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ICJ Intervention in the Interactive Dialogue on the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/10/3)

12 March 2009

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Distinguished Special Rapporteur,

The ICJ welcomes attention in your annual report to the role of intelligence in countering terrorism and call on Governments to follow your recommendations in this regard. The ICJ's Eminent Jurists Panel on Counter-Terrorism and Human Rights also concluded that increased powers of intelligence services in countering terrorism, often without sufficient accountability mechanisms, have led to serious human rights violations and pervasive impunity of their perpetrators.

Many human rights violations, committed in the context of countering terrorism, some of which constitute crimes under international law, have been shrouded in a culture of secrecy through the operations of intelligence services. Some of the laws and policies underpinning these practices,, including the "state secrecy" doctrine, have served to deprive victims of their right to an effective remedy and reparation and must be reviewed and repudiated.

Mr. Rapporteur, can you elaborate further on the criteria to distinguish between legitimate and illegitimate means by which state officials may protect information which they purport must be kept secret for reasons of national security?

Governments should also enhance regulatory frameworks governing cooperation among intelligence services. It is particularly vital to remove provisions for immunity, indemnity clauses, and limitation to access to courts, and to provide effective safeguards against complicity in human rights violations as a result of intelligence cooperation.

Mr. Rapporteur, how should the Council proceed on your suggestion to elaborate guidelines in this regard?

It is essential that criminal justice system remains the principal legal tool to counter terrorism. It must not be eroded through the use of intelligence-based legal proceedings, which typically do not provide for essential due process guarantees nor through preventive administrative measures, such as deportation, control orders, listings of individuals or organizations, which have frequently amounted to *de facto* punishment.

In light of the EJP' findings, the ICJ calls on the Council to develop a detailed plan of action and bolster systematic follow-up to the recommendations of the UN Special Rapporteur on protecting human rights while countering terrorism. Given the continuing challenge to the human rights framework and the seriousness of a threat of terrorism, the ICJ also urges the Council to convene a Special Session on the protection of human rights in countering terrorism. Now is the time for the Council to take a leadership role and assist Governments in taking stock and implementing necessary remedial actions.

I thank you.
