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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-fourth session

SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 August 2002, at 10 a.m.

Chairperson: Mr. PINHEIRO

later: Mr. KARTASHKIN
(Vice-Chairperson)

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The meeting was called to order at 10.15 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued)

Statement in exercise of the right of reply

1. Ms. HOUMMANE (Observer for Morocco) said that a non-governmental organization (NGO) had allowed itself to be used as a front by opponents of Morocco's territorial integrity, whose totally inappropriate, not to say mistaken, comments on the human rights situation in that country were based on groundless allegations.

2. The release of 101 Moroccan prisoners in July 2002 could not be considered as evidence of a political will for peace, as the NGO concerned had insisted on interpreting it. On the contrary, it was required by international law and the relevant Security Council resolutions. It should not be forgotten that 1,260 Moroccan prisoners were still being held captive in Frente POLISARIO jails, where they had been kept for over 25 years in flagrant violation of international humanitarian law. Despite constant appeals by the Secretary-General of the United Nations and by the Security Council, including in its resolution 1429 (2002) of 30 July 2002, the Frente POLISARIO still refused to accept its historical responsibility to free the Moroccan prisoners.

3. She also drew attention to the ordeal of the Moroccans held in the camps in Tindouf, whose situation was intolerable. Subjected not only to exile and harsh living conditions but also to the worst kinds of human rights violations, they were deprived of the most basic rights, such as freedom of expression and the right to information. Attention was regularly drawn to those human rights violations by the international press and by some NGOs in the field. For example, in its 2002 report, Amnesty International pointed out that the perpetrators of the human rights violations in those camps still enjoyed impunity.

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (agenda item 3) (continued) (E/CN.4/Sub.2/2002/4-6; E/CN.4/Sub.2/2002/NGO/4, 14-16, 20 and 22)

4. Ms. HAMPSON, introducing the work in progress that she had submitted in accordance with Sub-Commission resolution 2001/105 (E/CN.4/Sub.2/2002/6), concerning the scope of the activities and the accountability of armed forces, United Nations civilian police, international civil servants and experts taking part in peace support operations, sought the views of Sub-Commission members on three specific points. It was her intention to cover all operations carried out under United Nations mandates by either United Nations forces or other forces, and she would like first of all to know whether the Sub-Commission approved of that approach, which excluded operations not carried out under the authority of the United Nations.

5. Suggesting that a distinction should be drawn between the acts of individuals and/or contingents which were in conflict with human rights standards and the implementation of specific human rights mandates, she asked if the implementation of those mandates should be considered in the study.

6. The problem of prostitution and trafficking in women in the context of peacekeeping operations should also be tackled. When someone participating in such an operation had sexual relations with a prostitute in full knowledge that she was not acting voluntarily, it could be argued that the client and the client's contingent was accountable insofar as the individual concerned was exploiting a situation that involved a human rights violation, even if the individual was not responsible for that situation. That raised the broader question of the responsibility of contingents towards the persons under their control: to what extent were they responsible for preventing serious violations from being committed by third parties, particularly in the case of prostitution and trafficking in women? She would like to know if members of the Sub-Commission thought it necessary to include that issue in the planned study.

7. Mr. SATTAR asked whether the proposed study would deal solely with operations carried out in implementation of a human rights mandate or whether it also concerned peacekeeping operations.

8. Ms. HAMPSON said that her working paper would seek to cover all forms of peacemaking operations, including peacekeeping or peace enforcement operations, carried out under a United Nations mandate.

9. Mr. KARTASHKIN said that it would be necessary to define precisely the legal framework and norms applicable for any operation carried out under a United Nations mandate, whatever its nature. It would also be necessary, as Ms. Hampson had pointed out, to define responsibilities clearly, by making a distinction between those of individuals and those of the contingents to which they belonged.

10. In the case of human rights violations such as forced prostitution or trafficking in women, the contingent should bear overall responsibility; in other words, it should be responsible not only for acts committed by individuals taking part in the operations but also those committed by third parties. The degree of responsibility would nevertheless depend on whether the violations were committed by members of the contingent or by third parties. In any case, personnel acting under the authority of the United Nations should ensure that no violation of any kind was committed by anyone.

11. Mr. PARK welcomed the work done by Ms. Hampson on the accountability of participants in peace support operations, which should fill a number of gaps, as the rules in that area were still very vague. Unfortunately, there had been many cases of human rights violations being committed during such operations, as pointed out, for example, in the 2001 report of the Office of Internal Oversight Services. Several country-specific studies on the sexual exploitation of children during armed conflicts had shown that the arrival of contingents to take part in operations of that kind had been followed by a rapid increase in child prostitution. An assessment mission carried out by the Office of the United Nations High Commissioner for Refugees and Save the Children UK in Kenya, Liberia and Sierra Leone in October and

November 2001 had also observed that peacekeeping troops abused their position and authority. While not wishing to denigrate the work carried out during those operations, he stressed the need to define clearly the responsibility of those taking part in them for their acts, whether or not those acts were committed in the exercise of their official duties.

12. The planned study should cover all operations carried out under the authority of the United Nations or with its authorization, with the aim of identifying remedies for the victims of human rights violations committed by individuals or contingents taking part in those operations. It would also be desirable to examine the implementation of mandates related specifically to human rights. In the case of violations related to prostitution and trafficking in women, the concept of accountability should be broadened to include a duty of protection, including protection from violations that might be committed by third parties.

13. Another issue raised was that of the accountability of international organizations themselves. If individuals or contingents taking part in United Nations-mandated peacemaking operations committed human rights violations, who was to be held responsible at the criminal and civil level: the perpetrators of the violations, the States of which they were nationals, or the United Nations? Perhaps joint accountability was a possibility. That raised the question of what court was competent and what laws were applicable. No clear answers to that question could be found in existing texts, such as the Convention on the Privileges and Immunities of the United Nations, the General Assembly resolution of 1998 setting time limits and financial limits on requests for compensation arising from civil responsibility, or the Secretary-General's circular on compliance with international humanitarian law by United Nations forces. That was why it would be particularly useful to carry out studies on the subject in order to contribute to the development of new rules of international law relating to the activities of international organizations.

14. Pointing out that the title of the paper submitted by Ms. Hampson, as it stood, seemed to refer to armed forces in general, he suggested changing it to specify that the paper related to armed forces intervening under a United Nations mandate. He would also like the paper to draw a distinction between peacekeeping operations and peace enforcement measures. Finally, he approved of Ms. Hampson's idea to annex a set of "standard provisions" to every United Nations peacemaking mandate. He hoped that such a proposal would be included among her final recommendations.

15. Mr. EIDE said that he agreed with Ms. Hampson's view of the scope of the planned study but was not sure that he had properly understood the second point on which members of the Sub-Commission had been invited to give their views, and asked for clarification on that point.

16. The issue of prostitution and trafficking in women in the context of peacemaking operations - which were, in fact, but one example of the serious violations that could be committed during those operations - raised the question of the scope of United Nations mandates. In that respect, a distinction should be made between the obligation to comply with human rights standards, which applied to every individual taking part in the operations, whatever the circumstances, and the obligation to protect people, which varied according to the nature of the mandate and individuals' ability to act under that mandate.

17. He wondered about the practical consequences of accepting that the United Nations itself bore some responsibility. Would the United Nations be held responsible for controlling the behaviour of individuals taking part in operations, dismissing the perpetrators of violations or those who had been unable to prevent violations being committed by third parties, or compensating victims?

18. Another question to be studied more closely was that of jurisdiction, since proceedings currently had to be conducted in domestic courts. In that respect, it would be interesting to examine the role of the International Criminal Court and to study the implications of the refusal by the United States of America to recognize the Court's jurisdiction over its nationals. That desire for impunity showed clearly that the possibility of war crimes or crimes against humanity committed within the framework of operations carried out under the authority, or with the authorization, of the United Nations had to be foreseen.

19. Ms. MOTOC welcomed Ms. Zerrougui's working paper (E/CN.4/Sub.2/2002/5) and said that the danger in studying a question as vast as discrimination in the criminal justice system was that in-depth analysis was impossible. The decision to focus on the legal aspects of domestic legislation and inter-State agreements, including regional ones, therefore appeared to be a particularly judicious one. A distinction must be drawn between regional agreements that affected third States and those that, like certain Council of Europe agreements, were purely regional.

20. With regard to Ms. Hampson's study, the approach to be taken would depend on whether it was the accountability of the United Nations or that of States that was being considered. In the first case, it would be very much a standard-setting exercise, undertaken with a view to proposing guidelines. In the second, it would be a question of examining the effectiveness of the law by reviewing ways to punish the perpetrators of violations, taking into account the unreliability of the judicial bodies in the countries affected by armed conflicts where the violations were committed.

21. It seemed appropriate to draw a parallel between peacekeeping forces and peace enforcement forces authorized by the Security Council: they pursued the same aims under the Charter and were thus also the responsibility of the United Nations. Some operations were, moreover, on the borderline between traditional peacekeeping and peace enforcement, because of the very ambiguous references to self-defence in Security Council resolutions.

22. Ms. Hampson's reasons for studying mandates related specifically to human rights separately were not very clear. She wondered if it was because there was a possible conflict between that kind of mandate and the existing legislative framework in the field of human rights, which might lead to certain violations.

23. Violations related to prostitution and trafficking in women were, of course, only one example of the many violations that might be committed during peace support operations. The question of the seriousness of the violations thus arose. Although there were criminal courts for crimes against humanity and war crimes, the legal framework for other violations was much more vague.

24. Mr. YOKOTA agreed with Mr. Park that Ms. Hampson's final study would need to have a fairly broad scope to cover all personnel engaged in peacekeeping operations pursuant to Article 42 of the Charter of the United Nations and in operations carried out by multinational forces acting under a Security Council mandate in accordance with Article 53 of the Charter. In that respect, it would be necessary to consider the question of the application of human rights standards in the case of the strikes by the North Atlantic Treaty Organization (NATO) on Yugoslavia in connection with events in Kosovo, given that top NATO officials and the President of the United States of America, Mr. Bush, had tried to justify that very controversial military action by arguing that it was provided for in the Charter.

25. With regard to the second point raised by Ms. Hampson, he was unsure, like Mr. Eide, of quite what the question meant. In any case, the final study should cover all the activities involved in a peacekeeping operation.

26. With regard to the law applicable to trafficking in women, priority should be given to humanitarian law, since if a State had not ratified the human rights instruments, particularly the conventions dealing with women's rights, it could not be claimed that nationals of the State concerned were bound by those instruments. On the other hand, as the Geneva Conventions had become part of customary law, there was absolutely no doubt that all members of peacekeeping forces must abide by them, whether or not the States of which they were nationals had ratified the human rights instruments.

27. Finally, he wondered what mechanisms would be used to bring the perpetrators of violations to justice. Would the United Nations be responsible for extraditing members of peacekeeping forces for trial by the International Criminal Court? The Sub-Commission should take a position on the refusal by the United States of America to recognize the Court's jurisdiction over United States nationals taking part in peacekeeping operations.

28. Ms. KOUFA said that she would like Ms. Hampson to expand on her introduction and offer some tentative conclusions, so that members could contribute more effectively to her study.

29. Ms. WARZAZI said that it was necessary to prosecute and punish not only the perpetrators of violations but also their superiors when the latter knew what was happening but did not intervene. Moreover, it would be useful if the United Nations could obtain from the Governments supplying contingents a commitment to have their nationals tried by their own courts. If they refused to do so, the United Nations could refer the cases to the competent international bodies.

30. Mr. WEISSBRODT drew Ms. Hampson's attention to chapter XXII of the training manual prepared and published by the Office of the United Nations High Commissioner for Human Rights, entitled "Norms applicable to UN human rights officers and other staff", which listed the rules applicable to international civil servants and other United Nations staff members whose function was to monitor human rights, and also to the 1994 Convention on the Safety of United Nations and Associated Personnel.

31. Ms. HAMPSON, replying to questions on the second point in her introduction, said that peacekeeping missions could include a number of components, including human rights training. As violations committed within the framework of that specific kind of activity were extremely rare, she had excluded that scenario from the scope of her study. On the other hand, she proposed to study the accountability of international civil servants whose conduct was incompatible with human rights standards.

32. With regard to trafficking in women, the accountability of soldiers who used the services of prostitutes was indirect and consequently not as clear-cut as in cases where soldiers ill-treated prisoners in their custody. Nevertheless, prostitution raised the broader issue of the extent to which peacekeeping troops had responsibility to protect women against third parties who violated their rights.

33. Explaining her choice of the term "accountability" in the English title of her document, she said that the word had a very broad meaning that covered legal responsibility, dispute settlement through administrative channels and the possible use of follow-up mechanisms to monitor domestic proceedings when the perpetrator of a violation was tried in the State of which he or she was a national. Moreover, the decision to make no direct reference to the Blue Helmets in the title, but to use a broader term, arose from a desire to include multinational armed forces acting under a United Nations mandate.

34. She intended to study the question of accountability from the viewpoint of civil, criminal and administrative regulations and to follow Mr. Park's suggestion to prepare a set of guidelines and practical recommendations rather than binding rules. The Sub-Commission could take up that constructive idea in other situations too.

35. Mr. LEBLANC (Dominicans for Justice and Peace), speaking also on behalf of Franciscans International, Pax Christi International and North American Dominican Justice and Peace Promoters, said that several Dominican congregations in the United States had been campaigning for the abolition of the death penalty. Since 1987, the Commission on Human Rights had adopted several resolutions in which it had requested States to introduce a moratorium on executions and 109 of the 189 States Members of the United Nations had begun to put those resolutions into practice, as shown by encouraging developments in Kyrgyzstan, Guatemala, Turkey and the United States.

36. In Kyrgyzstan, President Akayev had extended the moratorium on the death penalty and announced the adoption of a human rights programme that should lead to its abolition by 2010. In Guatemala, President Portillo had announced in July 2002 that 36 executions had been suspended and the Government had submitted a bill to abolish the death penalty, on which Congress would be taking a decision in the very near future. In Turkey, Parliament had voted for the abolition of the death penalty in peacetime on 2 August 2002, bringing the country significantly closer to membership of the European Union.

37. In the United States, the Supreme Court had recently handed down some crucial decisions, particularly one concerning a mentally handicapped person, in which it had declared

the death penalty to be unconstitutional. Consequently, the 20 States in the United States where the mentally handicapped could still be sentenced to death had been forced to suspend executions of that category of offender.

38. Persons belonging to racial minorities or disadvantaged and marginalized groups were particularly affected by discrimination in the criminal justice system, as shown by the abnormally high rate of death sentences passed on members of those groups. In that connection, he cited the case of Javier Suárez Medina, a young Mexican who had been sentenced to death at the age of 19, following a trial that left many questions unanswered, and who was due to be executed on 14 August 2002 in Texas, after spending 13 years on death row. As far as the supposedly deterrent effect of the death penalty was concerned, both independent studies and a United Nations study showed that the crime rate was not affected by the existence of that punishment.

39. In the belief that capital punishment merely perpetuated the cycle of violence, he urged all Governments to abolish the death penalty, ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and provide more humane alternative sentences. He encouraged the Sub-Commission to undertake a comprehensive study on discrimination in the criminal justice system and to support the appeal by the Pope and United States bishops for a moratorium on executions, and recommended that the Sub-Commission should look into the case of Javier Suárez Medina and intervene to prevent his imminent execution.

40. Mr. GUISSÉ, referring to Ms. Zerrougui's working paper, said it was unfortunate that the justice system, the last line of defence of any individual, should have ceased to contribute, through the principle of equality before the law, to the building of democratic societies around the world. The right to fairness in judicial matters was not limited to the trial as such. It should also be respected during the preliminary investigation carried out by the police, as it was mostly in police stations that individuals who had been deprived of their liberty were the victims of serious violations. Individuals detained in the offices of the border police or taken to the border were often ill-treated, tortured and deprived of any national or international legal protection. Police custody needed to be regulated, particularly in the developing countries. Provision must be made for the presence of a lawyer and for habeas corpus or amparo procedures, and the prisoner must have an opportunity to be examined by a doctor at the end of the preliminary investigation.

41. Inequality in the sphere of justice was also evident in trials, where the cost of proceedings, including civil proceedings, meant that justice was for the rich only. Indigenous peoples could not afford to challenge the expropriation measures regularly used to steal their land from them. Trade and employment tribunals in the developing countries were so corrupt that they spent their time declaring bankruptcies or announcing lay-offs for the benefit of transnational corporations, providing proof, if proof was needed, of the damaging role played by those corporations in developing countries, which no longer had any control over their economies or courts. A true justice system applied the same law to all people and all institutions, but current developments showed such justice was unfortunately still a long way off.

42. Mr. Kartashkin, Vice-Chairperson, took the Chair.

43. Mr. MADELIN (International Federation of Human Rights Leagues) drew the Sub-Commission's attention to the fate of Mr. Hamma Hammami, spokesperson of the Tunisian Communist Workers' Party, who had been imprisoned on 2 February 2002 after a mockery of a trial. Mr. Hammami had been ill-treated and kept in solitary confinement. His wife, Ms. Nasraoui, had condemned the sentencing of her husband for a "crime of opinion" and had gone on a hunger strike lasting almost five weeks. Their family had been constantly harassed by the Tunisian authorities for several years.

44. He welcomed the major advance for humanity represented by the establishment of the International Criminal Court and stressed that if the Court was to be, and be seen to be, a just, effective and independent institution, its judges must be extremely competent and impartial. The procedure for appointing judges must therefore be completely transparent and impartial and should involve consultation with civil society. Observing that the process as it stood had produced one particularly politicized appointment, from both a national and an international viewpoint, he welcomed the appeal for transparency and impartiality made on 28 June 2002 by the Special Rapporteur on the independence of judges and lawyers and called on the Sub-Commission to adopt a resolution on the question. Finally, he called on the Sub-Commission to express concern at the introduction in the United States and elsewhere, under cover of the fight against terrorism, of emergency, arbitrary and discriminatory forms of justice.

45. Ms. BELLAMY (International Confederation of Free Trade Unions) said it was deplorable that trade unionists going about their legitimate business were often treated with hostility by the authorities, who threatened their lives, personal safety and liberty. She called, in particular, for the immediate release of six trade unionists detained illegally in Haiti since 27 May 2002 for demonstrating during a conflict that had degenerated into clashes in which two trade unionists had been killed and many others injured as a result of lax policing by a complicit police force.

46. She condemned the sentencing of 10 trade unionists in the Democratic Republic of the Congo to 10 months' imprisonment for calling for a strike in the course of their legitimate trade-union activities and demanded their release and reinstatement. The Brazilian Government must take all necessary steps to prosecute and punish those guilty of killing and torturing a trade unionist, Bartolomeu Morais da Silva, who had been gathering evidence about abuses committed by certain parties in a government department in Pará. She also condemned the "regularization" of the trade-union movement by the Government in Belarus and the clampdown on independent trade unionists in China and Korea, and also in Turkey following the introduction there of a new labour code.

47. Ms. KOUFA joined her colleagues in encouraging Ms. Zerrougui to undertake an in-depth study on discrimination in the criminal justice system. The study should focus on criminal procedure and on the organization and functioning of the police and judicial and prison staff, and should, as Ms. Zerrougui had rightly emphasized, avoid peripheral forms of discrimination that were not directly attributable to the administration of justice. She should therefore take the administration of justice as her starting point before moving on to other factors

that contributed to the persistence of discrimination in the criminal system. Such a study would be a useful contribution by the Sub-Commission to the implementation of the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and to the work of the Commission on Crime Prevention and Criminal Justice.

48. Mr. SHARAFEDDIN (International Organization for the Elimination of All Forms of Racial Discrimination) said that there was no peace without justice and that conflicts were a natural phenomenon that had always existed. With time, human beings had managed to find ways to overcome their natural instincts by using their intelligence, wisdom and experience. The logic of domination and force had never achieved lasting peace and security, and States had established judicial systems to settle disputes between their citizens. He wondered, therefore, why it had not been possible to establish an international court to settle conflicts between different groups and different States. That task needed to be tackled urgently before a nuclear tragedy put an end to life on Earth.

49. Neither the International Court of Justice nor the new International Criminal Court had yet been able to accomplish that task. The latter's role had been compromised by the United States' insistence that its soldiers should be exempt from its jurisdiction. The former had only limited powers, partly because it could not intervene in any international conflict, however dangerous it might be, without the agreement of the two parties to the conflict and partly because it was unable to enforce its decisions through the use of international armed forces or other means of pressure. The Sub-Commission should raise that problem, which must be addressed if there was ever to be a strong and effective international court fully capable of upholding the rules of justice and applying them widely to groups and nations and thus ensuring peace.

50. Mr. ALFONSO MARTÍNEZ welcomed Ms. Zerrougui's well-argued final working paper on the administration of justice (E/CN.4/Sub.2/2002/5). As she suggested in paragraph 8 of the paper, there was a need to study further the daily workings of criminal justice and to examine carefully the mechanisms which, in violation not only of international but also of national rules, tended to perpetuate discrimination in criminal justice systems. In that respect, it was important that the study should concentrate on institutional mechanisms as well as on the particular social conditions in each country.

51. In her study, Ms. Zerrougui discussed the impact both of the World Conference against Racism and of the tragedy of 11 September 2001. The Declaration and Programme of Action of the World Conference had confirmed the existence of discrimination in the administration of criminal justice. As for the attacks of 11 September, which had been unanimously condemned by the international community, although Ms. Zerrougui had no mandate to evaluate the compliance or non-compliance of anti-terrorist provisions with international human rights standards and humanitarian law, as pointed out in paragraph 19, she should certainly study certain discriminatory measures in the area of criminal justice which had been taken as part of the fight against terrorism and which breached not only international standards but also domestic laws. Such measures had already been condemned by the United Nations High Commissioner for Human Rights, various NGOs and United Nations organs.

52. Ms. Zerrougui had analysed the characteristics and causes of discrimination affecting both nationals and aliens, while pointing out, in paragraph 28 and the following paragraphs, that non-citizens, and particularly women in that group, were the main victims of such discrimination. With regard to the failure of national criminal justice systems to meet the needs of vulnerable populations, it should be stressed that the socio-economic situation was responsible for the limited access by certain marginalized population groups to criminal justice.

53. In conclusion, he would support a recommendation by the Sub-Commission to the Commission on Human Rights that the study should be pursued in greater depth.

54. The CHAIRPERSON informed the Sub-Commission that the International Commission of Jurists, which had intended to make a statement on the administration of justice by military courts, had agreed to postpone its intervention as Mr. Joinet had not yet introduced his report on that subject.

55. Mr. SHIMABUKURO (International Association of Democratic Lawyers) said that his association had been drawing attention for many years to the campaign led by the League Demanding State Compensation for the Victims of the Public Order Maintenance Law. That repressive law had been introduced in Japan in 1925 to clamp down on anyone advocating freedom and democracy. Hundreds of thousands of people had suffered in the clampdown; 2,000 people had been tortured to death or had died in prison. The President of the League had himself been arrested, imprisoned and tortured for his opposition.

56. Everyone knew that during the 15 years of the war of aggression it had waged in the Asian and Pacific region up to 1945, Japan had committed all kinds of atrocities against the peoples of the region. The Nanjing massacre, experiments on living beings and the “comfort women” scandal were but a few examples. The war had caused 20 million deaths in the region and over 3 million in Japan itself. Since its foundation in 1968, the League had been trying to convince the Japanese Government to accept its responsibilities, calling on it to recognize and compensate the victims. However, the Japanese authorities still refused to do so, on the pretext that the matter had been dealt with. The Japan Federation of Bar Associations, which had over 15,000 members, had already adopted a resolution in 1993 calling on the Japanese Government to give priority to compensating the victims of the Public Order Maintenance Law.

57. The payment of compensation for wartime suffering was a trend that could be observed all round the world. Japan’s attitude in that respect differed markedly from that of many countries, such as the Republic of Korea, which had recognized the mental and financial harm caused to victims under Japanese colonial domination by the repressive Japanese law. In Germany and Italy, compensation had been paid to war victims and resistance fighters who had fought against fascism during the Second World War. The French, United States and Canadian Governments had also taken similar steps.

58. The Japanese Government's refusal to do likewise, while in fact attempting to justify and minimize the war of aggression and the war crimes it had committed, was unacceptable. Having become a major military power, Japan was currently using the terrorist attacks on the United States as a pretext for passing new emergency legislation, such as that concerning national conscription, with the sole aim of building up its military strength and taking part in military operations abroad alongside the United States.

59. He therefore called on the Sub-Commission to take the following measures: to recommend that the Japanese Government should seriously study the question of war reparations; to appoint, as necessary, a special rapporteur to study the question further; to recommend that the Japanese Government should set up a group consisting of members of the League Demanding State Compensation for the Victims of the Public Order Maintenance Law and representatives of the Government; and, lastly, to recommend that the Japanese Government should ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

60. Mr. ALI (Movement against Racism and for Friendship among Peoples) said that justice was generally more or less well administered but there were cases where it was not administered at all. One such case related to his own country, Mauritania. A number of flagrant violations continued to take place in Mauritania with complete impunity. In that country, which formed a bridge between northern Africa and black Africa and in which the population consisted of Berber Arabs and black African peoples, the Berber-Arabic community, which held power, imposed on black Mauritanians a systematic policy of racial discrimination and segregation in all spheres of political, economic, social and cultural life.

61. In 1986, thousands of black Mauritanian professionals had been arrested and given heavy sentences, with no lawyers present. A prison sentence of four to five years with hard labour was the usual punishment for those who condemned institutionalized racism in Mauritania. In December 1987, three black officers accused of treasonable conspiracy had been hung and shot after a summary trial. In 1989, ethnic cleansing had led to the mass deportation of almost 120,000 black Mauritanians to Senegal and Mali, and the villages where those people lived had been systematically repopulated with a Moorish population. Those deportees were in fact the survivors of a genocide organized and orchestrated by those in power.

62. Since then, the south of the country, where the black Mauritanians lived, had been under a state of emergency and under the control of an army "purged" of blacks. Between November 1990 and March 1991, over 500 black Mauritanian soldiers had been killed, burned, buried alive, drawn and quartered or shot. In June 1993, to guarantee impunity for the persons responsible for those crimes, the Mauritanian Government had proclaimed an amnesty for all crimes committed by the armed forces and security services between 1989 and 1992. However, Mauritanian communities continued to suffer from racial segregation and they were still being gradually excluded from all economic activities, laid off, robbed of their land so that it could be redistributed, denied official papers and subjected to systematic identity checks inside the country.

63. Around 150 years after the abolition of slavery, over 70 per cent of the Mauritanian population suffered human rights violations comparable to crimes against humanity. It was in that context that his association supported the organization Aide aux veuves et orphelins de militaires mauritaniens (AVOMM), which provided assistance for widows and orphans of Mauritanian soldiers, in its court action against the perpetrators of those crimes. That organization welcomed the recent decision by the Nîmes pre-trial chamber to have charges brought before the Gard assize court against a Mauritanian officer for crimes of torture and barbarism committed on black Mauritanian citizens in Mauritania.

64. He therefore called on the Sub-Commission to pay particular attention to the administration of justice in Mauritania. He would shortly be submitting a complete report so that the Commission on Human Rights could take up the question at its next session.

65. Ms. BONAVITA (Indian Movement "Tupaj Amaru") said that she was also speaking on behalf of an association called "¿Dónde Están?", which was campaigning for information to be provided on the fate of those people who had disappeared in Latin American countries, including Uruguay, during the years of military dictatorships.

66. A so-called "Peace Commission" had been set up in Uruguay by a presidential decision to determine the fate of 168 Uruguayan citizens who had disappeared before and during the military dictatorship. Unfortunately, the Commission, which had been called upon to establish the historical facts and to restore the collective memory of the people, had been a disappointment. The Peace Commission - which had no coercive powers, was formally bound not to identify anyone who might have been responsible for the disappearances and was prevented from taking any judicial action whatsoever against the guilty parties - had announced that it had thus far solved 15 cases of disappearances, but without recovering the remains of any of those missing. The commanders-in-chief of the armed forces, with the support of the President and Minister of Defence, had actually refused to provide any specific information, even though they were guaranteed impunity. The Government's position in the matter was completely contradictory, since although having set up the Commission it was also supporting those who hindered its work. In fact, the Uruguayan Government had never stopped supporting the soldiers and police officers who had violated human rights during the dictatorship, as shown by its refusal to supply information to Argentine judges prosecuting Uruguayan soldiers responsible for crimes committed in Argentina during "Operation Condor".

67. There were currently three complaints pending before the criminal courts. One concerned the disappearance of a teacher, Elena Quinteros, in June 1976. Proceedings in that case had been delayed for over 10 years because of "lost documents". A second complaint concerned 12 forcible disappearances in 1976 in Argentina. For the first time, a judge had recognized that forcible disappearance was a continuing offence and, as such, not subject to statutory limitations. Judges would therefore have to reopen the cases. The third complaint concerned the disappearance and killing of the daughter-in-law of Argentine poet Juan Gelman.

She had been secretly taken from Buenos Aires to Montevideo at the age of 19, when already eight months pregnant. After giving birth in the military hospital, the young woman had been killed and her daughter handed over to a high-ranking police official.

68. Meanwhile, the Uruguayan Government, acting under orders from Washington, had submitted a resolution against Cuba, at the fifty-eighth session of the Commission on Human Rights, to justify the economic embargo on that country. Once again, the Uruguayan people's profound friendship for the Cuban people had been betrayed. If the same political will had been applied to clearing up the kidnappings of children, murders and other crimes committed before and during the dictatorships in the countries of the Southern Cone, impunity would not be so widespread in those countries.

The meeting rose at 12.55 p.m.