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Summary record of the 14th meeting

Held at the Palais des Nations, Geneva, on Friday, 18 August 2006, at 3 p.m.

Chairperson: Mr. Bossuyt
later: Ms Motoc (Vice-Chairperson)
later: Mr. Bossuyt (Chairperson)

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The meeting was called to order at 3.10 p.m.

Prevention of discrimination:

(a) Racism, racial discrimination and xenophobia

(b) Prevention of discrimination and protection of indigenous peoples

(c) Prevention of discrimination and protection of minorities

(agenda item 5) (*continued*) (A/HRC/Sub.1/58/CRP.2 and CRP.7)

1. **Mr. Yokota** presented his expanded working paper on discrimination against leprosy-affected persons and their families (A/HRC/Sub.1/58/CRP.7). In resolution 2005/24, the Sub-Commission had expressed its concern about the large number of leprosy-affected persons, the economic and social discrimination they suffered, their isolation, and the absence of legislative and administrative measures to prohibit such discrimination and to protect them. Before addressing the working paper itself, he would like to make two preliminary observations: first, the term “leper” had not been used because most leprosy-affected persons considered it a stigma and therefore found it offensive; second, the Sub-Commission would recall that during the previous session one expert had suggested that the study should be extended to cover other diseases, such as HIV/AIDs and tuberculosis, as they raised the same human rights issues. He agreed that, when analysed from a human rights perspective, leprosy had points in common with those other diseases, but leprosy had its own particular features: it was curable and treatment was available. The main problem was that those affected were unaware of the nature of the disease and the existence of treatment. He had no objection to studies being made of other diseases, but he preferred to limit the exercise to leprosy in the first instance.

2. Regarding the working paper itself, it provided an overview of the visits he had made to India, Ethiopia and Brazil, with the support of the Nippon Foundation, where he had been able to gather useful data on leprosy-affected persons. He had met with members of the legal and health professions, as well as representatives of NGOs caring for leprosy-affected persons. Fewer new cases had been reported in 2005, and in some countries, such as China and Angola, the average number of cases was less than 1 per 10,000 inhabitants. On World Leprosy Day, celebrated on 25 January 2005, certain Governments had made a solemn undertaking to address the issue and show the patients that they were not forgotten.

3. The text of the draft principles and guidelines for the elimination of discrimination against leprosy-affected persons and their families was in need of improvement. It was important to take the views of those affected by leprosy, their family members, health workers and other stakeholders into account. He therefore suggested the holding of two regional workshops: one in Asia and one in Africa. It would also be useful to hold a meeting in Geneva so that Member States and NGOs could ensure that their voices were also heard.

4. *Ms. Motoc, Vice-Chairperson, took the Chair.*

5. **Ms. Mbonu** said that if there was one issue that the Sub-Commission must not overlook it was discrimination against people affected by leprosy. Though many in number, persons with leprosy, disregarded by Governments, often saw their economic, social and cultural rights violated. Most striking of all was that the afflicted themselves did not know that the disease was curable and that free treatment was available. Mr. Yokota must be allowed to continue his work on the topic. In that context, he must insist on the need to launch awareness-raising and education campaigns, especially in the media. Of course, the drop in the infection rate was cause for celebration, but it was not enough, especially since

there was a known cure. The goal of the international community should be to eradicate leprosy. Specific information on how leprosy was transmitted would be welcome. How contagious was leprosy? Was it hereditary? If so, were there data on hereditary transmission? She wondered whether it was reasonable to recommend that Governments should compensate former leprosy sufferers. The measure seemed slightly excessive; Mr. Yokota might wish to review that particular recommendation.

6. **Mr. Kartashkin** said that as the Human Rights Council had not adopted the Sub-Commission's recommendations on its future work, the legal status of the documents under examination at the current session was unclear. Were they reports, preliminary reports or simple working papers? The question needed to be settled by the Bureau so that a consistent approach could be adopted.

7. He fully approved of the content of the document presented by Mr. Yokota but urged him not to limit the study to discrimination against people affected by leprosy. It should also address the fundamental rights and freedoms of the sick in general. The issue was whether those rights and freedoms could be curtailed, and if so, under what circumstances.

8. **The Chairperson** said that the Bureau would take another look at the status of the documents submitted at that session, but that the document presented by Mr. Yokota could not be considered a preliminary report as the Human Rights Council had not had the time to adopt the Sub-Commission's recommendations about its future work.

9. **Mr. Alfredsson** said that, by and large, he approved the content of the document presented by Mr. Yokota. The proposed principles and guidelines covered the essential issues; however, they needed to be restructured and made more specific. It was not particularly helpful to have principles as well as guidelines: having one or the other would avoid repetitions.

10. **Mr. Yokota** thanked the members of the Sub-Commission for their constructive observations and encouragement. He agreed with Ms. Mbonu that Governments must aim to eradicate leprosy. Education and awareness-raising were essential and he would continue to focus on efforts in those areas. Regarding Ms. Mbonu's question on transmission of the disease, 95 per cent of the population was naturally resistant to leprosy bacilli, which meant that the other 5 per cent was not naturally immune. That lack of immunity, not the disease itself, was hereditary. Physical contact with someone with leprosy was not enough to catch the disease. As to the proposed principles and guidelines, only a draft outline had been presented and he agreed with Mr. Alfredsson that they needed to be more specific. However, principles and guidelines were both needed because they complemented one another. The former were more general, while the latter were more detailed and specific. Once the proposal was completely ready, the usefulness of the distinction would be more apparent. He had no objection to the study also covering the fundamental rights and freedoms of persons with leprosy.

11. **Ms. Pomeon O'Neill** (International Federation of Human Rights Leagues) drew the Sub-Commission's attention to the flagrant discrimination suffered by members of the Roma community living in the north-western part of the Russian Federation and to the violations of their economic, social and cultural rights. Racist and xenophobic acts of violence had increased in 2006 and perpetrators went unpunished despite NGO recommendations. Police brutality continued and was becoming increasingly systematic in certain regions. The authorities refused to consider discrimination against the Roma as a real problem, and no preventive or protective action had been taken. No plan of action or measure of any kind had been put forward to promote the Roma's rights. In some parts of the north-east of the country, politicians had recently openly accused the Roma of living off drug trafficking. One of their main electoral promises was to "clean up" the cities.

12. The Sub-Commission should draw the attention of the pertinent United Nations bodies to the problem so that they could request the national authorities, local governments and law enforcement agencies to put an end to discriminatory practices against the Roma. An anti-discrimination law was needed to combat effectively all types of discrimination, particularly in employment and health and in the provision of federal services. The Russian Federation should take inspiration from the action of the Organization for Security and Cooperation in Europe, the Council of Europe or the European Union, to draw up a special nationwide action plan to prevent and combat the discrimination that the Roma community faced on a daily basis.

13. In Chile, although the transition period had ended, the rights of the Mapuches continued to be violated. Landownership issues, environmental pollution and rising poverty were at the heart of the social conflict between the Mapuche people and the Government. Despite the authorities' efforts, the Mapuches were still marginalized, and police intervention in their daily lives was systematic. Several Mapuches had been prosecuted under special public security or counter-terrorism provisions for violent acts committed during demonstrations, which curtailed their safeguards and rights and imposed exceptionally long prison sentences on them. The definition of terrorism contained in the provisions was very broad, leading to serious abuse. The complaints filed by the Mapuches should be considered legitimate complaints of human rights abuses that underscored the flaws in Chile's legal and institutional framework.

14. The International Federation of Human Rights Leagues was equally concerned about discrimination against minorities in Botswana. The definition of discrimination in the Constitution did not explicitly prohibit discrimination on the grounds of ancestry or national or ethnic origin, or indirect discrimination. The criminal laws and the criminal justice system did not guarantee access to justice for disadvantaged groups, especially not for the poor and minorities. No legal assistance was provided and interpretation services were inadequate; most legal services were located in urban areas. Since 1997, the Botswanan Government had applied discriminatory policies to forcibly relocate the indigenous peoples, and numerous cases of ill-treatment had been reported. Hostility towards migrants from Zimbabwe was growing and immigration laws contained a number of discriminatory provisions. The Federation called upon the Working Group on Minorities and the Working Group on Indigenous Peoples to take all that information into account in the course of their work and to ensure that all the necessary measures were taken to end such discrimination.

15. *Mr. Bossuyt, Chairperson, resumed the Chair.*

16. **Ms. McConnell** (Interfaith International) pointed out that discrimination lay at the root of civil wars, ethnic conflicts and armed conflicts around the world. It was therefore heartening that elimination of discrimination was on the agenda of the current session. She drew the Sub-Commission's attention to the situation in Sri Lanka, where the Tamils' economic, social and cultural rights had been trampled since 1948. More than four years after the signing of the ceasefire agreement between the Sri Lankan Government and the Liberation Tigers of Tamil Eelam, 800,000 displaced persons were still unable to return to their lands, which were occupied by the Sri Lankan army. Interfaith International was deeply concerned by the rise in human rights violations on the island in the previous six months, which had resulted in the displacement of a further 60,000 people, who had no access to food or aid of any kind owing to the Government-imposed embargo. Since November 2005, over 700 Tamil civilians had been killed by the security forces and the paramilitary forces that had been working with them.

17. The previous week, the Sri Lankan Government had once again declared war on the Tamil people, by violating the ceasefire agreement on several occasions. Tamil areas had been bombed by the Sri Lankan air force. On 14 August 2006, 61 school-age children had

been killed and 129 others seriously wounded in a bomb attack carried out in broad daylight on a children's home in Mullaitivu. On 5 August 2006, humanitarian aid workers with Action against Hunger were murdered by Government security forces. Several special procedures mandate holders had issued a joint declaration expressing their deep concern and demanding that the authorities open an investigation, publish the conclusions and prosecute the perpetrators of those violations of justice. According to members of the Sri Lanka Monitoring Mission, Sri Lankan troops were involved in extrajudicial executions committed in the north of the country. The Sri Lankan Government's discriminatory policies and its refusal to recognize Tamils as full-fledged citizens lay behind the conflict that was wreaking havoc in the country. The Government's current attitude showed that it was engaging in a war of aggression, fuelled by destructive, genocidal inclinations. The international community needed to watch the situation in Sri Lanka closely and bring pressure to bear on the authorities to put an end to all acts of genocide against the Tamil people.

18. **Ms. Takahata** (Japan Fellowship of Reconciliation) endorsed the working paper on discrimination based on work and descent (A/HRC/Sub.1/58/CRP.2) and commended the progress made on the draft set of principles and guidelines. As indicated in the report, it was particularly important to carry out research and studies to gauge the current situation. Discrimination based on work and descent must not remain an "invisible evil", and work in the area should be contracted to universities and research institutes. Also, the advisory body that would replace the Sub-Commission must effectively continue its predecessor's work on labour and descent.

Tribute to Mr. Sergio Viera De Mello and the staff of the Office of the United Nations High Commissioner for Human Rights who had lost their lives in the bomb attack on the United Nations headquarters in Baghdad

19. *At the invitation of the Chairperson, a minute of silence was observed as a tribute to Mr. Sergio Viera De Mello and the staff of the Office of the United Nations High Commissioner for Human Rights who had lost their lives in the bomb attack on the United Nations headquarters in Baghdad.*

20. **Mr. Abdoulaye** (Tchad Agir pour l'environnement) said that he would like the Sub-Commission to examine energy issues and the new aspects of migration. States should encourage investment in renewable energies, which were essential to the future of humankind. He drew the Sub-Commission's attention to the work camps housing African migrants employed in the greenhouses of the market gardening sector in Spain. Many young African men lived there in dreadful conditions, crammed into small huts made of plastic sheeting. Humane social solutions needed to be found immediately to end the exodus of young inexperienced people. If nothing was done, the number of detention camps would probably multiply, and European countries and their neighbours would build defensive walls and boost their so-called dissuasive police measures.

21. **Ms. Baek** (Pax Romana), speaking also on behalf of Franciscans International, the International Movement Against All Forms of Discrimination and Racism, the Lutheran World Federation and the International Federation of the Movements of Catholic Rural Adults, welcomed the report presented by Mr. Yokota and Ms. Chung on discrimination based on work and descent. The document revealed the extent of the phenomenon, which mainly affected people in parts of Asia and Africa. It provided an overview of the different discriminatory practices encountered, and underscored the need to prioritize their elimination. The advisory body that would replace the Sub-Commission needed to follow up on its work on the subject.

22. In its consideration of the fifteenth and sixteenth periodic reports of Yemen, the Committee on the Elimination of Racial Discrimination had asked about the situation of the

al-Akhdam minority, which suffered serious forms of discrimination based on work and descent. It had claimed that the Yemeni Government did not acknowledge the full extent of the role of ancestry in the marginalization of the groups in its territory, especially the al-Akhdam. The Committee had also been deeply concerned by the persistence of discrimination against culturally different communities, based on their descent, which resulted in violations of their economic, social and cultural rights.

23. Mr. Yokota and Ms. Chung had also expressed concern about the situation of the al-Akhdam community in their document. The fact that different human rights protection mechanisms within the United Nations system had raised the same concerns highlighted the key role that the Sub-Commission should play in that area. Hence, it was essential for the drafting of the principles and guidelines to be completed. In that regard, Mr. Yokota and Ms. Chung should build on the Sub-Commission's work on human rights and non-State agents. The principles and guidelines as a whole should remind States of their responsibility and their obligation to report on their efforts to combat discrimination based on work and descent.

24. The Sub-Commission must follow up on its work on the issue and put the finishing touches to the set of draft principles and guidelines. Two regional workshops should be held for that purpose, one in Asia and one in Africa, so that the two Special Rapporteurs could define objectives in cooperation with the populations involved. A meeting should be arranged in Geneva to obtain the views of Governments, United Nations bodies and agencies, NGOs and representatives of stakeholders as input for the preparation of the definitive set of the principles and guidelines.

25. **Mr. Malezer** (Foundation for Aboriginal and Islander Research Action Aboriginal Corporation), fully endorsing the report of the Working Group on Indigenous Populations, asked the Sub-Commission to adopt the recommendations contained therein. The report raised the issues of the militarization of indigenous lands and the resolution of conflicts between indigenous peoples and States. The report stressed the need for measures to be taken to protect indigenous people's cultural heritage and endorsed the principle of free, prior and informed consent. He hoped that the Sub-Commission would continue to award priority to the issue. The recommendations on the permanent sovereignty of indigenous peoples over natural resources and on their relationship with the land, which had resulted from the workshop, must be applied. As to the reform under way, he hoped that the new Human Rights Council would make good use of the skills of indigenous experts.

26. The adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the Human Rights Council at its first session was to be welcomed even though the final version of the text referred to forced assimilation and the destruction of indigenous culture rather than to cultural genocide. Genocidal policies and practices were a reality and should be considered crimes against humanity. It was equally disappointing that the reference to "special measures" had been replaced in the final version with the weaker "effective measures".

27. **Ms. Sahureka** (International Association of Democratic Lawyers) fully endorsed the communication sent by the Indigenous Peoples' Caucus to the Chairperson of the Human Rights Council and hoped that the Chairperson would take it into account. She supported the holding of a seminar on the ongoing impact of colonialism on indigenous peoples. She invited the Sub-Commission to focus particular attention on the plight of indigenous women, who were often targeted by members of the armed forces and subjected to rape and other acts of sexual violence. With regard to conflict prevention and resolution, the International Association of Democratic Lawyers was still concerned about the situation of indigenous peoples caught up in armed conflicts, especially in the province of Maluku in Indonesia, where perpetrators of war crimes and flagrant human rights violations enjoyed impunity. The Indonesian Government's decision to reduce the sentences imposed on the

perpetrators of the attack on Bali in 2002 undermined the chances of achieving real peace. The conclusions drawn by Mr. Yokota on the use of indigenous peoples' lands by non-indigenous authorities, groups or individuals for military purposes called for follow-up. Violations of human rights and international humanitarian law, war crimes, and crimes against humanity must not go unpunished.

28. The Sub-Commission should consider making the following recommendations: immediate withdrawal of troops occupying indigenous lands; annulment of agreements whereby national armed forces personnel were deployed to protect the private interests of multinational corporations; and prohibition of the use of chemical and toxic substances that degraded or destroyed natural resources and endangered human lives. The Sub-Commission might also consider recommending that States should prosecute any of their nationals accused of committing human rights violations while serving as United Nations peacekeepers. The United Nations should lift the diplomatic immunity of members of its personnel accused of committing crimes in the Democratic Republic of the Congo and elsewhere so that they could be brought to trial.

29. **Ms. Paavilainen** (Commission to Study the Organization of Peace) said that no country could claim to have a completely homogeneous population. States were under a special obligation to safeguard the welfare of the minority groups on their territory, and that could only be achieved in a climate of full respect for the aspirations and unique features of each minority group. Discrimination on the basis of religion, faith, race or caste prevented minorities from fully realizing their potential and contravened the principle of the universality of human rights. States had to do all in their power to ensure that minorities were fully involved in the country's political, economic and social life and that they could follow their traditions and pass them on to future generations.

30. Discrimination could not be eradicated by laws and constitutions alone, because it stemmed from a tendency among certain human beings to assert their real or imagined superiority over others and to distinguish between groups and communities on the basis of religion, race, caste or beliefs. Enshrining the principle of equality before the law in the Constitution served as a safeguard in democratic countries, but not in countries that had opted for a concept of nationality that was in itself discriminatory.

31. In Pakistan, President Musharraf had not taken any decisive steps to amend or repeal the blasphemy laws (which extremists used in order to oppress religious minorities) or the Hudood ordinances which had made Pakistani women second-class citizens. The fact that Pakistani Shiites could not travel abroad on the ground that they might join Hezbollah illustrated how deep-rooted discrimination on the basis of religion was in Pakistani society. The prohibition was not imposed on the Sunni majority even though Sunni Muslim groups were known to have carried out activities in Iraq on behalf of Al-Qaida. The situation of the Ahmadiyya minority showed how a State could use the law to ostracize an entire community. Unfortunately, those backward tendencies were appearing once more in other countries, such as Bangladesh, which was witnessing a rise in fundamentalism and extremist ideology that would undoubtedly have consequences for the minorities in that country.

32. When States were founded on the ideals of democracy and liberalism, the voices of all those who condemned discrimination, whether they belonged to majority or minority groups, had more weight. It was therefore imperative that the United Nations and international human rights organizations should launch a worldwide campaign to promote equality in countries that continued to block the democratization of their constitutions and legal structures. Regardless of their skin colour or religion, people should learn to contribute together to the health of the planet. Accordingly, the international community should urge nation-States to recognize the aspirations of all segments of society and to improve their political structures. They needed to reinvent their identities as States, feel

pride in their mixed populations and ensure that the principle of equality for all citizens was upheld.

33. **Mr. Rahman** (Bangladesh) fully endorsed the statement made by the observer for Pakistan on behalf of the Organization of the Islamic Conference regarding agenda item 5. As to the information on his country contained in the progress report on discrimination based on work and descent, the Government of Bangladesh was constitutionally obliged to respect the rights of all minorities in the country. In addition to the protection afforded by the Constitution, the Government was implementing measures to help and protect minorities. Civil society organizations were also very active in protecting minorities in Bangladesh. Numerous NGOs around the world were working with the Government to improve the living conditions of the people of Bangladesh, including minorities. Schools were also prohibited from refusing to register people based on their race, culture, religion, ethnic background or descent. The Constitution guaranteed access to employment, property and justice under equal conditions. The Bangladeshi Government was sparing no effort to eradicate extreme poverty. Primary education was compulsory, and education for girls was free up to the end of secondary school. Bangladesh was a country undergoing considerable changes. The emphasis was on development and there was no room for extremism. Much still remained to be done to integrate minorities, but they were participating more and more in the country's economic and social life.

34. **Mr. Guissé** drew the Sub-Commission's attention to the need to establish norms for the protection of the rights of indigenous peoples against the harmful consequences of globalization, particularly the activities of transnational corporations. Indigenous peoples' natural resources were being pillaged by transnational corporations in violation of those rights, at times with the support of the State in question, which was even more deplorable. Despite all the efforts of the Sub-Commission and other United Nations bodies, indigenous peoples continued to suffer the devastating consequences of globalization. States and transnational corporations must be reminded of their shared responsibility towards indigenous peoples. The Sub-Commission, which had appreciated the risks associated with globalization early on, should ask the Working Group on Indigenous Peoples to draw up a set of rules to protect indigenous peoples against transnational corporations that monstrously exploited their natural resources solely for profit.

35. **The Chairperson** invited Ms. Chung and Mr. Yokota to present the progress report on discrimination based on work and descent, published as document A/HRC/Sub.1/58/CRP.2.

36. **Mr. Yokota** said that Ms. Chung and he had endeavoured to gain a thorough understanding of discrimination based on work and descent around the world. A questionnaire had been sent to Governments, specialized agencies in the United Nations system, national human rights organizations and NGOs to gather information on specific aspects of the phenomenon. The contents of the report were based on the replies received. Before handing over the floor to Ms. Chung, who had worked tirelessly on the results analysis, he wished to stress that discrimination based on work and descent was linked to extreme poverty, as the representative of Bangladesh had pointed out.

37. **Ms. Chung** (Special Rapporteur with the task of preparing a comprehensive study on discrimination based on work and descent) said that the questionnaire had been sent to all the Member States of the United Nations, national human rights organizations and NGOs. By March 2006, only 10 States, none of which had a problem of discrimination based on work and descent, had replied. None of the States that were affected by the problem and none of the human rights organizations had done so. Replies had been received from the International Labour Organization, special rapporteurs of the Commission on Human Rights, and treaty bodies. Several NGOs had also responded, attesting to the interest of civil society in discrimination based on work and descent. The

report had been based on the replies furnished by the NGOs. Discrimination based on work and descent was a serious problem affecting over 260 million people in Africa and Asia, as well as in communities of the diaspora. One of the main conclusions drawn from the replies was that discrimination based on work and descent was institutionalized and firmly anchored in the culture of the countries in question. Regarding the report itself, the first section presented an overview of the various discriminatory practices based on work and descent, the second presented the measures taken by States to combat the phenomenon, and the third presented matters that deserved special consideration.

38. **Mr. Yokota** said that to draw up the proposed set of principles and guidelines, he and Ms. Chung had drawn on the four preceding reports on discrimination based on work and descent and the discussions held on the subject by the Sub-Commission since 2001. He stressed the need for two workshops for completion of the drafts, one in Asia and another in Africa, as well as the need to hold consultations with the Member States and NGOs in order to hear their views.

39. **Mr. Alfredsson** expressed his approval of the substance of the draft set of principles and guidelines, but was still not convinced of the need to have both principles and guidelines.

40. **Ms. Motoc** requested more specific information on how the special rapporteurs had dealt with the complex issue of discrimination based on work and descent among the communities of the diaspora.

41. **Ms. Jourdan** (Association of World Citizens) encouraged Mr. Yokota to look into other diseases, such as HIV/AIDS. Improvements in hygiene and nutrition and the availability of treatment for leprosy were causing the disease to die out eventually. Hence the need to extend the study to diseases with terrifying consequences. In its report on racism in Europe in 2005, which was based on information provided by 20 member States of the European Union, the European Network Against Racism had shown that racism was becoming increasingly commonplace and had drawn attention to racist attacks on migrants in particular. She was surprised that the new Human Rights Council had not adopted a resolution on the subject. All migrants should be able to exercise their rights, regardless of their status. Globalization was often a worrying phenomenon inasmuch as it seemed that racism and nationalist conflicts of all kinds were spreading. Certain political movements led people to believe in the existence of a “foreign threat” that called for tougher legislation on the entry and stay of foreigners.

42. **Ms. Calfunao** (Indian Council of South America (CISA)) drew the Sub-Commission’s attention to the numerous violations of the human rights of members of the Juan Paillalef community in southern Chile. On 9 August 2005, several members of the community, including her son, had been detained by the police and tortured. She herself had been detained and tortured simply for having defended the community’s land rights. She urged the Sub-Commission to demand that the Chilean State respect the rights of the minorities living in its territory.

43. **Mr. Yokota** agreed with Mr. Alfredsson on the need to make the proposed principles and guidelines more specific. Once that had been done, the distinction between principles and guidelines would become clearer. As to discrimination within the diaspora communities abroad, he would, in the framework of future studies, be looking into an initiative by the British Parliament to address that form of discrimination.

Statement in exercise of the right of reply

44. **Mr. Lebbe** (Sri Lanka), in replying to the statement made by the representative of Interfaith International, said that the Sri Lankan Government invested considerable sums in the northern and eastern parts of the island. The recent escalation of violence was triggered

by the actions of the Liberation Tigers of Tamil Eelam, and the Sri Lankan Government was taking strictly defensive measures aimed at preserving the country's territorial integrity. The Government urged the Tigers to cease all violence and to return to the negotiating table.

The meeting rose at 6 p.m.