Welcome: Ms. Vanessa Drummond, Assistant Project Director at the Anti-Torture Initiative, Center For Human Rights & Humanitarian Law

Ms. Drummond thanked attendees, co-sponsors, and esteemed panelists. She provided background on the issue and the protocol: that despite its absolute prohibition under international law, the use of torture persists -- particularly during the first hours of custody and in the context of questioning by law enforcement. She also explained that former Special Rapporteur on Torture Juan E. Méndez called for the non-coercive interviewing and procedural safeguards in his October 2016 thematic report to the General Assembly to ensure that no person is subjected to torture, ill-treatment, or coercion during an investigative interview. She described that since the release of the report, there has been tremendous interest in the development of the Universal protocol. She then articulated that the protocol envisioned is ethically sound, evidence- and research-based and empirically founded and strives to move away from accusatory, manipulative, and confession-driven techniques, and be based in the principles of the presumption of innocence and the pursuit of truth.

Introductory Remarks: Ambassador Peter Lehmann Nielsen, Deputy Permanent Representative of Denmark to the UN:

Ambassador Lehmann Nielsen stressed the importance of the protocol called for by the former Special Rapporteur and the significance of holding the side event to ensure that progress is made with regard to the protocol’s development. Ambassador Lehmann Nielsen expressed that Denmark is keenly engaged in the process to develop the protocol as part of its overall engagement to combat torture. With Denmark’s election to the Human Rights Council, the protocol will be a priority over the next three years in Geneva as well in NY.

Panel Presentations:

(Moderator) Mr. Andrew Gilmour, Assistant Secretary-General for Human Rights:
Mr. Gilmour stressed the importance of the Universal protocol and how crucial it is to meet for the second year in a row to discuss the status of the protocol and the importance of its adoption by all stakeholders. The protocol highlights how the use of torture is not only ineffective but counterproductive. Additionally, at a time when the human rights movement needs allies, the initiative to develop the Universal protocol is important because it punctures the myth that security and human rights are antithetical.

1. Ms. Rebecca Shaeffer, Senior Legal and Policy Officer at Fair Trials (Americas)
Ms. Shaeffer is a member of the Steering Committee (SC) for the development of the Universal protocol. She gave an update on the status of the protocol, the process that the SC has been undertaking, the rationale for their work, and how they are proceeding to finalize text of the protocol.
She gave a background of the Universal protocol’s purpose to prohibit torture and ill-treatment. Additionally, an elaboration of the Universal protocol’s aims were given: to offer a practical tool to change practices on the ground and make investigations more effective while upholding the rule of law and institutionalizing the provision safeguards during the first hours of arrest. Also, she explained how the Universal protocol helps States in achieving their obligations under the UN Convention against Torture (UNCAT) and other relevant treaties.

Further, she explained how the process of drafting the Universal protocol is proceeding. The SC met in May of this year and drafted a timeline and a decision was made to have an 11-member Drafting Group (DG) made up of two sub-drafting groups: one on investigative interviewing and the other on associated safeguards. Additionally, there is an Advisory Council made up of many experts in the field who will provide support when the DG is faced with challenges. First DG meeting took place in September and discussed key substance and questions to be addressed. First draft of the Universal protocol should be prepared and reviewed in the second SC meeting in December later this year in Tunis.

Meanwhile, advocacy efforts are taking place and will keep taking place, so by the time the universal protocol is published, States are ready to endorse this non-binding but highly authoritative guidelines on the conduct of investigative interviewing and implementation of legal safeguards that is grounded on empirical evidence and scientific research.

2. Mr. Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Mr. Melzer stressed the significant role the Universal protocol will play in the prohibition of torture and other cruel, inhuman, and degrading treatment. He elaborated on the negative consequences that occur from torture and the fact that it has been scientifically proven that it produces unreliable information, counter-productive and leads to instability in societies.

And as we have scientific and empirical evidence that interrogatory coercive investigative techniques do not work, then the Universal protocol should be applicable in all contexts to all persons involved (suspects, victims, and witnesses). He specifically talked about how the Universal protocol can be applied in different contexts and not only in criminal investigations. He mentioned two examples: (1) the armed conflict context and the importance to apply the envisaged protocol under the International Humanitarian Law (IHL) for the fact that prohibition of torture continues to apply in armed conflict, and is considered a jus cogens that is non-derogable under any circumstance, and is considered if committed, a war crime, (2) migration context; irregular migrants face uncertainty and danger, violence, and abuse, and this makes them extremely vulnerable especially when they are being questioned (not necessarily a criminal law based questioning) while being held in administrative detention outside the criminal justice system, where they do not benefit from procedural safeguards and therefore the universal protocol will give guidance and protection in these instances.

As we have certainty that coercive interrogative techniques do not work and also will have alternative investigative methods it will set the standards for states to adopt and implement. Finally, as a member of the AC, he explicitly d his support for this initiative and that it will be an extremely important step in going forward in the prohibition of torture.

3. Dr. Jens Modvig, Chairperson of the Committee against Torture

Mr. Modvig gave the perspective on the Universal protocol from the Committee against Torture. He mentioned that a confession-based investigation is conducive to torture and ill-treatment and it does not require sophisticated tools and high financial investments to move from accusatory interrogations to investigative interviewing methods.

Further, he stressed how the Universal protocol supports States in implementing their obligations under the UNCAT, specifically Articles 11 and 15. Article 11 provides that State Parties must regularly review
their interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing torture. While Article 15 puts an obligation to exclude and dismiss any evidence or a confession taken under duress.

Nonetheless, Mr. Modvig expressed his concern that even with all these international obligations, States still do not comply. The Universal protocol will be a practical tool helping States know precisely how interviews should be conducted. He underlined that once the Universal protocol is finalized, published and endorsed, the Committee will ask State Parties to implement in their Concluding Observations and they will be able to follow up on those recommendations. As it is now, the Committee makes such recommendations but without a practical tool that can guide States on how to implement them.

4. Sir Malcolm Evans, Chairperson of the Subcommittee on Prevention of Torture

Sir Malcolm Evans explained the status quo of confession-based investigations, referring to confessions as being the “queens of proofs”. He then discussed the benefits of having such a highly authoritative guideline; giving a practical approach on how to implement the basic procedural safeguards. He mentions that one of the main reasons this initiative is of high importance is because it reflects a holistic approach and not only aims at showing how legal safeguards should be embedded in the justice system but also strives to change the approach to interviewing that will protect the integrity of the criminal justice system.

From his experience in visiting places of detention as the chairperson of the Subcommittee on Prevention of Torture, he explained how detainees who have been ill-treated and sometimes tortured do not consider themselves as victims of human rights violation as this is what they expected when they were detained. This clearly reflects a lack of faith and integrity in the justice system and addressed that the Universal protocol once endorsed and implemented will improve that as well.

5. Mr. Gisle Kvanvig, Director ASEAN/Vietnam, Norwegian Centre

Mr. Kvanvig discussed his practical experience in working with the police aiming to change the practice of interrogative investigative techniques and he shared some of the key lessons when working with police officials. He mentioned that working with the police on this topic is very much encouraged as it is effective, has low costs on the government and, most importantly, not a sensitive topic to work on.

Further, police officials value the fact that these investigative methods will produce reliable information helping them in the realization of justice. As fair trial guarantees many of the times are mentioned in the domestic legislation it is hardly implemented and the investigative interviewing methods help states in implementing their domestic legal obligations. Further, he highlights that training should be done peer-to-peer and spend extensive time explaining the theory and reasons behind this method.

And as police training is already taking place in all countries around the world, it will not be challenging to convince states to include this curriculum in the police training syllabus. Overall the Universal protocol will assist states in fulfilling their international legal obligations.

Open Discussion

1. Question from journalist about documenting human rights violations taking place against Turkish nationals. Individuals have been tortured repeatedly and subjected to forced confessions, which are used as evidence in trials
   a. Ms. Shaeffer: Universal protocol will apply not only to suspects but also to victims and witnesses, therefore exclusions of evidence and confessions taken under torture from witnesses should be inadmissible.
b. **Mr. Melzer:** from his visit to Turkey, he agrees that post-coup in Turkey, arbitrary detention has increased with high risks of ill-treatment. This protocol will help to demask the real intentions behind coercive interviewing and will help in such circumstances.

c. **Dr. Modvig:** Committee sees the problem with the de facto level and not the de jure level. Accordingly, they are constantly looking for best practices to share with State Parties that it applies in practice and give them examples how it can be applied. He then asks from the DG to make sure having practical examples in the universal protocol and not just having the theory behind the method.

2. **Question about ensuring the implementation of those methods on the ground after training of the police:**
   a. **Mr. Kvanvig:** it is difficult to follow up on the ground what is happening after the training, because governments are not that open to that kind of cooperation. Open and continuous discussions should take place with the government to see how they are doing and making sure that similar stakeholders (e.g., UNODC) are all speaking in the same language to pressure the police to eventually comply and implement on the ground.

3. **Question about applying the universal protocol in armed conflicts**
   a. **Ms. Shaeffer:** it is definitely a challenge we are facing, and we are trying to see how we can include it and make the universal protocol perspective as broad as possible to include all contexts but also as specific and practical as possible, so it can actually be used in the different contexts.
   b. **Mr. Melzer:** yes, it is challenging but we should always reinforce that it has been scientifically proven that torture and coercive methods do not work. Once we mainstream that fact and have people believe it then mindsets will eventually change.

4. **Remark by Mr. Melzer:** the society and justice system should look at the correctional system in a rehabilitative way rather than just a place for incarceration.

5. **Remark by Sir Malcolm:** two comments; (1) not all investigations lead to trial and we should bear that in mind, and (2) it takes time to make a change and have it reflected on the ground and on all stakeholders (police, judges, prosecutors, lawyers…etc.).

**Concluding remarks: Mr. Andrew Gilmour**

Advocacy efforts must be pursued to know how this Universal protocol can be adopted and designing different advocacy strategies to endure endorsement by the different stakeholders.

We need more people on board to persuade countries to fully implement this protocol and we also need more ideas and strategies on how to sell this protocol to people. In a difficulty environment where countries are associating human rights to terrorism and where they are also under attacks by some countries, our approach needs more persuasion than in the past.

As we are moving towards migration compact, the adoption of this protocol could be a giant leap towards fixing other humanitarian problems.