The entry into force of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 22 June 2006 after the 20th ratification, for the time being, marks the peak of the fight of the international community for the prevention of and protection against torture. The OPCAT envisages the creation of a unique system of global prevention of acts of torture from occurring in places of detention worldwide through the Subcommittee on Prevention and national bodies in its State Parties. As you know the idea of creating an effective instrument of unannounced visits to places of detention by a body or bodies of independent experts goes back to the very beginning of negotiations on the Convention against Torture during the 1970s. Eventually, the adoption of OPCAT culminates a thirty year process from the initial negotiations to make this system a reality.

Ladies and Gentleman,

it is an honour and a privilege to speak to you as the Chairperson-Rapporteur of the Working Group on Arbitrary Detention to explore means on how the Working Group and other human rights mechanisms created by the erstwhile Commission on Human Rights can collaborate with the Subcommittee on Prevention and pertinent national bodies of prevention in their common endeavour to protect victims of torture in places of detention or rather prevent them from becoming victims in the first place. The Working Group welcomes the adoption and entry into force of the OPCAT as an effective tool in the pursuit of our common goal.
I am convinced that the Subcommittee on Prevention and the national preventive mechanisms will strengthen the existing machinery in order to achieve wider compliance with the body of international law prohibiting torture. Several other international and regional systems focussing exclusively on protection and prevention of torture and mandated to conduct visits in places of detention are already in place and functioning.

On the international level, to name but a few, there is the Committee against Torture, established by the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 10 December 1984 and entered into force on 26 June 1987, and the Special Rapporteur on Torture, whose mandate was created by Resolution 1985/33 of the Commission on Human Rights. Other mandate-holders of the United Nations Special Procedures, including the Working Group on Arbitrary Detention, are also mandated to conduct visits in places of detention of any kind worldwide.

The International Committee of the Red Cross and the Red Crescent undertakes visits to detention facilities in times of war in order to monitor whether parties to an armed conflict observe their obligations under the Common Article 3 of the Geneva Conventions. Last, but not least, the United Nations High Commissioner for Refugees is also entitled to visit detention facilities where refugees and asylum seekers are being detained.

At the regional level, the three existing systems entrusted to promote and protect human rights, i.e. the European, the Inter-American and the African systems, have established their own mechanisms to deal with the protection against and the prevention of torture. The Committee for the Prevention of Torture, established by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is certainly the system closest to the one established by the Optional Protocol. It requires the Member States of the Council of Europe to accept repeated unannounced visits to any detention facility, and to cooperate and enter into a dialogue with the Committee.

Pursuant to the American system, the Inter-American Commission on Human Rights is addressing the question of torture within its general mandate to promote and protect human rights and will, in accordance with the Inter-American Convention to Prevent and Punish Torture, in force since 1987, [quote] “endeavor in its annual report to analyse the existing situation in the member states of the Organization of American States in regard to the
prevention and elimination of torture”. The Inter-American Commission on Human Rights and its Special Rapporteur on the Rights of Persons Deprived of Their Liberty may also inspect places of detention when visiting any given country. These visits are, however, subject to the consent of the State concerned.

The Special Rapporteur on Prisons and Condition of Detention in Africa, Mr. Mumba Malila, is entrusted by the African Commission on Human and People’s Rights, to examine the situation of prisons and prison conditions in Africa, and to ensure the protection of persons in detention or in prison. The Special Rapporteur’s mandate allows him to conduct on-site missions upon invitation of the Governments and to carry out visits to places of detention in the course of such missions. The relevant Resolutions by the African Commission make explicit reference, amongst others, to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as one of the legal foundations for his mandate.

Further to be mentioned in the African context is the Follow-Up Committee on the Implementation of the Robben Island Guidelines for the Prevention and Prohibition of Torture, established in the year 2002, and comprising the African Commission on Human and People’s Rights, the Association for the Prevention of Torture and prominent African experts, entrusted, inter alia, to develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels and to promote and facilitate the implementation of the Robben Island Guidelines within Member States of the African Union.

Notwithstanding the existence of the above-mentioned international and regional mechanisms on the protection against and prevention of torture, which are in part also mandated to conduct visits to detention facilities, the OPCAT was adopted because the State Parties to the OPCAT were [quote] “convinced that further measures are necessary to achieve the purposes of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment … and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment”, as it is stated in the second recital of the OPCAT. Article 1 of the OPCAT accordingly provides that [quote] “[t]he objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their
liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.” The reasoning behind this objective is clear: It is the persons in detention who are particularly vulnerable and face a higher risk of torture while in the custody of state authorities without regular or any contact to the outside world and, thus, require special protection. One cannot underestimate the importance of the added value of the Subcommittee on Prevention compared to all existing mechanisms – with the exception of the European Committee for the Prevention of Torture – which is that the Subcommittee will help building a national protection system against torture in each State Party to the OPCAT.

Some could ask the question whether another mechanism as envisaged by the OPCAT could lead to a duplication of protection against and prevention of torture. In fact, the OPCAT itself mentions the issue of possible duplication with these international and regional mechanisms. Article 31 of the OPCAT, amongst others, provides that “The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.”

However, is there really a potential for duplication once this “system of regular visits by independent international and national bodies to places where people are deprived of their liberty” is in place and fully functioning? The Committee on the Prevention of Torture in Europe addressed this issue already in its 13th General Report on the CPT’s activities of 10 September 2003 and stated that it “looks forward to cooperating with the Subcommittee on Prevention of Torture … as well as … with the national preventive mechanisms”. To this end the CPT proposes that “Parties to the Convention establishing the CPT which also ratify the Optional Protocol agree that visit reports drawn up by the CPT in respect of their countries, and their responses, be systematically forwarded to the Subcommittee on a confidential basis.”

I submit that there are no grounds for fear of unnecessary duplication for the following reasons:

First, the regional mechanisms, albeit of extreme importance in combatting torture and ill-treatment of persons in detention, are confined to its respective jurisdiction and react to allegations of such acts rather than focussing on the preventive side. More importantly, a
A regional mechanism exclusively addressing the issue of torture currently only exists for the Member States of the Council of Europe and of the African Union.

Second, the Committee against Torture is concerned with the monitoring of State Parties’ compliance with their international obligations pursuant to the Convention against Torture. However, the activities of the Committee against Torture are subject to significant limitations. In addition to examining the written reports of State Parties every four years it is also entitled to conduct confidential inquiries into allegations of systematic practice of torture in accordance with Article 20 of the Convention against Torture. As you may recall in such situations the State Party concerned is invited to cooperate with the Committee against Torture and to give its consent to a fact-finding mission carried out by the Committee. However, the threshold for making such inquiry, including or without a fact-finding mission in the country, is very high. It requires sufficient and well-founded indications of a systematic practice of torture and it requires the consent of the State Party concerned on a case-by-case basis. This mechanism has consequently not often been made use of in practice.

Furthermore, the competence of the Committee against Torture to consider individual communications from or on behalf of individuals who claim to be a victim of an act of torture, can only be triggered a posteriori, that is once such act has already occurred. Similar observations apply to other Treaty Bodies competent to receive and act on individual communications involving allegations of torture, such as the Human Rights Committee.

Thirdly, the thematic mechanisms established by the former Commission on Human Rights, of which not only the Special Rapporteur on the Question of Torture, but also the Working Group on Arbitrary Detention and other Special Procedures conduct regular visits to detention facilities during their country missions, are also putting their emphasis rather on the protection of victims of alleged human rights violations falling within their respective mandates after such violations have taken place. Whereas we hope that our country visits also have a deterrent effect and prevent acts of torture from occurring, such missions are limited in numbers. The Working Group, for example, is only able to conduct three to four visits per year and is, inasmuch as all other Special Procedures, dependent on an invitation from the Governments concerned before undertaking such visits. The main tool of the thematic human rights mechanisms of the former Commission on Human Rights have become the so-called letters of allegations and urgent appeals, sent separately or jointly by several mandate-holders.
to the Foreign Minister of the respective Governments almost on a daily basis upon communications received by or on behalf of individuals claiming to be a victim of a human rights violation or by NGOs or by other Governments. As far as the Working Group is concerned urgent appeals are sent on a purely humanitarian basis when there is sufficient and reliable information that a person might have been deprived of his or her liberty arbitrarily without, however, prejudging the arbitrary character of detention.

It is worth mentioning that the Working Group on Arbitrary Detention is the only non-treaty body mandated to deal with individual complaints on which it may adopt Opinions determining whether a particular situation of deprivation of liberty brought to its attention amounts to arbitrary detention. Violations of the prohibition on the use or threat of torture may also entail ramifications in the determination of the arbitrariness of detention, for example, when evidence retrieved by resorting to torture or ill-treatment have been used against the victim in criminal or other proceedings leading to arrest, detention or imprisonment and, thereby violating the right to fair trial, or when the person concerned is detained incommunicado. However, similar limitations apply to the Working Group’s individual complaints procedure as with respect to the system of protection available through the Treaty Bodies’ complaint mechanisms.

The OPCAT follows a different philosophy: It is based on the premise that the more open and transparent places of detention are, the less abuse will occur a priori. Opening such places of detention to independent monitoring bodies in the absence of prior concrete indications of torture will contribute significantly to the prevention of abusive practices and to the improvement of conditions of detention.

The OPCAT also aims at long-term and sustained collaboration with States Parties to prevent violations from occurring rather than on their condemnation after examination of State Parties’ compliance with their obligations through the reporting and individual communications mechanisms. The opportunity of such dialogue is also furthered by the confidentiality of the system in the absence of consent for publicity by the country concerned, which provides State Parties an incentive to correct deficiencies and implement changes without prior public condemnation.
Furthermore, the OPCAT fulfills this goal of prevention of torture in places of detention through a dual system of an international body and national bodies, thus, providing a mechanism which is able “to cover as much ground” on the globe as possible, if you like. This is facilitated by the fact that the national bodies are permanently present in the countries which ratify the OPCAT, and may hence conduct more frequent visits to detention facilities. While the Working Group, for instance, is always aiming at following up on its recommendations issued after a country mission as reported to the Human Rights Council, it has, in its 15 years of uninterrupted existence, only been able to pay two countries follow-up visits so far.

Ladies and Gentleman,

for these and other reasons I, therefore, firmly believe that the OPCAT does not create unnecessary duplications of protection for victims of torture. And even if there was an overlap of protection, such overlap would clearly be preferable over a protection gap.

In this respect, it suffices to recall what Edouard Delaplace and Matt Pollard stated in their distinguished article titled “Visits by human rights mechanisms as a means of greater protection for persons deprived of their liberty”: [quote] “The fact that the ICRC and human rights mechanisms take action in the same areas and therefore sometimes visit the same places of detention has not entailed pointless duplication; on the contrary, it has often led to operational cooperation that has been to the advantage of persons deprived of their liberty.”¹.

I now turn to the question in what way the Working Group on Arbitrary Detention and other mandates of the United Nations Special Procedures could assist, support and foster the work of the Subcommittee on Prevention and the national bodies once they will have been established by all State Parties ratifying the OPCAT. Article 11, lit. (c) of the OPCAT expressly envisages such cooperation when it states that [quote] “The Subcommittee shall: … Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.” Such collaboration can take up various forms.

¹ International Review of the Red Cross: Volume 87 Number 857 March 2005, 69, at 75.
Before I turn to the possible means of co-operation, it is, however, necessary to first identify the Special Procedures with whom the Subcommittee could cooperate most effectively. In this respect, the most appropriate mandate holders are certainly those who are regularly visiting places of detention and can provide ample expertise in this regard. They are the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Working Group on Arbitrary Detention, as well as the Special Rapporteur on the Protection of Human Rights While Countering Terrorism. Obviously, the Special Rapporteur on Torture, Mr. Manfred Nowak, is the most suitable mandate holder in this context, since, according to a well-established practice, he is never disclosing to the Governments beforehand, which detention facilities he would like to visit during the course of his missions conducted upon invitation of the concerned State. Unlike the Working Group on Arbitrary Detention, which confirms with the Government concerned the places of detention it would like to visit during the process of agreeing on a programme for each forthcoming visit, the Special Rapporteur on Torture is discharging his mandate on the same footing like the Subcommittee on Prevention and the national preventive mechanisms as envisaged by the OPCAT, the only difference being that the Special Rapporteur is dependent on an invitation from the Government prior to carrying out a country visit. The State Parties to the OPCAT undertake the obligation to receive the Subcommittee on Prevention and to grant it and the national mechanisms unlimited access to places of detention upon ratification of the OPCAT.

I have also mentioned the Special Rapporteur on the Protection of Human Rights While Countering Terrorism here as one of the most appropriate mandate holder for collaboration with the OPCAT mechanisms because of the widespread use of torture and other forms of ill-treatment prohibited by binding international law instruments in the context of the fight against terrorism.

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, and those focussing on specific groups that are potential victims of torture, like the Special Rapporteurs on Minorities, on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, on Violence against Women, its Causes and Consequences, and the
Special Representative of the Secretary-General on the situation of Human Rights Defenders, could also be helpful to the Subcommittee in the implementation of its mandate.

Firstly, these Special Procedures could enter into a dialogue, even in an institutionalised manner at an appropriate stage, with the Subcommittee on Prevention and the national bodies with a view to cooperation on the regular exchange of information. A permanent flow of information between Special Procedures and the bodies whose creation is stipulated or envisaged in the OPCAT could enable both systems to streamline their respective activities in order to enhance protection of victims of torture and support the OPCAT bodies in exercising their task of prevention.

For example, those Special Procedures mandate-holders conducting regular visits to places of detention, could organise missions to countries based on information received by the OPCAT bodies. The Working Group – and I am certain also other mandates of the thematic and other human rights mechanisms created by the Commission on Human Rights – bases its decision, which Governments to request an invitation for a visit from or whose (standing) invitations to accept, largely on an analysis of information about allegations of human rights violations available from the competent Treaty Bodies, the European Committee for the Prevention of Torture, from NGOs, and from other appropriate sources, which devote their activities on the situation of persons in detention in the countries concerned.

Given the limited numbers of State Parties to the OPCAT at present (33 States), it would, however, probably be more prudent at this stage, if the United Nations Special Procedures concentrate on such countries, which have not yet ratified the OPCAT.

Secondly, since the Working Group has only limited capacities to conduct repeated visits to countries and has been able to do so only with respect to two states, it could propose to the Subcommittee on Prevention or, through the Subcommittee, to the respective national bodies of OPCAT to undertake follow-up missions in countries previously visited by the Working Group, provided its observations and recommendations warrant such action and the country concerned is also State Party to the OPCAT. Article 13, para. 4, of the OPCAT itself considers follow-up visits by the Subcommittee on Prevention after a regular visit.
Thirdly, the Subcommittee on Prevention, if it so wishes, could benefit from the practical experience in organising and undertaking country missions. The Standard Terms of Reference for fact-finding missions by Special Rapporteurs and Special Representatives of the Commission on Human Rights as assumed by the Human Rights Council, contain a set of guarantees, which should be given by the Governments concerned with respect a country visit. They include such important elements as:

(a) Freedom of movement;
(b) Freedom of inquiry, in particular as regards:
   (i) Access to all prisons, detention centres and places of interrogation;
   (ii) Contacts with central and local authorities of all branches of government;
   (iii) Contacts with representatives of non-governmental organisations, other private institutions and the media;
   (iv) Confidential and unsupervised contact with witnesses and other private persons, including persons deprived of their liberty, considered necessary to fulfil the mandate of the special rapporteur; and
   (v) Full access to all documentary material relevant to the mandate;
(c) Assurance by the Government that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings…

These terms of references form the basis upon which every country visit of Special Procedures is made. You may have noted that they closely resemble the conditions the State Parties of the OPCAT undertake to grant to the Subcommittee on Prevention and the national preventive mechanisms as outlined in Articles 14 and 20 of the OPCAT, respectively. The Working Group and other Special Procedures mandates could share their experience with the Subcommittee and the national bodies in order to better equip them for their responses when, for example, Governments attempt to compromise the terms of reference before or during a country visit and to enable the OPCAT bodies to effectively negotiate with the Governments concerned in order to secure their adherence to the guarantees undertaken to grant to the OPCAT bodies upon ratification.

Fourthly, the Subcommittee on Prevention and the national bodies may wish to draw on the Working Group’s experience in conducting interviews with detainees and, particularly, in
exploring ways how to protect best victims and witnesses of torture against reprisals by authorities following an interview, as is reflected in Articles 15 and 21 of the OPCAT as well as the terms of reference of Special Procedures referred to already. On the same footing the Working Group, separately or jointly with other Special Procedures mandates, can help the Subcommittee on Prevention and the national preventive mechanisms in assuring that reprisals do not occur by, for example, following up on the fate of detainees interviewed and by sending urgent appeals on the cases of the individuals concerned to Governments if necessary and appropriate.

Lastly, the Subcommittee could also benefit from the well-established experience of the Special Procedures with respect to gathering information, conducting investigations and fact-finding missions and reporting. The joint report by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the Independence of Judges and Lawyers, the Special Rapporteur on Torture, the Special Rapporteur on Freedom of Religion or Belief, and of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health,² issued in February 2006 and conclude that some of the practises used at the Guantanamo Naval Base run contrary to the prohibition of the use of torture, probably provides the most suitable example of how several mandate holders of the Special Procedures of the former Commission on Human Rights can jointly deal with situations of detention which may or actually amount to torture within the meaning of applicable international human rights standards without creating unnecessary duplications.

The initiative for drafting this joint report on Guantanamo was at that time taken by the involved mandate holders themselves in the absence of a prior request by the Commission on Human Rights. However, the Human Rights Council recently followed this example when it adopted a Resolution on the situation in Darfur at the end of its 4th regular session. You are all well aware that the Human Rights Council decided to convene a group composed of seven Special Procedures mandate holders and requested them to ensure the implementation of previous resolutions and recommendations on Darfur adopted by various United Nations human rights organs, institutions and mechanisms. By doing that, the Human Rights Council confirmed the standard set by the mandates participating in the Guantanamo report, if you like, and decided to confer explicitly to pertinent Special Procedures the mandate to jointly

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² See UN Doc E/CN.4/2006/120.
address a particularly worrying situation of grave human rights violations, apparently without fear of unwanted overlaps.

Ladies and Gentleman,

I have endeavoured to argue that, in my opinion, the risk of duplication is not an issue with respect to the newly established mechanisms of prevention and also protection of victims of torture envisaged by the OPCAT. On the contrary, this unique combined system of an international Subcommittee on Prevention and national preventive bodies provides for an important mechanism complementing the mandate of other competent international and regional human rights bodies, including the Working Group on Arbitrary Detention and other Special Procedures. I, as the Chairperson-Rapporteur of the Working Group, look forward to intensive cooperation with the OPCAT bodies in the pursuit of our common objective that torture be eventually eradicated from the face of the earth. I am happy to listen to your comments and to answer any questions you may have.

Thank you very much.