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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-sixth session

SUMMARY RECORD OF THE 5th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 July 2004, at 10 a.m.

Chairperson: Mr. SORABJEE

later: Ms. HAMPSON
(Vice-Chairperson)

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The meeting was called to order 10.10 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) (E/CN.4/Sub.2/2004/NGO/3-5, 8, 9, 11, 24 and 26)

1. Mr. YOKOTA said that he was most concerned about the situation of human rights in Myanmar, on which the Special Rapporteur, Mr. Pinheiro, had submitted an excellent report. The situation in the Democratic People's Republic of Korea was also very worrying, and he therefore welcomed the appointment by the Commission on Human Rights of a Special Rapporteur for that country.
2. He also welcomed the Commission's decision to act on the Sub-Commission's recommendation to proclaim a Second United Nations Decade for Human Rights Education to commence on 1 January 2005. Like other members of the Sub-Commission, he considered such an initiative to be extremely important. It was unfortunate that the world's media did not pay attention to the work of United Nations human rights bodies, including the Sub-Commission, or of the treaty monitoring bodies. He therefore suggested that the Sub-Commission should appoint one of its members to prepare a working paper on the role and responsibility of the media in the promotion and protection of human rights and invite representatives of the media to follow its debates.
3. The plight of persons suffering from communicable diseases such as AIDS and malaria compelled attention. The abandonment of and discrimination against lepers in countries such as Japan, for example, was most disturbing. He hoped that the Sub-Commission would request one of its members to make a study of such human rights violations.
4. In many of the statements that had been made under agenda item 2 regarding serious human rights violations in armed conflicts criticism had been levelled at violations committed by only one of the parties, without mentioning those committed by the other party. The Sub-Commission had a duty of impartiality and should condemn all violations regardless of who committed them.
5. He completely agreed with Ms. Chung's recommendation that, given the extent and gravity of the phenomenon, the Sub-Commission should give priority to the question of trafficking in persons, especially women and girls for the purpose of sexual exploitation. The need for action in that area was more pressing than ever.
6. Ms. KOUFA said that, pursuant to Sub-Commission resolution 2003/15, which made provision, inter alia, for a study of the compatibility of counter-terrorism measures with international human rights standards with a view to elaborating detailed guidelines, she had studied the measures currently in place at regional level and had prepared a draft document on

guidelines containing various options which she would soon submit to the Sub-Commission, together with comments from States and organizations. However, in view of the decision of the Commission on Human Rights to request the High Commissioner for Human Rights to examine the question of the protection of human rights and fundamental freedoms while countering terrorism (Commission resolution 2004/87) and to designate an expert to assist the High Commissioner in that task, she wished to know whether she should continue her work on that topic. She would, of course, submit her final report on terrorism and human rights to the Sub-Commission under agenda item 6 (c).

7. Mr. GUISSÉ said that in condemning the concept of pre-emptive war, which did not exist in international law, he had simply wished to point out that such a concept opened the door to all kinds of abuses.

8. Ms. RAKOTOARISOA said that, as Mr. Guissé had so eloquently put it, one could not speak of human rights without speaking of peace. It was especially during times of tension, in particular during armed conflicts, that fundamental human rights such as the right to life or the right not to be tortured were flouted and derogations proliferated, leading to all kinds of abuses.

9. The judiciary had a crucial role to play in a free and democratic society. In such a society the judicial system performed an oversight function, a power stemming from the Constitution itself rather than from the Government in office. Its task was to ensure that justice was dispensed independently and impartially and to avoid any politicization. Against the backdrop of the global development of transnational criminal organizations, which over time had become powerful and competing forces, it was essential to improve arrangements for mutual judicial assistance between States. In that respect, the International Criminal Court, founded on a supranational concept of justice, constituted a significant achievement in efforts to combat impunity.

10. In addition to the judicial system, information played a crucial role in preventing human rights violations, as Mr. Yokota had noted, particularly when transmitted by civil society - non-governmental organizations (NGOs) - and the media. To the extent that they performed their allotted educational role, the media could make an effective contribution to protecting human rights.

11. Ms. WADIBIA-ANYANWU criticized the media and hence world public opinion for ignoring serious humanitarian crises around the world, especially in Africa. In an article published recently in the International Herald Tribune, Ms. Carol Bellamy, Executive Director of the United Nations Children's Fund (UNICEF), had inveighed against the world's oblivion of the crisis in Uganda, where thousands of children, some as young as 6, had been conscripted into the Lord's Resistance Army. The world also remained indifferent to the situation in the Darfur region of the Sudan, where dozens of refugees died every day. The same newspaper had blamed the media's silence on its obsession with Iraq and the Israeli-Palestinian conflict. But the international community had a duty to come to the assistance of all those requiring it, wherever and wherever they happened to be. It was not the elaboration of additional international instruments that was needed, but fulfilment by the leaders of the countries concerned of their obligations under existing instruments.

12. Recalling the Chairperson's remarks on terrorism at the opening of the fifty-sixth session, she noted that terrorism violated not only the most inalienable of rights, the right to life, but also the economic, social and cultural rights of the families and communities it struck. It was therefore necessary to make concrete recommendations to prevent terrorism, whatever the root cause, and to condemn the extreme counter-terrorism measures taken by Governments that also violated the rights of individuals.

13. She had listened with interest to the useful proposals made by some experts and NGOs on how best to advance the promotion and protection of human rights. She proposed that the Sub-Commission should appoint one or two experts to prepare a working paper based on those proposals for discussion at its fifty-seventh session in 2005.

14. Ms. MOTO said that the Sub-Commission's discussions under agenda item 2 indicated that it was capable of change like any living organism. Since 2000, on instructions from the Commission on Human Rights, the Sub-Commission had had to confine itself to naming and shaming States that committed human rights violations. Additionally, the Sub-Commission had had to refrain from referring to States that were being investigated by the Commission. Furthermore, because the 1503 procedure no longer fell within the Sub-Commission's mandate, information about countries gathered under that procedure was no longer available to the experts, which could compromise their credibility as to the origin of the information at their disposal. Lastly, it was difficult for members of the Sub-Commission to determine exactly what kind of violations they were supposed to be examining under agenda item 2. Were they massive violations of human rights, in other words international crimes? Given that the International Law Commission itself had been unable to come up with a satisfactory definition of "international crimes", the use of that concept as a yardstick did not resolve the problem. She therefore endorsed the proposal to set up a working group of the Sub-Commission to clarify the various issues arising under agenda item 2.

15. Some NGOs had drawn attention to the proliferation of human rights bodies, a phenomenon she ascribed to the increased fragmentation of law and the absence of a single decision-making authority in the human rights arena. The same fragmentation was apparent in the International Law Commission. However, fragmentation had no ill effects, since it enabled NGOs to apply to the body best adapted to deal with their concerns.

16. She endorsed the suggestions made by Mr. Alfredsson and Mr. Kartashkin on the role of prevention and best practice. Without overlooking political factors that might have played a role, it would be useful to consider how countries with a past history of massive human rights violations had eventually changed their behaviour. A paper could perhaps be prepared on that topic.

17. The CHAIRPERSON said that the suggestions made by Ms. Motoc were very helpful.

18. Mr. CHEN said that the reform of the Sub-Commission's working methods, which had been in force since 2000, was not intended to impede the work of the Sub-Commission but simply to avoid duplicating the work of the Commission on Human Rights and thus ensure the best use of resources. Nothing prevented the Sub-Commission from considering flagrant human rights violations requiring urgent action that had not been referred to the Commission.

19. Wars and armed conflicts were two of the factors behind the upsurge in human rights violations over the past year. The attack on Iraq had produced consequences that were hard to gauge from the strictly humanitarian standpoint. The precise number of Iraqi civilians - men, women and children - who had been killed or wounded in that war was not known. The country's infrastructure had been destroyed, but the extent of the destruction, which was still continuing, was unknown. With regard to the Israeli-Palestinian conflict, the application of *lex talionis* had claimed victims on both sides, although there were many more victims in the Palestinian camp. The fundamental task of the Sub-Commission should be to identify ways of bringing such conflicts to an end.

20. The devastation caused by terrorism was evident. Countries in Central, Western and Eastern Asia had experienced the harsh reality of terrorism well before America or Europe. In addition, the abusive nature of some counter-terrorism measures was perfectly illustrated at Guantánamo, where people were imprisoned without any regard for legal procedure. According to some accounts, some persons had even been tortured in the same shocking manner as Iraqi prisoners.

21. The racial and tribal conflicts that convulsed the African continent and the resulting humanitarian disasters were also a great source of concern. In Darfur, for example, 30,000 people had already died and half a million more had been displaced or left homeless.

22. Extreme poverty, which had quite rightly preoccupied the Social Forum, affected growing numbers of people, especially in sub-Saharan Africa, where the number of poor people had increased from 160 million to 340 million, notwithstanding the fact that in the Millennium Declaration the international community had set itself the goal of halving the number of persons living below the poverty line by 2015. Finding solutions to such problems was certainly a task in which the Sub-Commission could become involved.

23. Ms. WARZAZI first expressed her solidarity with her African colleagues who had spoken of the disastrous situation in certain areas of Africa. She shared the view of a number of experts that the human rights situation had significantly deteriorated over the past year. The current situation was all the more distressing given that the perpetrators of recent horrors were those who for years had put third world countries in the dock and proceeded to lecture them. A flood of information had revealed the horrors of wars waged with much bluster against peoples who, it was claimed, were being liberated from tyranny. Yet the world would be an insufferable place if war was declared by anyone who assumed the right to put an end to tyranny that actually existed or could be unwittingly fostered. In Afghanistan, where the self-proclaimed objective of the war had been to liberate the people from the Taliban, insecurity was rife outside Kabul, to the extent that Médecins sans Frontières had decided to pull out of the country. Drug trafficking had flourished as never before and women continued to suffer discrimination. In Iraq, daily television images showed a country wracked by insecurity, living in fear of attacks, lacking even a minimum of well-being, while multinationals took delight in the country's wealth. In Palestine, helicopters bombed homes and entire districts in the name of the war against terror. Even some Israelis had denounced the immorality of that situation.

24. Mr. ALFONSO MARTÍNEZ said that he had hesitated to take the floor on agenda item 2, mainly because of the restrictions imposed by the Commission. Nevertheless, he was in total agreement with previous speakers who had outlined the particularly difficult international situation regarding the promotion and protection of human rights. That was hardly surprising, given the general crisis of international relations and of international law, which governed those relations. The crisis in the rule of international law, which had affected dozens of countries, obviously had repercussions for the work of the Sub-Commission. The basic explanation was that some countries, following the example of the Administration installed in Washington, D.C., since 2001, had ridden roughshod over the principles established in Articles 1 and 2 of the Charter of the United Nations that underpinned the international order, namely the sovereign equality of States, the obligation to settle disputes by peaceful means, the unlawfulness of resorting to force except as stipulated by the Charter and, of course, non-interference in States' internal affairs. When those principles were flouted and lawlessness determined the conduct of international relations, and above all when force was used outside the control of an international body on the basis of fallacious arguments the like of which had not been advanced since the Nazis, it came as no surprise that human rights were no longer respected. The part played by the media in propagating such ideas should also be mentioned. The media had much to say about individual terrorists or terrorist groups, yet carefully avoided criticizing State terrorism directed against entire populations. Yet one might well ask what voices had been raised to denounce the genocide of the Palestinians.

25. Another factor contributing to the deterioration of human rights was the political manipulation of the topic by certain great Powers. All abuses were possible when human rights were invoked to demand a change of Government in a country whose regime happened to have fallen out of favour. The upshot was a kind of indifference towards violations of those same rights, and flagrant ones at that. When one was aware of what had happened or was still happening at the Guantánamo naval base, it was hard to understand how the international human rights community could remain silent when faced with a situation that so blatantly contravened international law.

26. It was abundantly clear that the Commission on Human Rights had intended, on the pretext of depoliticizing its debates, to retain decision-making power in situations where rights were being violated. If that was the case, one might well ask, as Ms. Warzazi had done, why the Commission continued to treat the issue in such a selective manner, consistently putting third world countries in the dock. During its 60 years of existence the Commission on Human Rights had been incapable of turning its attention to events in the so-called developed world. What then was the role of the Sub-Commission, if not to reaffirm the basic principles set out in Articles 1 and 2 of the Charter of the United Nations? Five years previously, the Sub-Commission had adopted by an overwhelming majority its resolution 1999/2, resolutely condemning as inadmissible and contrary to international law so-called humanitarian interventions, especially those involving the use of armed force.

27. Mr. BÍRÓ said that, with the exception of resolutions and decisions on country situations, which the Commission intended to keep within its exclusive competence, there existed a vast and complex sphere of activity in which the Sub-Commission could occupy itself profitably, namely prevention. He wished to make a proposal along the lines suggested by Mr. Kartashkin in his earlier statement, that the Sub-Commission should continue its activities within the mandate

defined by the Commission, including the study of positive developments and best practices as suggested by Mr. Alfredsson, taking into account the innovative ideas put forward by Minnesota Advocates for Human Rights, and also call upon its observer partners to provide information on potential threats to the realization of human rights in a particular country, region or social sphere. The intention was not to turn the Sub-Commission into an early warning mechanism, but rather to gather information from different sources, take note of early warning signals, for example those sent by special rapporteurs, and draw the attention of the Commission in summary records intended for its consideration to situations which, in the view of the Sub-Commission, merited urgent and priority attention.

28. Darfur was a case in point. What was currently considered an appalling humanitarian catastrophe had begun not 15 months previously, as the media would have people believe, but in early 1990, when violent conflict had erupted between small groups of Arab nomads and the Zaghawa and Masalit tribes. As the Special Rapporteur on the situation of human rights in the Sudan at the time, he had duly informed the Commission on Human Rights, the Sudanese Government and the general public of the violations occurring in the region: experience had shown that such violations were often the prelude to bloody conflicts.

29. There were also other areas where the Sub-Commission might focus its attention. Breathtaking advances in genetics, nanotechnology and robotics had raised a number of issues relevant to respect for human rights. Moreover, the Sub-Commission had already started to address some of those questions, such as the topic of the human genome, on which Ms. Motoc had prepared a report, and other matters raised in the Social Forum that had just taken place.

30. Mr. DOS SANTOS said that, as had been repeatedly noted during the debate on agenda item 2, the majority of human rights violations that continued to occur around the world took place in conflict zones. The protection of human rights was a complex task even in peacetime, but for countries emerging from conflicts the task was truly challenging, because they had to consolidate peace and democracy and promote socio-economic development, two prerequisites for the protection of human rights. It should be recalled that in the Millennium Declaration world leaders had recognized that “responsibility for managing worldwide economic and social development, as well as threats to international peace and security, must be shared among the nations of the world and should be exercised multilaterally”. It was in that context that the Sub-Commission should approach the question of human rights violations and identify the means of preventing them. He therefore agreed with the proposal to establish a small group of experts to consider the issue.

31. Mr. RIVKIN, taking the floor for the second time under agenda item 2, said that he wished to address the question of humanitarian interventions accompanied by excessive use of force, which had been rightly condemned by a number of speakers. However, views on that matter were far from unanimous. Some, including the Secretary-General himself, were in favour of such interventions when Governments treated their citizens in an intolerable manner. The Secretary-General had even set up a special team that had issued a report on the matter. Listening to some people, one might think that the concept of intervention had been invented by Western countries and was directed exclusively against third world countries. It was surprising

to note, moreover, that some accepted the imposition of sanctions against certain countries while at the same time recoiling at the idea of using force as the ultimate sanction against countries that committed widespread abuses of a genocidal nature. While it was possible to dispute the merits of a particular humanitarian operation, members of the Sub-Commission must, as legal experts, take care to distinguish between the arbitrary nature of certain interventions decided upon by States and the various aspects of the issue considered from the standpoint of international law.

32. It was true that the right of self-defence had been improperly invoked since time immemorial. The example cited by one member of the Sub-Commission, namely that of Hitler fabricating the idea of an attack against Nazi forces to justify his invasion of Poland, was indeed a good illustration. But history also taught that reluctance to use force merely encouraged tyrants, a truth of which European countries had bitter experience. Prompt use of force against Hitler would certainly have prevented him from taking power and would thus have saved millions of human lives. There again, the question was not as simple as some experts would have one believe.

33. Mr. PINHEIRO thanked NGOs for the important information they had provided to the Sub-Commission about certain country situations and strongly encouraged them to continue to submit such material at future sessions. He also thanked the Moroccan Human Rights Advisory Council for its statement under agenda item 2, and the Government observers who had given specific briefings on activities to promote and protect human rights at the national level. As Mr. Alfredsson had stated, it was important to learn about and disseminate best practices and not simply to catalogue atrocities. Thanks were also due to the United Nations Information Service for listing the countries referred to in the debate under agenda item 2 in its press releases.

34. He endorsed the idea of adopting a resolution on human rights defenders and also the idea of establishing a working group to consider ways of improving the consideration of agenda item 2, which had been suggested by the NGO Minnesota Advocates for Human Rights. In his view, item 2 continued to be a vital part of the Sub-Commission's agenda, as the large number of experts who had taken the floor on the item indicated. It was under agenda item 2 that the Sub-Commission most effectively performed its role as a "think tank", for example by identifying new patterns of country violations and finding new mechanisms for preventing them.

35. It was interesting to see that the majority of human rights violations reported by NGOs concerned Africa, Asia and Western Europe, whereas no cases had been reported in Latin America or Eastern Europe. Obviously, the distribution of complaints did not mean that the latter regions were completely free of such abuses. In any event, he had compiled a table summarizing the statements made under agenda item 2, which he intended to circulate.

36. Finally, he thought it important to build a better understanding with the Commission about the Sub-Commission's right to consider urgent matters of human rights violations. He encouraged NGOs, intergovernmental organizations and observer Governments to report to the Sub-Commission fact-based accounts that would help in identifying patterns of human rights violations and in identify their root causes, if possible.

37. Mr. SALAMA said that the debate as to how the Sub-Commission should consider agenda item 2 had progressed in the light of the new situation created by the Commission's guidelines. He considered most pertinent Mr. Pinheiro's suggestion that the Sub-Commission should become a sort of think tank whose task should be to detect gaps in the law. He also shared the view of Mr. Bíró on the prospects open to the Sub-Commission in the area of prevention.

38. Consideration of agenda item 2 could involve three separate elements: first, as Mr. Alfredsson had suggested, the Sub-Commission might consider situations that gave rise to human rights concerns while at the same time examining examples of best practices that provided encouragement; secondly, it could consider, as it was authorized to do, situations that had not been taken up by the Commission; lastly, it could identify gaps in the area of prevention. Those three elements, after some refining, could be included in the resolution that the Sub-Commission would adopt on agenda item 2.

39. Mr. ALFONSO MARTÍNEZ, taking the floor again, said that Mr. Rivkin had raised an issue that perturbed him deeply. First of all, he had never said that the concept of humanitarian intervention had been devised by the countries of the North to undermine the countries of the South. In point of fact, the concept had been developed in the late 1970s by a right-wing French intellectual, Jean-François Revel, and had been subsequently taken up by other French luminaries including Mario Bettati, who had written at length on what was originally called the right of humanitarian intervention, which subsequently became the duty to intervene on humanitarian grounds. The concept had then been put into practice by another famous Frenchman, Bernard Kouchner, following his appointment by the Secretary-General as head of the United Nations Interim Administration in Kosovo (UNMIK). Kosovo was the classic example of a humanitarian intervention in the name of which the civilian population had been bombed. The Sub-Commission would certainly recall the "humanitarian strikes".

40. In other words, intellectuals had helped to destroy the foundations of international law. Most frightening of all, their ideas had been espoused by the Secretary-General, whose primary responsibility was to defend the fundamental principles enshrined in the Charter of the United Nations. The equality and sovereignty of States were not obsolete concepts. At least, they were certainly not obsolete for those who had assumed the right to intervene in other States' affairs. To claim legal justification for intervention by tacking on the adjective "humanitarian" was as unacceptable as justifying torture by describing it as "subtle" or "moderate". Such an approach helped to nullify the fundamental legal principles governing international relations, solely in the interests of the Powers that wished to dominate the rest of the world.

41. Mr. RIVKIN asked for the floor again.

42. Mr. KARTASHKIN, speaking on a point of order, asked whether it was appropriate to hold a theoretical debate on the question of humanitarian intervention. He himself had published an article on that topic in the Russian Federation and would ask for the floor if the debate was allowed to proceed. He also wished to know exactly how long each expert was allowed to speak on any one agenda item.

43. The CHAIRPERSON said that the issue of humanitarian intervention did not strike him as irrelevant to agenda item 2. The speaking time allocated to experts could for various reasons exceed the limits set at the start of each session. He intended to give the floor once more to Mr. Rivkin, not in order to prolong the debate on humanitarian intervention, but solely to enable him to dispel any misunderstanding occasioned by his earlier statement.

44. Mr. RIVKIN explained that he had never said that the doctrine of humanitarian intervention had been invented by the countries of the North to undermine the countries of the South, merely that that was the view of certain opponents of the doctrine.

Statements in exercise of the right of reply

45. Mr. GUNARATNA (Observer for Sri Lanka) said that it was not his intention to address the so-called issues raised by the NGO calling itself the Asian Legal Resource Center, whose submissions were fictional and slanderous. There was no exceptional collapse of any kind taking place in Sri Lanka. In fact, the two and a half years since the signing of the ceasefire agreement on 21 February 2002, facilitated by Norway, had been an exceptionally peaceful time that had enabled the country to make progress in all areas, including human rights. His Government wished to reiterate its unwavering commitment to the cause of human rights and its determination to fulfil its treaty obligations in that area.

46. Ms. PRIETO ABAD (Observer for Colombia), recalling that the Commission on Human Rights was considering the situation in Colombia under item 3 of its agenda, said that her Government's policy aimed to re-establish the rule of law, strengthen institutions and improve security throughout the country. As a result, the level of violence against the civilian population had abated, as indicated by the reduction in the number of forced displacements, murders (specifically of trade unionists), kidnappings and massacres. The Government was taking action against the self-defence groups that committed acts of brutality against citizens, just as it was combating other armed groups that operated outside the law. The allegation that the self-defence groups were operating with the support of the army was untrue and constituted a complete misreading of the real situation in Colombia, which was characterized by frequent bomb attacks carried out by the rebel groups Fuerzas Armadas Revolucionarias de Colombia (FARC) and Ejército de Liberación Nacional (ELN). Moreover, the mission mandated by the Organization of American States (OAS) in the context of the peace process in Colombia had brought together all the parties in that process, including the guerrillas and the illegal self-defence groups.

47. Mr. OBIDOV (Observer for Uzbekistan) said that his Government was disappointed that Ms. Hampson, who had never been to Uzbekistan, had allowed herself to pass totally subjective judgements on his country. He recalled that the Special Rapporteur on Torture, Mr. Theo van Boven, had visited Uzbekistan at the invitation of the Government; that visit had marked the start of constructive cooperation with United Nations institutions in the context of the democratic transformation of Uzbekistan.

48. The Uzbek Government resolutely condemned all forms of torture and considered that isolated instances could not be classified as systematic violations. Moreover, pursuant to the recommendations of the Special Rapporteur, his Government had adopted a plan of action to ensure the implementation of the Convention against Torture and was endeavouring to improve

its judicial system. Of all the countries in the Commonwealth of Independent States (CIS), Uzbekistan had the smallest prison population, and its prisons were open to international organizations that were free to verify inmates' conditions of detention. All abuses committed by prison staff were severely punished. Reports that people had died while in detention were based on unfounded allegations. It had been claimed that Mr. Shelkovenko had been found hanged in his cell, but there was no proof that he had been the victim of any kind of brutality.

49. Mr. KIM Yong Ho (Observer for the Democratic People's Republic of Korea) recalled Mr. Yokota's reference to Commission on Human Rights resolution 2004/13 on the Democratic People's Republic of Korea and said that his Government refused to recognize that resolution, which reflected the politicization of the Commission. The sole intent of the sponsors of the text, egged on by the United States of America, had been to exert pressure on the Socialist regime in his country by exploiting the nuclear issue. It was interesting to note that the sponsors had never sought to consult with the party concerned. The resolution had been a unilateral initiative.

50. Mr. SIMBOLON (Observer for Indonesia) said that his delegation wished to respond to a point raised by Ms. Hampson the previous day regarding the situation in the Indonesian province of Aceh. Basing her comments exclusively on allegations contained in the report of the NGO Human Rights Watch, she had accused the Indonesian army of carrying out massacres of civilians during military operations in that province. His Government had responded to the allegations by Human Rights Watch in the clearest and most official terms. It had indicated, inter alia, that when rebels belonging to the Free Aceh Movement (GAM) were killed during such operations, it was commonplace for GAM to claim that the victims were civilians in order to manipulate public opinion. It was simply absurd to claim that the army had killed civilians in Aceh, because the purpose of the military intervention was precisely to protect local people against violence perpetrated by Islamic or tribal groups whose narrow ideology was completely out of step with the pluralist and tolerant outlook of democratic Indonesia. Thanks to the joint operations by the Indonesian armed forces, the security, humanitarian and even economic situation in the province was improving. The progress made to date had enabled the Government to reduce the number of troops in Aceh since May 2004.

51. He emphasized the importance of the democratic reforms currently under way in Indonesia, such as the efforts being made to improve the training of the military and the police. Other achievements included freedom of the press, the independence of human rights institutions and the dynamism of civil society organizations, all indicators of Indonesia's transformation, which, unfortunately, Human Rights Watch refused to see.

52. Mr. YOKOTA thanked the Observer for the Democratic People's Republic of Korea for clarifying his country's position on Commission on Human Rights resolution 2004/13. His own view of that resolution was totally different.

53. Ms. HAMPSON, referring to the legal points of order raised at the previous meeting, said that she had taken care to refer solely to country situations that had not been taken up by the Commission on Human Rights.

54. Regarding the comments by the observer for Colombia, she stressed that all parties to the conflict in that country - paramilitaries, armed forces and rebel groups - were violating international humanitarian law. However, it was impossible to speak of human rights violations committed by FARC or ELN, because international humanitarian law applied only to States and not to armed groups with no affiliation to the State.

55. Returning to a point raised by Ms. Koufa, she said that the question of human rights violations occurring in the context of the fight against terrorism should be considered under agenda item 6 rather than agenda item 2. She welcomed Ms. Koufa's proposal to prepare guidelines in that area, on condition that they brought something new to the debate. It would be sensible, before drafting such guidelines, to wait for the report of the independent expert appointed by the Commission on Human Rights.

56. Ms. WARZAZI said that it had never been the intention of the Commission on Human Rights to prevent members of the Sub-Commission from freely speaking their mind on any country situation. Furthermore, she did not think it right to downplay the responsibility of armed groups that committed human rights violations, sometimes on a massive scale.

57. Finally, when there was a difference of opinion between an expert and a country observer, she suggested that the two should meet and initiate face-to-face dialogue with a view to harmonizing their respective viewpoints.

58. The CHAIRPERSON said that the Sub-Commission had thus concluded its consideration of agenda item 2.

Election of the Rapporteur

59. Mr. ALFONSO MARTÍNEZ nominated Mr. Pinheiro for the office of Rapporteur.

60. Mr. Pinheiro was elected Rapporteur by acclamation.

PREVENTION OF DISCRIMINATION:

- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA
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(agenda item 5) (E/CN.4/Sub.2/2004/29 and Add.1, 30 and Add.1, 31 and 45;
E/CN.4/Sub.2/2004/NGO/1, 11, 16-18, 24 and 25)

61. Ms. Hampson (Vice-Chairperson) took the Chair.

62. Mr. YOKOTA introduced the expanded working paper on the topic of discrimination based on work and descent, prepared by himself and Mr. Eide (E/CN.4/Sub.2/2004/31). He thanked the Lutheran World Federation and the International Movement Against All Forms of Discrimination and Racism for their valuable collaboration.

63. After reviewing the different stages that had preceded the preparation of the expanded working paper, specifically resolution 2003/22, adopted by the Sub-Commission at its previous session, he said that the document consisted of four parts. Chapter I, based on the necessarily incomplete information available, outlined the legal, judicial, administrative and educational measures taken by the Governments concerned. The countries referred to should be considered as examples of good practice, in that they had made an effort to tackle the problems that arose in that area. Chapter II was devoted to other communities facing that type of discrimination. Chapter III proposed a framework for a draft set of principles and guidelines for the elimination of discrimination based on work and descent. Three considerations were borne in mind, namely that such discrimination was contrary to international human rights law; that in many parts of the world it was deeply rooted in tradition; and that, because its victims were often disadvantaged and excluded from power, the cooperation of the international community was essential to combat such discrimination. Chapter IV put forward three concrete proposals, namely appointing a Special Rapporteur or Rapporteurs to prepare a study of discrimination based on work and descent; authorizing the Special Rapporteur or Rapporteurs to request the Office of the United Nations High Commissioner on Human Rights to transmit a questionnaire to Governments, national human rights institutions and NGOs; and preparing a set of principles and guidelines in collaboration with United Nations bodies dealing with racial discrimination and with NGOs.

64. Mr. RIVKIN said that the question of discrimination based on work and descent offered the Sub-Commission a vast and still largely unexplored field of study. He personally had been unaware of the scale of discrimination based on work and descent throughout the world. The issue therefore merited closer study in order to pinpoint the problem geographically, analyse its various manifestations and identify appropriate solutions.

The meeting rose at 12.55 p.m.