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**Oral Statement by Martin Scheinin,  
Special Rapporteur on the promotion and protection  
of human rights and fundamental freedoms  
while countering terrorism**

14<sup>th</sup> session of the Human Rights Council

1 June 2010  
Geneva



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Mr. President, distinguished delegates, ladies and gentlemen,

Let me express my satisfaction for being invited to appear before the Human Rights Council at this 14<sup>th</sup> session, after having done so with my regular report as recently as in the 13<sup>th</sup> session. The resolutions that created the mandate of a Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism introduced the idea of not only reporting, but of reporting "regularly" to the Commission on Human Rights - now the Council - and to the General Assembly. There is clearly a need for the Council being able to receive and discuss reports by at least some of its Special Rapporteurs at any time, this not affecting the well-established principle of each mandate holder producing an annual thematic main report, with focus on one or more freely chosen thematic aspects of the mandate, irrespective of whether he or she is also producing additional reports to the Human Rights Council.

The document in front of you (A/HRC/14/46) is a compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight. This study was specifically requested in Human Rights Council resolution 10/15.

The resolution was adopted in the context of the Council's consideration in March 2009 of my previous report, focusing on the role of intelligence agencies in countering terrorism, and in complying with human rights when doing so (A/HRC/10/3). That report gave a factual account of how the post-9/11 wave of counter-terrorism measures has transformed the role of intelligence agencies from

activities concentrated on unwanted operations by other States to countering terrorism. New problems have emerged in this transformation, as the international cooperation between intelligence agencies has greatly intensified and as such cooperation very often forms an unregulated activity that escapes existing oversight mechanisms. My report elaborated the consequences of the international law of State responsibility in respect of intelligence cooperation and concluded by recommending to the Human Rights Council the elaboration and adoption of an instrument such as guidelines for human rights compliance and best practice by intelligence agencies. In its subsequent resolution, the Council then requested me to prepare a compilation of good practice.

Such a compilation of good practice is now in front of you. It consists of 35 identified elements of good practice, organized under subheadings A to L in Section II of the report. In substance, the 35 areas of good practice can be grouped into four different 'baskets', namely legal basis (1-5), oversight and accountability (6-10, 14-18), substantive human rights compliance (11-13, 19-20) and issues related to specific functions of intelligence agencies (21-35).

Since the adoption of resolution 10/15 more than one year ago, work has been in progress for the production of the study that today is in front of you. It was greatly facilitated by cooperation with the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and a research group on constitutional responses to terrorism, operating within the International Association of Constitutional Law. The latter group convened an expert workshop at the European University Institute in Florence in November 2009, and in the first days of March 2010 a broader expert consultation was co-organized in Montreux by the Office of the High Commissioner for Human Rights and DCAF.

Consultation of States has been an important part of the project. From the very beginning, when preparing the study we have focused on existing good practice and therefore applied a method of carefully studying the legislation and practice of a large number of States, located in all parts of the world. As you have noticed, 41 States are mentioned in the footnotes of the study, again from all regions.

States have expressed a relatively high degree of interest in the study. A consultation hearing of 15 April was attended by 49 Governments. Before or after that date, 33 Governments utilized the opportunity of providing written submissions that were then used to verify existing information or, whenever possible, to include new references to State practice into the footnotes of the study. Unfortunately, some of the submissions arrived later than my deadline for the submission the report to the editors, 5 May.

No State submissions were ignored. They have all been placed separately on the OHCHR website, and those that arrived by 17 May are also reproduced verbatim in the form of an addendum to the report (see A/HRC/14/46/Add.1).

Submissions received later than 5 May could not be referred to in the footnotes of the actual study. For the record, and after examining all submissions, allow me to list where the countries in question could have been mentioned:

- Algeria under practices 6, 9, 28 and 29;
- Benin under practices 11 and 13;
- Colombia under practices 4 and 5;
- Denmark under practices 9, 13, 22, 25 and 28;
- Ireland under practices 1, 2, 6, 7, 9, 10 and 23;
- Kazakhstan under practices 4 and 23;
- Lebanon under practice 28;
- Malawi under practice 9; and
- the Russian Federation under practice 4.

The submission by the Syrian Arab Republic is a special case. It was submitted well within the deadline but related in substance to the joint study on secret detention, to be discussed tomorrow. I want to acknowledge receipt of that submission and state that the denial of any form of secret detention would in the context of the present study fall under practice 28 or 30.

Mr. President,

I am very much aware of the fact that intelligence services play a critical role in protecting the State and its population against threats to national security, including terrorism. They help to enable States to fulfill their positive obligation to safeguard the human rights of all individuals under their jurisdiction. Hence, effective performance and the protection of human rights can be mutually complementary goals for intelligence services.

The compilation of 35 elements of good practice is distilled from existing and emerging practice from a broad range of States throughout the world. These practices are primarily derived from national laws, institutional models, as well as the jurisprudence and recommendations of national oversight institutions and a number of civil society organizations. The compilation also draws upon international treaties, resolutions of international organizations and the jurisprudence of regional courts. In this context, the notion of 'good practice' refers to legal and institutional frameworks which serve to promote human rights and the respect for the rule of law in the work of intelligence services. 'Good practice' not only refers to what is required by international law, including human rights law, but goes beyond these legally binding obligations.

The fact that many States are mentioned in the footnotes, and some States are mentioned more often than some others, does not represent an intention to rank countries. Even though a country is mentioned in relation to a specific good practice, the report does not make any assertion of its full adherence to an identified good practice. Rather, the law or practice of the country concerned contains elements of the good practice in question - not necessarily all of them. I hope states themselves will use the compilation of good practice in an assessment of their own law and practice, identify the areas of full adherence, of partial adherence and of non-adherence. Thereafter, they would hopefully determine the areas where they wish to adhere with the identified good practices in the future and set benchmarks for getting there.

Mr. President and distinguished delegates, I look forward to a constructive dialogue.