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Fifty-sixth session

SUMMARY RECORD OF THE 19th MEETING
Held at the Palais des Nations, Geneva,
on Tuesday, 10 August 2004, at 10 a.m.

Chairperson: Mr. SORABJEE

later: Ms. RAKOTOARISOA
(Vice-Chairperson)

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The meeting was called to order at 10.05 p.m.

SPECIFIC HUMAN RIGHTS ISSUES

- (a) WOMEN AND HUMAN RIGHTS
- (b) CONTEMPORARY FORMS OF SLAVERY
- (c) NEW PRIORITIES, IN PARTICULAR TERRORISM AND COUNTER-TERRORISM

(agenda item 6) (continued) (E/CN.4/Sub.2/2004/33-35, 36 and Corr.1, 37 and Add.1, 38-43 and 45; E/CN.4/Sub.2/2004/CRP.3; E/CN.4/Sub.2/2004/NGO/7, 15, 19, 21, 22, 25, 27, and 30; E/CN.4/2003/101)

1. Ms. MARUTA (Asia-Japan Women's Resource Centre, speaking on agenda item 6 (b), said that it was regrettable that the report of the High Commissioner on systematic rape, sexual slavery and slavery-like practices during armed conflicts did not contain more targeted and tangible conclusions to end the impunity enjoyed by the perpetrators of such acts. The High Commissioner's previous report had revealed that the vast majority of cases were not prosecuted.
2. On the occasion of the Asia Pacific NGO Forum Beijing +10 held in Bangkok and the consultation with the Special Rapporteur on violence against women in Djakarta, women from various Asian countries had recently affirmed the alarming escalation of conflict in the Asia-Pacific region and had shared their experiences. Women belonging to the Shan ethnic minority in Burma had denounced numerous incidents of rape committed by Burmese army troops. An Afghan woman had pointed out that stability in Afghanistan could not be achieved in exchange for justice. The humiliation, exclusion, desperation and illness suffered by those women was precisely what the so-called "comfort women" had suffered during the Second World War. The women survivors of the system of sexual slavery established by Japan 50 years ago must be compensated to restore hope to those currently suffering the same fate in other parts of the world. In spite of the appeals launched by the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women, among others, the Japanese Government had consistently sidestepped its responsibility and refused to afford adequate compensation to those women before it was too late. Every effort must therefore be taken to ensure that the Japanese Government finally issued a formal apology.
3. Mr. GARWICK (Minnesota Advocates for Human Rights), speaking in reference to Ms. Barbara Frey's progress report (E/CN.4/Sub.2/2004/37), and in particular the Addendum to the report containing the draft principles on the prevention of human rights violations committed with small arms, urged the Sub-Commission to adopt those principles. They were intended for law enforcement and security officials, who often received no instruction or training in human rights. Experience had shown that human rights training could reduce the number of violations committed by law enforcement officials, including summary executions and the use of excessive force against protesters. The draft principles formulated by Ms. Frey were useful in several regards. They complemented existing provisions established by the Commission on Crime Prevention and Criminal Justice. They would certainly support the work of NGOs aimed at

improving law enforcement practices locally and would set benchmarks for United Nations bodies requesting information from States on training for law enforcement officials. Principle 9, which introduced a requirement to report and investigate all incidents involving the misuse of small arms, was particularly welcome. The principles fulfilled the two criteria repeatedly mentioned by Mr. Salama during the current session: they contributed to the protection of human rights, in particular the right to life, and were a useful complement to existing international legal standards. The draft principles on the prevention of human rights violations committed with small arms could produce similar results to those achieved by the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which had been drafted with the active participation of Minnesota Advocates for Human Rights.

4. Mr. LITTMAN (Association for World Education), referring to traditional practices affecting the health of women and girls under agenda item 6 (a), said that over 2 million young girls in over 30 countries, including thousands among immigrant communities in Europe, were victims of brutal mutilations. In the light of that appalling reality, the goal of eradicating those practices by 2010, which had been set in February 2004 at the International Day of Zero Tolerance of Female Genital Mutilation, seemed a pious hope. Such primitive customs could only be eradicated through education in schools, including religious education, from an early age.

5. In her 2004 report, the Special Rapporteur on traditional practices affecting the health of women and children once again stated that the religious authorities gave no backing to those practices. The fact that in Egypt female genital mutilation affected 97 per cent of the female population, although the practice had been outlawed since 1997, cast doubt upon that claim. Nothing would change, unless the highest Sunni spiritual authority at the Al-Azhar University in Cairo issued a fatwa prohibiting female genital mutilation. In a country where a large part of the population was illiterate, a fatwa was more likely to be followed than a piece of legislation. He hoped that his suggestion would be taken into account in the relevant draft resolution.

6. With reference to follow-up to the United Nations Decade for Human Rights Education 1995-2004 discussed under agenda item 6 (c), he said that reports published by the Center for Monitoring the Impact of Peace (CMIP) revealed that in Saudi Arabia and Egypt, religious intolerance and the failure to respect others were a distinguishing feature of school textbooks. He was also gravely concerned over passages in Saudi textbooks affirming that Islam was the only true religion, whose followers would have a place in paradise, while all others - Jews and Christians - were infidels and thus condemned to hell. Considering Egypt's status in the Arab world, the education imparted to children in that country was even more worrying. In that connection, he drew the Sub-Commission's attention to the statement submitted by his organization contained in document E/CN.4/Sub.2/2004/NGO/27, which contained excerpts of the relevant CMIP report. The textbooks praised jihad and martyrdom and justified the barbaric practice of beheading, which had become commonplace in Iraq and had been the tragic fate of Daniel Pearl in Pakistan.

7. Although the United Nations Decade for Human Rights Education was drawing to a close, he called on the Sub-Commission to adopt a firm position with regard to human rights education in general and to underscore that barbaric acts committed in the name of Islam severely damaged the reputation of that religion throughout the world.

8. Mr. TOTSUKA (Japan Fellowship of Reconciliation) said that the prohibition of slavery was one of the oldest laws of humanity. Nevertheless, the practice of military sexual slavery by Japan during the Second World War continued to be discussed at length at international forums. Many United Nations agencies and mandate holders had called on the Japanese Government to take concrete measures to settle the issue once and for all, but those appeals had consistently met with resistance. However, although the process of reconciliation had stagnated, progress was being made. In response to the criticism levelled at their country by the international community, the members of the opposition within the National Diet of Japan had expressed their support for a bill on the resolution of issues concerning victims of wartime sexual coercion. Although the bill had not been passed thus far, the opposition had increased its vote at the most recent election and was thus well placed to press for its adoption. The bill required the Government to establish and recognize the facts; to acknowledge the responsibility of the State of Japan; to afford compensation to the victims; to address a formal apology to the victims to restore their honour; and to submit annual reports to the Diet on the implementation of those measures. A council would be established to define the measures to be implemented; to ensure the necessary coordination between the different administrative institutions concerned; and to promote investigations. The Act would enter into force one month after its promulgation and expire 10 years later.

9. His organization called on the Sub-Commission to support those efforts to achieve reconciliation between Japan and the peoples it had humiliated by practising sexual slavery.

10. Mr. SHIOKAWA (International Association of Democratic Lawyers) said that the Japanese lawyers he represented continuously collected money to contribute to various United Nations Funds, in particular the Voluntary Fund on Contemporary Forms of Slavery, the Voluntary Fund for Indigenous Populations and the Voluntary Fund for Victims of Torture. Those donations were particularly valuable since, given the current state of public finances, the Japanese Government was likely to reduce its contributions to those Funds.

11. Concurrently, in an effort to preserve peace as a fundamental prerequisite for the full enjoyment of human rights, the same lawyers were collecting signatures in support of article 9 of the Japanese Constitution prohibiting the deployment of Japanese military forces abroad. The article was currently under threat and, given the potential consequences for peace, the issue deserved additional attention.

12. Mr. KHAN (World Muslim Congress), taking the floor on agenda item 6 (a), said that there was growing concern over the violations of the human rights of women in situations of armed conflict, in particular on the part of the Committee on the Elimination of Discrimination against Women, whose efforts were commendable. Despite that concern, measures taken to combat such violations remained utterly inadequate. Women continued to be considered “soft targets”, as they were unlikely to offer armed resistance. Such was the case in Kashmir, where systematic rape constituted a weapon of mass humiliation. Independent sources had confirmed that some 10,000 women had been victims of sexual violence perpetrated by members of the Indian occupation forces over the past 15 years. That despicable behaviour was not restricted to women in Kashmir. According to credible NGO information, thousands of Dalit women were raped each year in India and their fate aroused no indignation.

13. Moving on to agenda item 6 (c), he said that, being on the receiving end of terrorist acts being perpetrated by the Indian security forces, the people of Kashmir firmly condemned terrorism. With reference to Ms. Koufa's final report, he said it was essential to study the root causes and various manifestations of terrorism perpetrated by individuals, groups or States. It was also important to distinguish clearly between legitimate political dissent and resistance movements on the one hand, and heinous terrorist acts on the other. Any attempt to associate a given religion with terrorism must be firmly rejected. Such accusations, which were increasingly widespread, were nothing less than defamation.

14. No one was better placed than Ms. Koufa to look further into that issue by analysing the root causes of terrorism and considering strategies to reduce or prevent terrorism in all its manifestations.

15. Mr. LITTMAN (World Union for Progressive Judaism) said that the humanitarian tragedy unfolding in Darfur included the systematic rape and enslavement of African Muslim women and girls. For over a decade, his organization had insisted on calling things by their name and what was happening in Darfur constituted enslavement, not abductions. The latter term was used by the Sudanese Government, which continued to deny the reality, even within the Commission on Human Rights of which it continued to be a member.

16. With the support of the Sudanese Government, Darfur had become the main theatre for the operations of Arab nomad slave raiders who, as the Special Rapporteur on the situation of human rights in the Sudan had pointed out in her report, had for years been waging a veritable jihad against African tribes in the region. Following the conclusion of the ceasefire agreement with the Sudan People's Liberation Army, Arab masters had taken to acquiring their slaves among those tribes, and no longer among the black populations of southern Sudan.

17. He appealed to the Sub-Commission and United Nations agencies to take urgent action, both to put an end to the genocidal ethnic cleansing carried out by the regime in Khartoum and to free the tens of thousands of persons kept in slavery in northern Sudan and in the Darfur region. The appalling practice of slavery was not a recent phenomenon. In a book entitled "The River War", published 105 years ago, the young Winston Churchill had described all Arab nomads of the Sudan as slave raiders.

18. Ms. ZOON (International Islamic Federation of Student Organizations) commended Ms. Koufa on her important contribution to the study of terrorism. Ms. Koufa had rightly drawn a distinction between terrorism and a people's legitimate struggle for the right to self-determination. States which deliberately failed to recognize that right resorted to terror for the purpose of maintaining their illegal occupation. Such was the case of India, which refused to implement Security Council resolutions that provided for holding a plebiscite in Kashmir, under the auspices of the United Nations, to enable the population to decide on their own future. In Kashmir, as in Palestine, occupation went hand in hand with brutal repression. Over the past 15 years, some 85,000 Kashmiri people had been killed and another 9,000 had disappeared. Many Kashmiri women had been raped, marking them for life, or had suffered the terrible loss of a father, a brother or a son. Those were well-known facts to international human rights organizations.

19. As a think tank, the Sub-Commission should examine the issue of State terrorism, which was at the root of flagrant violations of human rights, especially the rights of women, and seek viable solutions based on principles of justice.

20. Mr. PIAL MEZALA (International League for the Rights and Liberation of Peoples) said that Ms. Koufa's final report clearly identified the challenges posed to human rights protection in the context of the fight against terrorism as it had developed since 11 September 2001. One of the major challenges was to strike the right balance between counter-terrorist measures and respect for human rights and fundamental freedoms. The main difficulty concerning Security Council resolution 1373, which had established a committee on counter-terrorism, was the absence of a clear definition of the phenomenon. As a result, there had been a proliferation of international and regional conventions and the adoption of domestic legislation that opened the door to arbitrary detention, could be used to justify the practice of torture, and undermined fundamental rights such as the right to strike. An alarming example was the Organization of African Unity Convention on the Prevention and Combating of Terrorism adopted in 2002, which listed among the acts constituting terrorism any act which "disrupts any public service or the delivery of any essential service to the public". There was a trend towards criminalizing the general public, as in the case of Colombia, where security forces had been granted far-reaching powers that enabled them to intercept private correspondence or arrest persons without a warrant under the pretext of the fight against terrorism. It was the case even in Europe, where the Spanish Government, for example, had adopted policies with regard to the Basque country that impeded the exercise of human rights.

21. The establishment of an international monitoring mechanism was the only way to ensure that national and regional legislation complied with human rights standards. His organization encouraged Ms. Koufa to continue her work on the comprehensive principles and guidelines on human rights and the fight against terrorism and to explore the possibilities for establishing such a mechanism.

22. Mr. SHAWL (International Human Rights Association of American Minorities) said that terrorism was closely linked to the absence of respect for human rights. Tyranny, occupation, repression, exclusion and the denial of the rights enshrined in international instruments were among the main factors responsible for prolonged conflicts. The denial of peoples' right to self-determination through repression and State-sponsored terrorism was a source of persisting conflicts and massive human rights violations. Any effective counter-terrorism strategy must therefore seek to create an international political environment that allowed conflicts to be settled in accordance with the law and with respect for the aspirations of the peoples concerned.

23. The people of Palestine and Kashmir were deprived of the right to determine their own fate and suffered brutal and systematic repression by the occupying forces. Paradoxically, in those territories, freedom fighters were labelled terrorists. He called on the international community to impress upon States that maintained their illegal occupation that settlement of those disputes should not be avoided or delayed, whatever the grounds, since the effectiveness of any counter-terrorist strategy depended on the settlement of those conflicts.

24. Mr. NIIKURA (Japanese Workers' Committee for Human Rights) said that, in the context of Japan's recent commemoration of the atomic bombings of Nagasaki and Hiroshima, he wished to draw the attention of the Sub-Commission to the terrible effects of depleted

uranium, a heavy metal used in the production of weapons of destruction. When breathed in or swallowed, uranium particles emitted radiation that caused congenital malformations and cancer. Persons who had visited Afghanistan, Iraq and Yugoslavia, where such weapons had been used, had seen those effects confirmed. It was encouraging that some NGOs, in particular International Educational Development and Dominicans for Justice and Peace, had echoed those concerns. In Japan, NGOs had launched a global campaign to prohibit the use of such weapons.

25. While combating terrorism carried out by private groups was a pressing concern, State-sponsored terrorism could not be ignored. States were bound by international law, in particular international human rights and humanitarian law. There was a need for a comprehensive ban on the use of weapons containing depleted uranium, a heavy metal that remained radioactive for billions of years and whose effects were harmful to all living creatures.

26. His organization called on the Sub-Commission to address that issue. The time had come to promote the establishment of medical care systems for the victims and to establish the liability of users and producers of weapons containing depleted uranium. He urged the Sub-Commission to acknowledge the pressing need for a treaty totally banning those weapons and for conferences or seminars to be convened on the issue.

27. Mr. OLIVER (World Peace Council) said that Pakistan had increasingly come into the limelight in connection with the fight against terrorism. In the pursuit of its rivalry with neighbouring India, Pakistan had permitted its soil to turn into a breeding ground for terrorists who had swarmed all over the world. The old distinction Pakistani leaders had always drawn between freedom fighters opposing Indian rule in Kashmir and terrorists who attacked other interests, in particular those of Western nations, no longer held true.

28. Pakistan was often depicted as a front-line State in the fight against terrorism, even though it was a base for groups like Lashkar-e-Taiba, which had trained its men alongside Al-Qaida in Afghanistan and had repeatedly called for jihad. It was also overlooked that those groups had indoctrinated and trained people from the United States and Australia, where individuals had been arrested for involvement in the planning of terrorist attacks. Furthermore, Pakistani nuclear scientists had been questioned on their contacts with Osama bin Laden and the Taliban, and the man acknowledged as the father of the Pakistani atomic bomb had been guilty on his own admission of the proliferation of nuclear weapons, even in so-called "rogue" States that supported international terrorist groups.

29. It was therefore surprising that the democracies of the world, in particular the United States, which dreaded that terrorist groups might acquire weapons of mass destruction, maintained close links with Pakistan and even provided ever-increasing economic and military assistance.

30. In the fight against terrorism, Afghanistan and Iraq had been invaded and destroyed. He believed that Pakistan should at least be sanctioned, rather than assisted. The time had come to act. Each time intelligence services identified extremist groups that espoused terrorism as an ideology anywhere in the world, including Western Europe, Southern Asia, China, Russia, the United States, Australia and Africa, the trail led to Pakistan.

31. Ms. BIONDI BIRD (International Confederation of Free Trade Unions) denounced the practices used against workers and their organizations in the fight against terrorism. Too often nowadays, trade union members had their human and trade union rights violated under false accusations of terrorism.

32. The most striking example was Burma. The 2004 Session of the International Labour Conference had strongly condemned Burma for its human rights record and the military junta had reacted once again with fabricated lies and slander against the Federation of Trade Unions - Burma. Earlier, in November 2003, three Federation leaders had been sentenced to death in a rigged trial. Following the vigorous protest of the International Labour Organization, the sentences had been commuted to life imprisonment for the main defendant and to three-year prison sentences for the remaining two. When arrested, the principal defendant had been knocked unconscious by intelligence officials and had woken up to being photographed in front of a table displaying bombing equipment. The current target of the military junta was the Secretary-General of the Federation of Trade Unions, Maung Maung, who was regularly accused of being a terrorist by the Government envoy to the United Nations at Geneva. Her organization strongly rejected those accusations, which sought to discredit a trade union deserving of particular respect, as it conducted its activities under extremely difficult circumstances.

33. In other parts of the world, workers also paid the high price of counter-terrorism measures. Such was the case for seafarers who, for security reasons, were being denied shore leave after weeks on board a cargo ship, especially in the United States. In response, seafarers, their trade unions and shipowners would join together in a mass demonstration on 30 September 2004 - World Maritime Day - to impress upon Governments that improved security was best achieved by working together, and not by treating seafarers as potential terrorists.

34. Ms. SRIVASTAW (International Institute for Non-Aligned Studies) said that a series of factors contributed to depriving women of their most fundamental rights, including the right to health and education. Poverty increased their vulnerability to exploitation, in particular sexual exploitation. Women were also exposed to the worst forms of violence within the family and in society in general. Her organization therefore recommended that all States should ratify the Convention on the Elimination of All Forms of Discrimination against Women; set time-bound targets for achieving women's equal participation in all levels of public life, especially in decision- and policy-making; eliminate the gender gap in access to primary and secondary education; remove discriminatory legal provisions; treat all forms of violence against women as a criminal offence punishable by law; integrate mental health services into primary health-care systems; raise awareness among health-care workers of violence against women and develop victim support programmes; take effective measures to eliminate all forms of trafficking in women; allocate adequate resources to the advancement and empowerment of women; take all necessary measures to combat diseases that had a disproportionate effect on women's health such as leprosy and HIV/AIDS; and adopt health policies so that all women had access to affordable, comprehensive health care throughout their lives.

35. Mr. LÖNN (International Youth and Student Movement for the United Nations) said that by joining the United Nations, countries had undertaken to comply with international law and to respect, in particular, human rights and humanitarian law. It was thus reasonable to expect States to uphold those principles in the fight against the threat of terrorism. However,

that had not been the case. Instead, over the past three years a conscious policy spearheaded by a super-Power had undermined international treaties, including the basic provisions of humanitarian and human rights law. In her report, Ms. Koufa had rightly drawn attention to the dangers inherent in the exploitation of exploiting the terrorist threat by certain States.

36. The time had come to launch a global campaign, within the framework of the United Nations, to call for respect of certain non-derogable rights and to raise public awareness of the current undermining of international law principles. The Sub-Commission might wish to discuss that proposal and examine remedies for the great number of persons who had become victims of abuses under counter-terrorism measures. Examples included the people detained without due process in Guantanamo and the unjust sanctions imposed by the Security Council on innocent people, as in the case of a few innocent citizens of Somali origin who had been accused without corroborating evidence.

37. Ms. PROTANO-BIGGS (European Law Students Association) said that she represented an organization with a membership of over 25,000 law students and young lawyers from 37 European countries, who firmly believed in human rights as the basis for the rule of law and a peaceful humane society and attached great importance to human rights education. They therefore welcomed the Sub-Commission's initiative to recommend the launch of a second Decade for Human Rights Education to begin on 1 January 2005. The promotion of human rights education was not an easy task. There was a fragmentation of civil and political rights on the one hand and of economic, social and cultural rights on the other, and greater emphasis was placed on some rights to the detriment of others. Further difficulties were the politicization of the issue in different institutions and the absence of human rights literature in local languages, particularly the languages of ethnic minorities, which created a divide between international standards and their implementation at the national and local levels. Her organization therefore urged the Sub-Commission to promote the translation of human rights documents into as many languages as possible.

38. Mr. BRETT (Conscience and Peace Tax International) said that, while conscientious objection to military service was firmly rooted in international law, such was not the case for conscientious objection to paying taxes to finance military expenditure. His organization had set itself the task of obtaining recognition of the right not to pay for war and the duty to pay for peace. That form of resistance had emerged for a number of reasons. In an increasing number of countries, military service was voluntary. However, it was a well-known fact that it was the poor who "volunteered", because they had no other choice. Conscientious objectors thus felt that paying their taxes was a form of performing their military service by proxy. In several countries, some people had therefore withheld the part of their individual tax assessment which they calculated funded military expenditure; others had challenged the right of the authorities to use their taxes for such purposes in court; and others again had sought legislative means, thus far unsuccessfully, to allow the free exercise of conscience in that respect.

39. Women played an important role in the matter. Most States did not oblige women to perform military service and resistance to military taxation was their only opportunity to make a public testimony of their pacifist convictions.

40. However, the practical application of conscientious objection to military taxation posed a number of practical problems. It was difficult to calculate precisely the part of tax assessments that funded military expenditure, and even more difficult to audit what was happening. It would be a worthy subject of study by the Sub-Commission.

41. Mr. KATES (World Forum on the Future of Sport Shooting Activities) expressed satisfaction that Ms. Barbara Frey had recognized the importance of the right to self-defence in her report on human rights violations committed with small arms and light weapons (E/CN.4/Sub.2/2004/37). His organization intended to hold a seminar on that topic. It firmly believed that the possession of firearms for purely defensive purposes enabled citizens to counter the threat of genocide. There was no doubt that firearms killed innocent victims when used by criminals. However, while 5 million deaths in the twentieth century could be attributed to criminals, 170 million unarmed, helpless civilians had been murdered by Governments during the same period. Disarming a minority population promoted genocide. Therefore, however good the intentions of those who advocated firearms control, no international instruments must be adopted that aimed at depriving peoples of their means of defence. Twentieth-century history confirmed that that position was well founded. In the 1990s, the Serbs would not have attacked the Croats if the latter had been better armed. Thousands of Bosnian Muslims had been killed before they had been able to procure weapons illegally. And the Khmer Rouge had proceeded to exterminate Cambodians as soon as they had been dispossessed of their means of defence.

42. Mr. BIERWITH (Office of the United Nations High Commissioner for Refugees, UNHCR) said that UNHCR was gravely concerned over the fact that certain media and politicians were creating unwarranted linkages between terrorism and foreigners, especially refugee and asylum-seekers. Some States had even revised their asylum systems from a security angle. The result was the creation of an environment hostile to refugees, who in certain States were often victims of attacks, although they themselves had fled to escape violence, including terrorist acts.

43. UNHCR fully supported States' legitimate right to prevent the entry of terrorists into their territory, but such measures must be in conformity with international law, in particular with the provisions governing the rights of refugees enshrined in the 1951 Convention relating to the Status of Refugees. That instrument contained clear provisions on the duties of refugees, as well as provisions on exclusion from refugee status on the grounds specified in article 1 F of the Convention. States were entitled to incorporate those exclusion clauses into their domestic legislation, provided they were fully in conformity with article 1 F.

44. Beyond the proper application of international refugee law, there was a need for a holistic approach to security, which could not be limited to State security, but must also take account of the security needs of all residents, including non-citizens and, among them, refugees. UNHCR invited the Sub-Commission to persevere in its efforts to minimize the adverse effects of the fight against terrorism, in particular with regard to refugees who depended on humanitarian aid.

45. Mr. Pinheiro's consultative approach to preparing his Draft Principles on Housing and Property Restitution for Refugees and Displaced Persons was commendable.

46. Mr. NAJIB (Observer for Iraq) said that the situation for the people of Iraq since the fall of Saddam Hussein's regime had been extremely difficult. All civilian infrastructure had been destroyed. The criminals released by the hundreds had not spared a single facility and mercenaries had systematically pillaged the country. Terrorist acts had multiplied, including the use of car bombs, kidnapping of Iraqis and foreigners, mutilations and the desecration of places of worship. Religious leaders had strongly condemned those criminal acts. In the absence of border controls, terrorists had entered the country and committed acts that were totally opposed to human rights principles, Iraqi culture and the laws of Islam. While taking firm action against those unlawful activities, the Iraqi Government had endeavoured to respect the rights of its citizens. It had therefore intended to limit the state of emergency to 60 days and requested a court decision before restricting fundamental freedoms. However, it had been necessary to introduce restrictions in order to create a suitable environment for holding free and fair elections as planned. In spite of efforts made at the national level, Iraq was dependent on the support of the international community at large to restore order in the country and combat terrorism.

47. Mr. AL-FAIHANI (Observer for Bahrain) said that the world had changed. Human rights violations were no longer committed by States alone, but increasingly by private groups and individuals. That was particularly true for violations of women's rights or certain practices such as contemporary forms of slavery. Such violations committed by non-State actors did not receive adequate attention. He called on the Sub-Commission to make public the extent and gravity of those violations.

48. The fight against terrorism must be based on the respect for traditions, cultures and religions and must not infringe human rights and fundamental freedoms. The prevention of racism, racial discrimination and xenophobia was also important. The Kingdom of Bahrain did not tolerate any form of discrimination, as illustrated by its submission in 2004 of its sixth and seventh reports to the Committee on the Elimination of Racial Discrimination. Bahrain was also in the process of preparing its initial report to the Committee on the Elimination of Discrimination against Women and had submitted its initial and second periodic reports to the Committee against Torture in 2004. All those initiatives indicated the importance attached by His Majesty the Emir of Bahrain to the protection of human rights. Bahraini civil society also contributed to the protection of human rights and Parliament fulfilled monitoring functions in that regard.

49. Mr. LUKIANTSEV (Observer for the Russian Federation) said that in recent years the world had seen the emergence of phenomena that posed a serious challenge for the international human rights system. His delegation had repeatedly drawn attention to the threat of international terrorism as a global phenomenon that affected all areas of life and it welcomed the Sub-Commission's interest in the issue. It particularly appreciated the outstanding work undertaken in that area by the Special Rapporteur, Ms. Koufa, since 1996 and her final report (E/CN.4/Sub.2/2004/40), and fully supported the conclusions and recommendations contained in the report. Paragraph 65, in which the Special Rapporteur recommended "that the international community fully recognize the universal right to be free of terrorists and terrorist acts of all kinds", was particularly relevant. His delegation had also taken note of the preliminary framework draft of principles and guidelines concerning human rights and terrorism (E/CN.4/Sub.2/2004/CRP.3). Although some of the provisions were debatable, the document could provide a useful basis for further work in that area. His delegation believed that the resolutions concerning terrorism and human rights adopted by the Third Committee of the

United Nations General Assembly and the Commission on Human Rights and the Mexican initiative relative to the protection of human rights in the context of the fight against terrorism should be consolidated in a single document.

50. Terrorist acts constituted violations of human rights and must be condemned as such. That position was consistent with developments in international law and reflected the current depressing reality in many regions in the world. From that perspective, the question whether or not non-State actors could be considered as violating human rights standards was irrelevant to the fight against terrorism. Although Ms. Koufa had presented her final report on the question of terrorism, the Sub-Commission should retain the issue on its agenda.

51. Mr. OMOTOSHO (Observer for Nigeria), taking the floor on agenda item 6 (a), said that his Government had made the promotion and protection of women's rights a priority. Thanks to that policy, an unprecedented number of Nigerian women had been appointed to senior positions.

52. His delegation was gravely concerned over the problem of human trafficking, which was an extreme form of violence against women. For a multitude of reasons, including poverty, unemployment and limited opportunity for legal emigration, trafficking had become one of the world's most profitable businesses and was conducted with impunity. His delegation joined the voices of those who, during the current session of the Sub-Commission, had called for the adoption of more efficient measures to eradicate that scourge.

53. Violence against women was a reality everywhere in the world. It took many forms, including harmful traditional practices, rape and forced prostitution, and generally resulted from women being perceived as inferior to men. He called on the Sub-Commission to pay increased attention to the issue and to examine all its aspects.

54. With reference to the study presented by the Centre on Housing Rights and Evictions on 4 August 2004 on women and inheritance rights in sub-Saharan Africa, he said that the Centre had acknowledged that Nigerian legislation did not discriminate against women in that regard. However, the Centre had alleged that the provisions relating to inheritance contained in common law, customary law and Islamic law were confusing and contradictory. The organization would have done better to be specific about that confusion and contradiction so that, if they truly existed, the Sub-Commission could advise the Nigerian Government on measures to be taken to rectify the situation.

55. Mr. SARAN (Observer for India) said that he was encouraged by the recommendation made by the Special Rapporteur, Ms. Koufa, that the international community should fully recognize the universal right to be free of terrorists and terrorist acts of any kind. Terrorism could never be justified. States must desist from supporting terrorist acts in the territories of other States and from encouraging activities within their own territory directed towards the commission of such acts.

56. India had been a victim of terrorism for over 20 years and had learned to its cost that democratic States were the principal target of international terrorism. September 11 and its aftermath had shown that terrorism required a global and comprehensive response and that the analysis of the so-called root causes of terrorism only diverted attention from such efforts.

57. Private groups and individuals who committed terrorist acts must be held accountable. That aspect of terrorism continued to be neglected and required further consideration. The issue of States that sponsored terrorism, used it to pursue expansionist foreign policies, and sought to lure the international community into perceiving terrorists as “freedom fighters” should also be addressed.
58. India had been forced to take special measures to deal with the growing threat of terrorism, while safeguarding human rights at the same time. In the fight against terrorism, domestic measures must be supplemented by strong and effective provisions in international law.
59. Ms. PRIETO (Observer for Colombia) said that the concept of inalienable human rights had emerged at a time when there had been a need to fight against the absolute power of the State. At present, the threat to those rights emanated from non-State actors. The international community therefore needed to reconsider international human rights law in the context of the changed circumstances and seek a global consensus on ways to hold those actors accountable. The difficulty of establishing a universally accepted definition of terrorism further complicated the situation. In order to bypass that problem, a list of acts classified as terrorism in various international legal instruments had been included in the Inter-American Convention Against Terrorism.
60. A comprehensive and balanced debate on the issue was indispensable. As Ms. Koufa had recognized in paragraph 55 of her report, excessive emphasis might hitherto have been placed on the repressive measures adopted by Governments, without paying much attention to the reprehensible means used by terrorists. However, things were changing. Some local NGOs conducted activities aimed at encouraging groups operating outside the law to respect humanitarian norms; achieving their accountability for human rights violations required further action. The Sub-Commission should continue its work on the issue.
61. Ms. Rakotoarisoa, Vice-Chairperson, took the Chair.
62. Ms. KOUFA expressed her gratitude to the members of the Sub-Commission, whose comments had contributed to the successful completion of her work. She also thanked NGOs and observer Governments for their active cooperation. She had taken note of the suggestion made by Mr. Alfredsson, Mr. Kartashkin, Mr. Bíró, Mr. Bossuyt and Mr. Chen to continue her review of measures taken in the context of counter-terrorism and to incorporate pertinent provisions in her preliminary framework draft of principles and guidelines concerning human rights and terrorism (E/CN.4/Sub.2/2004/CRP.3). The formulation of those principles and guidelines must be a collective effort, and not the result of the work of one single individual. She therefore recommended the establishment of a special working group to carry out that task.
63. Several speakers had mentioned the issue of establishing a definition of terrorism. Mr. Bíró, in particular, had rightly pointed out that any legal definition would necessarily be limited in scope. The politicization of the issue made the formulation of a unanimously accepted definition even more difficult. In view of that, she supported the suggestion made by Mr. Guissé to consider the issue of terrorism on a case-by-case basis.

64. She thanked Mr. Bíró for referring to the current controversy over the applicability of international human rights law to non-State actors. She had mentioned that issue both in her previous reports and in her final report. She welcomed Mr. Bíró's and Ms. Motoc's intention to undertake a study on the issue. Although domestic legislation contained solutions, its provisions were not applicable in international law. Furthermore, with respect to the examples she had cited in her report of decisions handed down by national courts, it was difficult to establish whether humanitarian law or international human rights law had been applied.

65. Ms. HAMPSON commended Ms. Motoc on her report, which demonstrated, contrary to commonly held views, that the human rights implications of human genome research were not an excessively complex issue.

66. History showed that the concerns voiced over such implications were well founded. Between the 1920s and the late 1950s, a number of European countries had authorized medical procedures aimed at sterilizing young girls who had been perceived as mentally disabled. It had emerged later that the perceived mental disability had been nothing other than antisocial behaviour. An analogy could be drawn between such violations and the kind of abuse that might result from work on the human genome. Guiding principles could therefore prove very useful.

67. She hoped that Ms. Motoc's future work would also address the issue of genetic weapons. That concept might seem to belong to the world of science fiction, but when the International Committee of the Red Cross had convened the first meeting on laser weapons designed to blind human beings, it had equally met with disbelief, even though two European countries had already fielded such weapons. The considerable danger represented by genetic weapons needed addressing before it became a reality.

68. Ms. MOTOC thanked the Sub-Commission experts and NGOs for their comments on her report on human rights and the human genome (E/CN.4/Sub.2/2004/38). Mr. Guissé had justly drawn attention to the problem of discrimination, as well as to the fact that genetic research was undertaken in developed countries and the results were not disclosed to developing countries. She had referred to that issue in her previous working paper, in connection with the issue of the common heritage of humanity and the possibility of incorporating that concept into the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). One of the key elements addressed in her next report to the Sub-Commission would be the principle of solidarity, which should govern all research on the human genome. The field of genetics could draw inspiration from the approach adopted for the supply of drugs for treating AIDS patients.

69. In response to Ms. Koufa's comments, she said that, beyond its purely scientific content, the question of the human genome had over time assumed both a legal and an ethical dimension. The legal dimension concerned, in particular, the right to health as guaranteed in various human rights instruments. Ethical aspects were much more controversial, as illustrated by the different, and often opposing, moral concepts relating to the question of the human genome, including at the level of States. Contrary to bodies like the United Nations Educational, Scientific and Cultural Organization (UNESCO), which were mainly interested in ethical problems, the Sub-Commission should concern itself with the legal aspects surrounding the issue. In that connection, she thanked Mr. Bíró for pointing out the value of the prospective guidelines and, together with Ms. Hampson, for calling attention to the danger represented by developing

techniques that might be used for eugenic purposes. The danger of those techniques also resided in the possibility to strive for human perfection, to the detriment of the diversity that was a feature of all living creatures, including humans.

70. Ms. Warzazi had rightly brought up the issue of discrimination against indigenous people in the context of human genome research. Ms. Motoc said she intended to draft guidelines on the question of discrimination as a whole, an issue that had never been examined with the requisite diligence.

71. Mr. Alfredsson had set a fine example by referring to the lack of criticism levelled at his own country, Iceland. Following the International Declaration on Human Genetic Data adopted by UNESCO in 2003, the system of biological data collection adopted by Iceland had given rise to considerable controversy. That system required patients to be informed of the aims and proceedings of a genetic research project in writing but, unlike in other countries, the collection of personal data did not require the person's formal consent. Iceland was thus confronted with a major challenge in that area. An Icelandic court had already ruled in favour of a person who had filed a complaint of violation of the right to privacy. She would discuss the case of Iceland again in her next report, taking account of relevant developments in that country.

72. Mr. Salama had spoken about the relation between individual consent and collective consent. The issue of collective consent did indeed cause a certain uneasiness, especially among indigenous populations, who were particularly sensitive on that point.

73. Ms. Hampson had rightly drawn attention to the potential dangers of genetic engineering techniques, in particular when used for military purposes.

74. Mr. DOS SANTOS, also speaking on behalf of Mr. Dos Santos Alves, thanked the members of the Sub-Commission and NGO representatives who had commented on the working paper contained in document E/CN.4/Sub.2/2004/43 on human rights and international solidarity.

75. The very purpose of that paper had been to study the practical relevance of the notion of international solidarity. Solidarity was linked to all the economic and social rights examined under agenda item 4. In his next working paper on the issue, Mr. Dos Santos Alves would look more deeply into those links.

Statements made in exercise of the right of reply

76. Mr. DIXON (Observer for the United Kingdom of Great Britain and Northern Ireland), speaking in reply to a statement made by the delegation of Mauritius on 2 August 2004, said that the British Indian Ocean Territory was under British sovereignty. The British Government had undertaken to cede the territory to Mauritius once it was no longer required for defence purposes and, when that time came, to engage in discussions with the Government of Mauritius regarding the necessary arrangements in conformity with international law. The British Government valued the close and constructive cooperation with the Government of Mauritius and looked forward to its continuation.

77. Mr. ALMAGLY (Observer for Sudan) said that he did not intend to waste the Sub-Commission's precious time by responding to the entirely pointless, misleading and malicious allegations made against his country by the NGO calling itself the World Union for Progressive Judaism.

78. Mr. TIRIZI (Observer for Pakistan), speaking in reference to document E/CN.4/Sub.2/2004/NGO/27 distributed by the secretariat on 26 July 2004, said that he was gravely concerned over statements made in that document, which amounted to defamation of Islam. Islam was a religion of peace and tolerance practised by over 1.5 billion people. The delegation of Pakistan respected freedom of expression, but the insults directed at Islam were in breach of the code of conduct to which the Sub-Commission adhered. They set a dangerous precedent that must be firmly condemned. His delegation had never responded to NGOs that were openly hostile to Islam, but had felt compelled to do so in the present case to prevent the recurrence of such attacks, which would seriously discredit the Sub-Commission. It was acceptable to criticize a person, a country, or a policy, but to show contempt for the sacred scriptures of a religion was going too far. His delegation had always desisted from doing so and expected the same from others. Unfortunately, defaming Islam and its followers had become rather fashionable, especially in the international media. The former Special Rapporteur of the Commission on Human Rights on freedom of religion or belief, Mr. Abdelfattah Amor, had referred to that trend in his most recent reports. It was regrettable that his warnings had not been heeded and that some people persisted in making comments that were an affront to the most basic standards of decency. It was unclear how such remarks were conducive to promoting human rights. His delegation would envisage taking measures to prevent such abuses in the future.

79. The Chairperson declared closed the consideration of agenda item 6.

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (agenda item 3)
(continued) (E/CN.4/Sub.2/2004/5, 7-12; E/CN.4/Sub.2/2004/NGO/11-13, 24, 26, 28 and 29)

80. Mr. POQUILLON (Dominicans for Justice and Peace), also speaking on behalf of the Dominican Leadership Conference, Pax Christi International and Franciscans International, said the organizations he represented were gravely concerned over the continuation of the death penalty. Their opposition to capital punishment was based on respect for all human life, the rejection of violence in society and the injustice inherent in the imposition of that punishment. It was therefore regrettable that the Iraqi Government intended to restore the death penalty, in spite of the general trend towards its abolition as indicated by the Secretary-General in his report to the Commission on Human Rights.

81. In countries where the death penalty was still in force, its imposition usually had racist motivations and, in particular, targeted minorities. It was therefore regrettable that the United States administration had turned a deaf ear to the Sub-Commission's appeal in 2002 requesting the deferral of the execution of a young Mexican citizen, Javier Suárez Medina, to guarantee his right to a fair trial and consular protection. The young man had been executed on 14 August 2002, while the Sub-Commission had been in session. In March 2004, the International Court of Justice had ruled that the United States had violated the rights of 51 Mexican citizens sentenced to death in several states and had ordered a review of their cases.

82. In Pakistan, capital punishment was imposed under the law of blasphemy, although relevant international standards stipulated that imposition of the death penalty should be limited to a highly restricted number of crimes and subject to strict judicial oversight. That was clearly not the case in Pakistan.

83. The organizations he represented called on the Sub-Commission to encourage all Governments to abolish the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. They also urged the United States Government to implement the decisions of the International Court of Justice handed down on 5 February 2003 and 31 March 2004. They invited member States of the Council of Europe to ratify Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, including in wartime. Finally, they urged those Governments that had not yet explored alternatives to the death penalty to follow the path of reason, civilized behaviour, compassion and justice.

The meeting rose at 1 p.m.