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Statement by Mr. Nils Melzer
SPECIAL RAPPORTEUR ON TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT

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Mr. President, Distinguished Representatives, Observers, Ladies and Gentlemen.

It is with great honor that I address this Council, for the first time, in my capacity as United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. In so doing, I wish to thank the distinguished Representatives and observers of this body for the confidence you have bestowed upon me. I am aware of the great responsibility of my mandate and will be fully committed to carrying it out to the best of my ability and for the benefit of humanity as a whole.

I also wish to salute the dedication and outstanding work accomplished by my predecessors since the establishment of the mandate in 1985. I intend to consolidate and build on their achievements throughout my tenure.

As this is my first statement to the Council, please allow me to use this opportunity to outline my vision and plans for the mandate during my tenure.

Mr. President,

It is impossible to ignore that, despite more than three decades of dedicated work of this mandate, and of countless other international, governmental and non-governmental stakeholders, torture and other cruel, inhuman or degrading treatment or punishment continues to be practiced in most, if not all, parts of the world. In particular, since the turn of the century, the rise of transnational terrorism, organized crime and other actual or perceived threats seems to have given way to an increasing tolerance for violent political narratives and popular beliefs that not only trivialize torture and other forms of ill-treatment but even promote and incite such practice in the name of national security and the fight against terrorism.

My first priority, therefore, will be to unequivocally reaffirm the absolute and universal prohibition of all, and any, forms of torture, and to further clarify the contours and meaning of the terms of “torture” and of “cruel, inhuman and degrading treatment” in light of the evolving international environment.

Furthermore, I will continue some of the thematic work streams initiated by my predecessors, such as the envisaged protocol on non-coercive interviewing and other issues arising in the area of police custody and pre-trial detention.

I very much welcome the proposal put forward by my predecessor Juan Méndez, in his last report to the General Assembly, advocating the development of universal guidelines for investigative interviewing practices. Investigative officers are obliged to respect and protect the inherent dignity and physical and mental integrity of all persons in their power, including suspects, witnesses and victims. Nevertheless, the use of torture and other forms of ill-treatment, coercion and intimidation during custody and interrogation remains persistent. This is so despite the universal and absolute prohibition of such practices, but also despite scientific and historical evidence that coercive interrogation produces unreliable information, false confessions and false accusations of third persons, thus entailing a wide variety of adverse consequences. I am therefore committed to take the work of my predecessor a step further and to contribute actively, in consultation and cooperation with other stakeholders, to the development of a set of universal standards for non-coercive interviewing methods.

Furthermore, procedural safeguards have been developed to prevent the infliction of torture and other cruel, inhuman or degrading treatment or punishment on persons deprived of their liberty who are under the complete control of the detaining

authorities. The full and effective implementation of these safeguards is key to eradicating torture and other forms of ill-treatment in practice. It is therefore my intention to conduct a global survey on how States implement such safeguards, to identify predominant challenges and best practices in this respect, and to encourage States to make the protection of detainees a reality rather than an aspiration.

Mr. President,

Please allow me to present to the Council the thematic priorities I have identified for the first years of my tenure.

My overall goal will be to widen - within the given scope of my mandate - the protection space for victims of torture and cruel, inhuman or degrading treatment or punishment. To that end, I intend to take up a number of issues that have not yet received systematic attention from the international community, such as torture and cruel, inhuman or degrading treatment or punishment occurring in the context of forced migration, in extra-custodial settings and at the hands of non-State actors.

First, on migration-related torture: The alarming increase of forced displacements since 2015 is accompanied by a worldwide tendency to criminalize irregular migration, to deter

applications for asylum and to detain people on the move. In this context, refugees, asylum seekers and other irregular migrants have become more vulnerable to human rights violations, including torture and other forms of ill-treatment. It is therefore my intention to look with particular scrutiny into the risks of torture and other ill-treatment faced by irregular migrants. I will do so in close collaboration with relevant UN mechanisms and agencies to ensure that our findings and recommendations are mutually reinforcing. My work on migration-related torture will be guided, *inter alia*, by the 2016 New York Declaration on Refugees and Migrants, in which the States represented in this very room committed to protect the human rights of all refugees and migrants.

Second, on extra-custodial use of force: In the past, this mandate has focused predominantly on fighting the torture and ill-treatment of persons deprived of their liberty. It has not yet systematically examined the extent to which the use of force by State officials outside the context of detention can come within the purview of the mandate. This question is particularly relevant where State officials resort to unnecessary, disproportionate or otherwise arbitrary or excessive force without, however, directly infringing the right to life. I will therefore aim to clarify how terms such as "torture", "cruel", "inhuman" and "degrading" should be interpreted within the

context of extra-custodial use of force, particularly in view of potential justifications for the use of force, such as arrest, crowd control, and self-defence or defence of others. I will also examine how this subject matter interrelates with the protection of other fundamental rights including the right of peaceful assembly, the freedom of expression and the right to life. Further, I plan to examine the extent to which the use of certain types of weapon, riot-control devices or other means and methods of law enforcement would have to be considered intrinsically cruel, inhuman or degrading in the light of their immediate to long-term consequences.

Third, on non-State actors: So far, steps taken by this mandate to combat torture have almost entirely focused on States agents as potential perpetrators. Yet organized armed groups, private military and security contractors, mercenaries, foreign fighters and other non-State actors are increasingly engaged in conduct that adversely interferes with human rights, including the prohibition of torture and cruel, inhuman or degrading treatment or punishment. For the absolute and non-derogable prohibition of such methods to retain its practical relevance, it must also provide for practical protection against violations on the part of non-State actors. This raises questions, first of all, with regard to the due diligence obligations of States, but also - to a certain extent - with regard to the direct

applicability of the prohibition of torture and cruel, inhuman or degrading treatment or punishment to non-State actors. Indeed, in order to achieve its original purpose, human rights law must protect every human being from violations, whoever the perpetrator may be.

Mr. President,

It is my firm view that there is no better deterrent to torture than a strong national will to combat and prevent such abhorrent practice. In addition to visiting places of detention, therefore, I will use the unique opportunity provided by fact-finding visits to encourage States to take effective legislative, administrative and judicial measures for the prevention of torture.

Since my appointment, I have had the opportunity to conduct my first fact-finding visit, to Turkey, from 28 November to 2 December 2016. I wish to sincerely thank the Government of Turkey for the invitation and for the excellent cooperation extended to me and to my team throughout the visit. I also would like to expressly welcome the unequivocal commitment of the Turkish authorities to a zero-tolerance policy on torture. At the same time, I have expressed serious concern to the Turkish Government about what appears to be a significant

disconnect between official policy and the current reality on the ground. Most notably, the sweeping security measures taken by the Government in response to the failed coup d'état of 15 July 2016 seem to have resulted in a general sense of intimidation and distrust among many segments of the population. This atmosphere of fear, in turn, seems to have prevented not only detained persons and their families but also lawyers, doctors and other members of civil society, and even law enforcement officials, from participating in any procedure that might be perceived as opposing or criticizing the Government including, most notably, complaints of, or investigations into, allegations of torture and other forms of ill-treatment. Also, some of the recently adopted legislation and statutory decrees seem to have created an environment conducive to torture and other forms of ill-treatment. These include the extension of the period of custody without judicial review to 30 days, the extension of the period without access to a lawyer to five days, the denial of confidential exchange between inmates suspected of terrorist crimes and their lawyers, and the introduction of a requirement of authorization for the criminal prosecution of security forces involved in counter-terrorist operations in the south-east. I wish to stress that I fully recognize the Turkish Government's right to protect its citizens and institutions through extraordinary measures, especially in view of the various concurrent crises and the state

of emergency prevailing in the country. I have also expressed my sincere solidarity with all segments of Turkish society in these difficult times. However, I have also reminded the Turkish authorities that expedient access to lawyers and judicial review remain absolutely indispensable for the prevention of torture and other forms of ill-treatment; and I have appealed to the Turkish Government to unequivocally make clear to State officials at all levels that they are expected and, indeed, obliged to investigate all allegations of torture and to bring perpetrators to justice. I will present a full report on this visit to the thirty-seventh session of the Human Rights Council.

Mr. President,

During the reporting period, but prior to my own tenure, my predecessor, Professor Juan Méndez, undertook two country visits, namely to Mauritania from 25 January to 3 February 2016, and to Sri Lanka from 29 April to 7 May 2016.

The report of the former Special Rapporteur on his country visit to Mauritania acknowledged that the Government adopted several important pieces of legislation aiming at eradicating torture and ill-treatment, including the 2015 anti-torture law and the 2015 law establishing a National Preventive Mechanism against Torture, in accordance with the Optional Protocol to the

CAT. The report noted, however, that torture and ill-treatment were still a regular occurrence, in particular in the early stages of arrest and interrogation, often for the purpose of forcing confessions. Juan Méndez also found that conditions of detention often amounted to cruel, inhuman or degrading treatment. Severe overcrowding, inadequate access to health care, insufficient nutrition and water were among the main factors identified as severely affecting the living conditions of inmates. I therefore encourage Mauritania to take steps to implement the very detailed recommendations provided by my predecessor and to fully implement the existing laws and safeguards for the protection from torture and ill-treatment.

My predecessor also conducted a visit to Sri Lanka, jointly with the Special Rapporteur on the independence of judges and lawyers. The report found that while the practice of torture was less prevalent, and the methods used were less severe, than during the conflict, “a culture of torture” nevertheless persisted - particularly in the early stages of arrest and interrogation and against those suspected of being involved in terrorism or other offences against national security. The report further described conditions of detention amounting to cruel, inhuman or degrading treatment, owing to severe overcrowding, insufficient ventilation, excessive heat and humidity, and the denial of adequate access to health care, education and recreational

activities. The report also pointed out that the current legal framework perpetuated the risk of torture and called on Sri Lankan authorities to ensure full compliance with international standards.

My predecessor also prepared a follow-up report to the country visit he conducted in Mexico from 21 April to 2 May 2014. This follow-up report is the result of extensive research, including information received by means of a follow-up questionnaire and replies on the most important recommendations, from the Mexican Government; 54 non-governmental organizations; and 32 National and State Commissions in Mexico. In the report, the former Special Rapporteur expressed his deep regret at having to conclude that torture and ill-treatment in Mexico remain generalized, a situation further exacerbated by prevailing impunity. Mr. Méndez therefore urged the Government of Mexico to implement his recommendations, in particular by ensuring a comprehensive and effective enforcement of the relevant laws, regulations and programs.

Mr. President,

During my tenure, apart from the thematic work I have already outlined, I will continue to give great importance to

country visits, given that they allow for the establishment of a relationship of mutual confidence and trust with individual States, for a proper assessment of the local situation with regard to the risk of torture, and for the formulation of tailor-made recommendations to address possible challenges and shortcomings. Since the beginning of my tenure, I have made several visiting requests, all of which are still pending. I therefore would like to use this opportunity to encourage States to extend invitations for country visits to my mandate, in accordance with resolution 25/13.

Furthermore I consider it an absolute priority for this mandate to continue to transmit urgent appeals and other communications to States on behalf of individuals reported to be at risk of torture and other forms of ill-treatment. This protection tool is unique in that it provides victims and their relatives a prompt and effective means of communication and intervention with the concerned State authorities, irrespective of any formal judicial proceedings. Since I have taken over the mandate, several of my communications have yielded positive results for all those involved and, thus, have helped to protect the concerned individuals from being exposed to the risk of torture. However, I must note with serious concern that the resources allocated to the mandate are no longer sufficient to respond to the ever-growing number of individual and collective

requests for intervention. Today, the lack of resources of this mandate is such that numerous individual cases meriting my intervention either cannot be addressed in a timely manner or cannot be processed at all. I therefore urgently appeal to the Council as a whole, as well as to its members individually, to take every possible measure to allow this mandate to effectively carry out its protective function on behalf of individuals exposed to a real and concrete risk of torture and other forms of ill-treatment.

Mr. President and all here gathered,

Let me conclude with the following observation: The absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment may well constitute the most fundamental achievement in the history of mankind, and any tolerance, complacency or acquiescence concerning such practices, however exceptional and well argued, will inevitably lead down a slippery slope towards complete arbitrariness and brute force, in disgrace for all of humanity.

I am humbled by the noble task and heavy responsibility bestowed upon me as the Special Rapporteur, and I am aware that expectations are high. However, the worldwide battle against torture cannot be won by this mandate alone.

Particularly in these troubled times of global destabilization and increasingly violent political narratives, all of us - States, civil society and international and regional anti-torture mechanisms - must join forces and apply all our strength and determination in reaffirming and enforcing the absolute prohibition of torture and any other forms of cruel, inhuman or degrading treatment or punishment. All of us gathered here today bear the historical responsibility for making this endeavour a success - because failure, truly, is not an option.

I thank you for your attention and look forward to a fruitful dialogue with you.
