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Panel 2: How Are Laws Applied and Detention Practices Reformed? Introductory Remarks and Presentation of Panelists

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PANEL 2: HOW ARE LAWS APPLIED AND DETENTION PRACTICES REFORMED?

Introductory Remarks and Presentation of Panelists

*Remarks of João Nataf **

GOOD MORNING. I HOPE YOU HAD A NICE COFFEE BREAK. My name is João Nataf, and I am currently the interim secretary of the United Nations Committee Against Torture. I would like to say that if Professor Rick Wilson and Ambassador Luis Gallegos said they have one boss here, I am in a much worse situation because I have three bosses here, and I will have an additional one in the afternoon session. So, I have to be extremely careful. First of all, I want to thank the Washington College of Law for organizing this conference now. I think it was exactly the right moment.

As we are running on time, due to Professor Rick Wilson's extreme professionalism in dealing with the scheduled time, I don't want to start too late, in order to be blamed for not managing the time as well as he did. Thus, I will just make a brief introduction of the second panel, which will be dealing with "how laws are applied and detention practices reformed." This gives us the opportunity to discuss the second pillar of the structure aiming at combating and preventing torture, which is the practical implementation of the legal framework (first panel) discussed previously this morning. This second panel will consider the law in action, the everyday practice of the prevention of torture.

In this regard, I would like to mention that the Committee Against Torture (CAT) has always stressed the importance to receive information from the States parties, when submitting their reports on the implementation of the Convention against Torture, about the effective measures that are taken at the domestic level.

In 2007, the Committee adopted a general comment on Article 2 of the Convention on the effective measures States parties have to take in order to implement preventive measures at the national level. Article 2 of the Convention establishes the States parties have to "take effective legislative, administrative, judicial or other measures to prevent acts of torture." The Committee has always stressed the importance of having such practical information with regards to the implementation of its provisions. That is why statistics are extremely important to know, for instance, if the principle of non-discrimination is applied, as discrimination is an element of the definition of Torture under the Convention, like it is also for the Committee

on the Elimination of Racial Discrimination, an older Committee than CAT, which also requires such information for the prevention of racial discrimination. Through statistics, we note that discrimination is still an important factor, within certain countries, why persons belonging to certain ethnic minorities are more subject to acts of torture than other citizens.

Ambassador Gallegos mentioned earlier the fact that in order to assess what is the situation – the effective and practical situation – of the implementation of the provisions of the Convention in a State, States parties must submit their reports to CAT, the monitoring body for the Convention. Currently there are approximately 20 reports pending consideration before the Committee. The Committee will consider seven reports next May, and then there will be 14 additional reports to be reviewed. However, the backlog of the number of reports before the Committee has been diminishing since the last four or five years, which is a rather strange situation as the Committee was expecting that the backlog of reports would actually be augmenting. So, it is interesting to reflect on why suddenly States are not reporting, as it is their obligation every four year under the Convention, to the Committee. I think that this is not a good sign and says much about the fulfillment, or not, of their conventional obligations.

The Committee, considering that this new circumstance does not permit that it assesses the situation of the implementation of the Convention in the countries, has initiated two mechanisms in order to collect this information. The first one, which we'll address this afternoon by a speaker on panel 3, is the follow up procedure. This procedure, initiated after the states' reports are analyzed and considered by the Committee, allows the Committee to request additional information to the State party. The second one is the possibility that the Committee has to solicit a report from the States. There are numerous countries that have never reported to the Committee. At present, there are 38 states parties that have never presented their initial reports to the Committee, and there are several others that have not reported to the Committee in the past 10 years.

In order to address this problem, the Committee has adopted a procedure, a "new optional reporting procedure," using the terminology of the Committee. The Committee will not sit and wait for the reports to be provided but could actually prepare lists of questions, called "list of issues," that will be sent to State parties in advance of the submission of their report. Non-reporting States will reply to this list of questions, and the replies provided will be considered as the report presented to

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the Committee. This is a way that the Committee has used – in a very proactive manner – to start to look for information when countries do not want to provide it, in certain cases for more than 18 years. Thus, the Committee is able to assess with such mechanisms, the implementation of the Conventions provision in the country.

However, I think that now we want to hear our panelists, as time is running. Just before introducing them, they will be speaking on “torture litigation,” “advocacy against torture,” “interrogation practices,” and “the role of the media,” I would like to mention some possible elements on the assessment of effective implementation of legal provisions, which the Committee systematically mentions in its concluding observations, to show its preoccupation about effective implementation.

First of all, the importance of having effective fundamental legal safeguards in practice: (1) all detained person must be registered from the moment of apprehension; (2) detainees must have the right to receive independent legal assistance as well as medical assistance; (3) that they are informed of their rights; (4) that they can contact a relative from the outset of apprehension; and (5) that there are independent and impartial mechanisms to monitor and review their detention.

A second element is the importance of nondiscrimination. Certain minorities and marginalized individuals and groups are especially at risk of torture. Without information on those persons, without statistics on who is detained, from which group of the population detainees belong, what are their effective pre-trial detention period, etc. It is difficult to assess the practical and effective implementation of the law.

A third one is the gender factor. Too often issues involving gender are not specifically considered with regard to torture and ill-treatment. The Committee has stressed that States parties have to provide detailed information on the situation of men and women during detention and imprisonment after trial, in

order to assess how the law is applied. The same logic applies to juveniles.

And finally, another issue that is extremely important and that the Committee always stresses, even if states are not keen on providing this information, is training. Training and education regarding law enforcement personnel, but also specific training with regard to medical personnel. A speaker will actually be addressing this issue during the afternoon.

Without any further delay, I want to quickly present the panelists by just mentioning their most important feature. First of all, Steven Watt has been a Senior Attorney with the American Civil Liberties Union specialized in litigation before the federal courts and international tribunals. He conducted well-known cases such as *Khalid al-Masri v. Tenet* and *Ali v. Rumsfeld*. He also worked for the Center for Constitutional Rights where he focused on post-911 legislation, including the case *Rasul v. Bush*.

Afterwards, James Ross will be addressing advocacy and campaigning against torture. He is the Legal and Policy Director of Human Rights Watch. He has worked with the Organization for Security and Co-operation in Europe in Bosnia and for the International Human Rights Law groups in Cambodia.

After him, Eugene Fidell will speak about reforming interrogation practices. He began teaching law at Yale Law School in 1993, and was appointed Florence Rogatz Visiting Lecturer in 2008. He is the President of the National Institute of Military Justice, and a member of the ABA task force on treatment of enemy combatants.

Finally, David Danzig, will address public perceptions and the role of the media. He is the Primetime Torture Project Director at Human Rights First. He works closely with several military officials in order to level up and create additional tools to make sure that junior soldiers know that real life is not what you see on television.

Without further delay, I will give the floor to Steven Watt.

Thank you.

HRB



Courtesy of Rick Reinhard

From left: Steven Watt, James Ross, and Eugene Fidell