



CANADA

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The Permanent Mission of Canada  
to the United Nations  
at Geneva

La Mission permanente du Canada  
auprès des Nations Unies  
à Genève

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***Presentation of Canada's Sixth Report  
to the Committee against Torture***

***Canada***

***May 21<sup>st</sup>, 2012***

***Statement delivered by: Alan H. Kessel  
The Legal Advisor  
Foreign Affairs and International Trade Canada***

*Check against delivery*

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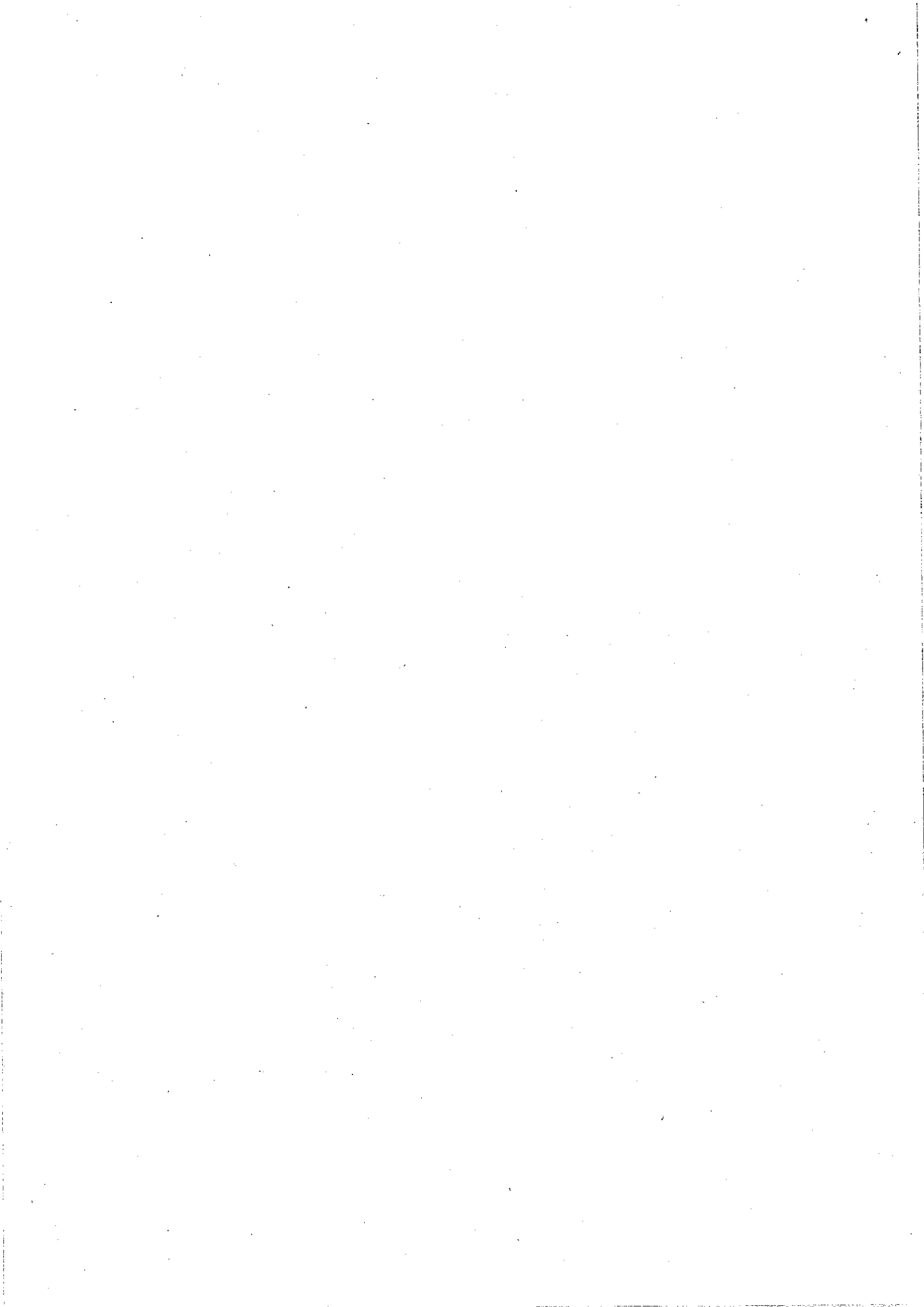
***Présentation du Sixième rapport du Canada  
au Comité sur la torture***

***Canada***

***Le 21 mai 2012***

***Prononcé par : Alan H. Kessel  
Le Jurisconsulte  
Affaires étrangères et Commerce international Canada***

*Priorité au discours prononcé*



## Presentation of Canada's Sixth Report to the Committee against Torture

### Opening Statement (May 21, 2012)

Mr. Chair and members of the Committee, Canada is here today to present its Sixth Report under the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

My name is Alan Kessel and I am The Legal Adviser in Canada's Department of Foreign Affairs and International Trade, which is responsible for Canada's communications with international organizations, including the human rights treaty bodies.

Canada's implementation of its obligations under the *Convention against Torture* falls within the mandates of several Canadian federal government departments and agencies, and also within provincial government mandates. I am joined today by colleagues from various federal government departments, including:

- From the Department of Public Safety, Mr. Paul MacKinnon, Assistant Deputy Minister, Strategic Policy
- From the Department of Justice, Human Rights Law Section, Ms. Laurie Sargent, Acting Senior Counsel; and
- From Citizenship and Immigration Canada, Mr. Dominique Collinge, Minister-Counsellor and Chief of Humanitarian Affairs Section, and Immigration Program Manager, Permanent Mission of Canada to the Office of the United Nations in Geneva.
- We are also pleased to have Ms. Karen McCarthy, Conseillère, Droits de la personne et Affaires autochtones, from the Ministère des Relations internationales, representing the Province of Québec.

In addition, I would like to acknowledge Ambassador Elissa Golberg, Permanent Representative of Canada to the Office of the United Nations and to the United Nations Conference on Disarmament in Geneva.

I would also like to acknowledge and thank those who participated in the preparation of Canada's Sixth Report and response to the Committee's List of Issues. All governments, federal, provincial and territorial, worked together to produce this report.

Civil society and Aboriginal organizations also play an important role in identifying and advancing important areas of discussion with respect to Canada's domestic implementation of international human

rights obligations. Their views were sought in the drafting of Canada's report in preparation for this review.

This year marks the 25<sup>th</sup> anniversary of Canada's ratification of the *Convention against Torture*. Canada is proud of its excellent record in upholding its obligations under the *Convention*. This presentation will highlight some of Canada's key efforts, and will also touch on some challenges, particularly those that States Parties may face in a global environment where torture may occur in other States despite the *Convention's* absolute prohibition.

All levels of government in Canada are aware of—and take seriously—their treaty obligations, including under the *Convention against Torture*. Canada implements the *Convention* domestically through a variety of means, most notably the *Canadian Constitution*, which includes the *Canadian Charter of Rights and Freedoms*. Other means include the *Canadian Bill of Rights*, the *Criminal Code*, and the *Immigration and Refugee Protection Act* and the *Extradition Act*. The obligations to prevent, prosecute and punish torture and other cruel, inhuman or degrading treatment or punishment are also implemented through a range of other legal and operational measures outlined in Canada's reports to this Committee.

Canada is a free and open society that respects rights and freedoms, and opposes the use of torture by any State or agency for any purpose. Our Constitution sets an overarching framework for all government action in Canada, including the protection of the rights to life, liberty and security of the person, legal rights on arrest or detention and the right not to be subject to cruel and unusual treatment or punishment, including torture. These rights and values inform the actions of all Canadian officials.

In the area of corrections, Canada is committed to the safe, secure and humane custody of its detained persons. Our national standards with respect to the management and delivery of federal corrections programs meet and, often, exceed internationally-accepted minimums. A robust oversight body exists to monitor the rights of federal detainees and ensure that our corrections system operates in a fair, transparent, and accountable manner. Canada has been recognized internationally for its efforts in this regard, and is considered a world leader in safe and humane corrections.

The Correctional Service of Canada (CSC) has undertaken an ambitious Transformation Agenda that responds to the majority of the recommendations contained in the 2007 Report of the Correctional Service of Canada Independent Review Panel. For the vast majority of the recommendations, implementation is underway or completed.

Through its Transformation Agenda initiatives, the CSC is focusing on a number of key areas for improvement to its operations. These are: enhancing offender accountability; enhancing correctional

programs and offenders' employment skills; eliminating drugs from institutions; and modernizing physical infrastructure.

With respect to the obligation to prosecute crimes of torture and to assist other States in this regard, Canada is committed to the principle that it will not become a safe haven for persons involved in war crimes, genocide or crimes against humanity, as well as to making an effective contribution to the global effort to strengthen accountability for such crimes. Canada has demonstrated its commitment in this regard through recent prosecutions of persons accused of having committed genocide and crimes against humanity in Rwanda. Canada also believes that wherever possible, people accused of such terrible crimes should face justice in the countries in which the crimes occurred. In cases where this is not possible, international courts and tribunals and other efforts to hold perpetrators accountable for serious international crimes may be used.

In the area of national security, Canada is proud of its record in combating terrorism while respecting fundamental human rights standards and safeguards. To date, fourteen people have been convicted of criminal offences under Canada's *Anti-terrorism Act*. The Act was drafted with a view to ensuring consistency with the *Charter* and Canada's international obligations, including treaty obligations and any legal obligations under relevant Security Council Resolutions, in the areas of combating terrorism, protecting fundamental human rights, and international humanitarian and refugee law. The Act was not emergency legislation and does not derogate in any way from the *Convention against Torture*. It amended the *Criminal Code* by creating several terrorism offences, which are subject to fair trial safeguards as well as the *Charter's* equality and non-discrimination guarantees. It has been upheld by Canadian courts as consistent with constitutional protections. Canada is confident that the Act will continue to prove a fair and balanced framework for the prosecution of terrorism offences.

Canada's independent judicial system provides an overarching mechanism for reviewing all laws and government action for consistency with the *Charter* or other legal protections. In addition, there are external, independent oversight mechanisms with the specific mandate to receive and investigate complaints regarding the conduct of law enforcement personnel in all jurisdictions across Canada.

Canadian law enforcement personnel receive training on the legal framework that governs their operations, including legal protection against torture and cruel and unusual treatment or punishment. Police officers are subject to criminal and/or code of conduct investigations as well as an external review of a public complaint. Review bodies exist to ensure that police officers conduct themselves appropriately. Canada is not aware of any current disciplinary investigations into allegations of torture or cruel, inhumane or degrading treatment committed by Canadian law enforcement agents.

Where broader issues or challenges are identified – for example in respect of the use of Conducted Energy Weapons or CEWs – governments in Canada listen and respond. The Braidwood Inquiry Report, released in July 2009, made recommendations relating to CEW policies and procedures including standards for use, medical assistance, training, testing and research. It recommended that CEW should not be deployed unless the subject’s behaviour meets the threshold of “causing bodily harm” or “will imminently cause bodily harm”. Among the many actions taken in response to the Braidwood Inquiry, new national Guidelines for the Use of CEWs have been developed and approved. The Guidelines address: when to use a CEW, training, testing, supervision, and, reporting. They provide guidance to jurisdictions and police services in developing their respective CEW policies and practices. To date, the provinces and territories, as well as the RCMP have taken steps to meet, or exceed, the guidelines.

Similarly, the Government of Canada has responded to the recommendations of the Arar Inquiry, which investigated and reported in 2006 on the actions of Canadian officials in relation to Mr. Arar. In addition to a settlement, Canada has taken measures to improve inter-departmental cooperation on national security files, to enhance safeguards on the sharing of information with other countries, to implement more robust training activities for national security agencies, and to enhance consular services for Canadians abroad.

The Government is also examining options for modernizing and strengthening Canada’s national security review framework as a whole, including creating a mechanism to facilitate inter-agency review of national security activities. The commitment for such a framework was reaffirmed in the December 2010 Air India Action Plan and work is ongoing in this regard.

While this work continues, a number of measures and other review mechanisms are already in place. In addition to the RCMP Public Complaints Commission, the following bodies are also specifically involved with the review of national security activities in Canada: the Security Intelligence Review Committee, the Commissioner of the Communications Security Establishment, and a number of Parliamentary committees.

Turning to the challenges of our globalized world, Canada is known around the world as a vigorous defender of freedom, democracy, and the rule of law. We will continue to promote these values on the world stage by pursuing a stable, principled foreign policy that advances Canada’s interests.

Internationally, the Government of Canada takes its commitments to protect people at risk of persecution, including displaced populations, very seriously. In this context, Canada has been outspoken in its

denunciation of regimes that violate the fundamental freedoms of their people, including those which engage in torture.

While our asylum system is world-renowned for its high standard of fairness and generosity, it is currently challenged by long wait times for decisions, a significant backlog of claimants, a lengthy and complex post-claim process, and slow removals.

In 2010, the Government introduced the *Balanced Refugee Reform Act*, which will address the challenges and improve the efficiency of the system by streamlining the processing and removal of unfounded claimants who take advantage of Canada's generosity and abuse our asylum system, while ensuring that all claimants continue to have access to a fair hearing of their claim.

At the same time, the Government committed to increase the number of resettled refugees by 2,500 persons. By 2013, Canada will welcome up to 14,500 refugees through its resettlement program, and resettle approximately 1 in 10 refugees resettled worldwide. This will further reinforce Canada's place as one of the most generous countries for resettlement in the world.

Our goal is a fair and efficient asylum system, which protects those in need, discourages abuse of the system by illegal immigrants and economic migrants pretending to be refugees, and upholds Canada's long humanitarian tradition.

In 2011, Canada undertook to review and strengthen the 2010 reforms. The proposed legislative changes introduced by Canada's Minister of Citizenship, Immigration and Multiculturalism in February 2012 represent two key protection goals:

- It will further strengthen the integrity of Canada's asylum system; and
- It aims to address concerns posed by the horrific reality of human smuggling.

It will also provide the legislative authority to set out the countries and territories whose foreign nationals will be required to provide biometrics, when making a visitor visa, study, or work permit application.

There is growing concern about migrant-smuggling generally, including its potential to undermine the fundamental principle of state sovereignty and to overwhelm protection institutions, to violate domestic laws and circumvent established domestic processes, its links to and facilitation of organised crime and terrorism, and especially its cost in human lives each year.

To address these realities, recent legislative efforts aim to provide immigration officials with better tools to properly determine the identity and admissibility of individuals who arrive in the context of "irregular arrivals", which can be the case with dangerous and illegal human-smuggling operations that enrich

criminals and undermine Canada's inviolable sovereignty and the integrity of the immigration system. Canada is confident that these measures continue to uphold our international protection obligations, including the principle of non-refoulement.

We will also be strengthening the authority to detain illegal or irregular migrants until we can determine whether or not they are legitimate refugees, and if they pose a flight or security risk. This fulfils our government's paramount duty, which is the safety and security of the Canadian people, including to protect them from violent foreign criminals and terrorists and to prevent the exploitation of our generous social services, while still providing a refuge for those fleeing real persecution.

The forthcoming changes to Canada's asylum system and our anti-smuggling efforts, combined with a strengthened commitment to refugee resettlement, are necessary to ensure that protection continues to be provided to those who need it, while at the same time ensuring Canada's programs and Canadian communities are protected from those who do not.

In implementing these new measures, Canada will continue to uphold its obligations under the Convention, including the commitment not to expel, *refouler* or extradite a person to another State where there are substantial grounds for believing the individual would be in danger of being subjected to torture in accordance with Article 3.

Canada is a consistently responsible participant in, and generous contributor to, the UN system. At the same time, as a reliable partner, Canada will always speak truthfully about its concerns with how the Organization is functioning. The UN system is a forum for debate and dialogue, but it must also be a force for positive action.

As this Committee is aware, Canada has worked diligently to provide a timely response in both official languages to this Committee's thirty-three advance questions with their many subparts. Canada takes its international obligations, including its reporting obligations, seriously. As such, we have endeavoured to provide a comprehensive response that reflects extensive internal consultation. Essentially, Canada has produced a comprehensive periodic report in less than six months, which reflects the hard work and dedication of all the people involved with the process.

The scope of the questions posed by the Committee in the List of Issues reflects the unfortunate delay between the submission of our 6<sup>th</sup> Report in 2008 and its consideration by the Committee. Canada is aware of the backlog of reports before this Committee and the other human rights treaty bodies. In the face of these challenges, Canada has been actively involved in the treaty body strengthening process being led by the Office of the High Commissioner for Human Rights and is committed to streamlining its



own reporting processes. We appreciated the Committee's continuing efforts to improve its working methods, and, as a State Party, stand ready to engage cooperatively.

As the Committee is aware, Canada is a party to seven principal international human rights treaties requiring the preparation of a substantial number of reports and reviews. This work, in addition to the reporting and follow-up required in relation to the Universal Periodic Review, is a significant burden on resources.

We would encourage the Committee to take measures to modernise the reporting process, including conducting video-conferences in lieu of costly in-person delegations. Independently, we have already begun to decrease the size of our delegations to the bare minimum required to respond effectively.

While Canada takes these issues seriously, it is unreasonable to expect a country to respond effectively and efficiently to questions from multiple bodies at once. This illustrates a problem of coordination and duplication that every State Party to multiple treaties is facing in terms of its reporting burden. It also compounds the burden on the Committee and on the Secretariat in terms of its own review and translation of documentation.

In this respect, Canada has observed that this Committee has asked questions about issues that fall more squarely within other bodies' mandates, including for example general issues relating to violence against women and trafficking in persons, which are better addressed by other committees charged with overseeing more directly applicable treaties. We urge this Committee – and the other human rights treaty bodies – to focus on their core mandates and not engage in the sort of bureaucratic mission creep to which organizations all too often succumb, though often from the best of intentions.

Canada is committed to maintaining a constructive dialogue with the UN human rights treaty bodies which are part of a strong and effective international human rights system. However, we would note that Canada also has a strong and exemplary record of promoting and protecting freedom at home and abroad that is not dependent on the involvement or oversight of the UN. No matter what the circumstance, Canada will continue to stand up for the advancement of freedom, fundamental human rights, democracy, and the rule of law, and to take principled positions in support of these core Canadian values.

Mr. Chair and members of the Committee, my delegation would be pleased to take your questions.