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**Statement by Martin Scheinin**

**SPECIAL RAPPORTEUR ON THE PROMOTION AND  
PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL  
FREEDOMS WHILE COUNTERING TERRORISM**

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Mr. Chairman, distinguished delegates

This is my fifth appearance before the General Assembly as Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.

During the year that has passed since my previous appearance before the Third Committee, there have been promising signs that the pendulum is now swinging back: after a global wave of counter-terrorism measures after 11 September 2001 that all too often ended up violating human rights, many governments are now moving away from such practices. In some countries, there are promising signs of accountability for those who engaged in practices such as torture. Many other countries have announced their definitive rejection of extraordinary rendition, secret detention or other counter-terrorism measures hostile to human rights. In line with the Global Counter-Terrorism Strategy, adopted in 2006 by the General Assembly, there is broad consensus that combating terrorism in compliance with human rights is not only a legal and moral obligation of States but also the most *effective* way to fight against terrorism.

Despite this optimistic note, it falls within my mandate as Special Rapporteur on human rights and counter-terrorism to remain vigilant in respect of continuing or new forms of human rights abuses in the name of countering terrorism. There is still plenty of work to do in this area.

Mr. Chairman,

Since my last appearance before the Third Committee, and as highlighted in the brief activities section of my report, I conducted in April a country visit to Egypt. It is remarkable that this country which in many respects is a regional leader and important global actor is opening itself to the special procedures of the Human Rights Council, and that despite the highly sensitive nature of my own mandate, I had the privilege to be among the first to undertake a country mission. The April visit consisted of meetings with authorities and civil society actors and focused on the commitment by Egypt to replace the long-lasting state of emergency with a proper counter-terrorism law. While I would have wanted to complete the mission through what I call "part two" of the mission, a new trip to visit places of detention in accordance with the standard terms of reference of the special procedures, I do appreciate the frankness of the high-level discussions we had with various administrative, judicial and legislative authorities. An advance edited version of my mission report, submitted in early October for presentation at the next session of the Human Rights Council is now in the public domain. I am looking forward to continued constructive

engagement with the Government of Egypt, and I reiterate the wish to return to the country in the near future for the purpose of visiting places of detention and observing terrorism trials. This will hopefully happen already prior to the consideration by the Human Rights Council of my mission report.

With regrets, some weeks ago I had to amend my proposal of visiting Tunisia in mid-December. Since 2008, I have had constructive preparatory discussions with the diplomatic representatives of this country, which similarly to Egypt, is a regional leader in counter-terrorism policy. Unfortunately, time was getting too short for designing the program of the visit, and for that reason I have now proposed a one-month timeout and anticipate visiting the country in January.

In 2010, I also plan to visit Peru and Chile. My requests for country visits remain pending in respect of Algeria, Malaysia, Pakistan, the Philippines and Thailand. I welcome the invitation extended by the Government of Iceland in March 2009. With the Russian Federation, I hope soon to engage in a consultative process in preparation of other forms of cooperation.

Mr. Chairman,

When renewing the Special Rapporteur's mandate with which I am entrusted, the Human Rights Council, in December 2007, requested the mandate holder to integrate a gender perspective into his or her work (HRC Resolution 6/28). Both before and after being so requested, I have in fact addressed gender issues in my reports. For instance:

- In my report on a mission to Israel, including visits to the occupied Palestinian territory (OPT), I addressed particular forms of hardship experienced by Palestinian women, including those giving birth, because of the construction of the wall or barrier by Israel into the OPT;
- In my report on a mission to the United States, as well as in a thematic report on counter-terrorism measures and refugee law, I dealt with the question how tightening border controls affect female asylum-seekers, including terrorism victims who may be denied asylum for providing "material support" to terrorists, even at gunpoint;
- In a thematic report on terrorist profiling and suicide terrorism I drew attention to the risk that women fall victims of such profiling, both because of being forced or recruited to become suicide bombers to escape the profile, and because of States targeting, for instance, pregnant women as suspected suicide bombers; and
- In a thematic report on the relationship between economic, social and cultural rights and counter-terrorism measures, one of the

recommendations urged that attention be paid systematically to the rights of women and gender issues by securing the effective enjoyment of ESCR rights as part of a sustainable long-term strategy for the prevention of terrorism.

Despite this earlier piecemeal work, I felt it was pertinent to devote one of my thematic reports to a comprehensive assessment of the gender impact of counter-terrorism measures. As is reflected in paragraph 9 of the current report, in March of this year I convened an expert consultation here in New York to assist me in the preparation of the report. Three universities deserve credit for helping me to deliver the report: my employer, the European University Institute in Florence, my previous home base, Åbo Akademi University in Finland, and New York University which hosted the consultation and offered me the research assistance by a highly competent team composed of Jayne Huckerby, Lama Fakih, Margaret Satterthwaite, Amrita Kapur and Kabaye Liku.

I am conscious of the fact that the report exceeds many expectations by taking the issue of gender beyond focusing merely on human rights of women. The bulk of the report deals with the effect of counter-terrorism measures upon women's rights but I am also addressing questions such as how sexual minorities including gays, lesbians and transgender persons face particular hardship due to either insensitive or maliciously targeted counter-terrorism measures, and how the interrogation of male terrorism suspects alarmingly often makes use of torture methods that utilize sexuality, including through rape, forced homosexuality and humiliation related to homophobic fears.

The report in front of you includes (at para. 53) not less than seventeen recommendations to Member States. In order to indicate more the range of those recommendations than any real priorities, let me mention just five:

- States should give attention to gender-sensitive reparation schemes for victims of terrorism, as women undergo specific forms of abuse by terrorist groups (d);
- States must stop detaining and ill-treating women and children to produce information on male family members suspected of terrorism (g);
- Torture and other inhuman treatment must be prevented, investigated and punished, also when it happens in the name of countering terrorism and targets persons for their sexual orientation or gender identity, or utilizes homophobia in the selection of torture methods (l);
- Victims of gender-based persecution should be granted entry and asylum in other countries, and them falling victims to abuse by terrorist groups

should never be treated as "material support" to terrorism resulting in exclusion (p); and

- Gender diversity, including the different experiences of men and women, as well as of persons belonging to sexual minorities, should be seen as a resource in the fight against terrorism, contributing to a design of counter-terrorism measures that is both in compliance with human rights and most effective in combating terrorism (q).

The report ends with four specific recommendations addressed to United Nations bodies:

- that relevant special procedures and other mechanisms of the Human Rights Council and the human rights treaty bodies give attention to gender and counter-terrorism;
- that, in particular, CEDAW, the Committee on the Elimination of Discrimination against Women incorporate the specific question of the impact of counter-terrorism on women in its examination of State reports and other work;
- that the Security Council's Counter-Terrorism Committee, the Counter-Terrorism Executive Directorate and the Counter-Terrorism Implementation Task Force take explicit account of gender as a relevant human rights concern; and
- that the Security Council and its subsidiary bodies continue the process of reforming the regime for listing individuals and entities as terrorist ones, and include a gender assessment in that review.

Mr. Chairman,

Let me finish with some reflections on the last-mentioned issue and go beyond the gender dimension of it. In my earlier reports and interactions, I have addressed the issue of listing and delisting of Al Qaida and Taliban terrorists by the 1267 Sanctions Committee of the Security Council. During this week in New York, I hope to continue pursuing this matter. I want to acknowledge that there have been many positive developments in the listing regime, including through Security Council resolution 1822 and the reform of the Committee's Guidelines as a consequence. However, these piecemeal improvements have not remedied the main shortcomings of the 1267 listing procedure.

Decisions are taken by a political body composed of diplomatic representatives of the fifteen Member States of the Security Council. States do not necessarily disclose the real reasons for a listing proposal even to each other but may use vague references to "existing" intelligence information. There is no judicial or

other independent review of the listing and delisting decisions by the 1267 Committee. Instead, all forms of review are in the hands of one and the same Committee. On top of all this, the delisting of an individual requires a consensus decision by the 1267 Committee.

For all these reasons, the terrorist listing procedure of the 1267 Committee fails to meet the requirements of a 'fair and clear procedure', a notion used to describe the level of procedural guarantees that one can expect an intergovernmental organization to deliver, not to mention full compliance with the right to a fair trial, as would be required if a State were to impose criminal sanctions.

A year ago, the Human Rights Committee concluded in the case of *Sayadi and Vinck* that Belgium had violated Articles 17 (right to privacy) and 12 (freedom of movement) of the Covenant on Civil and Political Rights in respect of a Belgian couple, because it had initiated their listing as terrorists by the 1267 Committee, and was subsequently unable to have them delisted even though no case had been proven against them. In July of this year, the 1267 Committee finally removed the couple from its list. This decision by the 1267 Committee is indicative of a broader acknowledgment that there is a need for judicial or other independent review of terrorist listing. Although Belgium was unable to reach a delisting decision earlier, it managed to obtain consensus within the 1267 Committee after the Human Rights Committee's Final Views. The decision to delist these individuals can be seen as a recognition of the Human Rights Committee's possibility to conduct indirect United Nations level quasi-judicial review over the consequences of the listing by the Security Council, as long as a State that has ratified the Optional Protocol to the ICCPR can be shown to have had a strong enough role in initiating (or implementing) the listing.

Mr. Chairman,

As a final word, let me commend the General Assembly for its resolution 63/185 which urges states 'while ensuring full compliance with their international obligations', to include 'adequate human rights guarantees' in their national procedures for the listing of terrorist individuals and entities. This statement should be seen as an appeal to States to implement sanctions against persons listed by the Security Council, not blindly, but subject to adequate human rights guarantees.

Mr. Chairman, I look forward to a constructive dialogue with the Delegates.