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Statement by Mr. Nils Melzer

**SPECIAL RAPPORTEUR ON TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT**

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**Mr. President, Distinguished Representatives, Observers,
Ladies and Gentlemen,**

At the outset, I would like to briefly update you on the main activities of my mandate since my last address to this Council in March 2017.

Urgent Appeals:

Throughout the year, my mandate transmitted 152 communications on behalf of individuals exposed to torture or other ill-treatment. I am happy to report that, in some cases, these letters have yielded positive results for the victims. However, in view of the great number of requests submitted to my office, the beneficiaries of my mandate would greatly benefit if an additional staff member could be assigned to it. I therefore reiterate my appeal to this Council to ensure that my mandate is appropriately staffed.

Country visits:

Regarding country visits, I wish to thank the Governments of Argentina, Serbia and Kosovo¹, Libya, Spain and Ukraine for inviting my mandate to conduct an official visit to their countries.

¹ All references to Kosovo are to be understood in compliance with UN Security Council Resolution 1244 (1999) and are without prejudice to the status of Kosovo.

I regret to say that, based on my personal assessment of the security situation at the time of the envisaged visit, I decided to cancel my visit to Libya. I hope there will be opportunities to carry it out in the future.

From 13 – 24 November 2017, my team and I visited Serbia and Kosovo. I am very pleased to report that, by and large, the prison systems in Serbia and Kosovo appear to be free from ill-treatment and that great investments have been and continue to be made on both sides towards significantly improving the conditions of detention. I note with grave concern, however, that I have received numerous allegations of inefficient legal proceedings and unnecessary or excessive pre-trial detention, and of frequent ill-treatment during the initial police interrogation, most notably as a means of coercing confessions for offences related to narcotics, terrorism and organized crime. My preliminary observations on this visit have already been published, and I will present my detailed findings and recommendations to this Council in March 2019.

From 28 November to 2 December 2016, I conducted an official visit to Turkey. In my report, I welcomed the commitment of the Turkish authorities to a zero-tolerance policy on torture. At the same time, I expressed serious concern about what appears to be a significant disconnect between official policy and the reality on the ground.

During my visit, I received numerous consistent allegations according to which torture and ill-treatment of suspected supporters of the coup was widespread in the immediate aftermath of the coup, but then largely ceased a few weeks later, once detainees had arrived in the regular prison system. Unfortunately, since the end of my visit, and particularly in the past few months, the number of allegations submitted to my office regarding ill-treatment suffered by suspected supporters of the coup in Turkish custody has been on the rise again, allegedly with the aim of forcing confessions that might justify previous mass arrests. I also note with great concern that, according to allegations transmitted to me, torture and ill-treatment has remained a constant part of initial custody and interrogation occurring in relation to the violence in the South-East of the country. While fully acknowledging that Turkey faces complex security challenges on several levels, I have recently shared my serious concerns directly with the Turkish Government and remain open to a constructive dialogue in this respect.

Thematic report - Migration-related torture and ill-treatment:

In order to prepare my thematic report, I have conducted worldwide expert consultations on the prevalence of torture and other abuse in the context of irregular migration. In fact, my

observations here cannot even begin to do justice to the sheer scale of suffering and abuse inflicted on these people every day in all corners of this world.

According to a recent study, depending on the context, the confirmed prevalence of torture victims among irregular migrants ranges up to 76%, with the overall average being 27%. Even when discounting widespread underreporting and focusing exclusively on recognized refugees and asylum seekers, this extrapolates to a staggering 7 million victims of torture - and my fear is that this number may represent but the proverbial "tip of the iceberg".

Most importantly, however, all of this is not some sort of natural disaster that came upon us without our contribution, but it is a man-made and state-sponsored tragedy of epic proportions happening right before our eyes. While it is true that countless armed groups, smugglers, traffickers and other organized criminals and private actors seek to exploit and perpetuate this tragedy for personal gain, the truth is that none of this could happen on any significant scale without the active or tacit participation, support, consent, complacency, or acquiescence of States.

And there is not one State in this world, which does not bear its share of the responsibility. For it is States who are unable or unwilling to prevent or alleviate conflict, organized crime,

corruption, environmental degradation and poverty both at home and abroad, thus causing millions to seek safety and better lives elsewhere. And it is States who permit the exportation of weapons to regimes known for their deplorable human rights record. It is States who tolerate or even encourage the unfair and excessive exploitation of human and natural resources in other countries for the benefit of their own businesses and populations at home. And it is States who make agreements with other States or with private actors to prevent migrants from arriving at their borders and keeping them back in situations that can only be described as death-traps. Last but not least, it is States who create cruel, inhuman and degrading reception conditions, including systematic and indefinite detention, that are deliberately designed for no other purpose than to scare migrants away.

Mr. President,

This year, we are celebrating the 70th anniversary of the Universal Declaration of Human Rights, this towering instrument which arose from the ashes of World War II, one of the darkest chapters in human history, epitomized not only in the monstrosities of Auschwitz, Dresden and Hiroshima, but also in the merciless rape, enslavement, internment, and murder of millions of nameless civilians, and in heartless border-closures

and deportations, exposing the most vulnerable to certain death for mere political expediency.

Seven decades ago, the Universal Declaration warned that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind". It proclaimed the advent of a world marked by the "freedom from fear and want", and it stressed that "the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the very foundation of freedom, justice and peace in the world".

Today, we prepare to celebrate the 70th anniversary of this text, which like no other stands for the triumph of human dignity and the rule of law over barbarism and inhumanity, yet we turn a blind eye on the suffering of millions, we deliberately deter or prevent migrants from seeking protection at our borders and we deny them their most fundamental right to a fair and individualized proceeding. The truth is that, every day, our current "disregard and contempt for human rights" continues to result in "barbarous acts" that gravely undermine "the foundation of freedom, justice and peace in the world" and that - one day - will again "outrage the conscience of mankind".

So please forgive my bluntness but, as long as the global tragedy of irregular migration is allowed to continue and gain momentum, there really is no reason for anyone to celebrate. As long as

States still argue over petty issues of jurisdiction, refugee quotas, and extra-territorial applicability of human rights, as long as States still profess to be "rescuing" migrants from drowning in the sea by deliberately preventing them from escaping slavery and murder on land, as long as States still claim that "deterrence" can be a legitimate basis for any migration policy, or try to circumvent non-refoulement obligations by resort to diplomatic assurances that can be neither monitored nor enforced, and as long as governments still grant impunity to perpetrators and policy makers responsible for widespread or systematic torture and ill-treatment, one can only wonder what, if anything, has been achieved in the last seven decades.

Mr. President,

If there is one thing that every single migrant has in common with all of us here, it is that they, like us, are members of the human family, with their own dreams, hopes, fears and aspirations. As humans, they have the very same "inherent dignity" and the very same "equal and inalienable rights" as we do. And they have these rights not because of their nationality, fortune, or character or education, but because of their humanity. It is because these rights are not earned, that they also can never be lost, but are "inherent". And it is because these rights are inherent in our humanity, that they are "human" rights. Most importantly, however, migrants have these rights not as a matter of pity,

policy or politeness, but they have these rights as a matter of law.

Mr President,

Based on the observations and considerations reflected in my report, and on broad stakeholder consultations, I have come to the following main conclusions to the best of my personal judgment and conviction:

- 1) In the recent past, widespread and increasingly systematic human rights violations committed against migrants by State officials, criminals and private citizens have not only grown into a major global governance challenge, but have become one of the greatest human tragedies of our time.
- 2) In this context, I salute the broad range of individual and collective efforts undertaken by States, international organizations, civil society and private citizens throughout the world to protect the human rights and dignity of migrants and to alleviate their suffering without discrimination.
- 3) While recognizing that States have the prerogative and duty to exercise jurisdiction over their international borders, I remind this Council in the strongest terms that States must do so in full compliance with human rights law, including the absolute and non-derogable prohibition of torture and ill-treatment.

4) The primary cause for the massive abuse suffered by migrants in all regions of the world, including torture, rape, enslavement, trafficking and murder, is neither migration itself, nor organized crime, or the corruption of individual officials, but the growing tendency of States to base their official migration policies and practices on deterrence, criminalization and discrimination, rather than protection, human rights and non-discrimination.

5) Let me emphasize that migration laws, policies and practices that knowingly or deliberately subject or expose migrants to foreseeable acts or risks of torture or ill-treatment, or that knowingly or deliberately prevent them from exercising ancillary rights designed to protect them against such abuse, are conclusively unlawful and give rise to State responsibility for the ensuing harm, irrespective of the direct attributability of the relevant acts of torture or ill-treatment. Moreover, whenever States fail to exercise due diligence to protect migrants from violations on the part of private actors, to punish perpetrators or to provide remedies, they are acquiescent or complicit in torture or ill-treatment.

6) The personal involvement of policy makers and other officials, of corporate managers and of private citizens in the shaping, promotion and implementation of such policies and practices may well amount to complicity or other participation in

crimes against humanity or war crimes and, therefore, may give rise to universal and life-long criminal responsibility under applicable customary and treaty law.

7) While the specific recommendations made in my report aim to assist States in preventing torture and ill-treatment in the context of migration and ensuring access to protection, redress and rehabilitation for victims, the global governance challenges posed by large and complex migration movements cannot possibly be resolved by individual States alone, but only through multilateral cooperation ensuring international peace and security, human rights, sustainable development, environmental protection and the rule of law in line with the United Nations Sustainable Development Goals. The currently on-going work towards two global compacts on refugees and on migrants represents a timely and important opportunity for the international community to make a significant step forward in this respect.

Mr President,

Let me conclude by recalling that, throughout the history of mankind, major population movements have always existed and will always exist. Migration is a global trend that is here to stay. If today that trend has become a tragedy; if today we are facing political tensions and an escalating humanitarian crisis of global proportions; it is not because of the population movements we

experience, but because of our failure to respond to them with humanity and to assume our collective responsibility for ensuring global governance in line with human rights, non-discrimination, peace and equality. It is high time that we all, States, international organizations, civil society and private individuals, live up to the commitments made in the Universal Declaration and stop this intolerable tragedy, in the name of humanity.

I thank you for your attention and look forward to a fruitful dialogue.
