

Report of the Discussion of the Scheinin report on gender aspects in Human Rights and countering terrorism

UN Third Committee, October 26, 2009

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The house was pretty packed, about 80-90% of delegates are present, and many delegations had two people present.

The initial input of Martin Scheinin, are contained in an independent pdf document.

Here is a quick summary of the discussion, which followed after Scheinin's initial input:

Tanzania on behalf of the African Group: The recent report is an attempt to introduce conflicting notions. It is a departure from code of conduct, and an expansion of the mandate of the Special Rapporteur. The integration of a gender dimension in the work is one thing, but this is another. A request to the Human Rights Council should have been made to deliver this report in New York, as not to bypass the mandate that has been granted. Tanzania/the African Group is alarmed at putting women on par with homosexuality. The approach serves to undermine the whole Special Rapporteur system. Scheinin paid total disregard to the respect for acceptable sources. He exceeded the mandate in citing the Yogyakarta Principles, which undermines independent nature of his mandate. Tanzania expressed profound disappointment at the breach of trust confided in him.

St. Lucia: Underscores their commitment to the Universal Declaration of Human Rights, but opposes of the Special Rapporteur's personal ideas of what a gender perspective means. Generally defined, gender perspective means to St. Lucia the opposition between men and women, nothing else. A reality of the social order of male/female does not include sexual orientation or gender identity. This is the general understanding of the member states and UN structures. The reference to the Yogyakarta Principles is inappropriate, as they are not evidence-based standards. The Special Rapporteur thus exceeded his mandate. The right not to be discriminated falls outside of Special Rapporteur's mandate. Addressing sexual orientation and gender identity issues goes at cost of addressing the effects of counter-terrorism measures on women. St. Lucia submits a request for real guidance on counter terrorism from a gender perspective.

Malaysia on behalf of the Organization of Islamic Conference: Supports the Special Procedures, and places great weight on impartiality etc. The Special Rapporteur however redefines the notion of gender, far away from the intent of the member states. He introduces principles (meaning Yogyakarta Principles) that are not recognized by the majority of member states. The Special Rapporteur does not respect objectivity. The report does not take into account facts in a timely manner (not quite sure what they meant by this). Malaysia recognizes the principle of independence of the Special Procedures. The discussion takes away from work of the Special Procedures. The OIC express regret at contents of report, and ask that the Special Rapporteur respect the code of conduct.

Sudan on behalf of the Arab Group: Welcomes in general the dialogue with the Special Rapporteur, which enriches questions of Human Rights in candor and transparency. The Arab Group rejects terrorism in all forms. The Arab Group has appreciated previous reports of Scheinin's. The Arab states support the work of the Special Rapporteur within the limits of his mandate. This report however represents a clear departure from the mandate. It draws members into a debate on controversial concepts, and submits a distorted view of existing legislation in talking about 'sexual desires and whimsies'. There is no agreement on these concepts to begin with, so no discussion is possible. The Special Rapporteur departs explicitly from the limits of his mandate. The bulk of the Special Rapporteur's report should not focus on gender, as other aspects of counter-terrorism & human rights are important. The sources cited are not reliable. The Special Rapporteur violates the code of conduct. The Yogyakarta Principles enjoy no international recognition, and are thus imprudent to cite. Sudan

supports the independence of the Special Rapporteur, but expresses profound regret at approach of the Special Rapporteur, and reminds all Special Rapporteur's to keep to their limits, in order to guarantee independency of all Special Rapporteur's.

USA: Pleased to have the Special Rapporteur shed light on issues which are often not addressed and welcomes the highlight on women and LGBT people. The USA are concerned that issues are overlooked, because of a provocative interpretation of gender. The USA stress that, as agreed in Beijing, the concept of gender in the 'ordinarily, generally accepted' form is the one utilized by the USA. The independence of the Special Rapporteur is important. Poses question: 'How should governments go about counter-terrorism while not repeating stereotypes?'

Holy Sea: Terrorism undermines the understanding between people, and violations must be addressed. The Holy Sea is concerned with the presumption that gender is a social construct, the Holy Sea sticks to its ordinary usage. However, the delegation rejects a biologicistic view that male and female are fixed, but thinks that diversity is not indefinite either. Men and women are complementary. Focusing on gender ultimately divides men and women, instead of looking at value and dignity of the person.

Australia: Welcomes the report. The main part of the input is about financing of NGOs and the accountability of grassroots organizations, as discussed in the report. Australia also talks about the increased scrutiny of travel documents, which affect transgender persons. Australian trans persons can apply for a variety of passports, regardless of their birth or citizenship records, and welcomes other suggestions on how to deal with the issue.

Sweden on behalf of EU: thanks the Special Rapporteur for his presence and the presentation of report. Also talks about the funding issues for NGOs. Sweden asks the Special Rapporteur to elaborate on the work of the Task Force? The EU is a strong supporter of the mandate holders' independence. Mandate holders have to decide within their terms of mandate on their own issues and focus. Mandate holders cannot be criticized on the terms of their mandate every time they put out a report. The EU believes that any discrimination violates individual's rights and freedoms, including on the grounds of sexual orientation and gender identity. An evaluation of the effects of counter-terrorism measurements on any group falls within mandate of the Special Rapporteur. The Special Procedures must be able to conduct their work independently and free from pressure or outside interference.

Argentina: The report gives much food for thought. The human rights of all people, regardless of gender or gender identity must be respected. Argentina agrees with the Special Rapporteur's analysis of the effect of disappearances of the head of household on women. Argentina is concerned at some countries' overbroad definition of terrorism.

Palestine: associates with Sudan's statement and thanks the Special Rapporteur for the report and his statement. Palestine would like to express its appreciation and thanks for the visit to the occupied territories, and reporting on the hardship which is experienced by Palestinian women. Many reports to the UN, including from NGOs, highlight women's and children's issues in Palestine. Concrete measures have to be taken to put end to the suffering of Palestine women & children. Israel thinks it is above the law.

Finland: aligns itself with EU statement and fully supports the report, and the way the report addresses issues in a multi-faceted manner. Finland asks the Special Rapporteur to address indigenous people's rights? On the issue of women's human rights defenders as targets, Finland wants to know marginalization can be better avoided in this field? Finland does not mention sexual orientation and gender identity in their intervention.

Switzerland: As a special statement of procedures, Switzerland stresses that the independence is one of the most important keys to the work of the Special Rapporteur, and must be preserved. Self-regulation is crucial in this regard. The standards are those set forth in the mandate, and the code of conduct. Switzerland cannot agree to the attacks on the Special Rapporteur, and attacks on the mandate of the Special Procedures.

Uruguay: Fully support the mandate, were not expecting to be discussing counter-terrorism in its impact on LGBT individuals, but it is an issue, and regrettably we missed an opportunity to discuss women's issues, just because it is controversial.

Canada: supports the independence and impartiality of the Special Procedures. Wants to know what actions can be taken to integrate gender perspective in rules and procedures at member states level?

Netherlands: aligns to itself to the EU statement. The report addresses serious issues, which affects an already vulnerable group (LGBT people); no exception from the universality of human rights for LGBT people can be made. Awareness of LGBT issues, including in counter-terrorism issues, remains important and should be addressed in reports like this. The choice should be the Special Rapporteur's.

UK: supports the EU statement. The UK defends resolutely the independence of the Special Rapporteur, and their decision to focus on a special issue. He legitimately brought to view the issues that intersect with his mandate. The Special Rapporteur is right to address issues that should not be ignored. The UK stresses the universality of human rights, including the human rights of women and LGBT people.

India: unfortunately the Special Rapporteur has redefined the concept of gender, taking away from the focus on the gender impact on women. The Special Rapporteur's focus is misguided, academic in nature, and not in compliance with the code of conduct. The report makes a broad statement on issues already addressed by other UN bodies.

Mexico: promoted the creation of this Special Rapporteur, stresses the independence of the Special Procedures and says generally nothing positive or negative about the report.

Chile: The independence of the Special Rapporteur must be supported. An exclusion of LGBT people creates second class citizens. Would like to know about co-operation of the Special Rapporteur with regional organizations?

Norway: expresses full support to Special Rapporteur and this report, and welcomes the expansion of the gender definition. Norway stresses the universality of human rights, regardless of sexual orientation and gender identity. Special Procedures must be independent and non-political, and must be able to keep autonomy and independence.

Cuba: condemns all sorts of terrorist acts, torture, inhuman punishment etc. Cuba also condemns all sorts of discrimination in combat of terrorism. They encourage the Special Rapporteur to take into account all comments, and the independence enshrined in the code of conduct. Cuba encourages the Special Rapporteur to focus on rehabilitation, compensation and reparation to victims of terrorism and victims of counter-terrorism measurements in his next report. Cuba highlights the torture of victims by the USA.

Scheinin: Welcomes Cuba's proposal. Scheinin stresses that a full agreement on the notion of gender would be great, but it is not bad to discuss openly the different views on gender in this setting. As for the Code of Conduct: a procedure is in place, and the Special Rapporteur is accountable to the Human Rights Council. Many provisions in code of conduct do not take into account the issue of thematic reports. As for the use of sources: the Yogyakarta Principles is introduced as comparison and as a soft-law document, which enriches the discussion on human rights legislation. The Human Rights Council has to be the recipient of report, yet a presentation in New York is prudent, which is also highlighted by the questions received.

As to the notion of gender: gender refers to persons of male and female sex in their social context. The context differs from time to time and place to place. Sexual orientation and gender identity does not take away from the focus on women. Gender is richer than just women, and also relates to women who breach gender roles in one way or another.

Sexual orientation and gender identity have been addressed several times by UN treaty bodies; they fall under sex or 'other' status. Many UN documents acknowledge that gender is not a static status. In relation to male persons, gender-based violence usually has nothing to do with their own gender role, but it uses male stereotypes, and (homo-) phobias associated with manhood. Scheinin appreciates the comment by the Holy See, to look at the person, irrespective of gender, gender identity or sexual orientation.

As to NGO funding: Scheinin envisions moderating agencies, which manage micro-projects. He notes that governments are streamlining development operations into larger structures which have positive and negative effects, which need to be assessed.

As to further measures to support transgender persons crossing borders: Apart from Australia's solution, sensitivity in the use and application of security technologies needs to be applied, which are often indifferent to men/women. The enhancement of privacy protections is important.

Joint mission and joint identification of best practice and technical reference tools will be a way to introduce gender assessment in counter-terrorism measures.

In answering Palestine, Scheinin refers back to his 2007 report.

Indigenous people have been caught between government and terrorist groups in the past. The empowerment of women is an important way to counter this.

Statement Count:

6 Negative:

Tanzania/African Group
St. Lucia
Malaysia/OIC
Sudan/Arab Group
Palestine
India

4 Vague or erring on the side of positive:

Mexico
USA
Holy Sea
Cuba?

4 Indirectly Supportive of LGBT Rights

Argentina
Finland
Switzerland
Canada

7 Outright supportive

Australia
EU
Uruguay
Netherlands
UK
Chile
Norway

Supportive total: 8 WEOG and 3 GRULAC