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## Third Committee

### Summary record of the 25th meeting

Held at Headquarters, New York, on Friday, 20 October 2017, at 3 p.m.

*Chair:* Mr. Gunnarsson . . . . . (Iceland)

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*The meeting was called to order at 3.05 p.m.*

**Agenda item 72: Promotion and protection of human rights (A/72/40 and A/C.3/72/9)**

**(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (A/72/127, A/72/128, A/72/131, A/72/132, A/72/133, A/72/135, A/72/137, A/72/139, A/72/140, A/72/153, A/72/155, A/72/162, A/72/163, A/72/164, A/72/165, A/72/170, A/72/171, A/72/172, A/72/173, A/72/187, A/72/188, A/72/201, A/72/202, A/72/219, A/72/230, A/72/256, A/72/260, A/72/277, A/72/280, A/72/284, A/72/289, A/72/290, A/72/316, A/72/335, A/72/350, A/72/351, A/72/365, A/72/370, A/72/381, A/72/495, A/72/496, A/72/502, A/72/518, A/72/523 and A/72/540)**

**(c) Human rights situations and reports of special rapporteurs and representatives (A/72/279, A/72/281, A/72/322, A/72/322/Corr.1, A/72/382, A/72/394, A/72/493, A/72/498, A/72/556, A/72/580-S/2017/798, A/72/581-S/2017/799, A/72/582-S/2017/800, A/72/583-S/2017/816, A/72/584-S/2017/817, A/72/585-S/2017/818, A/72/586-S/2017/819, A/72/587-S/2017/852, A/72/588-S/2017/873, A/C.3/72/11, A/C.3/72/14 and A/C.3/72/16)**

1. **Mr. Brillantes** (Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families) said that migration was something to be embraced, not repelled; migrant workers must enjoy their human rights during their journeys and in schools and workplaces around the globe. The rights of migrant workers and those of their families were regularly violated; they worked under dangerous conditions, received low wages and were subjected to fraudulent practices, long working hours and even illegal confinement by employers, as well as sexual harassment, threats and intimidation. The current global migration crisis highlighted the importance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, a robust legal framework which set out the best strategy to prevent abuse and address challenges faced by migrant workers. There were also high hopes for the global compact for safe, orderly and regular migration. His Committee emphasized that any global commitment on migration should be supported by the Convention and ensure the fundamental human rights of all migrants and their families, documented and undocumented. States should also ensure access to justice and effective legal

redress for violations of human rights, labour standards and any other legal claim on a non-discriminatory basis.

2. While States had legitimate interests in securing their borders and exercising immigration controls, such concerns could not override their obligations to respect the internationally guaranteed human rights of all persons. The Convention did not lay out new categories of human rights, but set out in greater detail how international human rights were to be applied to migrant workers and their families.

3. A clear vision of the need for migrant labour in destination countries, with more channels for regular migration, as well as for family reunification, would assist greatly in preventing the exploitation and other dangers faced by people who were seeking a dignified life. More work also needed to be done to address the root causes of desperate attempts to flee home countries. Migration should be a choice: the factors that pushed people to risk their lives in search of safety and decent work must be addressed and long-term durable solutions found. He called on Member States to ensure that the global compact on migration would address the root causes of forced migration and strengthen protection to migrants in line with international human rights norms and labour standards.

4. During its twenty-fifth and twenty-sixth sessions, the Committee had considered seven State party reports and adopted concluding observations on them. It had also adopted a list of issues concerning a periodic report. Since 2006 the Committee had issued 54 concluding observations and adopted 55 lists of issues on reports received under the simplified reporting procedure.

5. The resources provided for the human rights treaty body system did not recognize its continued growth and evolution. The General Assembly must give the matter serious consideration and ensure the provision of budget resources adequate for the effective functioning of the system, as it was no longer able to function under the status quo.

6. The Committee continued to encourage civil society organizations, national human rights institutions and the specialized agencies of the United Nations to provide their input and support during the processes of reporting and follow-up to recommendations. Reviewing the actions and achievements of the Committee over the period covered by the Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on its twenty-fifth and twenty-sixth sessions, he said that the Committee had also continued to seek opportunities for strategic partnerships, an endeavour that had produced very good results.

7. The two joint general comments recently adopted by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Committee on the Rights of the Child were complementary and, though they stood in their own right, should be read and implemented together. In addition to providing authoritative guidance to States parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of the Child, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families hoped that the general comments would inform the negotiations on the global compact as well as its outcome document.

8. Despite the work of Committee members to assist States parties in implementing their treaty obligations and to promote the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families through various forums and publications, the potential of the Convention to bring about change at the national and international levels had not been fully exploited largely due to a lack of ratification by States of destination. He urged the 16 signatory States that had not yet ratified the Convention to do so expeditiously.

9. It was incomprehensible that the world was experiencing some of the greatest migratory flows in history, yet there remained a lack of political will to ensure that appropriate priority was given to the protection of the human rights of migrants. The Committee hoped that the Convention would be at the centre of the discussions concerning the global compact and would be reflected in the outcome document.

10. **Ms. Tovar** (Mexico) said that migration was a multidimensional reality of the twenty-first century, which could only be addressed by analysing all its dimensions. The Convention represented a fundamental pillar of the human rights protection for all migrants, but regrettably the number of ratifications remained low. She wondered which violations of migrants' rights were the most systematic and would also like to hear about best practices for ensuring just recruitment for decent work.

11. **Mr. Forax** (Observer for the European Union) said that his delegation would welcome examples of good practices in international and regional dialogue and cooperation with a view to maximizing the potential benefits of migration and minimizing the related costs for countries of origin, transit and destination. He would also be interested to hear more about best practices Member States could use to uphold international human

rights norms and standards concerning migrant children, who were often disproportionately affected by smuggling, trafficking, xenophobia and organized crime.

12. **Ms. Mortaji** (Morocco) said that her delegation wished to know what measures were being taken to address the challenge of ratification of the Convention in the context of increasing xenophobia and racist discourse regarding migrant workers and refugees in certain destination countries. It would also welcome further details about the contributions of the Committee in the negotiations on the global compact.

13. **Ms. Donatirin** (Indonesia) said that the protection of Indonesian workers abroad was a top priority for her Government, and new legislation on that subject was nearly complete. The meetings on the global compact had made it clear that migration was an important issue in the United Nations system, and the momentum should be maintained. Her delegation hoped that United Nations mechanisms continued to provide support to States parties for capacity-building in their national laws to protect migrant workers and their families. She would also like to know what measures were being taken to increase ratification of the Convention, given that the majority of the countries which had already ratified it were sending States.

14. **Mr. Brillantes** (Chair of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families) said that on the issue of violations occurring at the global level, there were certain circumstances that were usually specific to the respective country. The problems experienced by Qatar, for instance, were different from the situation in the Mediterranean region. Among countries that had ratified the Convention, some means of addressing problems were common because of the provisions of the Convention, and the Committee would like to see such a trend among more of the receiving countries.

15. One of the main potential benefits of the Convention was universality, and norms, regulations and rules to be followed. When no regular channels of migration were available, people affected by violence, political situations and the desire for economic betterment would look for irregular channels. There should be more agreement on regular channels, which would discourage trafficking in persons and other criminal elements, thereby helping countries to simplify their legislation on migration. The best practices in that regard were the recommendations in the concluding observations concerning the Convention, including those on detention and segregation of women and children because of their vulnerability.

16. The issue of capacity-building was indeed important, and it would be included in concluding observations and recommendations so that countries would have the proper tools to produce results.

17. Many non-governmental organizations were providing assistance to the Committee in the interest of increasing ratifications, while all members of the Committee were also personally asking States to ratify the Convention. In addition to collaboration with non-governmental organizations, the Committee was also working with national human rights institutions and reporting to the Third Committee in the hope that more States would ratify.

18. **Mr. González Morales** (Special Rapporteur on the human rights of migrants), introducing his report (A/72/173), said that the current global situation in respect of migrants was very serious and required a new response from the international community. Since he had taken up his position as Special Rapporteur in August 2017, he had been actively involved in consultations on the global compact for safe, orderly and regular migration to ensure that human rights remained at the heart of migration policies. During the first year of his mandate, he would focus on the return and reintegration of migrants and access to justice for all migrants.

19. The return of migrants not protected as refugees under the Convention Relating to the Status of Refugees was gaining increased international attention. Migrants' rights must be protected in accordance with international human rights and international labour law, particularly in cases of detention, physical or mental abuse, labour exploitation, forced labour, return to torture, sexual and gender-based violence, separation of families and the protection of children. All migrants should be assessed individually to determine their vulnerabilities and the appropriate legal framework for their protection and they should never be returned to their country of origin without due process of law and access to proper representation and remedies. The increase in readmission agreements and in the number of persons returned under a readmission agreement without an effective pre-return assessment and effective oversight by a post-return human rights monitoring mechanism was a cause for concern. He would focus his work on vulnerable groups who required special procedures and safeguards during the return process, especially unaccompanied or separated children. Their return or repatriation must only take place after due process of law and as a measure of protection in the child's best interests, such as for family reunification. He would also explore what type of oversight mechanisms were required to ensure effective post-

return human rights monitoring. He had requested country visits to Mali, Nepal and Niger in 2018 to deepen his knowledge of returns and reintegration and would submit his first thematic report on the topic to the Human Rights Council in June 2018.

20. Without adequate access to justice, migrants' rights would remain illusory. During his mandate, he would concentrate on those migrants who were most vulnerable to abuse, violence and exploitation, including temporary migrant workers, undocumented migrant workers living in a precarious situation due to their immigration status and intrinsically vulnerable migrant groups such as women and children. Migrants were often denied access to justice because they had no recourse to complaint mechanisms, the judicial system, legal representation and consular assistance. They were also usually unfamiliar with the local culture, language, their rights and domestic labour laws; had limited or no access to legal and administrative systems; and depended on their employers on account of migration-related debt bondage, their legal status or restrictions to their freedom to leave the workplace. Furthermore, without firewalls, they were reluctant to report abuse by their employer for fear of retaliation, detection, detention and deportation. He would submit his first thematic report on access to justice for migrants to the General Assembly in 2018.

21. **Mr. Idris** (Eritrea) said that it was important to acknowledge the fact that migration was here to stay. There was a tendency to view migration as a crisis rather than as a common human phenomenon present throughout history. Seeing it as part of the human experience would enable the international community to better manage global mobility. The focus should be on the protection of the rights and dignity of migrants. Eritrea had an active diaspora community which had made exemplary contributions to the struggle for self-determination and independence as well as the work of nation-building. Since the country's independence, the Government had made it a priority to ensure the protection of Eritrean communities abroad.

22. A recent meeting of Europeans of Eritrean origin had unfortunately been cancelled because the local authorities had refused to grant them permission to hold the event, hindering the right of migrants to maintain links with their countries of origin. His delegation would welcome the views of the Special Rapporteur on the ways States could ensure that such a right was protected, or its exercise even encouraged.

23. **Ms. Tovar** (Mexico) said that her delegation was pleased to hear that the 2035 agenda for facilitating human mobility proposed in the report (A/72/173)

would be based on targets 10.7 and 8.8 of the Sustainable Development Goals. Migrants represented 3.3 per cent of the global population, yet they generated almost 9 per cent of global wealth. That reality was apparently being ignored, given the levels of xenophobia and intolerance seen around the world. She asked how States could remain informed in order to meet the needs of international migration in all its dimensions and ensure their policies were not based on false rhetoric. The goals and indicators mentioned in the report reaffirmed the General Assembly's understanding that the global compact for safe, orderly and regular migration must be a practical document that contained concrete means of implementation. She asked how the commitments eventually negotiated in the compact should be followed up.

24. **Mr. de Sousa Monteiro** (Brazil) said that his delegation welcomed the proposed 2035 agenda, whose goals were consistent with his country's migration policies and laws. The increasingly negative perception of migrants was of great concern and an evidence-based discussion was needed to address misperceptions of the consequences of migration and to raise awareness of migrants' contributions. Brazil agreed that the focus on securitization, repression and deterrence in migration policies was part of the problem. The expansion and creation of regular pathways of admission should be an integral part of migration policies, as a means of curbing the smuggling of migrants and reducing migrants' vulnerability. Migration policies should be people-centred, human rights-based and gender-responsive, all of which should form the basis of the global compact. Brazil would like to know which issues would be given priority by the Special Rapporteur.

25. **Mr. Al-Mansouri** (Qatar) said that, in line with its moral and humanitarian principles, his country provided significant assistance to countries hosting refugees and migrants. That assistance included emergency medical and food aid, as well as housing, educational and other services to meet the basic needs of refugees and migrants in those countries. Qatar had also facilitated the resolution of a number of armed conflicts in the region, and believed strongly that conflict resolution initiatives could help reduce the numbers of refugees and migrants seeking shelter outside their countries of origin.

26. In accordance with the Qatar National Vision 2030, his Government was taking steps to enhance the skills and capacities of the country's workforce, promote good business ethics and create job opportunities for all. Qatar was also moving forward with its labour sector reforms and had taken a number of steps to strengthen and uphold the rights of foreign

workers in the country, including the adoption of Law No. 21 of 2015, scheduled to enter into force in December 2017, which would abolish the kafala (worker sponsorship) system. Qatar had also promulgated legislation strengthening protections for domestic workers and regulating employee-domestic worker relations, on the basis of International Labour Organization Domestic Workers Convention, 2011 (No. 189).

27. **Mr. Forax** (Observer for the European Union) asked what the main advantages of the proposed 2035 agenda for facilitating human mobility would be, given that the 2030 Agenda for Sustainable Development and the global compact already presented unique opportunities to promote a holistic and human rights-based approach to migration. The report had stressed the need to accept that migrants moved according to push and pull factors and he asked what could be done to raise awareness of the main push factors, such as poverty. How could Member States and other stakeholders better cooperate to address those challenges?

28. **Mr. Ariturk** (United States of America) said that, while appreciating the analysis of the perils facing migrants and its emphasis on the challenges presented by human smuggling, his delegation was concerned by some of the sweeping generalizations in the report. It lacked a focus on how the international community could work together to combat the criminal elements that exploited migrants. His delegation was also concerned by the recommendation that Governments should consider a potential 2035 agenda for facilitating human mobility, since that could result in the duplication of work.

29. It was each State's responsibility to manage its own borders and immigration. The commitments set forth in the global compact, as well as their implementation, should be voluntary and non-binding, and should take into account national limitations and priorities. The onus was on Member States to develop and strengthen cooperation mechanisms and to ensure oversight of their respective commitments. He would be interested in hearing about strategies for collecting data on hard-to-count migrant populations, since the report had emphasized the importance of including them in data analysis.

30. **Mr. Hendricks** (South Africa) said that his delegation agreed that political rhetoric on migration most often did not reflect reality and shaped public perceptions of migration. Furthermore, the reference to labour shortages caused by population ageing in some regions was firmly in line with his Government's position that managed migration had great potential to

foster development. He would like to know how best to tackle the stigmatization of migrants and address the drivers and root causes of migration, such as unemployment.

31. **Mr. Guzmán Muñoz** (Chile) said that his delegation shared the view that the consideration of migration and mobility by the United Nations system was a positive development. However, in order to have a real impact, the global compact must link together the multiple dimensions of migration, which included upholding migrants' fundamental human rights. Chile stood ready to collaborate with the Special Rapporteur to ensure that his mandate was successful in effectively protecting migrants, who were an invisible and vulnerable group. He would like to know what steps States could take to facilitate migrants' access to justice.

32. **Ms. Joubli** (Switzerland) said that with respect to the dignity and human rights of migrants, her country placed particular emphasis on the principle of non-discrimination. The 2030 Agenda for Sustainable Development and the negotiations on the global compact were two historic opportunities to address the rights of migrants in the multilateral system.

33. Her Government was also of the view that responsibilities in the global governance of migration should be shared. Switzerland was deeply involved in the negotiations on the global compact, which needed public support in order to be successful. Her delegation would like to know whether the Special Rapporteur was pursuing the proposal of his predecessor to create a new international "Agenda 2035", and whether doing so might dilute the attention given to the issue of migration.

34. Her delegation would also welcome the views of the Special Rapporteur regarding the extent to which the ideas and solutions for the Latin American region could be expanded to other regions of the world, and what major lessons could be learned from the situation in the Americas with a view to achieving a strong and action-oriented global compact.

35. **Ms. Pritchard** (Canada) said that her delegation was pleased to see that the Special Rapporteur had already been heavily involved in the thematic sessions on the global compact. Canada strongly supported the development of a long-term vision of migration, complemented by inclusive, coherent and comprehensive goals and responses. The international community, in particular through the global compact, was uniquely placed to strengthen human rights protection for migrants, particularly those who fell outside established protection systems. Canada maintained a standing invitation to the Special

Rapporteur and looked forward to working with him in the future. She wondered what the main roadblocks would be in the development of the global compact, and, given the diverging views on how to respond to international migration, how the international community could find an approach that achieved buy-in from States while also improving responses to migration issues. Lastly, she asked how the Special Rapporteur would prioritize action to improve global migration governance.

36. **Ms. Sukacheva** (Russian Federation) said that it was unwise to develop the 2035 agenda for facilitating human mobility, since it would overlap with the work of existing international instruments. Her delegation was concerned about the violations of migrants' rights, particularly in Europe, where many migrants had died trying to cross the Mediterranean Sea in search of a better life or in flight from terrorist threats, persecution, conflict, instability and poverty. The International Organization for Migration had reported that as at September 2017, over two thousand migrants had lost their lives en route to Europe.

37. A distinction must be made between migrants and refugees. The erosion of the institution of international protection of refugees, as set out under the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, was unacceptable. Given that economic difficulties and poor labour market access were often the main reasons for migration from countries of origin, the Russian Federation also disagreed with the Special Rapporteur's opinion that persons must not be returned even when they might not otherwise qualify as refugees under the Convention relating to the Status of Refugees or national law. To stabilize the migration situation, it was vital to control migration flows, curb criminal activities by migrants, enhance readmission mechanisms and establish more paths for legal migration. Every effort should be made to screen out foreign terrorist migrants from migrants who genuinely needed help and to prevent migrants from becoming the political pawns of those intent on stoking ethnic, religious and social hatred. Her delegation firmly believed that solutions to migration issues must not violate the basic principles of humanity, neutrality, impartiality and independence, infringe a State's sovereignty and territorial integrity, or be pursued without the consent of the receiving country.

38. **Ms. Mortaji** (Morocco) said that Morocco had offered to host the international conference on migration to be held in 2018 as part of the process of implementing the New York Declaration for Refugees and Migrants. National consultations on the global compact, which were vital to understanding the needs of migrants in the

area of human rights, would be held in Morocco in 2017 in partnership with the International Organization for Migration, in preparation for intergovernmental negotiations in 2018. She wondered what the value added would be of the 2035 agenda proposed in the report.

39. **Ms. Asgedom** (Ethiopia) said that, as a country of origin, transit and destination for migrants, Ethiopia attached the utmost importance to the issue of migration. Migrants made a positive contribution and States were responsible for upholding the human rights of migrants within their jurisdiction, regardless of status. Protecting the human rights of migrants in transit and destination countries remained a challenge and her delegation welcomed the emphasis on that issue in the report. Ethiopia noted with interest the proposed 2035 agenda and welcomed the proposed goals and targets, which would serve as very useful input for a comprehensive migration governance framework. It was vital for the Special Rapporteur to be able to contribute to the consultation process for the global compact.

40. **Mr. González Morales** (Special Rapporteur on the human rights of migrants) said that various factors determined the extent to which migrants were able to maintain ties with their country of origin. First, persons in an irregular situation were more likely to fear for their life or for the violation of their human rights and were thus less likely to contact their home country. Second, some States had a larger civil society and stronger safeguards for the protection of migrants and freedom of association. Third, some Member States did not enforce certain basic rights enshrined in international instruments, such as access to consular services and to justice.

41. He agreed with the representative of Mexico that despite the considerable contribution of migrants to society, many were subjected to xenophobia. Positive action was needed not only from the authorities to break the culture of stigmatization, but also more generally to change social attitudes to migrants. Since migrants in an irregular situation were more liable to fall victim to exploitation than regular migrants, it was important to establish secure channels for regular immigration. Regularization of migrants also made it easier for States to collect data on hard-to-count migrant populations. Certain formalities were crucial to a migrant's life, such as the regularization of their status, access to legal representation and the existence of firewalls so that they might not fear detection, detention and deportation. The thematic report which he would submit to the General Assembly in 2018 would give details on how to improve migrants' access to justice.

42. Besides access to justice and the return and reintegration of migrants, he considered the global compact for safe, orderly and regular migration to be a key priority. The criminalization of immigration would be another important theme during his mandate. The imposition of penalties for regular immigration and the extensive practice of detaining migrants fuelled discrimination and xenophobia against migrants by linking them to criminality. It was important to analyse how the State could contribute to breaking down such perceptions, including through social participation at the grassroots level.

43. Member States, United Nations bodies, especially those specializing in human rights or migration, and civil society were instrumental in following up the agreements negotiated on the global compact for safe, orderly and regular migration. Member States should endeavour to harmonize bilateral agreements with international standards to address the various push factors which caused migration.

44. The 2035 agenda for facilitating human mobility would provide a longer-term vision than the global compact for safe, orderly and regular migration and could incorporate new elements relevant to the international community as they emerged or once consensus had been reached on their importance. Indeed, perceptions of immigration in 2017 were vastly different to those held ten years earlier and were likely to continue to change. In response to fears that the 2035 agenda for facilitating human mobility might duplicate the work of other United Nations bodies, he said that mechanisms were sometimes created within the United Nations system with slightly different mandates because States had differing levels of commitment to each body. Thus, the Special Rapporteur on the human rights of migrants had a broader mandate than the Committee on Migrant Workers. In a spirit of complementarity, the bodies tried to focus on slightly different issues.

45. His experience in Latin America had shown him both positive and negative approaches to migration policies. The policy pursued in many Latin American countries of decriminalizing undocumented entry had in some cases not even led to a reduction in migration-related detention. The paradox was that a detainee sometimes had fewer procedural rights under the new system, since if they had been formally accused of committing an offence under the previous system, they had at least been entitled to numerous legal guarantees.

46. **Mr. Cannataci** (Special Rapporteur on the right to privacy), presenting his report (A/72/540), said that there was a vacuum in international law regarding the issue of surveillance and privacy in cyberspace, which



was a serious obstacle to privacy. Accordingly, he was considering a recommendation to the Human Rights Council on the need for a legal instrument on surveillance and privacy. There was considerable support for such an instrument among many stakeholders, including members of civil society, large international corporations and a small but growing number of law enforcement and intelligence agencies.

47. He summarized the main activities carried out in the previous year before turning to the second part of his report, which focused on big data and open data. There had been delays finalizing that part of the report owing to a number of developments. A broad-based public consultation would be held in March 2018, with a view to reviewing the draft recommendations before they were presented to the General Assembly in October 2018. The recommendations in the report included the need to adhere to and enforce international standards and principles, introduce mechanisms to manage the risk to privacy, and examine the role of Governments and corporations in actively supporting privacy-enhancing technologies.

48. **Mr. Ariturk** (United States of America) said that his Government had undertaken a number of reforms to improve the transparency of its surveillance programmes and to ensure that appropriate tools were in place to protect personal information and human rights. Following the Special Rapporteur's visit to the United States in June 2017, his Government had reviewed his draft report with interest and appreciated the opportunity to submit supplemental information for consideration.

49. The Special Rapporteur's 2017 report to the Human Rights Council ([A/HRC/34/60](#)) called for the development of an international treaty on surveillance and privacy. While the United States supported the call to develop best practices for surveillance oversight, it did not currently favour a binding legal instrument, since existing international instruments provided a sufficient and appropriate framework. Regarding the Special Rapporteur's comments that risks to reputation were both different from, and akin to, the need to protect privacy, he wondered how that related to the right to freedom of expression.

50. **Mr. de Sousa Monteiro** (Brazil) said that Brazil, together with Germany, had been at the forefront of efforts to promote and protect the right to privacy in the digital age. His delegation would have appreciated receiving the report earlier, in order to analyse it in more detail.

51. With regard to the Special Rapporteur's intention to support discussions on a new legal instrument on

surveillance in cyberspace and to address gaps in international law regarding surveillance and privacy in cyberspace, General Assembly resolution [71/199](#) recognized that discussions on the right to privacy should be based on existing international and domestic legal obligations, including international human rights law, and should not open the path for undue interference with an individual's human rights. He wondered which fundamental gaps would be addressed by an international instrument. The report also referred to the challenges of privacy in relation to collecting, processing, retaining and using personal information. He asked how the Special Rapporteur intended to analyse that topic further during his mandate. Lastly, recalling that Human Rights Council resolution [34/7](#) called on the United Nations Commissioner for Human Rights (OHCHR) to organize an expert workshop on privacy in the digital age, he said that Brazil looked forward to engaging with other stakeholders at that event.

52. **Mr. Koehler** (Germany) said that his delegation was concerned about widespread breaches of the right to privacy, which were often a prelude to other human rights infringements. Such breaches included Governments systematically collecting data on citizens' political or religious views or their sexual identity, which could pave the way for targeted repression. Of particular note were cases in which human rights defenders had been criminalized for attempting to protect themselves from illegal surveillance. Human rights applied online as well as offline, and Germany regarded such cases as breaches of existing human rights, in particular those enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Thus, greater efforts were needed to implement the established human rights framework, in particular the right to privacy and related human rights, rather than a new legal instrument. Lastly, his delegation was concerned that references to a vacuum in international law might suggest that privacy infringements did not constitute human rights violations under the existing legal framework. He wondered how that misperception could be countered.

53. **Mr. Forax** (Observer for the European Union) said that it had been difficult to develop a detailed response to the report, given the lateness of its publication. The timely production of such reports was a crucial step in ensuring real and valuable engagement and considered responses.

54. His delegation remained unconvinced that the correct and proportionate response to the challenges surrounding the use of data was a legally binding instrument, which in any case was unlikely to have a



direct impact on data collection and use by private companies.

55. Considering the worrying trend of a shrinking — or even closing — space for civil society in many countries, civil society must be strengthened. His delegation was particularly concerned about attempts to criminalize human rights defenders for their use of secure communications, since their work depended on privacy. Any Government interference in an individual's privacy must abide by the principles of legality, necessity and proportionality. However, privacy was not only under threat by Governments; there was growing concern about private companies' approach to data privacy, and his delegation therefore appreciated the Special Rapporteur's work on big data. He wondered how the Special Rapporteur intended to increase understanding that all human rights applied online in the same way as offline.

56. **Ms. Oehri** (Liechtenstein) asked what the outcomes of the 2016 International Intelligence Oversight Forum had been and what action national oversight bodies and intelligence agencies could take before the 2017 edition to enhance privacy protection. In addition, she asked how patients' right to privacy could be better protected, since more and more health data were being stored in the cloud, which heightened the risk that it would be misused through legal or illegal sales.

57. **Mr. Hendricks** (South Africa) said that the question of whether privacy rights could co-exist with new technologies that could not have been conceived when instruments such as the Universal Declaration of Human Rights were drafted was true of all human rights. The right to privacy was constitutionally enshrined in his country's Bill of Rights and his Government had also enacted several key pieces of legislation to protect individuals from violations perpetrated by both private and public authorities.

58. His delegation did not support the view that the promotion and protection of human rights, including the right to privacy, were the same online and offline. The right to freedom of opinion and expression in cyberspace was limited when acts constituted incitement to hatred and advocacy of violence. Furthermore, any gaps in codified international law should be identified and complementary standards should be developed. Those normative standards must also deal with violations of the right to privacy committed by private entities and non-State actors, and he would appreciate clarification regarding how best to address such violations.

59. **Mr. Rabah** (Iraq) said that his country had warmly welcomed the adoption of Human Rights Council resolution 28/16 on the right to privacy in the digital age. Terrorists were making increasing use of information technology and digital communication networks to perpetrate their crimes, and Iraq called on the international community to increase its vigilance and forge stronger partnerships with a view to combating the activities of terrorists and extremists in that area, which posed a grave danger to all countries and societies. States must, moreover, comply fully with all United Nations resolutions adopted with a view to countering their activities. He asked what steps could be taken to prevent the abuse by terrorists of the Internet and other forms of modern technology, while also upholding the right to privacy.

60. **Ms. Joubli** (Switzerland) said that her delegation wished to reiterate its appreciation for the creation of the mandate, which had represented an important landmark in the promotion and protection of human rights in the digital age.

61. Even when data were collected for legitimate purposes, transparency and effective management were essential. While the right to privacy could not be absolute in the areas of crime and national security, checks and balances must be in place to protect democratic and free societies. The increase in measures that restricted privacy in the name of national security was a global phenomenon, yet such measures were often contrary to national constitutions and did little to improve security. Rather than seeking to know everything about everyone and store that information, Switzerland agreed that the real solution was targeted surveillance and controlled data processing by the competent services, while respecting the rule of law. However, targeted surveillance must only be undertaken on the basis of concrete evidence, never nationality alone.

62. **Mr. Cannataci** (Special Rapporteur on the right to privacy) said that a detailed report of his country visit to the United States was in preparation; the delegation had sent over 70 pages of comments. In his report to the General Assembly, he had been careful to refer to the adoption of a "legal instrument" on surveillance and privacy, not a treaty. The proposed legal instrument was not targeted at private companies. Initially, its main focus would be government-led surveillance, which was a real concern for many stakeholders. There were separate ongoing efforts aimed at private companies.

63. Although the scope of the instrument was clear, the form that it should take was not. It could consist of recommendations, guidelines or an international treaty.

He would be holding public consultations on the matter and hoped to form a more definite view by March 2018. He urged States to participate in the discussions.

64. While there were international privacy laws, it was not always possible to apply them to online situations. The advent of technology had given rise to many situations where policymakers, legislators, police, intelligence agencies and companies required much more detailed guidance. Certain types of problems were simply not addressed by existing laws, for instance issues of jurisdiction and data localization. In addition, in some countries the right to privacy was being used to stifle freedom of expression, including journalistic freedom, so detailed regulation was needed. Governments, prosecutors, police forces and members of the public had all contacted him to complain that current legal systems were not adequate.

65. A number of countries, including Argentina, Tunisia, Uruguay and much of Europe, had already recognized that merely acknowledging the right to privacy was not enough; detailed regulation was needed. In Europe, the General Data Protection Regulation would enter into force in 2018. In addition, some 50 countries had ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which showed that there was a clear need for such instruments.

66. The International Intelligence Oversight Forum, which had been held in 2016, had provided an invaluable insight into the actual state of intelligence oversight in Europe. There were huge disparities among States in terms of their oversight regimes. The second edition of the Forum would be held in Brussels in November 2017. One of the key issues on the agenda was the draft legal instrument, including how it would work in practice. The issue of health data was extremely important. He hoped that the work of the TAsK Force on Health Data would pick up speed, with a view to holding a public consultation in 2018.

67. Freedom of expression was at the intersection of the right to privacy. In many countries, freedom of expression laws contained provisions on privacy. His research had shown that members of the public were extremely concerned about the possibility of their dignity and reputation being harmed by material posted online and the difficulty of getting defamatory content taken down. Many felt that there was no equality of arms between the individual being defamed and the perpetrator, because of the expense of bringing a case to court.

68. He agreed that the Internet was used by organized criminal gangs and terrorists, but he stressed that it was

also used by innocent citizens. Some States had powerful intelligence, anti-corruption, tax and police agencies, all of which were tracking citizens. In some countries, tracking software was used to harass and monitor journalists and human rights activists. While there was a need for targeted surveillance, effective safeguards must be put in place to ensure that surveillance was necessary and proportionate.

69. Indeed, surveillance should only be carried out if there was concrete proof that a person was a danger to society. He was considering developing an international data access warrant as part of the proposed legal instrument. Prosecutors currently relied on mutual legal assistance frameworks, which meant that they often had to wait up to a year to receive information. In addition, there were jurisdiction problems because of the growing use of international data centres.

70. A number of representatives had raised the issue of the lateness of the report. He had completed work on the report in July; however, he had sent a number of letters of allegation, which had delayed the process as Governments had 60 days to reply. Indeed, he was still awaiting some responses.

*The meeting rose at 5.50 p.m.*