said that her Foundation represented former prisoners of war, civilian internees and comfort women, all victims of the Japanese occupation of the Dutch East Indies during the Second World War. Some 90,000 claims from survivors had been registered with her organization. Men, women and children had been interned in concentration camps and many had died working as slaves. Women had been forced into sexual slavery, while girls as young as 12 had been taken from their homes and transported to "comfort stations" organized by the Japanese Army, sometimes in other countries. Yet the Prime Minister of Japan had recently stated that there was no evidence that such women had been forced to have sex with soldiers.

97. She wondered whether Japan was suffering from amnesia: the Government had still not responded to the 1996 report of the Special Rapporteur on violence against women, its causes and consequences (E/CN.4/1996/53/Add.1 and Corr.1), in which the Special Rapporteur had advised the Japanese Government to take appropriate action. In Germany, denying the Holocaust was a crime. The attitude of the Japanese Government, in contrast, made the surviving comfort women feel that they were being raped all over again. The Government should face the facts and acknowledge Japan's wrongdoing, apologize and compensate the now elderly women whose lives had been permanently scarred.

98. Mr. DELAPLACE (Association for the Prevention of Torture (APT)), speaking also on behalf of the International Federation of Action by Christians for the Abolition of Torture, the International Rehabilitation Council for Torture Victims and the World Organization Against Torture (OMCT), expressed appreciation to the Special Rapporteur on the question of torture for being accessible to victims, undertaking visits to a variety of places of detention and strengthening the legal framework relating to the absolute prohibition of torture. He asked the Special Rapporteur whether he considered that the obligation to exercise universal jurisdiction reflected customary international law and was therefore applicable to all States Members of the United Nations and not only to States parties to the Convention.

99. It appeared that the obligation on States parties to designate torture as a specific crime in national legislation was seldom implemented. He therefore wondered whether the Special Rapporteur would consider devoting part of a future report to that question or whether it would be more useful for the Committee against Torture to adopt a general comment on article 4 of the Convention. Lastly, in view of the importance of cooperation with regional mechanisms, he asked whether the Special Rapporteur would undertake joint country visits with the Special Rapporteur on prisons and conditions of detention in Africa of the African Commission on Human and Peoples' Rights or with the Special Rapporteur on the Rights of Persons Deprived of Their Liberty of the Inter-American Commission on Human Rights.

100. Ms. ZOON (International Islamic Federation of Student Organizations) drew attention to the unrelenting use of excessive force against innocent civilians in Jammu and Kashmir, which was occupied by India, a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The full impunity enjoyed by Indian troops under such laws as the Terrorist and Disruptive Activities (Prevention) Act and the Public Safety Act helped to perpetuate human rights violations. The Prime Minister of India had called for zero tolerance of human rights violations, yet his troops meted out inhumane treatment. She urged the Council to dispatch the Special Rapporteur to Jammu and Kashmir to see the situation there first-hand.

101. Mr. CHEIKH (Mouvement International de la Jeunesse et des Étudiantes pour les Nations Unies) said that for the Saharan people in the territories under Moroccan occupation, the past two years had been among the darkest in their history, owing to the climate of fear and the repression to which they were subjected daily. The human rights abuses suffered by the people were well documented. In May 2006, OHCHR had stated that the people of Western Sahara must be allowed to exercise their right to self-determination without delay. The figures alone told the

story: there were around 200,000 refugees in Western Sahara whom the authorities sought to control by withholding food; 500 people had disappeared since the beginning of the conflict; 150 Saharan prisoners of war had been held by Morocco for 31 years; hundreds of persons had been subjected to arbitrary arrest; numerous heavy prison sentences had been imposed following trials invalidated by the systematic use of torture; and 400 persons had been disabled by the millions of mines - planted by the Moroccans. The urgency of the situation was such that the Council should appoint a special rapporteur to look into the constantly deteriorating situation of human rights violations in Western Sahara.

102. Mr. VOSS (Asian Legal Resource Centre) said that in many Asian States, including States that were members of the Council, such as Bangladesh, India, Indonesia, Pakistan, the Philippines and Sri Lanka, torture was the principal method of investigation used by law enforcement agencies. Whereas in some States torture was used as a political tool for specific aims, it was endemic and widespread in many countries in Asia, sustained by reluctance to prosecute perpetrators and a lack of institutions governed by the rule of law. He asked the Special Rapporteur how he thought that the Council might address what was a deeply engrained problem in the Asian region. Lastly, with regard to the statement made by the observer for Nepal, he said that there were still many reports of torture in that country, where all parties failed to observe human rights.

103. Mr. NOWAK (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), responding to the questions that had been raised, said that he wished to thank the representative of Jordan for expressing at the previous meeting his Government's commitment to cooperate with the Special Rapporteur's mandate even though the Government did not agree with all his conclusions. He welcomed the closure of Al Jafr prison and the possible closure of two other facilities. As for the United States detention centre at Guantánamo Bay, he said that prisoners were indeed subject to arbitrary detention and interrogation methods that did not comply with international standards. He had not yet been allowed to visit the centre but had put in another request to do so and was optimistic that he would be allowed access and that the centre might be closed.

104. He was glad that the Russian Federation wanted to continue its dialogue with him. He hoped to visit that country, but his terms of reference were non-negotiable: as in other countries, he must be able to carry out unannounced visits to places of detention and speak in private to detainees. It was thus up to the Government to change its legislation or the interpretation thereof to enable him to visit. He was particularly appreciative of the efforts made by the Governments of Morocco and Senegal, the latter of which had taken additional steps towards implementing the Convention. The implementation of the decision on Hissène Habré was a positive example of cooperation between the African Union and the United Nations.

105. As to how the reluctance of States to exercise universal jurisdiction could be overcome, he suggested that States should incorporate the relevant such provisions of the Convention into their domestic legislation and raise awareness among law enforcement officials and others, as Senegal had done. In that connection, he wished to point out that the case of a person who was abducted in one State and transferred to another was covered by article 3 of the Convention.

106. In 2007, he would be visiting Sri Lanka, Togo, Indonesia and - he hoped - the Russian Federation. He had written an urgent letter to the Government of Zimbabwe concerning recent events in that country and had received two informal invitations, which he hoped would be converted into a formal one. The best way that the United Nations could help countries implement the Convention was through the United Nations Development Programme (UNDP), which could help with the training of police and, above all, reforming prisons, which were often in a deplorable state owing to a shortage of funds. The observer for Norway and the representative of an NGO had asked whether the universal jurisdiction principle could apply to non-State parties. His answer was unequivocally in the affirmative: States parties were under an obligation to arrest individual perpetrators of torture.

107. He tried to ensure that country visits by members of the Committee against Torture did not overlap with his own visits. He favoured the idea, however, of holding joint seminars on the implementation of the Convention. His visit to Indonesia would, like his visit to Paraguay, begin with such a seminar. On the question of regional cooperation, he said that he had undertaken joint missions with special rapporteurs from the African Commission on Human and Peoples' Rights and the Inter-American Commission on Human Rights.

108. The phrase of "systematic practice of torture" meant that torture was government policy. Such a policy was very rare, and he had found it only in Nepal in 2005, in a situation that no longer existed. He wished to commend that country for the reforms it had carried out. Elsewhere, torture, although widespread, was not systematic. If his view was disputed by NGOs, he would gladly pay follow-up visits. With regard to the question of rehabilitation, he said that in the long term it was an expensive process and, as a rule, provided by States other than the State that had engaged in torture. The latter should in fact be encouraged to contribute financially.

109. There had been some questions regarding access in the context of his visits. He had often obtained only partial access, as in Guantánamo Bay or the Russian Federation. With regard to compensation for rendition, he noted that two individuals had tried and failed to obtain compensation before the United States courts. However, it was gratifying to note that a Canadian citizen had received Can\$ 10.5 million from his Government. He thanked the Governments of Paraguay and Nigeria for their cooperation. Both countries had given assurances at the highest level and, in his final reports, he would take account of all their comments. Lastly, universal jurisdiction was not a part of customary international law but applied to individuals. He concurred with the idea that the Committee against Torture should issue a general comment on article 4 of the Convention. Indeed, he was surprised that so few States complied with the obligation to criminalize torture.

The meeting rose at 12.15 p.m.